

**WSR 10-20-004**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed September 22, 2010, 2:25 p.m., effective October 23, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 181-79A WAC, adds new section WAC 181-79A-158 requiring teachers to report address changes to the state teacher certification office.

Citation of Existing Rules Affected by this Order: Amending x.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 10-11-059 on May 13, 2010.

Changes Other than Editing from Proposed to Adopted Version: Clarified language related to eligibility for renewals.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: July 22, 2010.

David Brenna  
 Legislative and  
 Policy Coordinator

**NEW SECTION**

**WAC 181-79A-158 Requirements for providing contact information.** Educators holding certificates shall provide a current mailing address to the superintendent of public instruction. Beginning September, 2010, any change of address shall be communicated to the same office within sixty days.

**WSR 10-20-011**  
**PERMANENT RULES**  
**PUBLIC DISCLOSURE COMMISSION**

[Filed September 24, 2010, 8:22 a.m., effective October 25, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To implement SB 6243 (chapter 205, Laws of 2010), including revising instructions on forms, revising instructions set out in rules, and repealing outdated instructions.

Citation of Existing Rules Affected by this Order: WAC 390-13-100, 390-16-011, 390-16-012, 390-16-041, 390-16-115, 390-19-030, and 390-16-314; repealing 1; and amending 6.

Statutory Authority for Adoption: RCW 42.17.370(1).

Adopted under notice filed as WSR 10-17-073 on August 16, 2010.

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 6, Repealed 1.

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

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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 1.

Date Adopted: September 23, 2010.

Lori Anderson  
 Communications and  
 Training Officer

**AMENDATORY SECTION** (Amending WSR 02-03-018, filed 1/4/02, effective 2/4/02)

**WAC 390-13-100 Duties of elections officials receiving copies of campaign finance reports.** (1) Pursuant to RCW 42.17.375, when arranging, indexing, handling and providing access to reports filed with the county as required by chapter 42.17 RCW prior to June 10, 2010, county election officers shall adhere to the following:

(a) Each report on receipt shall be marked with the date (or some means of determining the date) the report was post-marked and/or the date on which it was received by the elections office.

(b) Files for these reports shall be maintained separate from all other reports and documents in the office and shall be arranged alphabetically by the name of the candidate or committee. Elections officers may segregate files into additional categories, if desired.

(c) Files may be maintained in paper or electronic form or on micrographics. If files are maintained in electronic form or on micrographics, equipment for viewing and reproducing reports on paper must be made available to the public.

(d) A separate, special index shall be maintained showing the name of each candidate or committee for whom reports are on file. The index need not list each report subsequently filed. The index shall be readily available for public inspection.

(e) Reports shall be placed in the files and available for public inspection by the end of the next business day following receipt.

(f) Mindful that the public's right to know of the financing of political campaigns is paramount, elections officials shall give priority attention to and promptly honor each request for public inspection of the campaign finance report files.

(2) Copies of reports must be maintained by elections officers for a period of at least six years, in accordance with RCW 42.17.450, and records retention schedules prepared pursuant to chapter 40.14 RCW.

(3) A description of the county's method of filing and indexing campaign finance reports shall be updated and sent to the public disclosure commission within thirty days of a revision to the filing and indexing system.

AMENDATORY SECTION (Amending WSR 08-01-069, filed 12/14/07, effective 1/14/08)

**WAC 390-16-011 Forms—Registration statement for political committees.** The official form for providing the statement of organization by political committees for designating a campaign treasurer and depository and for reporting information required to qualify for mini campaign finance reporting is designated "C-1pc," revised ~~((1/08))~~ 11/10. Copies of this form are available at the Commission Office, 711 Capitol Way, Room 206, P.O. Box 40908, Olympia, Washington 98504-0908. Any attachments shall be on 8-1/2" x 11" white paper.



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Please consult PDC instruction manuals when completing this report. Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.



**Who Must File** – Persons, committees, organizations or groups that receive contributions or make expenditures in support of or opposition to: candidates in jurisdictions of 5,000 or more registered voters as of the last general election; statewide ballot issues; or local ballot issues in jurisdictions with 1,000 or more registered voters as of the last general election.

**When To File** – Within 2 weeks of organizing a committee or first expecting to receive contributions or make expenditures, whichever occurs first. **(Committees that organize within three weeks of an election must file within three business days of forming or of expecting to receive contributions or make expenditures.)**

File an amended C-1pc form within 10 calendar days of any material change to the registration information furnished previously. For single election-year only committees, a material change includes providing or modifying the list of candidates the committee is supporting or opposing.

Continuing political committees using Mini Reporting must also file a C-1pc annually in January. Reports are considered filed as of the postmark date or date hand-delivered to PDC.

**Where To File** – Send the **original to PDC** at the above address. Send a **copy to County Auditor** (county elections office) of the county in which the committee headquarters is located. If there is no headquarters, send to the County Auditor of the county in which the treasurer resides. Keep a copy as part of the committee's records.

**“Officer” of a Political Committee** – Officer of a political committee includes the following persons:

- any person designated as an officer on the C-1pc registration statement, and
- any person who alone or in conjunction with other persons makes, directs, or authorizes contribution, expenditure, strategic or policy decisions on behalf of the committee. [WAC 390-05-245]

#### **Persons who perform “Ministerial Functions” for two or more campaigns**

A person may perform ministerial functions for a candidate and a political committee without jeopardizing that political committee's eligibility to make independent expenditures or electioneering communications regarding that candidate as long as:

- the person performs solely ministerial functions for both the candidate and the political committee;
- the person is identified on both the candidate's and political committee's registration statements as a person performing ministerial functions for the campaign; and
- the person does not share information from or about one of the campaigns with the other campaign, or does not use information from or about one of the campaigns to assist the other campaign. [See RCW 42.17.020 (15)(b)(ix) and WAC 390-05-243 for more detailed information.]

“Ministerial functions” means activities carried out as part of the duties of an administrative office without exercise of personal judgment or discretion. RCW 42.17.020(34). Also see WAC 390-05-243 for a non-exclusive list of ministerial functions and a definition of administrative office. Typically, persons performing ministerial functions may, under the supervision of a candidate or committee officer, file PDC reports, make deposits, pay bills and maintain campaign finance records. However, if a person performs functions for both a candidate and a political committee and those functions for one or both campaigns entail duties beyond those deemed ministerial, any expenditure by the committee benefiting the candidate may be a contribution, rather than an independent expenditure or electioneering communication. [RCW 42.17.020(34) and WACs 390-05-243 and 390-05-210]

**For Instruction Manuals and Reporting Forms click on the “Filer Resources” tab at [www.pdc.wa.gov](http://www.pdc.wa.gov)**

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Continuing political committees using Mini Reporting must also file a C-1pc annually in January. Reports are considered filed as of the postmark date or date hand-delivered to PDC.

**Where To File** – Send the **original to PDC** at the address on the reverse side. Keep a copy as part of the committee's records.

**“Officer” of a Political Committee** – Officer of a political committee includes the following persons:

- any person designated as an officer on the C-1pc registration statement, and
- any person who alone or in conjunction with other persons makes, directs, or authorizes contribution, expenditure, strategic or policy decisions on behalf of the committee. [WAC 390-05-245]

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- the person performs solely ministerial functions for both the candidate and the political committee;
- the person is identified on both the candidate's and political committee's registration statements as a person performing ministerial functions for the campaign; and
- the person does not share information from or about one of the campaigns with the other campaign, or does not use information from or about one of the campaigns to assist the other campaign. [See RCW 42.17.020(15)(b)(ix) and WAC 390-05-243 for more detailed information.]

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AMENDATORY SECTION (Amending WSR 08-01-069, filed 12/14/07, effective 1/14/08)

**WAC 390-16-012 Forms—Registration statement for candidates.** The official form for providing the statement of organization by candidates and candidate's committees, for designating a campaign treasurer and depository and for reporting information required to qualify for mini campaign finance reporting is designated "C-1," revised ((4/08)) 11/10. Copies of this form are available at the Commission Office, 711 Capitol Way, Room 206, P.O. Box 40908, Olympia, Washington, 98504-0908. Any attachments shall be on 8-1/2" x 11" white paper.

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 <p><b>PUBLIC DISCLOSURE COMMISSION</b> 711 CAPITOL WAY RM 206 PO BOX 40908 OLYMPIA WA 98504-0908 (360) 753-1111 Toll Free 1-877-601-2828</p>		<h2 style="text-align: center;">Candidate Registration</h2>		<h1 style="font-size: 2em;">C1</h1> <p style="font-size: 0.8em;">(1/2008)</p>	
Candidate's Name (Give candidate's full name.)				Telephone Number (     )	
Candidate's Committee Name (Do not abbreviate.)				Fax Number (     )	
Mailing Address				Candidate's E-Mail Address	
City		County		Zip + 4	
1. What office are you running for?		Legislative District, County or City		Position No.      Do you now hold this office? Yes <input type="checkbox"/> No <input type="checkbox"/>	
2. Political party (if partisan office)			3. Date of general or special election		
<p>4. How much do you plan to spend during your entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. If no box is checked you are obligated to use Option II, Full Reporting. See instruction manuals for information about reports required and changing reporting options.</p> <p><input type="checkbox"/> <b>Option I MINI REPORTING:</b> In addition to my filing fee of \$ _____, I will raise and spend no more than \$5,000, including any charges for inclusion in state and local voters pamphlets. I will not accept more than \$500 in the aggregate from any contributor except myself.</p> <p><input type="checkbox"/> <b>Option II FULL REPORTING:</b> I will use the Full Reporting system. I will file the frequent, detailed campaign reports required by law.</p>					
5. Treasurer's Name and Address. Does treasurer perform <u>only</u> ministerial functions? Yes ___ No ___ See WAC 390-05-243 and next page for details. List deputy treasurers on attached sheet.				Daytime Telephone Number (     )	
6. Persons who perform only ministerial functions on your behalf <u>and</u> on behalf of other candidates or political committees. List name, title and address of these persons. See WAC 390-05-243 and next page for details. <input type="checkbox"/> Continued on attached sheet.					
7. Committee Officers and other persons who authorize expenditures or make decisions on your behalf. List name, title and address. See next page for definition of "officer." <input type="checkbox"/> Continued on attached sheet.					
8. Campaign Bank or Depository		Branch		City	
9. Related or Affiliated Political Committees. List name, address and relationship. <input type="checkbox"/> Continued on attached sheet.					
<p>10. Campaign books must be open to the public by appointment between 8 a.m. and 8 p.m. during the eight days before the election, except Saturdays, Sundays, and legal holidays. In the space below, provide contact information for scheduling an appointment and the address where the inspection will take place. It is not acceptable to provide a post office box or an out-of-area address.</p> <p style="text-align: center;"><b>Street Address, Room Number, City where campaign books will be available for inspection</b></p> <p>In order to make an appointment, contact the campaign at (telephone, fax, e-mail): (     )</p>					
<p>11. <b>CERTIFICATION:</b> I certify that this report is true, complete and correct to the best of my knowledge.</p> <p>Candidate's Signature _____ Date _____</p>					

SEE INSTRUCTIONS ON NEXT PAGE

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**Who Must File** – Candidates who seek:

- state office (legislative or statewide executive),
- a state supreme court or state court of appeals position,
- local office in jurisdictions having 5,000 or more registered voters as of the last general election or in jurisdictions covering an entire county,
- local office in jurisdictions of any size if the candidate receives or expects to receive \$5,000 or more in contributions.

**When To File** – Within 2 weeks of becoming a candidate. A person becomes a candidate for PDC purposes when he or she **first** does any of the following:

- receives contributions, makes expenditures, or reserves space or facilities with intent to promote his or her candidacy;
- purchases commercial advertising space or broadcast time to promote his or her candidacy;
- authorizes another person to take one of these above actions on his or her behalf;
- announces publicly that he or she is seeking office; or
- files a declaration of candidacy with the appropriate elections official.

File an amended registration within 10 days of a material change to information provided on previously filed C-1. Reports are considered filed as of the postmark date or date hand-delivered to PDC.

**Where To File** – Send the **original to PDC** at the above address. Send a **copy to County Auditor** (county elections office) of the county in which the candidate resides. Candidates for city offices are advised to contact their City Clerk to learn if local filing is required by local ordinance. Keep a copy for the campaign's records.

**“Officer” of a Candidate’s Committee** – Officer of a candidate’s committee includes the following persons:

- any person designated as an officer on the C-1 registration statement, and
- any person who alone or in conjunction with other persons makes, directs, or authorizes contribution, expenditure, strategic or policy decisions on behalf of the committee. [WAC 390-05-245]

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Candidate's Name (Give candidate's full name.)		Telephone Number (     )	
Candidate's Committee Name (Do not abbreviate.)		Fax Number (     )	
Mailing Address		Candidate's E-Mail Address	
City	County	Zip + 4	Campaign E-Mail Address
1. What office are you running for?		Legislative District, County or City	Position No.      Do you now hold this office? Yes <input type="checkbox"/> No <input type="checkbox"/>
2. Political party (if partisan office)		3. Date of general or special election	
4. How much do you plan to spend during your entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. If no box is checked you are obligated to use Option II, Full Reporting. See instruction manuals for information about reports required and changing reporting options.			
<input type="checkbox"/> <b>Option I MINI REPORTING:</b> In addition to my filing fee of \$_____, I will raise and spend no more than \$5,000, including any charges for inclusion in state and local voters pamphlets. I will not accept more than \$500 in the aggregate from any contributor except myself.			
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7. Committee Officers and other persons who authorize expenditures or make decisions on your behalf. List name, title and address. See next page for definition of "officer." sheet. <input type="checkbox"/> Continued on attached sheet.			
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<b>Street Address, Room Number, City where campaign books will be available for inspection</b>  In order to make an appointment, contact the campaign at (telephone, fax, e-mail): (     )			
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Candidate's Signature			

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**For Instruction Manuals and Reporting Forms click on the “Filer Resources” tab at [www.pdc.wa.gov](http://www.pdc.wa.gov)**

AMENDATORY SECTION (Amending WSR 04-01-132, filed 12/18/03, effective 1/18/04)

**WAC 390-16-041 Forms—Summary of total contributions and expenditures.** (1) The official form for reports of contributions and expenditures by candidates and political committees who use the "full" reporting option is designated "C-4," revised ((4/02)) 11/10, and includes Schedule A, revised 1/04, Schedule B, revised 1/04, Schedule C, revised 3/93, and Schedule L, revised 1/02.

(2) Copies of these forms are available at the Commission Office, 711 Capitol Way, Room 206, P.O. Box 40908, Olympia, Washington 98504-0908. Any paper attachments shall be on 8-1/2" x 11" white paper.

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**CAMPAIGN SUMMARY  
RECEIPTS & EXPENDITURES**

<b>C4</b> <small>(1/02)</small>	PDC OFFICE USE

Candidate or Committee Name (Do not abbreviate. Include full name)	
Mailing Address	City

Zip + 4	Office Sought (Candidates)	Election Date
Report Period Covered	From (last C-4) To (end of period)	Final Report? Yes <input type="checkbox"/> No <input type="checkbox"/>

**\*For PACs, Parties & Caucus Committees:** During this report period, did the committee make an **independent expenditure** (i.e., an expense not considered a contribution) supporting or opposing a state or local candidate?

**RECEIPTS** \*See reverse Yes  No

1. Previous total cash and in kind contributions (From line 8, last C-4) (if beginning a new campaign or calendar year, see instruction booklet) ..... \$ \_\_\_\_\_
2. Cash received (From line 2, Schedule A) ..... \$ \_\_\_\_\_
3. In kind contributions received (From line 1, Schedule B)..... \_\_\_\_\_
4. Total cash and in kind contributions received this period (Line 2 plus 3) ..... \_\_\_\_\_
5. Loan principal repayments made (From line 2, Schedule L)..... ( \_\_\_\_\_ )
6. Corrections (From line 1 or 3, Schedule C) ..... Show + or (-) \_\_\_\_\_
7. Net adjustments this period (Combine line 5 & 6)..... Show + or (-) \_\_\_\_\_
8. Total cash and in kind contributions during campaign (Combine lines 1, 4 & 7) ..... \_\_\_\_\_
9. Total pledge payments due (From line 2, Schedule B).....

**EXPENDITURES**

10. Previous total cash and in kind expenditures (From line 17, last C-4) (if beginning a new campaign or calendar year, see instruction booklet)..... \_\_\_\_\_
11. Total cash expenditures (From line 4, Schedule A) ..... \_\_\_\_\_
12. In kind expenditures (goods & services) (From line 1, Schedule B)..... \_\_\_\_\_
13. Total cash and in kind expenditures made this period (Line 11 plus line 12) ..... \_\_\_\_\_
14. Loan principal repayments made (From line 2, Schedule L)..... ( \_\_\_\_\_ )
15. Corrections (From line 2 or 3, Schedule C) ..... Show + or (-) \_\_\_\_\_
16. Net adjustments this period (Combine lines 14 & 15)..... Show + or (-) \_\_\_\_\_
17. Total cash and in kind expenditures during campaign (Combine lines 10, 13 and 16)..... \_\_\_\_\_

**CANDIDATES ONLY**

	Won	Lost	Unopposed	Name not on ballot
Primary election	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General election	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Treasurer's Daytime Telephone No.:  
( \_\_\_\_\_ )

**CASH SUMMARY**

18. Cash on hand (Line 8 minus line 17)..... \_\_\_\_\_  
(Line 18 should equal your bank account balance(s) plus your petty cash balance.)
19. Liabilities: (Sum of loans and debts owed) ..... ( \_\_\_\_\_ )
20. Balance (Surplus or deficit) (Line 18 minus line 19)..... \_\_\_\_\_

**CERTIFICATION:** I certify that the information herein and on accompanying schedules and attachments is true and correct to the best of my knowledge.

Candidate's Signature	Date	Treasurer's Signature	Date
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SEE INSTRUCTIONS ON REVERSE  
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<p><b>Page 2</b></p>	<p><b>C4</b> <small>(1/02)</small></p>	<p><b>CAMPAIGN SUMMARY RECEIPTS &amp; EXPENDITURES</b></p>
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**Please consult PDC instruction manuals when completing this report.  
Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.**

- WHO MUST FILE** Each candidate and political committee using Full Reporting.
- FILING DATES**
- 1) File with C-1 or C-1pc (Registration form) if you received contributions or made expenditures before registering.
  - 2) File on the 10th of each month if contributions or expenditures are over \$200 since last C-4 was filed. (These 10th-of-the-month reports are not required if another C-4 must be filed during that month. See #3 below.)
  - 3) For each primary, general and special election in which the candidate or political committee makes an expenditure, file
    - 21 days prior to the election
    - 7 days prior to the election
    - 10th of the first month after the election -- see note below

(Note: Not required after primary election from candidates who will be in the general election or from continuing political committees.)
  - 4) File final report when campaign is finished or committee closes operation. Often, this coincides with the primary or general post-election, 10th-of-the-month report.

All reports are considered filed as of the postmark date or the date hand-delivered to PDC.

**WHERE TO SEND REPORTS** Send original C-4 reports, along with all schedules and attachments, to PDC. Candidates send a duplicate copy to their County Auditor (County Elections Department). Political committees send a copy to County Auditor of the county in which their headquarters is located or, if no headquarters, the county in which their treasurer resides.

Candidates for city offices, city ballot issue committees and other political committees who give to city candidates or ballot issue committees should check with city clerk regarding any local filing requirements.

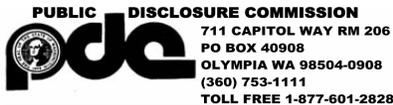
**\*FOR ALL PACS, POLITICAL PARTIES & CAUCUS POLITICAL COMMITTEES** The question posted near the top of the first page of this form regarding independent expenditures applies to **ALL POLITICAL COMMITTEES** required to file C-4 reports, **except ballot issue committees** that neither contribute to candidates nor make independent expenditures regarding them **and candidate committees** (because they are prohibited from making expenditures that are not directly related to their own campaigns).

**All other Political Committees and PACs must indicate whether they made any independent expenditures supporting or opposing one or more candidates for state or local office.**

If the response is "yes," the independent expenditure(s) **MUST** be itemized on the appropriate schedule (either Schedule A, or Part 3 of Schedule B), showing:

- the date of the expense;
- the name and address of the vendor or recipient of the funds;
- if using Schedule A, an "I" in the Code column;
- the name and office sought of the candidate supported or opposed;
- an indication of support or opposition; and
- a brief description of the expense (e.g., brochure mailed to absentee voters).

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**CAMPAIGN SUMMARY  
RECEIPTS & EXPENDITURES**

<b>C4</b> <small>(11/10)</small>	<small>PDC OFFICE USE</small>
-------------------------------------	-------------------------------

Candidate or Committee Name (Do not abbreviate. Include full name)

Mailing Address City

Zip + 4	Office Sought (Candidates)	Election Date
Report Period Covered	From (last C-4) To (end of period)	Final Report? Yes <input type="checkbox"/> No <input type="checkbox"/>

**\*For PACs, Parties & Caucus Committees:** During this report period, did the committee make an **independent expenditure** (i.e., an expense not considered a contribution supporting or opposing a state or local candidate?)

\*See reverse Yes  No

**RECEIPTS**

1. Previous total cash and in kind contributions (From line 8, last C-4) (if beginning a new campaign or calendar year, see instruction booklet) ..... \$ \_\_\_\_\_
2. Cash received (From line 2, Schedule A) ..... \$ \_\_\_\_\_
3. In kind contributions received (From line 1, Schedule B)..... \_\_\_\_\_
4. Total cash and in kind contributions received this period (Line 2 plus 3)..... \_\_\_\_\_
5. Loan principal repayments made (From line 2, Schedule L)..... ( ) \_\_\_\_\_
6. Corrections (From line 1 or 3, Schedule C)..... Show + or (-) \_\_\_\_\_
7. Net adjustments this period (Combine line 5 & 6)..... Show + or (-) \_\_\_\_\_
8. Total cash and in kind contributions during campaign (Combine lines 1, 4 & 7) ..... \_\_\_\_\_
9. Total pledge payments due (From line 2, Schedule B) .....

**EXPENDITURES**

10. Previous total cash and in kind expenditures (From line 17, last C-4) (if beginning a new campaign or calendar year, see instruction booklet)..... \_\_\_\_\_
11. Total cash expenditures (From line 4, Schedule A) ..... \_\_\_\_\_
12. In kind expenditures (goods & services) (From line 1, Schedule B) ..... \_\_\_\_\_
13. Total cash and in kind expenditures made this period (Line 11 plus line 12)..... \_\_\_\_\_
14. Loan principal repayments made (From line 2, Schedule L)..... ( ) \_\_\_\_\_
15. Corrections (From line 2 or 3, Schedule C)..... Show + or (-) \_\_\_\_\_
16. Net adjustments this period (Combine lines 14 & 15)..... Show + or (-) \_\_\_\_\_
17. Total cash and in kind expenditures during campaign (Combine lines 10, 13 and 16)..... \_\_\_\_\_

CANDIDATES ONLY				
	Won	Lost	Unopposed	Name not on ballot
Primary election	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General election	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Treasurer's Daytime Telephone No.:  
( ) \_\_\_\_\_

CASH SUMMARY	
18. Cash on hand (Line 8 minus line 17).....	_____
<small>[Line 18 should equal your bank account balance(s) plus your petty cash balance.]</small>	
19. Liabilities: (Sum of loans and debts owed).....	( ) _____
20. Balance (Surplus or deficit) (Line 18 minus line 19).....	_____

**CERTIFICATION:** I certify that the information herein and on accompanying schedules and attachments is true and correct to the best of my knowledge.

Candidate's Signature	Date	Treasurer's Signature	Date
-----------------------	------	-----------------------	------

**SEE INSTRUCTIONS ON REVERSE**

Page 2

**C4**

(11/10)

**CAMPAIGN SUMMARY  
RECEIPTS &  
EXPENDITURES**

**Please consult PDC instruction manuals when completing this report.  
Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.**

<b>WHO MUST FILE</b>	Each candidate and political committee using Full Reporting.
<b>FILING DATES</b>	<ol style="list-style-type: none"> <li>1) <u>File with C-1 or C-1pc</u> (Registration form) if you received contributions or made expenditures before registering.</li> <li>2) <u>File on the 10th of each month</u> if contributions or expenditures are over \$200 since last C-4 was filed. (These 10th-of-the-month reports are not required if another C-4 must be filed during that month. See #3 below.)</li> <li>3) For each primary, general and special election in which the candidate or political committee makes an expenditure, file <ul style="list-style-type: none"> <li>• 21 days prior to the election</li> <li>• 7 days prior to the election</li> <li>• 10th of the first month after the election -- see note below</li> </ul> <p>(Note: Not required after primary election from candidates who will be in the general election or from continuing political committees.)</p> </li> <li>4) <u>File final report</u> when campaign is finished or committee closes operation. Often, this coincides with the primary or general post-election, 10th-of-the-month report.</li> </ol> <p>All reports are considered filed as of the postmark date or the date hand-delivered to PDC.</p>
<b>WHERE TO SEND REPORTS</b>	<p>Send original C-4 reports, along with all schedules and attachments, to PDC. Keep a copy for the campaign's records.</p> <p>Candidates for city offices, city ballot issue committees and other political committees who give to city candidates or ballot issue committees should check with city clerk regarding any local filing requirements.</p>
<b>*FOR ALL PACS, POLITICAL PARTIES &amp; CAUCUS POLITICAL COMMITTEES</b>	<p>The question posted near the top of the first page of this form regarding independent expenditures applies to <b>ALL POLITICAL COMMITTEES</b> required to file C-4 reports, <b>except ballot issue committees</b> that neither contribute to candidates nor make independent expenditures regarding them <b>and candidate committees</b> (because they are prohibited from making expenditures that are not directly related to their own campaigns).</p> <p><b>All other Political Committees and PACs must indicate whether they made any independent expenditures supporting or opposing one or more candidates for state or local office.</b></p> <p><u>If the response is "yes,"</u> the independent expenditure(s) <b>MUST</b> be itemized on the appropriate schedule (either Schedule A, or Part 3 of Schedule B), showing:</p> <ul style="list-style-type: none"> <li>• the date of the expense;</li> <li>• the name and address of the vendor or recipient of the funds;</li> <li>• if using Schedule A, an "I" in the Code column;</li> <li>• the name and office sought of the candidate supported or opposed;</li> <li>• an indication of support or opposition; and</li> <li>• a brief description of the expense (e.g., brochure mailed to absentee voters).</li> </ul>

**CASH RECEIPTS AND EXPENDITURE**

SCHEDULE **A**  
to C4  
(1/04)

Candidate or Committee Name (Do not abbreviate. Use full name.) Report Date

1 CASH RECEIPTS (Contributions) which have been reported on C3. List each deposit made since last C4 report was submitted.

Date of deposit	Amount	Date of deposit	Amount	Date of deposit	Amount	Total deposits
						\$

2. TOTAL CASH RECEIPTS Enter also on line 2 of C4 \$

**CODES FOR CLASSIFYING EXPENDITURES:** If one of the following codes is used to describe an expenditure, no other description is generally needed.

The exceptions are:

- 1) If expenditures are **in-kind or earmarked contributions** to a candidate or committee or **independent expenditures** that benefit a candidate or committee, identify the candidate or committee in the Description block;
- 2) When reporting payments to vendors for travel expenses, identify the traveler and travel purpose in the Description block; and
- 3) If expenditures are made directly or indirectly to compensate a person or entity for soliciting signatures on a statewide initiative or referendum petition, use code "V" and provide the following information in the Description block: name and address of each person/entity compensated, amount paid each during the reporting period, and cumulative total paid all persons to date to gather signatures.

CODE DEFINITIONS ON NEXT PAGE	C - Contributions (monetary, in-kind & transfers) I - Independent Expenditures L - Literature, Brochures, Printing B - Broadcast Advertising (Radio, TV) N - Newspaper and Periodical Advertising O - Other Advertising (yard signs, buttons, etc.) V - Voter Signature Gathering	P - Postage, Mailing Permits S - Surveys and Polls F - Fundraising Event Expenses T - Travel, Accommodations, Meals M - Management/Consulting Services W - Wages, Salaries, Benefits G - General Operation and Overhead
----------------------------------	---	---

3. EXPENDITURES

- a) Expenditures of \$50 or less, including those from petty cash, need not be itemized. Add up these expenditures and show the total in the amount column on the first line below.
- b) Itemize each expenditure of more than \$50 by date paid, name and address of vendor, code/description, and amount.
- c) For each payment to a candidate, campaign worker, PR firm, advertising agency, consultant or credit card company, provide a detailed breakdown in the Description block of expenses included in the payment.

Date Paid	Vendor or Recipient (Name and Address)	Code	Purpose of Expense and/or Description	Amount
N/A	Expenses of \$50 or less	N/A	N/A	
				\$

Total from attached pages \$

4. TOTAL CASH EXPENDITURES

Enter also on line 11 of C4 \$

CODE DEFINITIONS ON NEXT PAGE

Page 2 - For information only. Do not file as part of report.

## EXPENDITURE CODE DEFINITIONS AND USES

(for use on Schedule A and Schedule B)

**NOTE:** Expenditures (including debts) for payments to a candidate, campaign worker, PR firm, advertising agency, consultant or credit card company require further detail in the Description block. See expenditure description on Schedule A, WAC 390-16-037 and WAC 390-16-205.

- C MONETARY, IN-KIND AND EARMARKED CONTRIBUTIONS** your campaign legally makes to other campaigns. Put a "C" in the Code column, in the Description column specify who was benefited and, if in-kind, what was purchased.
- I INDEPENDENT EXPENDITURES** (those expenditures that benefit other candidates or committees but are made independently of them). Put an "I" in the Code column and fully describe purpose.
- L LITERATURE.** Use "L" for expenditures made for the preparation and production of campaign literature and printed solicitations, including expenditures for mailing lists, design, photography, copy, layout, printing and reproduction. Use "P" for literature mailing costs.
- B BROADCAST ADVERTISING** Use "B" for expenditures associated with the production and purchase of radio and television advertising.
- N NEWSPAPER & PERIODICAL ADVERTISING.** Use "N" for expenditures associated with the production and purchase of advertising in newspapers, periodicals and other publications.
- O OTHER ADVERTISING.** Use "O" for expenditures associated with the production and purchase of advertising on billboards, yard signs and campaign paraphernalia such as buttons, bumper stickers, T-shirts, etc.
- V VOTER SIGNATURE GATHERING.** Use "V" for expenditures made directly or indirectly to compensate a person or entity for soliciting or procuring signatures on a statewide initiative or referendum petition. Attach itemization of each such payment.
- P POSTAGE.** Use "P" for expenditures for stamps, postage, United Parcel Service, Federal Express and direct mail services (postage only). Use "L" for design and other production costs associated with producing campaign literature.
- F FUNDRAISING EVENTS.** Use "F" for expenditures associated with holding a fundraiser, including payments to restaurants, hotels, caterers, other food and refreshment vendors, entertainers and speakers. Use "L" for expenditures for printed matter produced in connection with fundraising events.
- S SURVEYS AND POLLS.** Use "S" for expenditures associated with designing or producing polls, reports on election trends, voter surveys, telemarketing, telephone banks, GOTV drives, etc.
- T TRAVEL, ACCOMMODATIONS, MEALS.** Use "T" for expenditures associated with travel. If vendor has been paid directly, identify the traveler in Description column. If travel payment was made to credit card company or traveler (for out-of-pocket expenses), itemize expenses on separate sheet and attach to Schedule A.
- M MANAGEMENT AND CONSULTING SERVICES.** Use "M" for salaries, fees and commissions paid to campaign management companies and contract consultants, including law firms, whether the person is retained or formally employed by the campaign (for tax withholding purposes).
- W WAGES, SALARIES, BENEFITS.** Use "W" for expenditures associated with hiring campaign employees and other freelance workers who provide miscellaneous services other than campaign management or consulting.
- G GENERAL OPERATION AND OVERHEAD.** Use "G" for general campaign operating expenses and overhead, including filing fees, miscellaneous campaign expenses, headquarters rental, utilities, and purchase or rental of office equipment and furniture for the campaign.

**IN KIND CONTRIBUTIONS, PLEDGES,  
ORDERS, DEBTS, OBLIGATIONS**

**SCHEDULE TO C4** **B**  
(1/04)

Candidate or Committee Name (Do not abbreviate. Use full name.) Report Date

**1. IN KIND CONTRIBUTIONS RECEIVED** (goods, services, discounts, etc.)

Date Received	Contributor's Name and Address	Description of Contribution*	Fair Market Value	Aggregate Total	P R I G E N		If more than \$100, Employer Name, City, State & Occup.
					P	G	
							Occupation
							Occupation
							Occupation
<input type="checkbox"/> Check here if additional pages are attached.			<b>TOTAL</b> (Enter also on line 3 and line 12 of C4)				

**2. PLEDGES RECEIVED BUT NOT YET PAID.** List each pledge of \$100.00 or more.

Date Notified of Pledge	Name and Address of Pledge Maker	Fair Market Value	Aggregate Total	P R I G E N		If more than \$100, Employer Name, City, State & Occup.
				P	G	
						Occupation
						Occupation
<input type="checkbox"/> Check here if additional pages are attached.			<b>TOTAL</b> (include new pledges above and all other outstanding pledges.) (Enter also on line 9 of C4)			

**3. ORDERS PLACED, DEBTS, OBLIGATIONS.** If debt is owed to a candidate, campaign worker, PR firm, advertising agency, consultant or credit card company, provide a detailed breakdown of expenses included in the debt. (Give estimate if actual amount not known. Exclude loans. Report loans on Schedule L.)

Expenditure Date	Vendor's/Recipient's Name and Address	Amount Owed	Code	OR	Description of Obligation*
		\$			
		\$			
		\$			
		\$			
		\$			
		\$			
<input type="checkbox"/> Check here if additional pages are attached.			<b>TOTAL</b> (Include in line 19 of C4)		

\*SEE NOTE AND CODE DEFINITIONS ON REVERSE

## EXPENDITURE CODE DEFINITIONS AND USES

(for use on Schedule A and Schedule B)

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**NOTE: Expenditures (including debts) for payments to a candidate, campaign worker, PR firm, advertising agency, consultant or credit card company require further detail in the Description block. See expenditure description on Schedule A, WAC 390-16-037 and WAC 390-16-205.**

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- T TRAVEL, ACCOMMODATIONS, MEALS**. Use "T" for expenditures associated with travel. If vendor has been paid directly, identify the traveler in Description column. If travel payment was made to credit card company or traveler (for out-of-pocket expenses), itemize expenses on separate sheet and attach to Schedule A.
- M MANAGEMENT AND CONSULTING SERVICES**. Use "M" for salaries, fees and commissions paid to campaign management companies and contract consultants, including law firms, whether the person is retained or formally employed by the campaign (for tax withholding purposes).
- W WAGES, SALARIES, BENEFITS**. Use "W" for expenditures associated with hiring campaign employees and other freelance workers who provide miscellaneous services other than campaign management or consulting.
- G GENERAL OPERATION AND OVERHEAD**. Use "G" for general campaign operating expenses and overhead, including filing fees, miscellaneous campaign expenses, headquarters rental, utilities, and purchase or rental of office equipment and furniture for the campaign.

**CORRECTIONS**

SCHEDULE **C**  
to C4

Candidate or Committee Name (Do not abbreviate. Use full name.)

Date

**1. CONTRIBUTIONS AND RECEIPTS** (Include mathematical corrections.)

Date of report	Contributor's name or description of correction	Amount reported	Corrected amount	Difference (+ or -)
Total corrections to contributions Enter on line 6 of C4. Show + or (-).				

**2. EXPENDITURES** (Include mathematical corrections.)

Date of report	Vendor's 's name or description of correction	Amount reported	Corrected amount	Difference (+ or -)
Total corrections to expenditures Enter on line 15 of C4. Show + or (-).				

**3. REFUNDS FROM VENDORS.** The below listed amounts have been received as refunds on expenditures previously reported. The refund has been deposited and reported on C3 report, Line 1d.

Date of refund	Source /person making refund	Amount of refund
Total refunds Enter as (-) on line 6 & line 15 of C4.		

# LOANS

See Instructions and Example on reverse

**SCHEDULE  
TO C3  
OR C4**

**L**  
(1/02)

Candidate or Committee Name \_\_\_\_\_ Report Date \_\_\_\_\_

**1. MONETARY OR IN-KIND LOAN RECEIVED.** Loans are considered contributions and are subject to any applicable limit.

Date Loaned	Lender's Name and Address	P R I N G E N	Amount of Loan	Annual Interest Rate	Repayment Schedule	Date Due

If Total Contributed is more than \$100, Show Lender's Occupation and Name, City & State of Employer

If monetary loan, also include this amount on line 1c, C3 report.  
If in-kind loan, itemize in Part 1 of Schedule B.

Name and Address of Each Loan Endorser, Co-Signer	P R I N G E N	Amount Liable For (Same as Loan Amount)	Aggregate Total	If Total Contributed is more than \$100, Show Endorser's Occupation and Name, City, & State of Employer

Continued on attached sheet

**2. LOAN PAYMENTS.** Candidates may be repaid no more than amount loaned or permitted by WAC 390-05-400, whichever is less. See instruction manual.

Date Paid	Lender's Name and Address	Principal Paid	Interest Paid	Total Payment	Balance Owed

Total Principal Paid Enter also on lines 5 and 14, C-4 report →

Total Payments Enter as an expenditure on Schedule A →

**3. LOANS FORGIVEN.**

Date	Lender's Name and Address	Original Amount	Principal Repaid	Amount Forgiven	Balance Owed

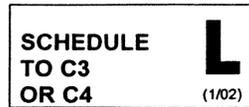
**4. LOANS STILL OWED.** List each loan that has previously been reported and still has a balance due.

Date	Lender's Name and Address	Original Amount	Principal Repaid or Forgiven	Amount Owed

Subtotal \_\_\_\_\_  
New Loans Received (and listed in Item 1 above) \_\_\_\_\_  
Total Loans Owed Include in total on line 19, C-4 report \_\_\_\_\_

Continued on attached sheet.

**LOANS**



Please consult PDC instruction manuals when completing this schedule. Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.

**WHO MUST FILE** Each candidate and political committee using full reporting that receives one or more campaign loans.

**FILING DATES** When a monetary loan is received by the campaign, complete Part 1 and file the Schedule L with the C-3 report that corresponds with the loan's deposit into the account. **Use a separate schedule for each loan received.**

When an in-kind loan is received, complete Part 1 and file Schedule L along with the Schedule B (to the C-4) that itemizes the in-kind contribution.

When a loan is paid or forgiven, in whole or in part, complete Part 2 and/or Part 3 and file the Schedule L with the C-4 covering the period when the payment or forgiveness occurred.

When one or more loans remain unpaid, complete Part 4 and file the schedule with each C-4 report until all loans are repaid in full or forgiven. (The same schedule may be used to show loan payments, forgiveness information and to show which loans remain unpaid.)

LOAN RECEIVED  
(Information would appear on separate Schedule L)



LOAN PAYMENTS



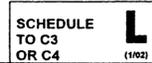
LOANS FORGIVEN



LOANS STILL OWED



**Example LOANS**



Candidate or Committee Name		Report Date	
Adrian Adams for State Representative		12/22/XXXX	
<b>1. MONETARY OR IN-KIND LOAN RECEIVED.</b> Loans are considered contributions and are subject to any applicable limit.			
Date Loaned	Lender's Name and Address	Amount of Loan	Annual Interest Rate
2/12/XXXX	Tyler Adams PO Box 123 Olympia, WA	\$ 500.00	12%
If monetary loan, also include this amount on line 1c, C3 report.		\$ 500.00	
If in-kind loan, itemize in Part 1 of Schedule B.			
Name and Address of Each Loan Endorser, Co-Signer	Amount Liable For (Same as Loan Amount)	Aggregate Total	
<input type="checkbox"/> Continued on attached sheet			
<b>2. LOAN PAYMENTS.</b> Candidates may be repaid no more than amount loaned or permitted by WAC 390-05-400, which ever is less. See instruction manual.			
Date Paid	Lender's Name and Address	Principal Paid	Interest Paid
3/30/XXXX	Tyler Adams PO Box 123, Olympia, WA	\$ 100.00	\$ 10.00
3/31/XXXX	Michael Murray 201 Westway Rd, Tacoma, WA	100.00	\$ 0
Total Principal Paid		\$ 200.00	
Total Payments		\$ 210.00	
<input type="checkbox"/> Continued on attached sheet			
<b>3. LOANS FORGIVEN.</b>			
Date	Lender's Name and Address	Original Amount	Principal Repaid
3/15/XXXX	Kelly Adams 2222 Riverfront Rd, Olympia, WA	\$ 250.00	\$ 0
<b>4. LOANS STILL OWED.</b> List each loan that has previously been reported and still has a balance due.			
Date	Lender's Name and Address	Original Amount	Principal Repaid or Forgiven
1/22/XXXX	Tyler Adams PO Box 123, Olympia, WA	\$ 500.00	\$ 100.00
2/12/XXXX	Michael Murray 201 Westway Rd, Tacoma, WA	350.00	100.00
3/01/XXXX	Kelly Adams 2222 Riverfront Rd, Olympia, WA	250.00	150.00
3/11/XXXX	K.M. Lawrence PO Box 3456, Olympia, WA	1,000.00	0
Subtotal		\$ 1,750.00	
New Loans Received (and listed in Item 1 above)		\$ 0	
Total Loans Owed		\$ 1,750.00	
<input type="checkbox"/> Continued on attached sheet.			

AMENDATORY SECTION (Amending WSR 01-22-051, filed 10/31/01, effective 1/1/02)

**WAC 390-16-115 Mini campaign reporting—Conditions for granting use.** The exemptions allowed in WAC 390-16-105 shall be granted to a candidate or political committee, including a continuing political committee, only upon compliance with the following conditions.

(1) A candidate shall, within fourteen days of first:

(a) Receiving contributions, making expenditures, reserving space or facilities or purchasing commercial advertising space or broadcast time to promote his or her candidacy;

(b) Giving his or her consent to another person to take on behalf of the candidate any of the action in (a) of this subsection; or

(c) Announcing publicly or filing a declaration of candidacy with the appropriate elections official, file the C-1 registration statement with the commission (~~and his or her county elections office~~). The statement must declare that the candidate will not exceed the contribution or expenditure limits set out in WAC 390-16-105.

(2) A political committee shall, within fourteen days after its organization or after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier, file the C-1pc registration statement with the commission (~~and with the appropriate county elections office as specified below:~~

~~(a) For a political committee, the elections office of the county in which the treasurer resides, unless the treasurer resides out of state, in which case the elections office of Thurston county; or~~

~~(b) For a continuing political committee, the elections office of the county in which the committee's in-state office or headquarters is located; if there is no in-state office or headquarters, the elections office of the county in which the committee treasurer resides, unless the treasurer resides out of state, in which case the elections office of Thurston county).~~

(3) The statement filed under subsection (2) of this section shall declare that the political committee will not exceed the contribution or expenditure limits set out in WAC 390-16-105.

(4) In addition to complying with subsections (2) and (3) of this section, a continuing political committee shall also file a C-1pc between January 1 and January 31 for each year in which the committee intends to use the mini reporting system. Failure to file a new registration statement during January will automatically terminate the committee's entitlement to use the mini reporting system until such time as a new C-1pc is filed.

(5) A candidate or political committee shall keep current records in sufficient detail to allow the candidate or political committee to make reports otherwise required by RCW 42.17.040 through 42.17.090 in the event that the filing of such reports becomes necessary as a result of exceeding the contribution or expenditure limitation pursuant to the provisions of WAC 390-16-125.

(6) A candidate or political committee treasurer shall, during the eight days immediately preceding the date of the election, maintain records of contributions and expenditures

current within one business day. These records shall be open for public inspection during the hours designated on the registration statement at the principal campaign headquarters or, if there is no campaign headquarters, at a local address of the campaign treasurer or such other place as may be authorized by the commission.

(7) The records of contributions and expenditures shall be available for audit or examination by representatives of the public disclosure commission at any time upon request from the commission.

AMENDATORY SECTION (Amending WSR 05-11-001, filed 5/4/05, effective 6/4/05)

**WAC 390-19-030 Electronic filing—Reporting threshold.** (1) The "electronic reporting threshold" that requires electronic filing of all contribution and expenditure reports is met when a candidate or political committee has expended \$10,000 or more in the preceding calendar year or expects to expend \$10,000 or more in the current calendar year.

(2) It is presumed that a filer "expects to expend" \$10,000 or more when any one of the following first occurs:

(a) A filer spends at least \$10,000;

(b) A filer is a candidate for the same office last sought, the filer's election is in the current calendar year, and his or her campaign expenditures in the previous election for the same office were \$10,000 or more;

(c) A filer's expenditures meet or exceed \$2,500 on or before March 31 of the current calendar year;

(d) A filer's expenditures meet or exceed \$5,000 on or before June 30 of the current calendar year;

(e) A filer's expenditures meet or exceed \$7,500 on or before September 30 of the current calendar year; or

(f) A filer otherwise projects that \$10,000 or more will be spent during the current calendar year.

(3) The following expenditures or transactions are excluded from the electronic reporting threshold calculation:

(a) Expenditures made to pay outstanding debts carried forward from a previous election;

(b) Surplus funds disposed of in accordance with RCW 42.17.095; and

(c) The value of in-kind contributions pledged or received within eight days of a special or general election.

(4) Candidate committees or political committees supporting or opposing ballot propositions that meet, exceed or expect to meet or exceed the electronic reporting threshold shall report electronically for the duration of the campaign.

~~((5) A report that is filed with the commission electronically need not also be filed with the county auditor or elections officer pursuant to RCW 42.17.080-))~~

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-16-314

Independent expenditure—  
Disclosure.

**WSR 10-20-012**  
**PERMANENT RULES**  
**PUBLIC DISCLOSURE COMMISSION**

[Filed September 24, 2010, 8:23 a.m., effective October 25, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To implement SB 6344 (chapter 206, Laws of 2007), including amending the definition of "aggregate," clarifying which entities are affiliated and share a contribution limit, and clarifying when candidates subject to contribution limits may accept contributions after the primary election.

Citation of Existing Rules Affected by this Order: WAC 390-16-038, 390-16-309, and 390-17-302; amending 3.

Statutory Authority for Adoption: RCW 42.17.370(1).

Adopted under notice filed as WSR 10-17-074 on August 16, 2010.

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 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: September 23, 2010.

Lori Anderson  
 Communications and  
 Training Officer

AMENDATORY SECTION (Amending WSR 02-03-018, filed 1/4/02, effective 2/4/02)

**WAC 390-16-038 Definition—Aggregate.** The term "aggregate" means, for purposes of:

(1) A candidate for state or local office subject to contribution limits under RCW 42.17.640, the total amount of contributions received by the candidate, an agent of the candidate and any political committee affiliated with the candidate from the beginning of the election cycle;

(2) A candidate for local office not subject to contribution limits under RCW 42.17.640 or judicial office, the total amount of contributions received by the candidate, an agent of the candidate and any political committee affiliated with the candidate from the beginning of the candidate's campaign;

(3) A bona fide political party or caucus political committee, the total amount of contributions received by the committee from January 1 of the current calendar year;

(4) A political committee, the total amount of contributions received by the committee from the date of organization;

(5) A continuing political committee, the total amount of contributions received by the committee from January 1 of the current calendar year;

(6) A contributor, the total amount of all contributions received from a person, and any person affiliated with the person, to any one candidate or political committee;

(7) A person making independent expenditures with respect to a candidate and the reporting and disclosure provisions of RCW 42.17.100, (~~((42.17.180))~~) 42.17.180, (~~((42.17.510))~~) 42.17.510 and (~~((42.17.550))~~) 42.17.550, an independent expenditure made by a person in support of a candidate shall be added to any independent expenditure by the same person in opposition to one or more of the candidate's opponents; and, for purposes of a person making independent expenditures with respect to a ballot proposition, an independent expenditure made by a person in support of a ballot proposition shall be added to any independent expenditure by the same person in opposition to the ballot proposition or in support of an alternative ballot proposition;

(8) The special reports required by RCW 42.17.105 and 42.17.175, the total amount of contributions received or expenditures made by a single person or entity during the special reporting period;

(9) An employer of a registered lobbyist, the total amount of all contributions made to a political committee supporting or opposing a candidate for state office, or to a political committee supporting or opposing a statewide ballot proposition during the preceding calendar year;

(10) The sponsor of a grass roots lobbying campaign, the total amount of contributions received since the beginning of the campaign and the total amount of expenditures made during the time frames specified in RCW 42.17.200(1);

(11) RCW 42.17.245, the total amount of all time and demand deposits in each financial institution on December 31;

(12) RCW 42.17.395(4), the total amount of monetary penalty that the commission may impose for multiple violations of the act.

AMENDATORY SECTION (Amending WSR 94-11-016, filed 5/5/94, effective 6/5/94)

**WAC 390-16-309 Identification of affiliated entities.**

(1) Two or more entities are treated as a single person and share one contribution limit under RCW 42.17.640 and 42.17.645 if one of the entities is:

(a) A corporation and the other is a subsidiary, branch or division of the corporation;

(b) A national or international labor union, or state body of such national or international labor union, and the other is a local union or other subordinate organization of such national or international labor union or state body;

(c) A trade association or state body of such trade association and the other is a branch or local unit of such trade association;

(d) A national or state collective bargaining organization and the other is a branch or local unit of such national or state collective bargaining organization;

(e) A national or international federation of labor unions, or a state federation of labor unions, and the other is a local body of such federation;

(f) A membership organization and the other is a local unit or branch of such membership organization;

(g) Any entity referenced in (a) through (f) above and a political committee established, financed, maintained or controlled by that entity.

(2) For purposes of RCW 42.17.640 and 42.17.645, two entities shall not be treated as a single entity solely because one of the entities is a dues paying member of the other entity.

(3) In addition to paragraph (1) above, two or more entities shall be treated as one entity and share a contribution limit under RCW 42.17.640 and 42.17.645 if one of the entities is established, financed, maintained or controlled by the other, as evidenced by any one of the following factors:

(a) Whether one entity owns a controlling interest in the voting stock or securities of another entity; or

(b) Whether one entity has authority or the ability to direct or participate, other than through a vote as a member, in the governance of another entity through provisions of constitution, bylaws, contract or other formal or informal procedure or has authority or the ability to hire, appoint, demote or otherwise control, other than through a vote as a member, the officers or other decision making employees or members of another entity; or

(c) Whether (i) one entity has a common or overlapping membership with another which indicates either a formal or ongoing relationship between the two organizations or the creation of a successor entity and (ii) the entity has an active or significant role in the formation of the other entity and (iii) the entities have similar patterns of contributions or contributors which indicate a formal or ongoing relationship between the entities; or

(d) Whether one entity provides, causes or arranges, funds, services or goods in a significant amount or on an ongoing basis, through direct or indirect means to the other entity, for less than full consideration. Full consideration includes the payment of membership dues.

AMENDATORY SECTION (Amending WSR 07-07-005, filed 3/8/07, effective 4/8/07)

**WAC 390-17-302 Contributions after the primary election.** (1) Pursuant to RCW 42.17.640 and 42.17.645, the date of the primary is the last day for making primary-related contributions unless a ~~((state-office))~~ candidate subject to contribution limits loses in the primary, that candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary, and the contributions are used to satisfy this outstanding debt.

(2) For purposes of the contribution limit in RCW 42.17.640 and 42.17.645, any contribution made up to thirty days after the primary election pursuant to RCW 42.17.640 and 42.17.645 is aggregated with contributions made on or before the date of the primary from the same contributor and any person with whom that contributor shares a limit under RCW 42.17.660 and WAC 390-16-309.

(3) The day following the primary election is considered the first day of the thirty-day period during which contributions may be made to ~~((state-office))~~ candidates subject to contribution limits who lose in the primary election and who have outstanding primary debts.

(4) For purposes of RCW 42.17.640 and 42.17.645, "outstanding primary debts," "outstanding debts" and "debts outstanding" all mean:

(a) Unpaid primary-election related debts incurred on or before the date of the primary by the authorized committee of a candidate who lost the primary election for ~~((a-state))~~ an office subject to contribution limits; and

(b) Reasonable costs associated with activities of the losing candidate's authorized committee necessary to retire the primary-related debts it incurred on or before the date of the primary. Examples of such reasonable costs include:

(i) Necessary administrative expenses (office space rental, staff wages, taxes, supplies, telephone and computer costs, postage, and the like) for activities actually and directly related to retiring the committee's debt; and

(ii) Necessary expenses actually and directly related to the fund-raising activities undertaken to retire the debt, as long as all persons solicited for contributions are notified that the contributions are subject to that contributor's primary election limit for that losing candidate.

(5) Nothing in this section is to be construed as authorizing contributors to make, or ~~((state-office))~~ candidates subject to contribution limits who lose the primary to receive, contributions that are used for a purpose not specifically authorized by RCW 42.17.640 or 42.17.645, including use for some future election or as surplus funds.

(6) All contributions received in excess of the sum needed to satisfy outstanding primary debts shall be returned to the original contributors in an amount not to exceed the amount contributed in accordance with the first in, first out accounting principle wherein the most recent contribution received is the first to be returned until all excess funds are returned to contributors.

### WSR 10-20-039

#### PERMANENT RULES

#### PUGET SOUND

#### CLEAN AIR AGENCY

[Filed September 27, 2010, 9:34 a.m., effective November 1, 2010]

Effective Date of Rule: November 1, 2010.

Purpose: To adjust the maximum civil penalty amount for inflation and update the federal regulation reference date.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Sections 3.11 and 3.25.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 10-17-105 on August 17, 2010.

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 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: September 23, 2010.

Craig Kenworthy  
Executive Director

## **AMENDATORY SECTION**

### **REGULATION I SECTION 3.11 CIVIL PENALTIES**

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed \$16,609.00 (~~(\$16,445.00)~~), per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than \$16,609.00 (~~(\$16,445.00)~~), for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary

circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

## **AMENDATORY SECTION**

### **REGULATION I SECTION 3.25 FEDERAL REGULATION REFERENCE DATE**

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, 2010 (~~(2009)~~).

## **WSR 10-20-055**

### **PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed September 27, 2010, 9:46 a.m., effective October 28, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Add a new section and revise one existing section for rules regarding provision of state funding for juvenile students in adult jails. The 2010 legislature passed SB 6702 which provides public education for juvenile students in adult jails. This rule change provides procedures and processes for the implementation of this law.

Citation of Existing Rules Affected by this Order:  
Amending WAC 392-122-205.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 10-13-018 on June 4, 2010.

Changes Other than Editing from Proposed to Adopted Version: The following changes have been made to the new proposed WAC 392-122-228:

- A paragraph break has been added to subsection (1).
- The WAC reference in subsection (5)(a) has been changed from WAC 392-121-225 to WAC 392-122-225.

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 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 0, Repealed 0.

Date Adopted: June 4 [July 27], 2010.

Randy Dorn  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending WSR 07-23-023, filed 11/9/07, effective 12/10/07)

**WAC 392-122-205 State institutional education program—Eligible programs.** Programs supported as state institutional education programs include those provided in:

(1) State operated group homes—i.e., facilities maintained by the division of juvenile rehabilitation of the department of social and health services to house adjudicated youth twenty-four hours a day;

(2) Juvenile detention centers—i.e., facilities meeting the definition of a "detention facility" in RCW 13.40.020.

(3) Institutions for juvenile delinquents—i.e., facilities maintained by the division of juvenile rehabilitation of the department of social and health services for the diagnosis, confinement and rehabilitation of juveniles committed by the courts.

(4) Residential habilitation centers—i.e., facilities maintained by the division of developmental disabilities of the department of social and health services for care and treatment of persons with exceptional needs by reason of mental and/or physical deficiency.

Programs providing educational services to youth in a residential rehabilitation center may include services provided at facilities controlled and operated by the school district providing those services.

(5) Adult jails and correctional facilities housing juveniles—i.e., facilities maintained by the state department of corrections for juvenile inmates under eighteen years of age.

**NEW SECTION**

**WAC 392-122-228 Alternative learning experiences for juvenile students incarcerated in adult jail facilities.**

(1) A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may make use of digital and/or on-line curricula, and may be delivered over the internet or using other electronic means. A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may also include participation by students and parents in the design and implementation of a student's learning experience. This section provides an alternative method of determining full-time equivalent enrollment and claiming state funding for public school learning experiences that are:

(a) Individual courses of study for juvenile students incarcerated in adult jail facilities. "Adult jail facility" means any jail operated under the authority of chapter 70.48 RCW;

(b) Supervised, monitored, assessed, and evaluated by school staff. As used in this section, "school staff" means certificated instructional staff of the school district according to the provisions of chapter 181-82 WAC, or a contractor pursuant to WAC 392-121-188;

(c) Provided in accordance with a written alternative learning experience plan that is implemented pursuant to the school district board's policy for alternative learning experiences; and

(d) Provided in whole or part, outside the regular classroom setting, including those learning experiences provided digitally via the internet or other electronic means.

This section sets forth the standards, procedures, and requirements for state funded alternative learning experiences for juvenile students incarcerated in adult jail facilities. This section is not intended to prevent or limit alternative education programs provided by a school district with federal or local resources.

An alternative learning experience for a juvenile student incarcerated in adult jail facilities may be counted as a course of study pursuant to WAC 392-121-107 if the following requirements are met:

(2) School district board policies for alternative learning experiences: The board of directors of a school district claiming state funding for alternative learning experiences for juvenile students incarcerated in adult jail facilities shall adopt and annually review written policies for each alternative learning experience program and program provider that:

(a) Require a written plan for each student participating in an alternative learning experience for juvenile students incarcerated in adult jail facilities that meets the minimum criteria pursuant to subsection (4) of this section;

(b) Describe how student performance will be supervised, monitored, assessed, evaluated, and recorded by school staff. Such description shall include methods for periodic grade reporting, if different from existing school district policy;

(c) Require each juvenile student who is incarcerated in an adult jail facility and enrolled in an alternative learning experience to have direct personal contact with school staff at least weekly, until the student completes the course objectives or the requirements of the learning plan. Such direct personal contact must be for a period not less than thirty minutes per week. Direct personal contact shall be for the purposes of instruction, review of assignments, testing, reporting of student progress, or other learning activities. Direct personal contact means a face-to-face meeting with the student;

(d) Require that each student's educational progress be reviewed at least monthly and that the results of each review be communicated to the student;

(e) Designate one or more school district official(s) responsible for approving specific alternative learning experience programs or courses, monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(i) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(ii) A description of how certificated and classified staff are assigned program management and instructional responsibilities that maximize student learning, including the ratio of certificated instructional staff to full-time equivalent students;

(iii) A description of how a written student learning plan pursuant to subsection (4) of this section, is developed, and student performance supervised and evaluated, by certificated staff;

(iv) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(v) Results of any self-evaluations conducted pursuant to subsection (7) of this section;

(f) Satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies (chapter 392-410 WAC); and

(g) For alternative learning experience courses offering credit, or for alternative learning experience programs issuing a high school diploma, satisfy the state board of education's high school graduation requirements (chapter 180-51 WAC).

(3) Alternative learning experience implementation standards:

(a) Alternative learning experiences shall be accessible to all juveniles incarcerated in adult jail facilities, including those with disabilities. Alternative learning experiences for special education students shall be provided in accordance with chapter 392-172A WAC.

(b) It is the responsibility of the school district or school district contractor to ensure that enrolled juvenile students incarcerated in adult jail facilities have all curricula, course content, instructional materials, and other learning resources essential to successfully complete the requirements of the written student learning plan.

(c) Contracting for alternative learning experiences shall be subject to the provisions of WAC 392-121-188 and RCW 28A.150.305.

(d) The school district shall institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

(4) Written student learning plan: Each juvenile student incarcerated in an adult jail facility who is enrolled in an alternative learning experience course of study shall have a written student learning plan designed to meet the student's individual educational needs. The written student learning plan may be developed in partnership with the student, with recognition that school staff has the primary responsibility and accountability for the plan, including supervision and monitoring, and evaluation and assessment of the student's progress. The written student learning plan shall include, but not be limited to, the following elements:

(a) A beginning and ending date for the learning experience;

(b) An estimate of the average number of hours per week that the student will engage in learning activities to meet the requirements of the student learning plan. This estimate may be used in reporting enrollment in compliance with subsection (5) of this section and must be based upon the criteria in subsection (6) of this section;

(c) A description of how weekly contact requirements will be fulfilled;

(d) A description of the specific learning goals and performance objectives of the alternative learning experience. This requirement may be met through the use of course syllabi or other similarly detailed descriptions of learning requirements. The description shall clearly identify the requirements a student must meet to successfully complete the course or program;

(e) Identification of instructional materials essential to successful completion of the learning plan; and

(f) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan.

The written student learning plan shall identify whether the alternative learning experience meets one or more of the state essential academic learning requirements or any other academic goals, objectives, and learning requirements defined by the school district. For a high school alternative learning experience, the plan shall specify whether the experience meets state and district graduation requirements.

(5) Enrollment reporting: Effective the 2009-10 school year, the full-time equivalency of juvenile students incarcerated in adult jail facilities who are enrolled in alternative learning experience programs shall be determined as follows:

(a) Using the definition of full-time equivalent student in WAC 392-121-122(1) and the estimated average weekly hours of learning activity described in the written student learning plan on the first enrollment count date on or after the start date specified in the written student learning plan; and

(b) The enrollment count shall exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with school staff for ten consecutive school days. Any such student shall not be counted as an enrolled student until the stu-

dent has met with appropriate school staff and resumed participation in his or her alternative learning experience or participated in another course of study as defined in WAC 392-121-107.

(6) Accountability for student performance:

(a) At minimum, juvenile students incarcerated in adult jails who are enrolled in alternative learning experiences shall have their educational performance evaluated according to the following process and schedule:

(i) Each student's educational progress shall be reviewed at least once per month. The progress review shall be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The progress review shall be conducted by school staff and shall include direct personal contact with the student. The results of the review shall be communicated to the student.

(iii) Based on the progress review, school staff shall determine and document whether the student is making satisfactory progress in completing the learning activities and reaching the learning goals and performance objectives defined in the written plan.

(iv) If the student fails to make satisfactory progress for no more than two consecutive evaluation periods or if the student fails to follow the written student learning plan, an intervention plan designed to improve student progress shall be developed and implemented. This intervention plan shall be developed by school staff in conjunction with the student.

(v) If, after no more than three subsequent evaluation periods, the student still is not making satisfactory progress, a plan designed to more appropriately meet the student's educational need shall be developed and implemented by school staff.

(b) The educational progress of juvenile students incarcerated in adult jail facilities who are enrolled in alternative learning experiences shall be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district.

(7) Program evaluation: School districts offering alternative learning experiences to juvenile students incarcerated in adult jail facilities shall engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation shall follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

(8) Annual reporting: Each school district offering alternative learning experiences shall report annually to the superintendent of public instruction on the types of programs and course offerings subject to this section, including student headcount and full-time equivalent enrollment claimed for basic education funding. The report shall identify the ratio of certificated instructional staff to full-time equivalent students enrolled in alternative learning experience courses or programs. The report shall separately identify alternative learning experience enrollment of students provided under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(9) Documentation: In accordance with required records retention schedules, a school district claiming state funding for alternative learning experiences shall maintain the following written documentation available for audit:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (2)(g) of this section;

(c) Annual reports to the superintendent of public instruction as required by subsection (8) of this section;

(d) The written student learning plans required by subsection (4) of this section, including documentation of required weekly direct personal contact;

(e) Student progress reviews, evaluations, and assessments required by subsection (6) of this section; and

(f) Student enrollment detail substantiating full-time equivalent enrollment reported to the state, including estimated total hours of participation in educational activities, and any actual documentation of hours of learning for those students failing to make satisfactory progress.

**WSR 10-20-059**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed September 27, 2010, 2:53 p.m., effective October 28, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of early learning (DEL) is revising WAC 170-100-080 to implement section 7(3) of 2SHB 2731 (chapter 231, Laws of 2010, regular session). Section 7 amends DEL's RCW 43.215.405 to include children who are eligible for special education due to disability under RCW 28A.155.020 in the definition of "eligible child" for the early childhood education and assistance program (ECEAP).

Citation of Existing Rules Affected by this Order: Amending WAC 170-100-080.

Statutory Authority for Adoption: RCW 43.215.020, 43.215.070.

Other Authority: Chapter 231, Laws of 2010, regular session.

Adopted under notice filed as WSR 10-14-118 on July 7, 2010.

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 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 0, Amended 1, Repealed 0.

Date Adopted: September 27, 2010.

Elizabeth M. Hyde  
Director

AMENDATORY SECTION (Amending WSR 06-18-085, filed 9/5/06, effective 9/5/06)

**WAC 170-100-080 Eligibility for services.** ~~((1) Contractors must recruit, document eligibility, and enroll children based on available funds. Enrolled children must not be participants in the federally funded head start program. Contractors must give priority for enrollment to children from families with the lowest incomes or to children from families with multiple needs.~~

~~(2) To be enrolled, children must meet the following age criteria:~~

~~(a) First priority for enrollment must be given to children who are four years old, but not yet five years old, by August 31 of the program year.~~

~~(b) Second priority may be given to children who are three years old by August 31 of the program year and meet other eligibility criteria.~~

~~(c) Contractors may not enroll children who are younger than three years old or older than five years old on August 31 of the program year.~~

~~(3) To be enrolled, children must meet either the following income or risk factor criteria:~~

~~(a) Family income. Children are eligible if their family income is at or below one hundred ten percent of the Federal Poverty Guidelines established by the United States Department of Health and Human Services. Contractors may choose which time period below best reflects the family's current financial circumstances:~~

~~(i) Previous calendar year before enrollment;~~

~~(ii) Twelve months before enrollment; or~~

~~(iii) Previous or current month, when annual family income has been documented and shows a significant recent decrease due to death, divorce, unexpected job loss, or similar circumstance.~~

~~(b) Risk factors. Up to ten percent of funded slots may be used for children from families who are not income eligible and are impacted by:~~

~~(i) Developmental factors, such as developmental delay or disability; or~~

~~(ii) Environmental factors, such as domestic violence, chemical dependency, child protective services involvement, or other factors affecting school success.)) (1) Contractors must write and follow a recruitment procedure, including active recruitment of age-eligible homeless children, children in the foster care system, and children with disabilities.~~

(2) Children are eligible for ECEAP if they are at least three years old, but not yet five years old, by August 31st of the school year and one of the following:

(a) Returning to the same ECEAP contractor from the previous school year.

(b) Qualified by their school district for special education services under RCW 28A.155.020. All children on a

school district individualized education program (IEP) meet this requirement.

(c) From a family with income at or below one hundred ten percent of the federal poverty guidelines established by the U.S. Department of Health and Human Services.

(d) From a family that is not income-eligible but is impacted by either:

(i) Developmental risk factors, such as developmental delay or disability, but not on an IEP.

(ii) Environmental risk factors that could affect school success such as domestic violence, chemical dependency, homelessness, parental incarceration, or child protective services involvement.

Each contractor's maximum percentage of over-income children is in their ECEAP client services contract.

(3) Children cannot be simultaneously enrolled in Head Start and ECEAP. Children served by school district special education may be simultaneously enrolled in ECEAP.

(4) Contractors must write and follow a procedure for prioritizing enrollment of the eligible children who are most in need of ECEAP services. From the pool of eligible children, contractors must prioritize children who are:

(a) Four years old by August 31st of the school year.

(b) From families with the lowest incomes.

(c) Homeless, as defined by the federal McKinney-Vento Homeless Assistance Act.

(d) In the foster care system.

(e) From families with multiple needs.

(5) Contractors may determine additional prioritization categories to best meet the needs of their community, such as:

(a) English language learners.

(b) Refugee status.

(c) Transferring from other ECEAP or Head Start sites.

## WSR 10-20-061

### PERMANENT RULES

#### DEPARTMENT OF AGRICULTURE

[Filed September 27, 2010, 3:44 p.m., effective October 28, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 68, Laws of 2010, transferred the authority to administer state emergency food programs from the department of general administration and the department of commerce to the department of agriculture (WSDA) effective July 1, 2010. Chapter 365-140 WAC contains the rules governing these programs. These rules are being moved to new chapter 16-740 WAC under Title 16 WAC, Department of agriculture, and chapter 365-140 WAC is repealed.

Citation of Existing Rules Affected by this Order: Repealing WAC 365-140-010, 365-140-020, 365-140-030, 365-140-040, 365-140-050, and 365-140-060.

Statutory Authority for Adoption: Chapter 68, Laws of 2010.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 10-15-119 and 10-15-123 on July 21, 2010.

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 6, 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 6, Amended 0, Repealed 6.

Date Adopted: September 22, 2010.

Dan Newhouse  
Director

## Chapter 16-740 WAC

### FOOD ASSISTANCE PROGRAMS

#### NEW SECTION

**WAC 16-740-010 Authority.** These rules are adopted under the authority of chapter 68, Laws of 2010, which provides that the director may adopt rules necessary to implement the food assistance programs.

#### NEW SECTION

**WAC 16-740-020 Purpose.** The purpose of this chapter is to set forth the conditions and procedures under which state funding will be made available to assist local emergency food programs.

#### NEW SECTION

**WAC 16-740-030 Definitions.** "Administrative costs" means management and general expenses, including membership dues that cannot be readily identified with a particular program or direct services.

"Applicant" means a public or private nonprofit organization, tribe or tribal organization who applies for state emergency food assistance.

"Commodity program" means a program that primarily distributes USDA surplus commodities to clients (TEFAP).

"Contractor" means an applicant who has been awarded state funds under the emergency food assistance program, and who has entered into a contract with the department to provide emergency food assistance to individuals.

"Department" means the Washington state department of agriculture.

"Director" means the director of the Washington state department of agriculture or the director's authorized representative.

"Emergency food" means food that is given to clients who do not have the means to acquire that food themselves, so that they will not go hungry.

"Emergency food assistance program" or "EFAP" means the statewide activities of the department to assist local emergency food programs by allocating and awarding state funds.

"Food bank" means an emergency food program that distributes unprepared food without charge to its clients, is open a fixed number of hours and days each week or month, and such hours and days are publicly posted.

"Food distributor" means a food distribution agency that collects, warehouses, and distributes food to emergency food programs and other charities on a county, regional, or statewide basis.

"In-kind" means the value of volunteer services or donated goods such as staff time, rent, food, supplies and transportation.

"Lead agency contractor" means a contractor who may subcontract with one or more local food banks to provide emergency food assistance to individuals, and with food distributors to provide food to food banks.

"Operational expenses" means those costs clearly identifiable with providing direct services to eligible clients, or distribution services to food banks such as staff time, transportation costs, and equipment rental.

"Participating food bank" means a local public or private nonprofit food bank that enters into a subcontract with a lead agency contractor to provide emergency food assistance to individuals.

"Religious service" means any sectarian or nondenominational service, rite, or meeting that involves worship of a higher being.

"Special dietary needs" means funds to purchase food that meets the nutritional needs of a special needs population.

"Tribal food voucher program" means the statewide activities of the department that allocate and award state funds to tribes and tribal organizations that issue food vouchers to clients.

#### NEW SECTION

**WAC 16-740-040 Contractor funding allocation and award of contracts.** At least seventy percent of the total allocation appropriated by the legislature shall be contracted to lead agency contractors. These funds shall be for the purpose of funding the activities of food banks and food distributors, the purchase of special dietary needs foods, and providing special dietary needs training. The specific appropriation for timber and salmon dependent communities shall be contracted to food banks in those communities. Of the remainder of the total allocation, not including department administrative costs, allocations shall be contracted to a discretionary program if the department elects to award such contracts, the tribal food voucher program, and additional special dietary needs training. Allocations for each county shall be contracted to lead agency contractors on the following basis:

(1) A formula for distributing the funds in proportion to need shall be established by the department in consultation with a committee appointed by the director or the director's designee. This formula may only be changed at the beginning of a biennial contract period.

(2) The department shall award the lead agency contract to an eligible contractor, as defined by the department, which is supported by a least two-thirds of the participating food banks in a county.

(3) The department may award the combined allocation for two or more counties to a single applicant.

(4) The department shall award a contract to no more than one lead agency contractor in each county, with the exception of King County, where there may be three lead agency contractors, to administer subcontracts with one or more participating food banks and food distributors.

(5) Federally recognized tribes may apply to the department directly for the food bank program without having to subcontract with the lead agency. They must meet all the same criteria and requirements as lead agencies.

(6) Within each lead agency service area, except for the additional funds specifically allocated for food banks in timber and salmon dependent communities, funds shall be allocated between food distributors, food banks, and special dietary needs foods and training based on a two-thirds vote of all participating food banks and the lead agency.

(7) The additional funds specifically allocated for food banks in timber and salmon dependent communities shall remain in the amounts identified by the legislature.

(8) If participating food banks designate funds for food distribution, they shall elect with a two-thirds vote of the participating food banks and the lead agency, an eligible distributor as defined by the department. They may choose more than one distributor with which to subcontract. The lead agency contractor shall be responsible for subcontracting with the food distributor(s).

(9) A formula for distributing the funds to each tribe and tribal organization participating in the emergency food assistance program in proportion to need shall be established by the department in consultation with a committee consisting of representatives from all tribes participating in the program. This formula may only be changed at the beginning of a biennial contract period.

(10) The department shall pay for services provided under the emergency food assistance program after the contractor submits a monthly report of expenditures incurred and a request for reimbursement.

(11) Tribes may apply for the food bank funds or the food voucher funds or both. Tribes will receive the same amount of funds whether they participate in one or both programs, computed as their share of the allocated EFAP tribal funds. It will be up to the discretion of each participating tribe how it allocates the EFAP funds.

(12) In the event that funds are not claimed by an eligible organization in a county or that a portion of the funds allocated to a county remains unspent, the lead agency contractor may request authorization from the department to reallocate funds, within its service area, to an area of unmet need.

(13) In the event that a portion of the funds allocated to a subcontracting tribe within a tribal contractor's contract remains unspent or unclaimed, the tribal contractor may request authorization from the department to reallocate funds to one of its other subcontracting tribes with unmet needs.

#### NEW SECTION

**WAC 16-740-050 Applicant eligibility criteria.** (1) The applicant must have a certified form from the IRS stating nonprofit status under section 501 (c)(3), or be a public non-

profit agency, be a recognized tribe, a tribal organization with section 501 (c)(3) status, or an unrecognized tribe with section 501 (c)(3) status.

(2) The applicant for funding as lead agency must have been operating as a public nonprofit or private nonprofit with section 501 (c)(3) status for one year prior to the beginning date of the contract.

(3) The applicant for funding as a participating food bank must have been operating as a public nonprofit or private nonprofit with section 501 (c)(3) status food bank for one year prior to the beginning date of the subcontract.

(4) The applicant for funding as a food distributor must have been operating as a public nonprofit or a private nonprofit with section 501 (c)(3) status food distributor for one year prior to the beginning date of the contract.

(5) The applicant for lead agency or tribal contractor may or may not actually provide emergency food program services.

(6) The applicant must practice nondiscrimination in providing services and employment.

(7) The applicant must not require participation in a religious service as a condition of receiving emergency food or a food voucher.

(8) Applicants within a county or multicounty region, or tribes with established parameters for service, may define their service area boundaries for the purpose of equitably allocating resources. The department encourages the provider to serve the client no matter what service areas the client resides in. If appropriate, the provider may then refer the client to the agency servicing the area in which the client resides, or to the tribe which has established jurisdiction over the individual, for further assistance. Providers must practice nondiscrimination when applying their service area policies.

(9) The applicant may not charge for food or food vouchers given to a client.

#### NEW SECTION

**WAC 16-740-060 Financial support application process.** (1) Potential applicants will be notified by the department that in order to be considered for state emergency food financial assistance, an application must be submitted to the department.

(2) An applicant must make formal application using forms issued and procedures established by the department. Such application shall be for the period indicated on the contract face sheet. Failure of an applicant to make application in a timely manner, as specified by the department, may result in denial of the funding request.

(3) Department funds may not supplant other existing funding sources.

(4) The department shall notify successful applicants and shall provide to each of them a contract for signature. This contract must be signed by an official with authority to bind the applicant and must be returned to the department prior to the award of any funds under this program.

(5) Applicants that receive food bank or food distribution funds are subject to the following fiscal requirements:

(a) The total funds from the department received by a nontribal lead agency contractor or a food distribution sub-

contractor must be equally matched by funds from other sources during the fiscal year. No more than fifty percent of that match may be documented in-kind contributions. Non-tribal participating food banks receiving funds from the department have two options for matching funds: They may equally match the EFAP funds, with no more than fifty percent being documented in-kind contributions; if they do not have at least one-half of their minimum match as cash, they may match their department funds by at least two hundred percent in in-kind contributions from other sources.

(b) Administrative costs for food bank and food distributor subcontractors under this program are limited to ten percent of their total contract award. Administrative costs for a lead agency contractor who also provides direct emergency food assistance services as a participating food bank and/or services as a food distributor are limited to ten percent of the contractor's allocation for providing direct services, ten percent of the contractor's allocation for providing food distributor services, and ten percent of the total contract award as food bank lead agency; total administrative costs, however, may not exceed fifteen percent of the total contract award. Administrative costs for agencies who are lead agency contractors only are limited to ten percent of their total contract award.

(6) Tribal applicants are subject to the following fiscal requirements:

(a) Tribal contractors and subcontractors must match thirty-five percent of the funds received by the department for the emergency food assistance program. No more than fifty percent of that match may be documented in-kind contributions.

(b) Of a contract award allocated to the tribal food voucher program, tribal contractors may not spend more than ten percent on administrative costs, and five percent on operational expenses. The balance of funds is to be used for food vouchers issued to clients. Of funds allocated to the food bank program, tribal contractors are subject to the same spending requirements as nontribal food bank contractors under subsection (5)(b) of this section.

**WSR 10-20-068**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**

[Filed September 29, 2010, 10:15 a.m., effective November 1, 2010]

Effective Date of Rule: November 1, 2010.

Purpose: The purpose of the rules is to (1) establish a risk-targeted approach for groundwater systems that are susceptible to fecal contamination; (2) establish corrective action requirements to reduce the risks of waterborne illness or death; and (3) make editorial changes for clarity and correct technical errors.

Citation of Existing Rules Affected by this Order: Amending WAC 246-290-002, 246-290-010, 246-290-025, 246-290-100, 246-290-107, 246-290-130, 246-290-135, 246-290-250, 246-290-300, 246-290-320, 246-290-415, 246-290-416, 246-290-451, 246-290-480, 246-290-620, 246-290-630, 246-290-634, 246-290-640, 246-290-670, 246-290-686, 246-290-71005, 246-290-72003, and 246-290-72012.

Statutory Authority for Adoption: RCW 43.20.050.

Other Authority: RCW 70.119A.080.

Adopted under notice filed as WSR 10-14-094 on July 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: Definitions were numbered in WAC 246-290-010; and a Code of Federal Regulations citation in WAC 246-290-453 (2)(d) was corrected.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 3, Amended 23, 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 3, Amended 23, Repealed 0.

Date Adopted: September 29, 2010.

Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

**WAC 246-290-002 Guidance.** (1) The department has numerous guidance documents available to help purveyors comply with state and federal rules regarding drinking water. These include documents on the following subjects:

- (a) Compliance;
- (b) Consumer and public education;
- (c) Contaminants;
- (d) Cross-connection control and backflow prevention;
- (e) Emergency response and drinking water security;
- (f) Engineering design and water treatment;
- (g) Financial assistance and state revolving fund (SRF);
- (h) General information;
- (i) (~~Ground water~~) Groundwater protection;
- (j) Growth management;
- (k) Operations and maintenance;
- (l) Operator certification;
- (m) Planning and financial viability;
- (n) Regulations;
- (o) Small water systems;
- (p) System approval;
- (q) Water quality monitoring and source protection;
- (r) Water system planning; and
- (s) Water use efficiency.

(2) The department's guidance documents are available at minimal or no cost by contacting the office of drinking water's publication service at 360-236-3100 or 800-521-0323. Individuals can also request the documents via the internet at <http://www.doh.wa.gov/ehp/dw> or through con-

ventional mail at P.O. Box 47822, Olympia, Washington 98504-7822.

(3) Federal guidance documents are available from the Environmental Protection Agency (EPA) for a wide range of topics. These are available from the EPA Office of Ground Water and Drinking Water web site at ([www.epa.gov/safewater/index.html](http://www.epa.gov/safewater/index.html)) [www.epa.gov/drink/index.cfm](http://www.epa.gov/drink/index.cfm).

**AMENDATORY SECTION** (Amending WSR 09-21-045, filed 10/13/09, effective 1/4/10)

**WAC 246-290-010 Definitions, abbreviations, and acronyms.** The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) **"Acute"** means posing an immediate risk to human health.

(2) **"ADD"** means an average day demand.

(3) **"AG"** means an air gap.

(4) **"Alternative filtration technology"** means a filtration process for substantial removal of particulates (generally  $> 2 \log$  *Giardia lamblia* cysts and  $\geq 2$ -log removal of *Cryptosporidium* oocysts) by other than conventional, direct, diatomaceous earth, or slow sand filtration processes.

(5) **"Analogous treatment system"** means an existing water treatment system that has unit processes and source water quality characteristics that are similar to a proposed treatment system.

(6) **"ANSI"** means the American National Standards Institute.

(7) **"Approved air gap"** means a physical separation between the free-flowing end of a potable water supply pipeline and the overflow rim of an open or nonpressurized receiving vessel.

To be an air gap approved by the department, the separation must be at least:

(a) Twice the diameter of the supply piping measured vertically from the overflow rim of the receiving vessel, and in no case be less than one inch, when unaffected by vertical surfaces (sidewalls); and

(b) Three times the diameter of the supply piping, if the horizontal distance between the supply pipe and a vertical surface (sidewall) is less than or equal to three times the diameter of the supply pipe, or if the horizontal distance between the supply pipe and intersecting vertical surfaces (sidewalls) is less than or equal to four times the diameter of the supply pipe and in no case less than one and one-half inches.

(8) **"Approved atmospheric vacuum breaker (AVB)"** means an AVB of make, model, and size that is approved by the department. AVBs that appear on the current approved backflow prevention assemblies list developed by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research or that are listed or approved by other nationally recognized testing agencies (such as IAPMO, ANSI, or UL) acceptable to the authority having jurisdiction are considered approved by the department.

(9) **"Approved backflow preventer"** means an approved air gap, an approved backflow prevention assembly, or an approved AVB. The terms "approved backflow

preventer," "approved air gap," or "approved backflow prevention assembly" refer only to those approved backflow preventers relied upon by the purveyor for the protection of the public water system. The requirements of WAC 246-290-490 do not apply to backflow preventers installed for other purposes.

(10) **"Approved backflow prevention assembly"** means an RPBA, RPDA, DCVA, DCDA, PVBA, or SVBA of make, model, and size that is approved by the department. Assemblies that appear on the current approved backflow prevention assemblies list developed by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research or other entity acceptable to the department are considered approved by the department.

(11) **"As-built drawing"** means the drawing created by an engineer from the collection of the original design plans, including changes made to the design or to the system, that reflects the actual constructed condition of the water system.

(12) **"Assessment source water monitoring"** means an evaluation of groundwater sources that may be at risk for fecal contamination. Assessment source water monitoring involves the collection of source water samples at regular intervals and analysis of those samples for fecal indicators as directed by the department.

(13) **"Authority having jurisdiction"** (formerly known as local administrative authority) means the local official, board, department, or agency authorized to administer and enforce the provisions of the Uniform Plumbing Code as adopted under chapter 19.27 RCW.

(14) **"Authorized agent"** means any person who:

(a) Makes decisions regarding the operation and management of a public water system whether or not he or she is engaged in the physical operation of the system;

(b) Makes decisions whether to improve, expand, purchase, or sell the system; or

(c) Has discretion over the finances of the system.

(15) **"Authorized consumption"** means the volume of metered and unmetered water used for municipal water supply purposes by consumers, the purveyor, and others authorized to do so by the purveyor, including, but not limited to, fire fighting and training, flushing of mains and sewers, street cleaning, and watering of parks and landscapes. These volumes may be billed or unbilled.

(16) **"AVB"** means an atmospheric vacuum breaker.

(17) **"Average day demand (ADD)"** means the total quantity of water use from all sources of supply as measured or estimated over a calendar year divided by three hundred sixty-five. ADD is typically expressed as gallons per day (gpd) per equivalent residential unit (ERU).

(18) **"AWWA"** means the American Water Works Association.

(19) **"Backflow"** means the undesirable reversal of flow of water or other substances through a cross-connection into the public water system or consumer's potable water system.

(20) **"Backflow assembly tester"** means a person holding a valid BAT certificate issued under chapter 246-292 WAC.

(21) **"Backpressure"** means a pressure (caused by a pump, elevated tank or piping, boiler, or other means) on the consumer's side of the service connection that is greater than

the pressure provided by the public water system and which may cause backflow.

(22) **"Backsiphonage"** means backflow due to a reduction in system pressure in the purveyor's distribution system and/or consumer's water system.

(23) **"Bag filter"** means a pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a nonrigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

(24) **"Bank filtration"** means a water treatment process that uses a well to recover surface water that has naturally infiltrated into ~~((ground-water))~~ groundwater through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

(25) **"BAT"** means a backflow assembly tester.

(26) **"Best available technology"** means the best technology, treatment techniques, or other means that EPA finds, after examination for efficacy under field conditions, are available, taking cost into consideration.

(27) **"Blended sample"** means a sample collected from two or more individual sources at a point downstream of the confluence of the individual sources and prior to the first connection.

(28) **"C"** means the residual disinfectant concentration in mg/L at a point before or at the first consumer.

(29) **"Cartridge filter"** means a pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

(30) **"Category red operating permit"** means an operating permit identified under chapter 246-294 WAC. Placement in this category results in permit issuance with conditions and a determination that the system is inadequate.

(31) **"CCP"** means composite correction program.

(32) **"CCS"** means a cross-connection control specialist.

(33) **"CFR"** means the Code of Federal Regulations.

(34) **"Chemical contaminant treatment facility"** means a treatment facility specifically used for the purpose of removing chemical contaminants.

(35) **"Clarification"** means a treatment process that uses gravity (sedimentation) or dissolved air (flotation) to remove flocculated particles.

(36) **"Closed system"** means any water system or portion of a water system in which water is transferred to a higher pressure zone closed to the atmosphere, such as when no gravity storage is present.

(37) **"Coagulant"** means a chemical used in water treatment to destabilize particulates and accelerate the rate at which they aggregate into larger particles.

(38) **"Coagulation"** means a process using coagulant chemicals and rapid mixing to destabilize colloidal and suspended particles and agglomerate them into flocs.

(39) **"Combination fire protection system"** means a fire sprinkler system that:

(a) Is supplied only by the purveyor's water;  
(b) Does not have a fire department pumper connection;  
and

(c) Is constructed of approved potable water piping and materials that serve both the fire sprinkler system and the consumer's potable water system.

(40) **"Combined distribution system"** means the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

(41) **"Completely treated water"** means water from a surface water source, or a ~~((ground-water))~~ groundwater source under the direct influence of surface water (GWI) source that receives filtration or disinfection treatment that fully complies with the treatment technique requirements of Part 6 of this chapter as determined by the department.

(42) **"Composite correction program (CCP)"** means a program that consists of two elements - a comprehensive performance evaluation (CPE) and comprehensive technical assistance (CTA).

(43) **"Composite sample"** means a sample in which more than one source is sampled individually by the water system and then composited by a certified laboratory by mixing equal parts of water from each source (up to five different sources) and then analyzed as a single sample.

(44) **"Comprehensive monitoring plan"** means a schedule that describes both the frequency and appropriate locations for sampling of drinking water contaminants as required by state and federal rules.

(45) **"Comprehensive performance evaluation (CPE)"** means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements.

The comprehensive performance evaluation must consist of at least the following components:

(a) Assessment of plant performance;  
(b) Evaluation of major unit processes;  
(c) Identification and prioritization of performance limiting factors;  
(d) Assessment of the applicability of comprehensive technical assistance; and  
(e) Preparation of a CPE report.

(46) **"Comprehensive technical assistance (CTA)"** means ~~((technical assistance intended to identify specific steps that may help a water treatment plant overcome operational or design limitations identified during a comprehensive performance evaluation))~~ the performance improvement phase that is implemented if the CPE results indicate improved performance potential. The system must identify and systematically address plant-specific factors. The CTA is a combination of using CPE results as a basis for follow-up, implementing process control priority-setting techniques, and maintaining long-term involvement to systematically train staff and administrators.

(47) **"Confirmation"** means to demonstrate the accuracy of results of a sample by analyzing another sample from

the same location within a reasonable period of time, generally not to exceed two weeks. Confirmation is when analysis results fall within plus or minus thirty percent of the original sample results.

(48) **"Confluent growth"** means a continuous bacterial growth covering a portion or the entire filtration area of a membrane filter in which bacterial colonies are not discrete.

(49) **"Consecutive system"** means a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

(50) **"Construction completion report"** means a form provided by the department and completed for each specific construction project to document:

- (a) Project construction in accordance with this chapter and general standards of engineering practice;
- (b) Physical capacity changes; and
- (c) Satisfactory test results.

The completed form must be stamped with an engineer's seal, and signed and dated by a professional engineer.

(51) **"Consumer"** means any person receiving water from a public water system from either the meter, or the point where the service line connects with the distribution system if no meter is present. For purposes of cross-connection control, "consumer" means the owner or operator of a water system connected to a public water system through a service connection.

(52) **"Consumer's water system,"** as used in WAC 246-290-490, means any potable (~~and~~) or industrial water system that begins at the point of delivery from the public water system and is located on the consumer's premises. The consumer's water system includes all auxiliary sources of supply, storage, treatment, and distribution facilities, piping, plumbing, and fixtures under the control of the consumer.

(53) **"Contaminant"** means a substance present in drinking water that may adversely affect the health of the consumer or the aesthetic qualities of the water.

(54) **"Contingency plan"** means that portion of the wellhead protection program section of the water system plan or small water system management program that addresses the replacement of the major well(s) or wellfield in the event of loss due to (~~ground water~~) groundwater contamination.

(55) **"Continuous monitoring"** means determining water quality with automatic recording analyzers that operate without interruption twenty-four hours per day.

(56) **"Conventional filtration treatment"** means a series of processes including coagulation, flocculation, clarification, and filtration that together result in substantial particulate removal in compliance with Part 6 of this chapter.

(57) **"Corrective action plan"** means specific written actions and deadlines developed by the water system or the department that the system must follow as a result of either the identification of significant deficiencies during a sanitary survey or the determination of a fecal indicator-positive sample in source water monitoring.

(58) **"Cost-effective"** means the benefits exceed the costs.

(59) **"Council"** means the Washington state building code council under WAC 51-04-015(2).

(60) **"CPE"** means a comprehensive performance evaluation.

(61) **"Critical water supply service area (CWSSA)"** means a geographical area which is characterized by a proliferation of small, inadequate water systems, or by water supply problems which threaten the present or future water quality or reliability of service in a manner that efficient and orderly development may best be achieved through coordinated planning by the water utilities in the area.

(62) **"Cross-connection"** means any actual or potential physical connection between a public water system or the consumer's water system and any source of nonpotable liquid, solid, or gas that could contaminate the potable water supply by backflow.

(63) **"Cross-connection control program"** means the administrative and technical procedures the purveyor implements to protect the public water system from contamination via cross-connections as required in WAC 246-290-490.

(64) **"Cross-connection control specialist"** means a person holding a valid CCS certificate issued under chapter 246-292 WAC.

(65) **"Cross-connection control summary report"** means the annual report that describes the status of the purveyor's cross-connection control program.

(66) **"CT" or "CTcalc"** means the product of "residual disinfectant concentration" (C) and the corresponding "disinfectant contact time" (T) i.e., "C" x "T."

(67) **"CT<sub>99.9</sub>"** means the CT value required for 99.9 percent (3 log) inactivation of *Giardia lamblia* cysts.

(68) **"CTA"** means comprehensive technical assistance.

(69) **"CTreq"** means the CT value a system shall provide to achieve a specific percent inactivation of *Giardia lamblia* cysts or other pathogenic organisms of health concern as directed by the department.

(70) **"Curtailement"** means short-term, infrequent actions by a purveyor and its consumers to reduce their water use during or in anticipation of a water shortage.

(71) **"CWSSA"** means a critical water supply service area.

(72) **"DBPs"** means disinfection byproducts.

(73) **"DCDA"** means a double check detector assembly.

(74) **"DCVA"** means a double check valve assembly.

(75) **"Dead storage"** means the volume of stored water not available to all consumers at the minimum design pressure under WAC 246-290-230 (5) and (6).

(76) **"Demand forecast"** means an estimate of future water system water supply needs assuming historically normal weather conditions and calculated using numerous parameters, including population, historic water use, local land use plans, water rates and their impacts on consumption, employment, projected water use efficiency savings from implementation of a water use efficiency program, and other appropriate factors.

(77) **"Department"** means the Washington state department of health or health officer as identified in a joint plan of operation under WAC 246-290-030(1).

(78) **"Design and construction standards"** means department design guidance and other peer reviewed documents generally accepted by the engineering profession as containing fundamental criteria for design and construction

of water facility projects. Design and construction standards are comprised of performance and sizing criteria and reference general construction materials and methods.

(79) "**Diatomaceous earth filtration**" means a filtration process for substantial removal of particulates ( $> 2 \log$  *Giardia lamblia* cysts) in which:

(a) A precoat cake of graded diatomaceous earth filter media is deposited on a support membrane (septum); and

(b) Water is passed through the cake on the septum while additional filter media, known as body feed, is continuously added to the feed water to maintain the permeability of the filter cake.

(80) "**Direct filtration**" means a series of processes including coagulation, flocculation, and filtration (but excluding sedimentation) that together result in substantial particulate removal in compliance with Part 6 of this chapter.

(81) "**Direct service connection**" means a service hookup to a property that is contiguous to a water distribution main and where additional distribution mains or extensions are not needed to provide service.

(82) "**Disinfectant contact time (T in CT)**" means:

(a) When measuring the first or only C, the time in minutes it takes water to move from the point of disinfectant application to a point where the C is measured; and

(b) For subsequent measurements of C, the time in minutes it takes water to move from one C measurement point to the C measurement point for which the particular T is being calculated.

(83) "**Disinfection**" means the use of chlorine or other agent or process the department approves for killing or inactivating microbiological organisms, including pathogenic and indicator organisms.

(84) "**Disinfection profile**" means a summary of *Giardia lamblia* inactivation through a surface water treatment plant.

(85) "**Distribution coliform sample**" means a sample of water collected from a representative location in the distribution system at or after the first service and analyzed for coliform presence in compliance with this chapter.

(86) "**Distribution-related projects**" means distribution projects such as storage tanks, booster pump facilities, transmission mains, pipe linings, and tank coating. It does not mean source of supply (including interties) or water quality treatment projects.

(87) "**Distribution system**" means all piping components of a public water system that serve to convey water from transmission mains linked to source, storage and treatment facilities to the consumer excluding individual services.

(88) "**Domestic or other nondistribution system plumbing problem**," means contamination of a system having more than one service connection with the contamination limited to the specific service connection from which the sample was taken.

(89) "**Dual sample set**" means a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an IDSE under WAC 246-290-300 (6)(b)(i)(F) and determining compliance with the TTHM and HAA5 MCLs under WAC 246-290-310(4).

(90) "**Duplicate (verification) sample**" means a second sample collected at the same time and location as the first sample and used for verification.

(91) "**DVGW**" means Deutsche Vereinigung des Gas und Wasserfaches.

(92) "**Elected governing board**" means the elected officers with ultimate legal responsibility for operational, technical, managerial, and financial decisions for a public water system.

(93) "**Emergency**" means an unforeseen event that causes damage or disrupts normal operations and requires immediate action to protect public health and safety.

(94) "**Emergency source**" means any source that is approved by the department for emergency purposes only, is not used for routine or seasonal water demands, is physically disconnected, and is identified in the purveyor's emergency response plan.

(95) "**Engineering design review report**" means a form provided by the department and completed for a specific distribution-related project to document:

(a) Engineering review of a project report and/or construction documents under the submittal exception process in WAC 246-290-125(3); and

(b) Design in accordance with this chapter and general standards of engineering practice.

(c) The completed form must be stamped with engineer's seal, and signed and dated by a professional engineer.

(96) "**EPA**" means the Environmental Protection Agency.

(97) "**Equalizing storage**" means the volume of storage needed to supplement supply to consumers when the peak hourly demand exceeds the total source pumping capacity.

(98) "**Equivalent residential unit (ERU)**" means a system-specific unit of measure used to express the amount of water consumed by a typical full-time single family residence.

(99) "**ERU**" means an equivalent residential unit.

(100) "**Existing service area**" means a specific area within which direct service or retail service connections to customers of a public water system are currently available.

(101) "**Expanding public water system**" means a public water system installing additions, extensions, changes, or alterations to their existing source, transmission, storage, or distribution facilities that will enable the system to increase in size its existing service area and/or its number of approved service connections. Exceptions:

(a) A system that connects new approved individual retail or direct service connections onto an existing distribution system within an existing service area; or

(b) A distribution system extension in an existing service area identified in a current and approved water system plan or project report.

(102) "**Filter profile**" means a graphical representation of individual filter performance in a direct or conventional surface water filtration plant, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

(103) "**Filtration**" means a process for removal of particulate matter from water by passage through porous media.

(104) "**Financial viability**" means the capability of a water system to obtain sufficient funds to construct, operate, maintain, and manage a public water system, on a continuing basis, in full compliance with federal, state, and local requirements.

(105) "**Finished water**" means water introduced into a public water system's distribution system and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

(106) "**Finished water storage facility**" means a water storage structure that is integrated with a water system's distribution network to provide for variable system demands including, but not limited to, daily equalizing storage, standby storage, or fire reserves, or to provide for disinfectant contact time.

(107) "**Fire flow**" means the maximum rate and duration of water flow needed to suppress a fire under WAC 246-293-640 or as required under local fire protection authority standards.

(108) "**Fire suppression storage**" means the volume of stored water available during fire suppression activities to satisfy minimum pressure requirements per WAC 246-290-230.

(109) "**First consumer**" means the first service connection associated with any source (i.e., the point where water is first withdrawn for human consumption, excluding connections where water is delivered to another water system covered by these regulations).

(110) "**Flocculation**" means a process enhancing agglomeration and collection of colloidal and suspended particles into larger, more easily settleable or filterable particles by gentle stirring.

(111) "**Flowing stream**" means a course of running water flowing in a definite channel.

(112) "**Flow-through fire protection system**" means a fire sprinkler system that:

- (a) Is supplied only by the purveyor's water;
- (b) Does not have a fire department pumper connection;
- (c) Is constructed of approved potable water piping and materials to which sprinkler heads are attached; and
- (d) Terminates at a connection to a toilet or other plumbing fixture to prevent stagnant water.

(113) "**Forecasted demand characteristics**" means the factors that may affect a public water system's projected water needs.

(114) "**Future service area**" means a specific area a public water system plans to provide water service. This is determined by a written agreement between purveyors under WAC 246-293-250 or by the purveyor's elected governing board or governing body if not required under WAC 246-293-250.

(115) "**GAC**" means granular activated carbon.

(116) "**GAC10**" means granular activated carbon filter beds with an empty-bed contact time of ten minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty days, except that the reactivation

frequency for GAC10 used as a best available technology for compliance with MCLs under WAC 246-290-310(4) shall be one hundred twenty days.

(117) "**GAC20**" means granular activated carbon filter beds with an empty-bed contact time of twenty minutes based on average daily flow and a carbon reactivation frequency of every two hundred forty days.

(118) "**Governing body**" means the individual or group of individuals with ultimate legal responsibility for operational, technical, managerial, and financial decisions for a public water system.

(119) "**gph**" means gallons per hour.

(120) "**gpm**" means gallons per minute.

(121) "**Grab sample**" means a water quality sample collected at a specific instant in time and analyzed as an individual sample.

(122) "**Groundwater system**" means all public water systems that use groundwater including:

(a) Consecutive systems receiving finished groundwater;  
or

(b) Surface water systems with groundwater sources except those systems that combine all sources prior to treatment.

(123) "~~((Ground-water))~~ **Groundwater under the direct influence of surface water (GWI)**" means any water beneath the surface of the ground that the department determines has the following characteristics:

(a) Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or, *Cryptosporidium*; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH closely correlating to climatological or surface water conditions where natural conditions cannot prevent the introduction of surface water pathogens into the source at the system's point of withdrawal.

(124) "**Guideline**" means a department document assisting the purveyor in meeting a rule requirement.

(125) "**GW1**" means ~~((ground-water))~~ groundwater under the direct influence of surface water.

(126) "**GWR**" means groundwater rule.

(127) "**HAA5**" means haloacetic acids (five).

(128) "**Health officer**" means the health officer of the city, county, city-county health department or district, or an authorized representative.

(129) "**Heterotrophic Plate Count (HPC)**" means a procedure to measure a class of bacteria that use organic nutrients for growth. The density of these bacteria in drinking water is measured as colony forming units per milliliter and is referred to as the HPC.

(130) "**High health cross-connection hazard**" means a cross-connection involving any substance that could impair the quality of potable water and create an actual public health hazard through injury, poisoning, or spread of disease.

(131) "**HPC**" means heterotrophic plate count.

(132) "**Human consumption**" means the use of water for drinking, bathing or showering, hand washing, food preparation, cooking, or oral hygiene.

(133) "**Hydraulic analysis**" means the study of a water system's distribution main and storage network to determine

present or future adequacy for provision of service to consumers within the established design parameters for the system under peak flow conditions, including fire flow. The analysis is used to establish any need for improvements to existing systems or to substantiate adequacy of design for distribution system components such as piping, elevated storage, booster stations or similar facilities used to pump and convey water to consumers.

(134) **"IAPMO"** means the International Association of Plumbing and Mechanical Officials.

(135) **"IDSE"** means an initial distribution system evaluation.

(136) **"Inactivation"** means a process which renders pathogenic microorganisms incapable of producing disease.

(137) **"Inactivation ratio"** means the ratio obtained by dividing CT<sub>calc</sub> by CT<sub>req</sub>.

(138) **"Incompletely treated water"** means water from a surface or GWI source that receives filtration and/or disinfection treatment that does not fully comply with the treatment technique requirements of Part 6 of this chapter as determined by the department.

(139) **"In-line filtration"** means a series of processes, including coagulation and filtration (but excluding flocculation and sedimentation) that together result in particulate removal.

(140) **"In-premises protection"** means a method of protecting the health of consumers served by the consumer's potable water system, located within the property lines of the consumer's premises by the installation of an approved air gap or backflow prevention assembly at the point of hazard, which is generally a plumbing fixture.

(141) **"Intertie"** means an interconnection between public water systems permitting the exchange or delivery of water between those systems.

(142) **"kPa"** means kilo pascal (SI units of pressure).

(143) **"Lake or reservoir"** means a natural or man-made basin or hollow on the earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

(144) **"Legionella"** means a genus of bacteria containing species which cause a type of pneumonia called Legionnaires' Disease.

(145) **"Limited alternative to filtration"** means a process that ensures greater removal and/or inactivation efficiencies of pathogenic organisms than would be achieved by the combination of filtration and chlorine disinfection.

(146) **"Local plans and regulations"** means any comprehensive plan or development regulation adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county for the applicable service area.

(147) **"Locational running annual average (LRAA)"** means the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

(148) **"Low cross-connection hazard"** means a cross-connection that could impair the quality of potable water to a degree that does not create a hazard to the public health, but does adversely and unreasonably affect the aesthetic qualities of potable waters for domestic use.

(149) **"LRAA"** means the locational running annual average.

(150) **"Major project"** means all construction projects subject to the State Environmental Policy Act (SEPA) under WAC 246-03-030 (3)(a) and include all surface water source development, all water system storage facilities greater than one-half million gallons, new transmission lines longer than one thousand feet and larger than eight inches in diameter located in new rights of way and major extensions to existing water distribution systems involving use of pipes greater than eight inches in diameter, that are designed to increase the existing service area by more than one square mile.

(151) **"Mandatory curtailment"** means curtailment required by a public water system of specified water uses and consumer classes for a specified period of time.

(152) **"Marginal costs"** means the costs incurred by producing the next increment of supply.

(153) **"Maximum contaminant level (MCL)"** means the maximum permissible level of a contaminant in water the purveyor delivers to any public water system user, measured at the locations identified under WAC 246-290-300, Table 3.

(154) **"Maximum contaminant level violation"** means a confirmed measurement above the MCL and for a duration of time, where applicable, as outlined under WAC 246-290-310.

(155) **"Maximum day demand (MDD)"** means the highest actual or estimated quantity of water that is, or is expected to be, used over a twenty-four hour period, excluding unusual events or emergencies. MDD is typically expressed as gallons per day per ERU (gpd/ERU).

(156) **"MCL"** means the maximum contaminant level.

(157) **"MDD"** means the maximum day demand.

(158) **"Membrane filtration"** means a pressure or vacuum driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

(159) **"mg/L"** means milligrams per liter (1 mg/L = 1 ppm).

(160) **"mL"** means a milliliter.

(161) **"mm"** means a millimeter.

(162) **"Monitoring waiver"** means an action taken by the department under WAC 246-290-300 (4)(g) or (8)(f) to allow a water system to reduce specific monitoring requirements based on a determination of low source vulnerability to contamination.

(163) **"MRDL"** means the maximum residual disinfectant level.

(164) **"MRDLG"** means the maximum residual disinfectant level goal.

(165) **"MTTP"** means maximum total trihalomethane potential.

(166) **"Municipal water supplier"** means an entity that supplies water for municipal water supply purposes.

(167) **"Municipal water supply purposes"** means a beneficial use of water:

(a) For residential purposes through fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year;

(b) For governmental or governmental proprietary purposes by a city, town, public utility, district, county, sewer district, or water district; or

(c) Indirectly for the purposes in (a) or (b) of this definition through the delivery of treated or raw water to a public water system for such use.

(i) If water is beneficially used under a water right for the purposes listed in (a), (b), or (c) of this definition, any other beneficial use of water under the right generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes.

(ii) If a governmental entity holds a water right that is for the purposes listed in (a), (b), or (c) of this definition, its use of water or its delivery of water for any other beneficial use generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes.

(168) "**Nested storage**" means one component of storage is contained within the component of another.

(169) "**Nonacute**" means posing a possible or less than immediate risk to human health.

(170) "**Nonresident**" means a person having access to drinking water from a public water system, but who lives elsewhere. Examples include travelers, transients, employees, students, etc.

(171) "**Normal operating conditions**" means those conditions associated with the designed, day-to-day provision of potable drinking water that meets regulatory water quality standards and the routine service expectations of the system's consumers at all times, including meeting fire flow demands. Operation under conditions such as power outages, floods, or unscheduled transmission or distribution disruptions, even if considered in the system design, are considered abnormal.

(172) "**NSF**" means NSF International (formerly known as the National Sanitation Foundation (NSF)).

(173) "**NTNC**" means nontransient noncommunity.

(174) "**NTU**" means a nephelometric turbidity unit.

(175) "**ONORM**" means Osterreichisches Normungsinstitut.

(176) "**Operational storage**" means the volume of distribution storage associated with source or booster pump normal cycling times under normal operating conditions and is additive to the equalizing and standby storage components, and to fire flow storage if this storage component exists for any given tank.

(177) "**PAA**" means a project approval application.

(178) "**pCi/L**" means picocuries per liter.

(179) "**Peak hourly demand (PHD)**" means the maximum rate of water use, excluding fire flow, that can be

expected to occur within a defined service area over a continuous sixty minute time period. PHD is typically expressed in gallons per minute (gpm).

(180) "**Peak hourly flow**" means, for the purpose of CT calculations, the greatest volume of water passing through the system during any one hour in a day.

(181) "**Performance criteria**" means the level at which a system shall operate in order to maintain system reliability compliance, in accordance with WAC 246-290-420, and to meet consumers' reasonable expectations.

(182) "**Permanent residence**" means any dwelling that is, or could reasonably be expected to be, occupied on a continuous basis.

(183) "**Permanent source**" means a public water system supply source that is used regularly each year, and based on expected operational requirements of the system, will be used more than three consecutive months in any twelve-month period. For seasonal water systems that are in operation for less than three consecutive months per year, their sources shall also be considered to be permanent.

(184) "**PHD**" means peak hourly demand.

(185) "**Plant intake**" means the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

(186) "**Point of disinfectant application**" means the point where the disinfectant is added, and where water downstream of that point is not subject to contamination by untreated surface water.

(187) "**Population served**" means the number of persons, resident and nonresident, having immediate access to drinking water from a public water system, whether or not persons have actually consumed water from that system. The number of nonresidents shall be the average number of persons having immediate access to drinking water on days access was provided during that month. In the absence of specific population data, the number of residents shall be computed by multiplying the number of active services by two and one-half.

(188) "**Potable**" means water suitable for drinking by the public.

(189) "**Potential GWI**" means a source identified by the department as possibly under the influence of surface water, and includes, but is not limited to, all wells with a screened interval fifty feet or less from the ground surface at the well-head and located within two hundred feet of a surface water, and all Ranney wells, infiltration galleries, and springs.

(190) "**ppm**" means parts per million (1 ppm = 1 mg/L).

(191) "**Premises isolation**" means a method of protecting a public water system by installation of approved air gaps or approved backflow prevention assemblies at or near the service connection or alternative location acceptable to the purveyor to isolate the consumer's water system from the purveyor's distribution system.

(192) "**Presedimentation**" means a preliminary treatment process used to remove gravel, sand, and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

(193) "**Pressure filter**" means an enclosed vessel containing properly sized and graded granular media through

which water is forced under greater than atmospheric pressure.

(194) **"Primary disinfection"** means a treatment process for achieving inactivation of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of public health concern to comply with the treatment technique requirements of Part 6 of this chapter.

(195) **"Primary standards"** means standards based on chronic, nonacute, or acute human health effects.

(196) **"Primary turbidity standard"** means an accurately prepared formazin solution or commercially prepared polymer solution of known turbidity (prepared in accordance with "standard methods") that is used to calibrate bench model and continuous turbidimeters (instruments used to measure turbidity).

(197) **"Project approval application (PAA)"** means a department form documenting ownership of water system, design engineer for the project, and type of project.

(198) **"Protected ~~((ground-water)) groundwater source"~~** means a ~~((ground-water)) groundwater~~ source the purveyor shows to the department's satisfaction as protected from potential sources of contamination on the basis of hydrogeologic data and/or satisfactory water quality history.

(199) **"psi"** means pounds per square inch.

(200) **"Public forum"** means a meeting open to the general public that allows for their participation.

(201) **"Public water system"** is defined and referenced under WAC 246-290-020.

(202) **"Purchased source"** means water a purveyor purchases from a public water system not under the control of the purveyor for distribution to the purveyor's consumers.

(203) **"Purveyor"** means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or other entity owning or operating a public water system. Purveyor also means the authorized agents of these entities.

(204) **"PVBA"** means a pressure vacuum breaker assembly.

(205) **"RAA"** means the running annual average.

(206) **"Reclaimed water"** means effluent derived in any part from sewage from a wastewater treatment system that has been adequately and reliably treated, so that as a result of that treatment, it is suitable for beneficial use or a controlled use that would not otherwise occur, and it is no longer considered wastewater.

(207) **"Record drawings"** means the drawings bearing the seal and signature of a professional engineer that reflect the modifications made to construction documents, documenting actual constructed conditions of the water system facilities.

(208) **"Recreational tract"** means an area that is clearly defined for each occupant, but has no permanent structures with internal plumbing, and the area has been declared in the covenants or on the recorded plat in order to be eligible for reduced design considerations.

(209) **"Regional public water supplier"** means a water system that provides drinking water to one, or more, other public water systems.

(210) **"Regularly"** means four hours or more per day for four days or more per week.

(211) **"Removal credit"** means the level (expressed as a percent or log) of *Giardia* and virus removal the department grants a system's filtration process.

(212) **"Repeat sample"** means a sample collected to confirm the results of a previous analysis.

(213) **"Resident"** means an individual living in a dwelling unit served by a public water system.

(214) **"Residual disinfectant concentration"** means the analytical level of a disinfectant, measured in milligrams per liter, that remains in water following the application (dosing) of the disinfectant after some period of contact time.

(215) **"Retail service area"** means the specific area defined by the municipal water supplier where the municipal water supplier has a duty to provide service to all new service connections. This area must include the municipal water supplier's existing service area and may also include areas where future water service is planned if the requirements of RCW 43.20.260 are met.

(216) **"RPBA"** means reduced pressure backflow assembly.

(217) **"RPDA"** means reduced pressure detector assembly.

(218) **"SAL"** means state advisory level.

(219) **"Same farm"** means a parcel of land or series of parcels that are connected by covenants and devoted to the production of livestock or agricultural commodities for commercial purposes and does not qualify as a **Group A** public water system.

(220) **"Sanitary survey"** means a review, inspection, and assessment of a public water system, by the department or department designee ~~((including, but not limited to)), to determine the adequacy of the system and its operation for producing and distributing safe and reliable drinking water.~~ Each survey includes, but is not limited to, an evaluation of the following components:

(a) Source;

(b) ~~((Facilities;))~~ Treatment;

(c) ~~((Equipment;))~~ Distribution system;

(d) ~~((Administration and operation;))~~ Finished water storage;

(e) ~~((Maintenance procedures;))~~ Pump, pump facilities, and controls;

(f) Monitoring, reporting, and data verification;

(g) ~~((Recordkeeping;))~~ System management and operation; and

(h) ~~((Planning documents and schedules; and~~

~~(i) Management practices;))~~ Operator compliance.

(221) **"Satellite system management agency (SMA)"** means a person or entity that is approved by the department to own or operate public water systems on a regional or county-wide basis without the necessity for a physical connection between the systems.

(222) **"SCA"** means a sanitary control area.

(223) **"SDWA"** means the Safe Drinking Water Act.

(224) **"Seasonal source"** means a public water system source used on a regular basis, that is not a permanent or emergency source.

(225) **"Secondary standards"** means standards based on factors other than health effects.

(226) **"SEPA"** means the State Environmental Policy Act.

(227) **"Service area"** means the specific area or areas a water system currently serves or plans to provide water service. This may be comprised of the existing service area, retail service area, future service area, and include areas where water is provided to other public water systems.

(228) **"Service connection"** means a connection to a public water system designed to provide potable water to a single family residence, or other residential or nonresidential population. When the connection provides water to a residential population without clearly defined single family residences, the following formulas shall be used in determining the number of services to be included as residential connections on the WFI form:

(a) Divide the average population served each day by two and one-half; or

(b) Using actual water use data, calculate the total ERUs represented by the service connection in accordance with department design guidance.

(c) In no case shall the calculated number of services be less than one.

(229) **"Severe health cross-connection hazard"** means a cross-connection which could impair the quality of potable water and create an immediate, severe public health hazard through poisoning or spread of disease by contaminants from radioactive material processing plants, nuclear reactors, or wastewater treatment plants.

~~("Significant noncomplier" means a system that is violating or has violated department rules, and the violations may create, or have created an imminent or a significant risk to human health.~~

~~The violations include, but are not limited to:~~

- ~~(a) Repeated violations of monitoring requirements;~~  
~~(b) Failure to address an exceedance of permissible levels of regulated contaminants; or~~  
~~(c) Failure to comply with treatment technique standards or requirements.))~~

(230) **"Simple disinfection"** means any form of disinfection that requires minimal operational control in order to maintain the disinfection at proper functional levels, and that does not pose safety concerns that would require special care, equipment, or expertise. Examples include hypochlorination, UV-light, contactor chlorination, or any other form of disinfection practice that is safe to use and easy to routinely operate and maintain.

(231) **"Slow sand filtration"** means a process involving passage of source water through a bed of sand at low velocity (generally less than 0.10 gpm/ft<sup>2</sup>) that results in substantial particulate removal (> 2 log *Giardia lamblia* cysts) by physical and biological mechanisms.

(232) **"SMA"** means a satellite system management agency.

(233) **"SOC"** means a synthetic organic chemical.

(234) **"Societal perspective"** means:

A point of view that includes a broad spectrum of public benefits, including, but not limited to:

- (a) Enhanced system reliability;
- (b) Savings that result from delaying, deferring, or minimizing capital costs; and

(c) Environmental benefits such as increased water in streams, improvements in aquifer recharge and other environmental factors.

(235) **"Source meter"** means a meter that measures total output of a water source over specific time periods.

(236) **"Source water"** means untreated water that is not subject to recontamination by surface runoff and:

(a) For unfiltered systems, enters the system immediately before the first point of disinfectant application; and

(b) For filtered systems, enters immediately before the first treatment unit of a water treatment facility.

(237) **"SPI"** means a special purpose investigation.

(238) **"Special purpose investigation (SPI)"** means on-site inspection of a public water system by the department or designee to address a potential public health concern, regulatory violation, or consumer complaint.

(239) **"Special purpose sample"** means a sample collected for reasons other than the monitoring compliance specified in this chapter.

(240) **"Spring"** means a source of water where an aquifer comes in contact with the ground surface.

(241) **"SRF"** means the state revolving fund.

(242) **"SSNC"** means state significant noncomplier.

(243) **"Standard methods"** means the book, titled *Standard Methods for the Examination of Water and Waste Water*, jointly published by the American Public Health Association, American Water Works Association (AWWA), and Water Pollution Control Federation. This book is available through public libraries or may be ordered from AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235. The edition to be used is that specified by EPA for the relevant drinking water parameter in 40 CFR Part 141.

(244) **"Standby storage"** means the volume of stored water available for use during a loss of source capacity, power, or similar short-term emergency.

(245) **"State advisory level (SAL)"** means a level established by the department and state board of health for a contaminant without an existing MCL. The SAL represents a level that when exceeded, indicates the need for further assessment to determine if the chemical is an actual or potential threat to human health.

(246) **"State board of health"** and **"board"** means the board created by RCW 43.20.030.

(247) **"State building code"** means the codes adopted by and referenced in chapter 19.27 RCW; the state energy code; and any other codes so designated by the Washington state legislature as adopted and amended by the council.

(248) **"State revolving fund (SRF)"** means the revolving loan program financed by the state and federal governments and managed by the state for the purpose of assisting water systems to meet their capital needs associated with complying with the federal Safe Drinking Water Act under chapter 246-296 WAC.

(249) "State significant noncomplier (SSNC)" means a system that is violating or has violated department rules, and the violations may create, or have created an imminent or a significant risk to human health.

The violations include, but are not limited to:

- (a) Repeated violations of monitoring requirements;

(b) Failure to address an exceedance of permissible levels of regulated contaminants;

(c) Failure to comply with treatment technique standards or requirements;

(d) Failure to comply with waterworks operator certification requirements; or

(e) Failure to submit to a sanitary survey.

**(250) "Subpart H System"** see definition for "surface water system."

**(251) "Surface water"** means a body of water open to the atmosphere and subject to surface runoff.

**(252) "Surface water system"** means a public water system that uses in whole, or in part, source water from a surface supply, or GWI supply. This includes systems that operate surface water treatment facilities, and systems that purchase "completely treated water" (as defined in this subsection). A "surface water system" is also referred to as a "Subpart H System" in some federal regulatory language adopted by reference and the two terms are considered equivalent for the purposes of this chapter.

**(253) "Susceptibility assessment"** means the completed Susceptibility Assessment Survey Form developed by the department to evaluate the hydrologic setting of the water source and assess its contribution to the source's overall susceptibility to contamination from surface activities.

**(254) "SUVA"** means specific ultraviolet absorption.

**(255) "SVBA"** means spill resistant vacuum breaker assembly.

**(256) "SWTR"** means the surface water treatment rule.

**(257) "Synthetic organic chemical (SOC)"** means a manufactured carbon-based chemical.

**(258) "System capacity"** means the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations.

**(259) "System physical capacity"** means the maximum number of service connections or equivalent residential units (ERUs) that the system can serve when considering the limitation of each system component such as source, treatment, storage, transmission, or distribution, individually and in combination with each other.

**(260) "T"** means disinfectant contact time in minutes.

**(261) "Time-of-travel"** means the time required for (~~ground-water~~) groundwater to move through the water bearing zone from a specific point to a well.

**(262) "TNC"** means transient noncommunity.

**(263) "TNTC"** means too numerous to count.

**(264) "TOC"** means total organic carbon.

**(265) "Too numerous to count (TNTC)"** means the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

**(266) "Tracer study"** means a field study conducted to determine the disinfectant contact time, T, provided by a water system component, such as a clearwell or storage reservoir, used for *Giardia lamblia* cyst and virus inactivation. The study involves introducing a tracer chemical at the inlet of the contact basin and measuring the resulting outlet tracer concentration as a function of time.

**(267) "Transmission line"** means pipes used to convey water from source, storage, or treatment facilities to points of

distribution or distribution mains, and from source facilities to treatment or storage facilities. This also can include transmission mains connecting one section of distribution system to another section of distribution system as long as this transmission main is clearly defined on the plans and no service connections are allowed along the transmission main.

**(268) "Treatment technique requirement"** means a department-established requirement for a public water system to provide treatment, such as filtration or disinfection, as defined by specific design, operating, and monitoring requirements. A "treatment technique requirement" is established in lieu of a primary MCL when monitoring for the contaminant is not economically or technologically feasible.

**(269) "Triggered source water monitoring"** means collection of groundwater source samples as a result of a total coliform-positive routine sample in the distribution system under WAC 246-290-300(3).

**(270) "Trihalomethane (THM)"** means one of a family of organic compounds, named as derivatives of methane, where three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure. THMs may occur when chlorine, a halogen, is added to water containing organic material and are generally found in water samples as disinfection byproducts.

**(271) "TTHM"** means total trihalomethane.

**(272) "Turbidity event"** means a single day or series of consecutive days, not to exceed fourteen, when one or more turbidity measurement each day exceeds 5 NTU.

**(273) "Two-stage lime softening"** means a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

**(274) "T10"** means the time it takes ten percent of the water passing through a system contact tank intended for use in the inactivation of *Giardia lamblia* cysts, viruses, and other microorganisms of public health concern, as determined from a tracer study conducted at peak hourly flow or from published engineering reports or guidance documents for similarly configured tanks.

**(275) "ug/L"** means micrograms per liter.

**(276) "UL"** means the Underwriters Laboratories, Inc.

**(277) "umhos/cm"** means micromhos per centimeter.

**(278) "Unapproved auxiliary water supply"** means a water supply (other than the purveyor's water supply) on or available to the consumer's premises that is either not approved for human consumption by the health agency having jurisdiction or is not otherwise acceptable to the purveyor.

**(279) "Uncovered finished water storage facility"** means a tank, reservoir, or other facility used to store water, which will undergo no further treatment to reduce microbial pathogens except residual disinfection and is directly open to the atmosphere without a suitable water-tight roof or cover.

**(280) "Uniform Plumbing Code (UPC)"** means the code adopted under RCW 19.27.031(4) and implemented under chapter 51-56 WAC. This code establishes statewide minimum plumbing standards applicable within the property lines of the consumer's premises.

**(281) "UPC"** means the Uniform Plumbing Code.

(282) **"Used water"** means water which has left the control of the purveyor.

(283) **"UTC"** means the utilities and transportation commission.

(284) **"Verification"** means to demonstrate the results of a sample to be precise by analyzing a duplicate sample. Verification occurs when analysis results fall within plus or minus thirty percent of the original sample.

(285) **"Virus"** means a virus of fecal origin which is infectious to humans and transmitted through water.

(286) **"VOC"** means a volatile organic chemical.

(287) **"Volatile organic chemical (VOC)"** means a manufactured carbon-based chemical that vaporizes quickly at standard pressure and temperature.

(288) **"Voluntary curtailment"** means a curtailment of water use requested, but not required of consumers.

(289) **"WAC"** means the Washington Administrative Code.

(290) **"Waterborne disease outbreak"** means the significant occurrence of acute infectious illness, epidemiologically associated with drinking water from a public water system, as determined by the appropriate local health agency or the department.

(291) **"Water demand efficiency"** means minimizing water use by the public water system's consumers through purveyor sponsored activities that may include, but are not limited to distributing water saving devices, providing rebates or incentives to promote water efficient technologies or by providing water audits to homes, businesses, or landscapes.

(292) **"Water facilities inventory (WFI) form"** means the department form summarizing each public water system's characteristics.

(293) **"Water right"** means a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

(294) **"Water right self-assessment"** means an evaluation of the legal ability of a water system to use water for existing or proposed usages in conformance with state water right laws. The assessment may be done by a water system, a purveyor, the department of ecology, or any combination thereof.

(295) **"Watershed"** means the region or area that:

(a) Ultimately drains into a surface water source diverted for drinking water supply; and

(b) Affects the physical, chemical, microbiological, and radiological quality of the source.

(296) **"Water shortage"** means a situation during which the water supplies of a system cannot meet normal water demands for the system, including peak periods.

(297) **"Water shortage response plan"** means a plan outlining policies and activities to be implemented to reduce water use on a short-term basis during or in anticipation of a water shortage.

(298) **"Water supply characteristics"** means the factors related to a public water system's source of water supply that may affect its availability and suitability to provide for both short-term and long-term needs.

Factors include, but are not limited to:

(a) Source location;

(b) Name of any body of water and water resource inventory area from which water is diverted or withdrawn;

(c) Production capacity;

(d) The source's natural variability;

(e) The system's water rights for the source;

(f) Other legal demands on the source such as water rights for other uses;

(g) Conditions established to protect species listed under the Endangered Species Act in 50 CFR 17.11;

(h) Instream flow restrictions established under Title 173 WAC; and

(i) Any conditions established by watershed plans approved under chapter 90.82 RCW and RCW 90.54.040(1) or salmon recovery plans under chapter 77.85 RCW.

(299) **"Water supply efficiency"** means increasing a public water system's transmission, storage and delivery potential through activities that may include, but are not limited to:

(a) System-wide water audits;

(b) Documenting authorized uses;

(c) Conducting leak surveys; and

(d) Repairs on:

(i) Meters;

(ii) Lines;

(iii) Storage facilities; and

(iv) Valves.

(300) **"Water use efficiency (WUE)"** means increasing water supply efficiency and water demand efficiency to minimize water withdrawals and water use.

(301) **"Water use efficiency program"** means policies and activities focusing on increasing water supply efficiency and water demand efficiency to minimize water withdrawals and water use.

(302) **"Well field"** means a group of wells one purveyor owns or controls that:

(a) Draw from the same aquifer or aquifers as determined by comparable inorganic chemical analysis and comparable static water level and top of the open interval elevations; and

(b) Discharge water through a common pipe and the common pipe shall allow for collection of a single sample before the first distribution system connection.

(303) **"Wellhead protection area (WHPA)"** means the portion of a well's, wellfield's or spring's zone of contribution defined using WHPA criteria established by the department.

(304) **"WFI"** means a water facilities inventory form.

(305) **"Wholesale system"** means a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

(306) **"WHPA"** means a wellhead protection area.

(307) **"WUE"** means water use efficiency.

(308) **"Zone of contribution"** means the area surrounding a pumping well or spring that encompasses all areas or features that supply (~~ground-water~~) groundwater recharge to the well or spring.

AMENDATORY SECTION (Amending WSR 09-21-045, filed 10/13/09, effective 1/4/10)

**WAC 246-290-025 Adoption by reference.** The following sections and subsections of Title 40 Code of Federal Regulations (CFR) Part 141 National Primary Drinking Water Regulations revised as of July 1, 2009, and including all amendments and modifications thereto effective as of the date of adoption of this chapter are adopted by reference:

141.2 Definitions. Only those definitions listed as follows:

- Action level;
- Corrosion inhibitor;
- Effective corrosion inhibitor residual;
- Enhanced coagulation;
- Enhanced softening;
- Haloacetic acids (five) (HAA5);
- First draw sample;
- Large water system;
- Lead service line;
- Maximum residual disinfectant level (MRDL);
- Maximum residual disinfectant level goal (MRDLG);
- Medium-size water system;
- Optimal corrosion control treatment;
- Service line sample;
- Single family structure;
- Small water system;
- Specific ultraviolet absorption (SUVA); and
- Total Organic Carbon (TOC).
- 141.12 Maximum contaminant levels for organic chemicals.
- 141.13 Maximum contaminant levels for turbidity.
- 141.21 Coliform monitoring.
- 141.22 Turbidity sampling and analytical requirements.
- 141.23(a) - 141.23(j), Inorganic chemical sampling, excluding (i)(2)
- 141.23(m) - 141.23(o)
- 141.24(a) - 141.24(d), Organic chemicals other than total trihalomethanes.
- 141.24 (f)(1) - 141.24 (f)(15), 141.24 (f)(18), 141.24 (f)(19), 141.24 (f)(21), 141.24 (f)(22)
- 141.24 (g)(1) - 141.24 (g)(9), 141.24 (g)(12) - 141.24 (g)(14), 141.24 (h)(1) - 141.24 (h)(11), 141.24 (h)(14) - 141.24 (h)(17)
- 141.24 (h)(20)
- 141.25(a), 141.25 (c) - (d), Analytical methods for radioactivity.

- 141.26 Monitoring frequency and compliance for radioactivity in community water systems.
- 141.31(d) Reporting of public notices and compliance certifications.
- 141.33(e) Record maintenance of public notices and certifications.
- 141.40 Monitoring requirements for unregulated contaminants.
- 141.61 Maximum contaminant levels for organic contaminants.
- 141.62, 141.64 Maximum contaminant levels for inorganic excluding (b) chemical and physical contaminants.
- 141.64 Maximum contaminant levels and Best Available Technologies (BATs) for disinfection byproducts.
- 141.65(c) Best Available Technologies (BATs) for Maximum Residual Disinfectant Levels.
- 141.66 Maximum contaminant levels for radionuclides.
- Control of Lead and Copper
- 141.80 General requirements.
- 141.81 Applicability of corrosion control treatment steps to small, medium-size and large water systems.
- 141.82(a) - 141.82(h) Description of corrosion control treatment requirements.
- 141.83 Source water treatment requirements.
- 141.84 Lead service line replacement requirements.
- 141.85 Public education and supplemental monitoring requirements.
- 141.86 (a) - (f) Monitoring requirements for lead and copper in tap water.
- 141.87 Monitoring requirements for water quality parameters.
- 141.88 Monitoring requirements for lead and copper in source water.
- 141.89 Analytical methods for lead and copper testing.
- 141.90, 141.91 Reporting requirements.
- 141.91 Recordkeeping requirements.
- Disinfectants and Disinfection Byproducts (D/DBP)
- 141.130 General requirements.
- 141.131 Analytical requirements.
- 141.132 Monitoring requirements.
- 141.133 Compliance.
- 141.134 Reporting and recordkeeping.
- 141.135 Treatment technique for control of disinfection byproduct precursors.

~~((Enhanced Filtration—Reporting and Recordkeeping))~~

Subpart O - Consumer Confidence Reports141.153 Contents of the reports.(h)(6)Enhanced Filtration - Reporting and Recordkeeping

141.175(b) Individual filter reporting and follow-up action requirements for systems treating surface water with conventional, direct, or in-line filtration and serving at least 10,000 people.

Subpart Q - Public Notification

141.201, General public notification requirements, excluding (3)(ii) of Table 1

141.202, Tier 1 Public Notice - Form, manner, and frequency of notice, excluding (3) of Table 1

141.203 Tier 2 Public Notice - Form, manner, and frequency of notice.

141.204 Tier 3 Public Notice - Form, manner, and frequency of notice.

141.205 Content of the public notice.

141.206 Notice to new billing units or new customers.

141.207 Special notice of the availability of unregulated contaminant monitoring results.

141.208 Special notice for exceedances of the SMCL for fluoride.

141.211 Special notice for *Cryptosporidium* monitoring failure.

Appendix A - NPDWR violations and situations requiring PN

Appendix B - Standard health effects language for PN

Appendix C - List of acronyms used in PN regulation141.400 General requirements and applicability.141.402(c) Groundwater source microbial monitoring and analytical methods.141.403 Treatment technique requirements for groundwater systems.  
(b)(3)(i) through (iii)

Subpart T - Enhanced Filtration and Disinfection - Systems Serving Fewer Than 10,000 People

141.530 - Disinfection profile and benchmark.  
141.544

141.563 Follow-up actions required.

141.570, Reporting requirements, excluding (c)

Subpart U and V - Initial Distribution System Evaluations and Stage 2 Disinfection Byproducts Requirements.

141.600 - Initial distribution system evaluations.  
141.605

141.620 - Stage 2 Disinfection Byproducts Requirements.  
141.629

Subpart W - Enhanced Treatment for *Cryptosporidium*

141.700-722 Enhanced Treatment for *Cryptosporidium*

Part 143 - National Secondary Drinking Water Regulations

143.1 Purpose.

143.2 Definitions.

143.3 Secondary maximum contaminant levels.

143.4 Monitoring.

Copies of the incorporated sections and subsections of Title 40 CFR are available from the Department of Health, P.O. Box 47822, Olympia, Washington 98504-7822, or by calling the department's drinking water hotline at 800-521-0323.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

**WAC 246-290-100 Water system plan.** (1) The purpose of this section is to establish a uniform process for purveyors to:

(a) Demonstrate the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with relevant local, state, and federal plans and regulations;

(b) Demonstrate how the system will address present and future needs in a manner consistent with other relevant plans and local, state, and federal laws, including applicable land use plans;

(c) Establish eligibility for funding under chapter 246-296 WAC.

(2) Purveyors of the following categories of community public water systems shall submit a water system plan for review and approval by the department:

(a) Systems having one thousand or more services;

(b) Systems required to develop water system plans under the Public Water System Coordination Act of 1977 (chapter 70.116 RCW);

(c) Any system experiencing problems related to planning, operation, and/or management as determined by the department;

(d) All new systems;

(e) Any expanding system; and

(f) Any system proposing to use the document submittal exception process in WAC 246-290-125.

(3) The purveyor shall work with the department to establish the level of detail for a water system plan. In general, the scope and detail of the plan will be related to size, complexity, water supply characteristics, forecasted demand characteristics, past performance, and use of the water system. Project reports may be combined with a water system plan.

(4) In order to demonstrate system capacity, the water system plan shall address the following elements, as a minimum, for a period of at least twenty years into the future:

(a) Description of the water system, including:

(i) Ownership and management, including the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system;

(ii) System history and background;

(iii) Related plans, such as coordinated water system plans, abbreviated coordinated water system plans, local land use plans, (~~ground water~~) groundwater management plans, and basin plans;

(iv) Service area maps, characteristics, agreements, and policies. Water systems must include their existing service area and future service area. Municipal water suppliers must define their retail service area and meet the requirements under WAC 246-290-106. Municipal water suppliers must identify where their water rights place of use will be expanded to their service area if the requirements under WAC 246-290-107 have been met; and

(v) Satellite management, if applicable.

(b) Basic planning data, including:

(i) Current population, service connections, water use, and equivalent residential units; and

(ii) Sufficient water production and consumption data to identify trends including the following elements:

(A) Monthly and annual production totals for each source, including water purchased from another public water system;

(B) Annual usage totals for each customer class as determined by the purveyor;

(C) Annual usage totals for water supplied to other public water systems; and

(D) For systems serving one thousand or more total connections, a description of the seasonal variations in consumption patterns of each customer class defined by the purveyor.

(iii) Designated land use, zoning, future population, and water demand for a consecutive six-year and twenty-year planning period within the water system's service area.

(c) Demand forecasts, developed under WAC 246-290-221, for a consecutive six-year and twenty-year planning period. These shall show future use with and without savings expected from the system's water use efficiency program.

(d) For systems serving one thousand or more total connections, a demand forecast projecting demand if the measures deemed cost-effective per WAC 246-290-810 were implemented.

(e) System analysis, including:

(i) System design standards;

(ii) Water quality analysis;

(iii) System inventory description and analysis; and

(iv) Summary of system deficiencies.

(f) Water resource analysis, including:

(i) A water use efficiency program. Municipal water suppliers must meet the requirements in WAC 246-290-810;

(ii) Source of supply analysis, which includes:

(A) An evaluation of water supply alternatives if additional water rights will be pursued within twenty years; and

(B) A narrative description of the system's water supply characteristics and the foreseeable effect from current and future use on the water quantity and quality of any body of water from which its water is diverted or withdrawn based on existing data and studies;

(ii) A water shortage response plan as a component of the reliability and emergency response requirements under WAC 246-290-420;

(iv) Water right self-assessment;

(v) Water supply reliability analysis;

(vi) Interties; and

(vii) For systems serving one thousand or more total connections, an evaluation of opportunities for the use of reclaimed water, where they exist, as defined in RCW 90.46.010(4).

(g) Source water protection under WAC 246-290-135.

(h) Operation and maintenance program under WAC 246-290-415 and 246-290-654(5), as applicable.

(i) Improvement program, including a six-year capital improvement schedule.

(j) Financial program, including demonstration of financial viability by providing:

(i) A summary of past income and expenses;

(ii) A one-year balanced operational budget for systems serving one thousand or more connections or a six-year balanced operational budget for systems serving less than one thousand connections;

(iii) A plan for collecting the revenue necessary to maintain cash flow stability and to fund the capital improvement program and emergency improvements; and

(iv) An evaluation that has considered:

(A) The affordability of water rates; and

(B) The feasibility of adopting and implementing a rate structure that encourages water demand efficiency.

(k) Other documents, such as:

(i) Documentation of SEPA compliance;

(ii) Agreements; and

(iii) Comments from each local government with jurisdiction and adjacent utilities.

(5) Purveyors intending to implement the project report and construction document submittal exceptions authorized under WAC 246-290-125 must include:

(a) Standard construction specifications for distribution mains; and/or

(b) Design and construction standards for distribution-related projects, including:

(i) Description of project report and construction document internal review procedures, including engineering design review and construction completion reporting requirements;

(ii) Construction-related policies and requirements for external parties, including consumers and developers;

(iii) Performance and sizing criteria; and

(iv) General reference to construction materials and methods.

(6) The department, at its discretion, may require reports from purveyors identifying the progress in developing their water system plans.

(7) Purveyors shall transmit water system plans to adjacent utilities and each local government with jurisdiction, to assess consistency with ongoing and adopted planning efforts.

(8) Prior to department approval of a water system plan or a water system plan update, the purveyor shall:

(a) Hold an informational meeting for the water system consumers and notify consumers in a way that is appropriate to the size of the water system; and

(b) Obtain the approval of the water system plan from the purveyor's governing body or elected governing board.

(9) Department approval of a water system plan shall be in effect for six years from the date of written approval unless:

(a) Major projects subject to SEPA as defined in WAC 246-03-030 (3)(a) are proposed that are not addressed in the plan;

(b) Changes occur in the basic planning data significantly affecting system improvements identified; or

(c) The department requests an updated plan or plan amendment.

(10) The purveyor shall update the plan and obtain department approval at least every six years. If the system no longer meets the conditions of subsection (2) of this section, the purveyor shall as directed by the department, either:

(a) Submit a water system plan amendment for review and approval with the scope to be determined by the department; or

(b) Meet the requirements under WAC 246-290-105.

**AMENDATORY SECTION** (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

**WAC 246-290-107 Place of use expansion.** The place of use of a surface or (~~(ground-water)) groundwater~~ right may be expanded to include any portion of the approved service area that was not previously within the place of use for the water right when documented in an approved planning or engineering document under chapter 43.20 RCW or in accordance with procedures adopted under chapter 70.116 RCW. This occurs as an effect of the department's approval of a service area identified in a water system plan, water system plan amendment, small water system management program, engineering document, or as an effect of the local legislative authority's approval of a service area as part of a coordinated water system plan.

(1) The following conditions must be met:

(a) The municipal water supplier is in compliance with the terms of the water system plan or small water system management program, including those regarding water use efficiency.

(b) The alteration of the place of use is not inconsistent regarding an area added to the place of use with any local plans and regulations.

(c) The alteration of the place of use is not inconsistent regarding an area added to the place of use with any watershed plan approved under chapter 90.82 RCW or a comprehensive watershed plan approved under RCW 90.54.040(1) after September 3, 2003, if such a watershed plan has been approved for the area.

(2) As part of the planning or engineering document, municipal water suppliers must:

(a) Identify the portions of the service area where the place of use will be expanded.

(b) Document that subsection (1)(a) and (c) of this section are met.

(c) Meet the requirements of WAC 246-290-108 for the portions of the service area where the place of use will be expanded.

**AMENDATORY SECTION** (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

**WAC 246-290-130 Source approval.** (1) Every purveyor shall obtain drinking water from the highest quality source feasible. No new source, previously unapproved source, or modification of an existing source shall be used as a public water supply without department approval. No intake or other connection shall be maintained between a public water system and a source of water not approved by the department.

(2) Before initiating source development or modification, the purveyor shall contact the department to identify submittal requirements.

(3) Any party seeking source approval shall provide the department sufficient documentation, in a project report, construction documents, or in supplemental documents, that the source:

(a) Is reasonable and feasible for the type and size of the system;

(b) May legally be used in conformance with state water rights laws;

(c) Supplies water that is physically and reliably available in the necessary quantities, as shown in:

(i) A hydrogeologic assessment of the proposed source;

(ii) A general description of the watershed, spring, and/or aquifer recharge area affecting the quantity or quality of flow, which includes seasonal variation and upstream water uses that may significantly affect the proposed source;

(iii) For (~~(ground-water)) groundwater~~ and spring sources, well source development data that are available from a pump test at the maximum design rate and duration, or are available from other sources of information, that establish pump settings (depth) in the well and demonstrate adequacy of water quantity to meet design criteria while not leading to water quality problems;

(iv) For (~~(ground-water)) groundwater~~ and spring sources, installation of a source meter or other equivalent device that reliably measures volume of flow into the system;

(d) Is, or is not, a GWI under WAC 246-290-640, and meets or can meet the applicable requirements for GWI sources as described in that section including treatment;

(e) Adequately provides for source protection, as shown in:

(i) For surface water and GWI sources, the watershed control program identified under WAC 246-290-135 and Part 6 of this chapter;

(ii) For wells, a preliminary department susceptibility assessment or equivalent information, and preliminary WHPA delineation and contaminant inventory, under the requirements for sanitary control and wellhead protection under WAC 246-290-135;

(f) Is designed and constructed in conformance with this chapter, and relevant requirements of chapter 173-160 WAC (department of ecology well construction standards);

(g) Meets water quality standards under WAC 246-290-310, as shown in an initial water quality analysis that includes, at a minimum, the following:

- (i) Bacteriological;
- (ii) Complete inorganic chemical and physical except that the MCL for arsenic under WAC 246-290-310 does not apply to TNC systems;
- (iii) Complete VOC;
- (iv) Radionuclides, if source approval is requested for a community system;
- (v) SOC, except where waived or not required under WAC 246-290-310; and
- (vi) Any other information required by the department relevant to the circumstances of the particular source.

Sources that otherwise would not meet water quality standards may be approved if treatment is provided.

(4) The required documentation under subsection (3) of this section shall include, at a minimum:

- (a) A water right self-assessment;
- (b) A map showing the project location and vicinity;
- (c) A map depicting topography, distances to the surface water intake, well or spring from existing property lines, buildings, potential sources of contamination, ditches, drainage patterns, and any other natural or man-made features affecting the quality or quantity of water;

(d) The dimensions, location, and legal documentation of the SCA under WAC 246-290-135;

(e) A copy of the on-site inspection form completed by the department or local health department representative;

(f) A copy of the water well report including the unique well identification tag number, depth to open interval or top of screened interval, overall depth of well from the top of the casing, vertical elevation, and location (both plat location and latitude/longitude); and

(g) Documentation of source meter installation. The purveyor may utilize other documents, such as a water system plan, susceptibility assessment, wellhead protection program, project report, or construction documents, to provide the documentation and information to the department, provided that the documents are current, and the purveyor indicates the location in the document of the relevant information.

(5) If treatment of a source is necessary to meet water quality standards, the purveyor may be required to meet the provisions of WAC 246-290-250 and Part 6 of this chapter, if applicable, prior to or as a condition of approval.

(6) An intertie must be adequately described in a written agreement between the purveyor and the supplier of the water, and otherwise meet the requirements of WAC 246-290-132.

(7) The purveyor shall not construct facilities for source development and use without prior approval of the department pursuant to the provisions of WAC 246-290-120.

(8) The purveyor may request a conditional source approval, such as one that sets limits on use or requires interim treatment, if further analysis of the quality of the source is required before final approval.

(9) For sources or supplies of water used by bottled water or ice plants to produce bottled water or ice:

(a) If the bottled water or ice plant is a Group A community water system and the plant uses the system's source for

the water that is bottled or made into ice, the source and supply used for the bottled water and ice shall meet the applicable Group A requirements;

(b) If the bottled water or ice plant uses its own source for the water that is bottled or made into ice, and the plant is not a Group A community water system, the owner or operator shall obtain source approval from the department, and the source water shall meet the ongoing source water quality monitoring requirements for a Group A community system;

(c) If the bottled water or ice plant purchases the water for bottling or making ice from another source or supply, the water shall meet the minimum requirements for a Group A community water system, and the owner or operator of the plant shall ensure that the water meets the requirements;

(d) The source or supply for the water that is bottled or made into ice shall be protected from contamination prior to the bottling or ice making process; and

(e) In addition to the requirements imposed under this subsection, the processing of bottled water shall be subject to regulation by the state department of agriculture and the United States Food and Drug Administration.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

**WAC 246-290-135 Source water protection.** (1) The department may require monitoring and controls in addition to those specified in this section if ~~(, in the opinion of)~~ the department ~~(,)~~ determines a potential risk exists to the water quality of a source.

(2) SCA.

(a) The purveyor shall maintain an SCA around all sources for the purpose of protecting them from existing and potential sources of contamination.

(b) For wells and springs, the minimum SCA shall have a radius of one hundred feet (thirty meters) and two hundred feet (sixty meters) respectively, unless engineering justification demonstrates that a smaller area can provide an adequate level of source water protection. The justification shall address geological and hydrological data, well construction details, mitigation measures, and other relevant factors necessary to assure adequate sanitary control.

(c) The department may require a larger SCA than specified in (b) of this subsection, or additional mitigation measures if land use, geological, ~~(and/)~~ or hydrological data support the decision. It shall be the purveyor's responsibility to obtain the protection needed.

(d) The purveyor shall prohibit the construction, storage, disposal, or application of any source of contamination within the SCA without the permission of the purveyor.

(e) The SCA shall be owned by the purveyor in fee simple, or the purveyor shall have the right to exercise complete sanitary control of the land through other legal provisions.

(f) A purveyor, owning all or part of the SCA in fee simple or having possession and control, shall send to the department copies of legal documentation, such as a duly recorded declaration of covenant, restricting the use of the land. This legal documentation shall state:

(i) Constructing, storing, disposing, or applying any source of contamination is prohibited without the permission of the purveyor; and

(ii) If any change in ownership of the system or SCA is considered, all affected parties shall be informed of these requirements.

(g) Where portions of the control area are in the possession and control of another, the purveyor shall obtain a duly recorded restrictive covenant which shall run with the land, restricting the use of the land in accordance with this chapter and provide the department with copies of the appropriate documentation.

(3) Wellhead protection.

(a) Purveyors of water systems using ~~((ground water))~~ groundwater or spring sources shall develop and implement a wellhead protection program.

(b) The wellhead protection program shall be part of the water system plan required under WAC 246-290-100 or the small water system management program required under WAC 246-290-105.

(c) The purveyor's wellhead protection program shall contain, at a minimum, the following elements:

(i) A completed susceptibility assessment or equivalent information;

(ii) WHPA delineation for each well, wellfield, or spring with the six month, one, five and ten year time of travel boundaries marked, or boundaries established using alternate criteria approved by the department in those settings where ~~((ground water))~~ groundwater time of travel is not a reasonable delineation criteria. WHPA delineations shall be done in accordance with recognized methods such as those described in the following sources:

(A) Department guidance on wellhead protection; or

(B) EPA guidance for delineation of wellhead protection areas;

(iii) An inventory, including identification of site locations and owners/operators, of all known and potential ~~((ground water))~~ groundwater contamination sources located within the defined WHPA(s) having the potential to contaminate the source water of the well(s) or spring(s). This list shall be updated every two years;

(iv) Documentation of purveyor's notification to all owners/operators of known or potential sources of ~~((ground water))~~ groundwater contamination listed in (c)(B)(iii) of this subsection;

(v) Documentation of purveyor's notification to regulatory agencies and local governments of the boundaries of the WHPA(s) and the findings of the WHPA inventory;

(vi) A contingency plan to ensure consumers have an adequate supply of potable water in the event that contamination results in the temporary or permanent loss of the principal source of supply (major well(s) or wellfield); and

(vii) Documentation of coordination with local emergency incident responders (including police, fire and health departments), including notification of WHPA boundaries, results of susceptibility assessment, inventory findings, and contingency plan.

(4) Watershed control program.

(a) Purveyors of water systems using surface water or GWI sources shall develop and implement a watershed con-

trol program under Part 6 of chapter 246-290 WAC as applicable.

(b) The watershed control program shall be part of the water system plan required in WAC 246-290-100 or the small water system management program required in WAC 246-290-105.

(c) The purveyor's watershed control program shall contain, at a minimum, the following elements:

(i) Watershed description and inventory, including location, hydrology, land ownership and activities that may adversely affect source water quality;

(ii) An inventory of all potential surface water contamination sources and activities, including identification of site locations and owner/operators, located within the watershed and having the significant potential to contaminate the source water quality;

(iii) Watershed control measures, including documentation of ownership and relevant written agreements, and monitoring of activities and water quality;

(iv) System operation, including emergency provisions; and

(v) Documentation of water quality trends.

(d) The purveyor shall submit the watershed control program to the department for approval. Following department approval, the purveyor shall implement the watershed control program as approved.

(e) Purveyors of systems using unfiltered surface or GWI sources and meeting the criteria to remain unfiltered as specified in WAC 246-290-690 shall submit an annual report to the department that summarizes the effectiveness of the watershed control program. Refer to WAC 246-290-690 for further information about this report.

(f) The purveyor shall update the watershed control program at least every six years, or more frequently if required by the department.

**AMENDATORY SECTION** (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-250 Treatment design.** (1) Treatment systems or devices shall be piloted and designed to ensure finished water quality conforms to water quality standards established in WAC 246-290-310.

(2) Treatment systems or devices for surface water or GWI sources shall be designed in accordance with the provisions of Part 6 of this chapter and the applicable provisions herein.

(3) Predesign studies, including pilot studies as appropriate, shall be required for proposed surface water and GWI sources ~~((and those ground water sources requiring treatment))~~ and those groundwater sources requiring treatment. The goal of the predesign study shall be to establish the most effective method, considering economics, to produce satisfactory finished water quality meeting the requirements of this chapter and complying with the treatment technique requirements in Part 6 of chapter 246-290 WAC. The predesign study shall be included as part of the project report under WAC 246-290-110. Refer to WAC 246-290-676 for requirements relating specifically to the filtration facility pilot study. The purveyor shall not establish nor maintain a bypass to

divert water around any feature of a treatment process, except by written permission of the department.

(4) All well and spring sources not determined to be GWI's shall have continuous disinfection that meets the ~~((operational))~~ requirements of WAC 246-290-451 ~~((3) and (4))~~. The department may modify the requirement for disinfection for public water systems that demonstrate the well or spring sources (not confirmed as GWI's) have satisfactory bacteriological histories at the source and have SCAs in accordance with WAC 246-290-135.

(5) Purveyors shall use appropriate treatment technologies, such as those outlined in department guidance on water treatment, and shall address water treatment facilities in their water system plans pursuant to WAC 246-290-100.

(6) Project reports for the design of treatment facilities shall meet the requirements of WAC 246-290-110.

(7) Construction specifications for treatment facilities shall meet the requirements of WAC 246-290-120.

**AMENDATORY SECTION** (Amending WSR 09-21-045, filed 10/13/09, effective 1/4/10)

**WAC 246-290-300 Monitoring requirements.** (1) General.

(a) The monitoring requirements specified in this section are minimums. The department may require additional monitoring when:

(i) Contamination is present or suspected in the water system;

(ii) A ~~((ground-water))~~ groundwater source is determined to be a potential GWI;

(iii) The degree of source protection is not satisfactory;

(iv) Additional monitoring is needed to verify source vulnerability for a requested monitoring waiver;

(v) Under other circumstances as identified in a department order; or

(vi) Additional monitoring is needed to evaluate continuing effectiveness of a treatment process where problems with the treatment process may exist.

(b) Special purpose samples collected by the purveyor shall not count toward fulfillment of the monitoring requirements of this chapter unless the quality of data and method of sampling and analysis are acceptable to the department.

(c) The purveyor shall ensure samples required by this chapter are collected, transported, and submitted for analysis according to EPA-approved methods. The analyses shall be performed by a laboratory accredited by the state. Qualified water utility, accredited laboratory, health department personnel, and other parties approved by the department may conduct measurements for pH, temperature, residual disinfectant concentration, alkalinity, bromide, chlorite, TOC, SUVA, ~~((and))~~ turbidity, calcium, conductivity, orthophosphate, and silica as required by this chapter, provided, these measurements are made ~~((in accordance with))~~ according to EPA approved methods.

(d) Compliance samples required by this chapter shall be taken at locations listed in Table 3 of this section.

(e) Purveyors failing to comply with a monitoring requirement shall notify:

(i) The department under WAC 246-290-480; and

(ii) The owner or operator of any consecutive system served and the appropriate water system users under 40 CFR 141.201 and Part 7, Subpart A of this chapter.

(2) Selling and receiving water.

(a) Source monitoring. Purveyors, with the exception of those that "wheel" water to their consumers (i.e., sell water that has passed through another purchasing purveyor's distribution system), shall conduct source monitoring under this chapter for the sources under their control. The level of monitoring shall satisfy the monitoring requirements associated with the total population served by the source.

(b) Distribution system monitoring. The purveyor of a system that receives and distributes water shall perform distribution-related monitoring requirements. Monitoring shall include, but not be limited to, the following:

(i) Collect coliform samples under subsection (3) of this section;

(ii) Collect disinfection byproduct samples as required by subsection (6) of this section;

(iii) Perform the distribution system residual disinfectant concentration monitoring under subsection (6) of this section, and as required under WAC 246-290-451 or 246-290-694. Systems with fewer than one hundred connections shall measure residual disinfectant concentration at the same time and location that a routine or repeat coliform sample is collected, unless the department determines that more frequent monitoring is necessary to protect public health;

(iv) Perform lead and copper monitoring required under 40 CFR 141.86, 141.87, and 141.88;

(v) Perform the distribution system monitoring under 40 CFR 141.23(b) for asbestos if applicable;

(vi) Other monitoring as required by the department.

(c) Reduced monitoring for regional programs. The receiving purveyor may receive reductions in the coliform, lead and copper, disinfection byproduct (including THMs and HAA5) and distribution system disinfectant residual concentration monitoring requirements, provided the receiving system:

(i) Purchases water from a purveyor that has a department-approved regional monitoring program;

(ii) Has a written agreement with the supplying system or regional water supplier that is acceptable to the department, and which identifies the responsibilities of both the supplying and receiving system(s) with regards to monitoring, reporting and maintenance of the distribution system; and

(iii) Has at least one compliance monitoring location for disinfection byproducts, if applicable.

(d) Periodic review of regional programs. The department may periodically review the sampling records of public water systems participating in a department-approved monitoring program to determine if continued reduced monitoring is appropriate. If the department determines a change in the monitoring requirements of the receiving system is appropriate:

(i) The department shall notify the purveyor of the change in monitoring requirements; and

(ii) The purveyor shall conduct monitoring as directed by the department.

## (3) Bacteriological.

(a) The purveyor shall be responsible for collection and submittal of coliform samples from representative points throughout the distribution system. Samples shall be collected after the first service and at regular time intervals each month the system provides water to consumers. Samples shall be collected that represent normal system operating conditions.

(i) Systems providing disinfection treatment shall ~~(when taking a)~~ measure the residual disinfectant concentration within the distribution system at the same time and location of routine ((or)) and repeat samples ~~(, measure residual disinfectant concentration within the distribution system at the same time and location and comply with the residual disinfection monitoring requirements under WAC 246-290-451)~~.

(ii) Systems providing disinfection treatment shall assure that disinfectant residual concentrations are measured and recorded on all coliform sample report forms submitted for compliance purposes.

## (b) Coliform monitoring plan.

(i) The purveyor shall prepare a written coliform monitoring plan and base routine monitoring upon the plan. The plan shall include coliform sample collection sites and a sampling schedule.

## (ii) The purveyor shall:

(A) Keep the coliform monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer ensures representative monitoring of the system, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(c) Monitoring frequency. The number of required routine coliform samples is based on total population served.

(i) Purveyors of **community** systems shall collect and submit for analysis no less than the number of routine samples listed in Table 1 during each calendar month of operation;

(ii) Unless directed otherwise by the department, purveyors of **noncommunity** systems shall collect and submit for analysis no less than the number of samples required in Table 1, and no less than required under 40 CFR 141.21. Each month's population shall be based on the average daily population and shall include all residents and nonresidents served during that month. During months when the average daily population served is less than twenty-five, routine sample collection is not required when:

(A) Using only protected ~~((ground water))~~ groundwater sources;

(B) No coliform were detected in samples during the previous month; and

(C) One routine sample has been collected and submitted for analysis during one of the previous two months.

(iii) Purveyors of systems serving both a resident and a nonresident population shall base their minimum sampling requirement on the total of monthly populations served, both

resident and nonresident as determined by the department, but no less than the minimum required in Table 1; and

(iv) Purveyors of systems with a nonresident population lasting two weeks or less during a month shall sample as directed by the department. Sampling shall be initiated at least two weeks prior to the time service is provided to consumers.

(v) Purveyors of TNC systems shall not be required to collect routine samples in months where the population served is zero or the system has notified the department of an unscheduled closure.

(d) Invalid samples. When a routine or repeat coliform sample is determined invalid under WAC 246-290-320 (2)(d), the purveyor shall:

(i) Not include the sample in the determination of monitoring compliance; and

(ii) Take follow-up action as defined in WAC 246-290-320 (2)(d).

(e) Assessment source water monitoring. If directed by the department, a groundwater system must conduct assessment source water monitoring which may include, but is not limited to, collection of at least one representative groundwater source sample each month the source provides groundwater to the public, for a minimum of twelve months.

(i) Sampling must be conducted as follows:

(A) Source samples must be collected at a location prior to any treatment. If the water system's configuration does not allow sampling at the source itself, the department may approve an alternative source sampling location representative of the source water quality.

(B) Source samples must be at least 100 mL in size and must be analyzed for *E. coli* using one of the analytical methods under 40 CFR 141.402(c).

(ii) A groundwater system may use a triggered source water sample collected under WAC 246-290-320 (2)(g) to meet the requirements for assessment source water monitoring.

(iii) Groundwater systems with an *E. coli* positive assessment source water sample that is not invalidated under WAC 246-290-320 (2)(g)(vii), and consecutive systems receiving water from this source must:

(A) Provide Tier 1 public notice under Part 7, Subpart A of this chapter and special notification under WAC 246-290-71005 (4) and (5); and

(B) Take corrective action as required under WAC 246-290-453(1).

(iv) The purveyor of a groundwater system that fails to conduct assessment source water monitoring as directed by the department shall provide Tier 2 public notice under Part 7, Subpart A of this chapter.

(f) The purveyor using a surface water or GWI source shall collect representative source water samples for bacteriological density analysis under WAC 246-290-664 and 246-290-694 as applicable.

TABLE 1  
MINIMUM MONTHLY ROUTINE COLIFORM  
SAMPLING REQUIREMENTS

Population Served <sup>1</sup>	Minimum Number of Routine Samples/Calendar Month	
	When NO sam- ples with a coli- form presence were collected during the previous month	When ANY sam- ples with a coli- form presence were collected during the previous month
During Month		
1 - 1,000	1*	5
1,001 - 2,500	2*	5
2,501 - 3,300	3*	5
3,301 - 4,100	4*	5
4,101 - 4,900	5	5
4,901 - 5,800	6	6
5,801 - 6,700	7	7
6,701 - 7,600	8	8
7,601 - 8,500	9	9
8,501 - 12,900	10	10
12,901 - 17,200	15	15
17,201 - 21,500	20	20
21,501 - 25,000	25	25
25,001 - 33,000	30	30
33,001 - 41,000	40	40
41,001 - 50,000	50	50
50,001 - 59,000	60	60
59,001 - 70,000	70	70
70,001 - 83,000	80	80
83,001 - 96,000	90	90
96,001 - 130,000	100	100
130,001 - 220,000	120	120
220,001 - 320,000	150	150
320,001 - 450,000	180	180
450,001 - 600,000	210	210
600,001 - 780,000	240	240
780,001 - 970,000	270	270
970,001 - 1,230,000 <sup>3</sup>	300	300

<sup>1</sup> Does not include the population of a consecutive system that purchases water. The sampling requirement for consecutive systems is a separate determination based upon the population of that system.

<sup>2</sup> Noncommunity systems using only protected ((ground-water)) groundwater sources and serving less than 25 individuals, may collect and submit for analysis, one sample every three months.

<sup>3</sup> Systems serving populations larger than 1,230,000 shall contact the department for the minimum number of samples required per month.

\*In addition to the provisions of subsection (1)(a) of this section, if a system of this size cannot show evidence of having been subject to a sanitary survey on file with the department, or has been determined to be at risk to bacteriological concerns following a survey, the minimum number of samples required per month may be increased by the department after additional con-

sideration of factors such as monitoring history, compliance record, operational problems, and water quality concerns for the system.

(4) Inorganic chemical and physical.

(a) A complete inorganic chemical and physical analysis shall consist of the primary and secondary chemical and physical substances.

(i) Primary chemical and physical substances are antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate (as N), nitrite (as N), selenium, sodium, thallium, and for unfiltered surface water, turbidity. (Except that the MCL for arsenic under WAC 246-290-310 does not apply to TNC systems.)

(ii) Secondary chemical and physical substances are chloride, color, hardness, iron, manganese, specific conductivity, silver, sulfate, total dissolved solids\*, and zinc.

\* Required only when specific conductivity exceeds seven hundred micromhos/centimeter.

(b) Purveyors shall monitor for all primary and secondary chemical and physical substances identified in Table 4 and Table 5. Samples shall be collected in accordance with the monitoring requirements referenced in 40 CFR 141.23 introductory text, 141.23(a) through 141.23(j), excluding (i)(2), and 40 CFR 143.4, except for composite samples for systems serving less than three thousand three hundred one persons. For these systems, compositing among different systems may be allowed if the systems are owned or operated by a department-approved satellite management agency.

(c) Samples required by this subsection shall be taken at designated locations under 40 CFR 141.23(a) through 141.23(j), excluding (i)(2), and 40 CFR 143.4, and Table 3 herein.

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) Under 40 CFR 141.23 (a)(3), alternate sampling locations may be used if approved by the department. The process for determining these alternate sites is described in department guidance. Purveyors of community and NTNC systems may ask the department to approve an alternate sampling location for multiple sources within a single system that are blended prior to entry to the distribution system. Alternate sampling plans shall address the following:

- (A) Source vulnerability;
- (B) Individual source characteristics;
- (C) Previous water quality information;
- (D) Status of monitoring waiver applications; and
- (E) Other information deemed necessary by the department.

(d) Composite samples:

(i) Under 40 CFR 141.23 (a)(4), purveyors may ask the certified lab to composite samples representing as many as five individual samples from within one system. Sampling procedures and protocols are outlined in department guidance; and

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve composite sampling between systems when those systems are part of an approved satellite management agency.

(e) When the purveyor provides treatment for one or more inorganic chemical or physical contaminants, the

department may require the purveyor to sample before and after treatment. The department shall notify the purveyor if and when this additional source sampling is required.

(f) Inorganic monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an inorganic chemical monitoring plan and base routine monitoring on the plan.

(ii) The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(g) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any nonnitrate/nitrite inorganic chemical and physical monitoring requirements identified in this chapter.

(ii) Purveyors requesting a monitoring waiver shall comply with applicable subsections of 40 CFR 141.23 (b)(3), and 141.23 (c)(3).

(iii) Purveyors shall update and resubmit requests for waiver renewals as applicable during each compliance cycle or period or more frequently as directed by the department.

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(h) The department may require the purveyor to repeat sample for confirmation of results.

(i) Purveyors with emergency and seasonal sources shall monitor those sources when they are in use.

(5) Lead and copper. Monitoring for lead and copper shall be conducted in accordance with 40 CFR 141.86 (a) - (f), 141.87, and 141.88.

(6) Disinfection byproducts (DBP), disinfectant residuals, and disinfection byproduct precursors (DBPP). Purveyors of community and NTNC systems providing water treated with chemical disinfectants and TNC systems using chlorine dioxide shall monitor as follows:

(a) General requirements.

(i) Systems shall collect samples during normal operating conditions.

(ii) All monitoring shall be conducted in accordance with the analytical requirements in 40 CFR 141.131.

(iii) Systems may consider multiple wells drawing from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with department approval in accordance with department guidance.

(iv) Systems required to monitor under this subsection shall prepare and implement a monitoring plan in accordance with 40 CFR 141.132(f) or 40 CFR 141.622, as applicable.

(A) Community and NTNC surface water and GWI systems that deliver water that has been treated with a disinfectant other than ultraviolet light and serve more than three

thousand three hundred people shall submit a monitoring plan to the department.

(B) The department may require submittal of a monitoring plan from systems not specified in subsection (6)(a)(iv)(A) of this section, and may require revision of any monitoring plan.

(C) Failure to monitor for TTHM, HAA5, or bromate will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages (~~and the systems' failure to monitor makes it impossible to determine compliance with MCL's or MRDL's~~).

(D) Failure to monitor for chlorine and chloramine residuals will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the systems' failure to monitor makes it impossible to determine compliance with the MRDLs.

(b) Disinfection byproducts - **Community** and NTNC systems only.

(i) TTHMs and HAA5.

(A) Systems shall monitor for TTHM and HAA5 in accordance with 40 CFR 141.132 (b)(1)(i) until the dates set in Table 2. On and after the dates set in Table 2, the systems shall monitor in accordance with 40 CFR 141.620, 141.621, and 141.622.

Table 2

Population Served	Routine Monitoring Start Date <sup>1</sup>
100,000 or more	April 1, 2012
50,000 - 99,999	October 1, 2012
10,000 - 49,999	October 1, 2013
Less than 10,000	October 1, 2013 <sup>2</sup> October 1, 2014 <sup>3</sup>

<sup>1</sup> Systems that have nonemergency interties with other systems must comply with the dates associated with the largest system in their combined distribution system.

<sup>2</sup> Surface water and GWI systems that did not have to do *Cryptosporidium* monitoring under 40 CFR 141.701 (a)(4).

<sup>3</sup> Surface water and GWI systems that also did *Cryptosporidium* monitoring under 40 CFR 141.701 (a)(4).

(B) With department approval, systems may reduce monitoring in accordance with 40 CFR 141.132 (b)(1)(ii) and (iii), or 40 CFR 141.623, as applicable.

(C) Systems on department-approved reduced monitoring schedules may be required to return to routine monitoring, or initiate increased monitoring in accordance with 40 CFR 141.132 (b)(1)(iv), 40 CFR 141.625, or 40 CFR 141.627, as applicable.

(D) The department may return systems on increased monitoring to routine monitoring if, after one year, annual average results for TTHMs and HAA5 are less than or equal to 0.060 mg/L and 0.045 mg/L, respectively, or monitoring results are consistently below the MCLs indicating that increased monitoring is no longer necessary. After the dates set in Table 2, systems must meet requirements of 40 CFR

141.628 and 40 CFR 141.625(c) to return to routine monitoring.

(E) After the dates set in Table 2, systems must calculate operational evaluation levels each calendar quarter and take action, as needed, in accordance with 40 CFR 141.626.

(F) NTNC systems serving ten thousand or more people and community systems must comply with the provisions of 40 CFR Subpart U - Initial Distribution System Evaluation at:

40 CFR 141.600	General requirements.
40 CFR 141.601	Standard monitoring.
40 CFR 141.602	System specific studies.
40 CFR 141.603	40/30 certification.
40 CFR 141.604	Very small system waivers.
40 CFR 141.605	Subpart V compliance monitoring location recommendations.

(ii) Chlorite - Only systems that use **chlorine dioxide**.

(A) Systems using chlorine dioxide shall conduct daily and monthly monitoring in accordance with 40 CFR 141.132 (b)(2)(i) and additional chlorite monitoring in accordance with 40 CFR 141.132 (b)(2)(ii).

(B) With department approval, monthly monitoring may be reduced in accordance with 40 CFR 141.132 (b)(2)(iii)(B). Daily monitoring at entry to distribution required by 40 CFR 141.132 (b)(2)(i)(A) may not be reduced.

(iii) Bromate - Only systems that use **ozone**.

(A) Systems using ozone for disinfection or oxidation must conduct bromate monitoring in accordance with 40 CFR 141.132 (b)(3)(i).

(B) With department approval, monthly bromate monitoring may be reduced to once per quarter in accordance with 40 CFR 141.132 (b)(3)(ii)(B).

(c) Disinfectant residuals.

(i) Chlorine and chloramines. Systems that deliver water continuously treated with chlorine or chloramines, including consecutive systems, shall monitor and record the residual disinfectant level in the distribution system under WAC 246-290-300 (2)(b), 246-290-451(~~((6))~~) (7), 246-290-664(6), or 246-290-694(8), but in no case less than as required by 40 CFR 141.74 (b)(6), 40 CFR 141.74 (c)(3), 40 CFR 141.132 (c), or 40 CFR 141.624.

(ii) Chlorine dioxide. Community, NTNC, or TNC systems that use chlorine dioxide shall monitor in accordance with 40 CFR 141.132 (c)(2) and record results.

(d) Disinfection byproducts precursors.

Community and NTNC surface water or GWI systems that use conventional filtration with sedimentation as defined in WAC 246-290-660(3) shall monitor under 40 CFR 141.132(d), and meet the requirements of 40 CFR 141.135.

(7) Organic chemicals.

(a) Purveyors of community and NTNC water systems shall comply with monitoring requirements under 40 CFR 141.24 (a) - (d), 141.24 (f)(1) - (f)(15), 141.24 (f)(18) - (19), 141.24 (f)(21), 141.24 (g)(1) - (9), 141.24 (g)(12) - (14), 141.24 (h)(1) - (11), and 141.24 (h)(14) - (17).

(b) Sampling locations shall be as defined in 40 CFR 141.24(f), 141.24(g), and 141.24(h).

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) Under 40 CFR 141.24 (f)(3) and 141.24 (h)(3), alternate sampling locations may be allowed if approved by the department. These alternate locations are described in department guidance. Purveyors may ask the department to approve an alternate sampling location for multiple sources within a single system that are blended prior to entry to the distribution system. The alternate sampling location shall consider the following:

(A) Source vulnerability;

(B) An updated organic monitoring plan showing location of all sources with current and proposed sampling locations;

(C) Individual source characteristics;

(D) Previous water quality information;

(E) Status of monitoring waiver applications; and

(F) Other information deemed necessary by the department.

(c) Composite samples:

(i) Purveyors may ask the certified lab to composite samples representing as many as five individual samples from within one system. Sampling procedures and protocols are outlined in department guidance;

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve composite sampling between systems when those systems are part of an approved satellite management agency.

(d) The department may require the purveyor to sample both before and after treatment for one or more organic contaminants. The department shall notify the purveyor if and when this additional source sampling is required.

(e) Organic chemical monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an organic chemical monitoring plan and base routine monitoring on the plan.

(ii) The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(f) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any organic monitoring requirement except those relating to unregulated VOCs;

(ii) Purveyors requesting a monitoring waiver shall comply with 40 CFR 141.24 (f)(7), 141.24 (f)(10), 141.24 (h)(6), and 141.24 (h)(7);

(iii) Purveyors shall update and resubmit requests for waiver renewals as directed by the department; and

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(g) Purveyors with emergency and seasonal sources shall monitor those sources under the applicable requirements of

this section when they are actively providing water to consumers.

(8) Radionuclides. Monitoring for radionuclides shall be conducted under 40 CFR 141.26.

(9) *Cryptosporidium* and *E. coli* source monitoring. Purveyors with surface water or GWI sources shall monitor the sources in accordance with 40 CFR 141.701 and 702.

(10) Other substances.

On the basis of public health concerns, the department may require the purveyor to monitor for additional substances.

TABLE 3  
MONITORING LOCATION

Sample Type	Sample Location
Asbestos	One sample from distribution system or if required by department, from the source.
Bacteriological	From representative points throughout distribution system.
<i>Cryptosporidium</i> and <i>E. coli</i> (Source Water) - WAC 246-290-630(16)	Under 40 CFR 141.703.
Complete Inorganic Chemical & Physical	From a point representative of the source, after treatment, and prior to entry to the distribution system.
Lead/Copper	From the distribution system at targeted sample tap locations.
Nitrate/Nitrite	From a point representative of the source, after treatment, and prior to entry to the distribution system.
Disinfection Byproducts - TTHMs and HAA5 - WAC 246-290-300(6)	Under 40 CFR 141.132 (b)(1) (Subpart L of the CFR).
Disinfection Byproducts - TTHMs and HAA5 - WAC 246-290-300((7)) (g)	Under 40 CFR 141.600 - 629 (IDSE and LRAA in Subparts U and V of the CFR).
Disinfection Byproducts - Chlorite (Systems adding chlorine dioxide)	Under 40 CFR 141.132 (b)(2).
Disinfection Byproducts - Bromate (Systems adding ozone)	Under 40 CFR 141.132 (b)(3).
Disinfectant Residuals - Chlorine and Chloramines	Under 40 CFR 141.132 (c)(1).
Disinfectant Residuals - Chlorine dioxide	Under 40 CFR 141.132 (c)(2).
Disinfection Precursors - Total Organic Carbon (TOC)	Under 40 CFR 141.132(d).
Disinfection Precursors - Bromide (Systems using ozone)	From the source before treatment.
Radionuclides	From a point representative of the source, after treatment and prior to entry to distribution system.

Sample Type	Sample Location
Organic Chemicals (VOCs & SOCs)	From a point representative of the source, after treatment and prior to entry to distribution system.
Other Substances (unregulated chemicals)	From a point representative of the source, after treatment, and prior to entry to the distribution system, or as directed by the department.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

**WAC 246-290-320 Follow-up action.** (1) General.

(a) When an MCL or MRDL violation or exceedance occurs, the purveyor shall take follow-up action as described in this section.

(b) When a primary standard violation occurs, the purveyor shall:

(i) Notify the department under WAC 246-290-480;

(ii) Notify the consumers served by the system and the owner or operator of any consecutive system served in accordance with 40 CFR 141.201 through 208, and Part 7, Subpart A of this chapter;

(iii) Determine the cause of the contamination; and

(iv) Take action as directed by the department.

(c) When a secondary standard violation occurs, the purveyor shall notify the department and take action as directed by the department.

(d) The department may require additional sampling for confirmation of results.

(2) Bacteriological.

(a) When coliform bacteria are present in any sample and the sample is not invalidated under (d) of this subsection, the purveyor shall ensure the following actions are taken:

(i) The sample is analyzed for fecal coliform or *E. coli*. When a sample with a coliform presence is not analyzed for *E. coli* or fecal coliforms, the sample shall be considered as having a fecal coliform presence for MCL compliance purposes;

(ii) Repeat samples are collected in accordance with (b) of this subsection;

(iii) Triggered source water monitoring is conducted in accordance with (g) of this subsection unless the department determines and documents in writing that the total coliform positive sample collected was caused by a distribution system deficiency;

(iv) The department is notified in accordance with WAC 246-290-480; and

~~((iv))~~ (v) The cause of the coliform presence is determined and corrected.

(b) Repeat samples.

(i) The purveyor shall collect repeat samples in order to confirm the original sample results and to determine the cause of the coliform presence. Additional treatment, such as batch or shock chlorination, shall not be instituted prior to the collection of repeat samples unless prior authorization by the department is given. Following collection of repeat samples, and before the analytical results are known, there may be a need to provide interim precautionary treatment or other

means to insure public health protection. The purveyor shall contact the department to determine the best interim approach in this situation.

(ii) The purveyor shall collect and submit for analysis a set of repeat samples for every sample in which the presence of coliforms is detected. A set of repeat coliform samples consists of:

(A) Four repeat samples for systems collecting one routine coliform sample each month; or

(B) Three repeat samples for all systems collecting more than one routine coliform sample each month.

(iii) The purveyor shall collect repeat sample sets according to Table 7;

(iv) The purveyor shall collect one set of repeat samples for each sample with a coliform presence. All samples in a set of repeat samples shall be collected on the same day and submitted for analysis within twenty-four hours after notification by the laboratory of a coliform presence, or as directed by the department.

(v) When repeat samples have coliform presence, the purveyor shall:

(A) Contact the department and collect a minimum of one additional set of repeat samples as directed by the department; or

(B) Collect one additional set of repeat samples for each sample where coliform presence was detected.

(vi) The purveyor of a system providing water to consumers via a single service shall collect repeat samples from the same location as the sample with a coliform presence. The set of repeat samples shall be collected:

(A) On the same collection date;

(B) Over consecutive days with one sample collected each day until the required samples in the set of repeat samples are collected; or

(C) As directed by the department.

(vii) If a sample with a coliform presence was collected from the first two or last two active services, the purveyor shall monitor as directed by the department;

(viii) The purveyor may change a previously submitted routine sample to a sample in a set of repeat samples when the purveyor:

(A) Collects the sample within five active adjacent service connections of the location from which the initial sample with a coliform presence was collected;

(B) Collects the sample after the initial sample with a coliform presence was submitted for analysis;

(C) Collects the sample on the same day as other samples in the set of repeat samples, except under (b)(iv) of this subsection; and

(D) Requests and receives approval from the department for the change.

(ix) The department may determine that sets of repeat samples specified under this subsection are not necessary during a month when a nonacute coliform MCL violation is determined for the system.

**Table 7**  
**REPEAT SAMPLE REQUIREMENTS**

# OF ROUTINE SAMPLES COLLECTED EACH MONTH	# OF SAMPLES IN A SET OF REPEAT SAMPLES	LOCATIONS FOR REPEAT SAMPLES (COLLECT AT LEAST ONE SAMPLE PER SITE)
1	4	<ul style="list-style-type: none"> <li>◆ Site of previous sample with a coliform presence</li> <li>◆ Within 5 active services upstream of site of sample with a coliform presence</li> <li>◆ Within 5 active services downstream of site of sample with a coliform presence</li> <li>◆ At any other active service or from a location most susceptible to contamination (i.e., well or reservoir)</li> </ul>
more than 1	3	<ul style="list-style-type: none"> <li>◆ Site of previous sample with a coliform presence</li> <li>◆ Within 5 active services upstream of site of sample with a coliform presence</li> <li>◆ Within 5 active services downstream of site of sample with a coliform presence</li> </ul>

(c) Monitoring frequency following a coliform presence. Systems having one or more coliform presence samples that were not invalidated during the previous month shall collect and submit for analysis the minimum number of samples shown in the last column of Table 2.

(i) The purveyor may obtain a reduction in the monitoring frequency requirement when one or more samples with a coliform presence were collected during the previous month, if the purveyor proves to the satisfaction of the department;

(A) The cause of the sample with a coliform presence; and

(B) The problem is corrected before the end of the next month the system provides water to the public.

(ii) If the monitoring frequency requirement is reduced, the purveyor shall collect and submit at least the minimum number of samples required when no samples with a coliform presence were collected during the previous month.

(d) Invalid samples. Routine and repeat coliform samples may be determined to be invalid under any of the following conditions:

(i) A certified laboratory determines that the sample results show:

(A) Multiple tube technique cultures that are turbid without appropriate gas production;

(B) Presence-absence technique cultures that are turbid in the absence of an acid reaction;

(C) Occurrence of confluent growth patterns or growth of TNTC (too numerous to count) colonies without a surface sheen using a membrane filter analytic technique;

(ii) The analyzing laboratory determines there is excess debris in the sample.

(iii) The analyzing laboratory establishes that improper sample collection or analysis occurred;

(iv) The department determines that a nondistribution system problem has occurred as indicated by:

(A) All samples in the set of repeat samples collected at the same location, including households, as the original coliform presence sample also are coliform presence; and

(B) All other samples from different locations (households, etc.) in the set of repeat samples are free of coliform.

(v) The department determines a coliform presence result is due to a circumstance or condition that does not reflect water quality in the distribution system.

(e) Follow-up action when an invalid sample is determined. The purveyor shall take the following action when a coliform sample is determined to be invalid:

(i) Collect and submit for analysis an additional coliform sample from the same location as each invalid sample within twenty-four hours of notification of the invalid sample; or

(ii) In the event that it is determined that the invalid sample resulted from circumstances or conditions not reflective of distribution system water quality, collect a set of samples in accordance with Table 7; and

(iii) Collect and submit for analysis samples as directed by the department.

(f) Invalidated samples shall not be included in determination of the sample collection requirement for compliance with this chapter.

(g) Triggered source water monitoring.

(i) All groundwater systems with their own groundwater source(s) must conduct triggered source water monitoring unless the following conditions exist:

(A) The system has submitted a project report and received approval that it provides at least 4-log treatment of viruses (using inactivation, removal, or a department approved combination of 4-log virus inactivation and removal) before or at the first customer for each groundwater source; and

(B) The system is conducting compliance monitoring under WAC 246-290-453(2).

(ii) Any groundwater source sample required under this subsection must be collected at the source prior to any treatment unless otherwise approved by the department.

(iii) Any source sample collected under this subsection must be at least 100 mL in size and must be analyzed for *E. coli* using one of the analytical methods under 40 CFR 141.402(c).

(iv) Groundwater systems must collect at least one sample from each groundwater source in use at the time a routine sample collected under WAC 246-290-300(3) is total coliform-positive and not invalidated under (d) of this subsection. These source samples must be collected within twenty-four hours of notification of the total coliform-positive sample. The following exceptions apply:

(A) The twenty-four hour time limit may be extended if granted by the department and will be determined on a case-by-case basis. If an extension is granted, the system must sample by the deadline set by the department.

(B) Systems with more than one groundwater source may meet the requirements of (g)(iv) of this subsection by sampling a representative groundwater source or sources. The system must have an approved triggered source water monitoring plan that identifies one or more groundwater sources that are representative of each monitoring site in the system's coliform monitoring plan under WAC 246-290-300

(3)(b). This plan must be approved by the department before representative sampling will be allowed.

(C) Groundwater systems serving one thousand people or fewer may use a repeat sample collected from a groundwater source to meet the requirements of (b) and (g)(iv) of this subsection. If the repeat sample collected from the groundwater source is *E. coli* positive, the system must comply with (g)(v) of this subsection.

(v) Groundwater systems with an *E. coli* positive source water sample that is not invalidated under (g)(vii) of this subsection, must:

(A) Provide Tier 1 public notice under Part 7, Subpart A of this chapter and special notification under WAC 246-290-71005 (4) and (5);

(B) If directed by the department, take corrective action as required under WAC 246-290-453(1); and

(C) Systems that are not directed by the department to take corrective action must collect five additional samples from the same source within twenty-four hours of being notified of the *E. coli* positive source water sample. If any of the five additional samples are *E. coli* positive, the system must take corrective action under WAC 246-290-453(1).

(vi) Any consecutive groundwater system that has a total coliform-positive routine sample collected under WAC 246-290-300(3) and not invalidated under (d) of this subsection, must notify each wholesale system it receives water from within twenty-four hours of being notified of the total coliform-positive sample and comply with (g) of this subsection.

(A) A wholesale groundwater system that receives notice from a consecutive system under (g)(vi) of this subsection must conduct triggered source water monitoring under (g) of this subsection unless the department determines and documents in writing that the total coliform-positive sample collected was caused by a distribution system deficiency in the consecutive system.

(B) If the wholesale groundwater system source sample is *E. coli* positive, the wholesale system must notify all consecutive systems served by that groundwater source within twenty-four hours of being notified of the results and must meet the requirements of (g)(v) of this subsection.

(C) Any consecutive groundwater system receiving water from a source with an *E. coli* positive sample must notify all their consumers as required under (g)(v)(A) of this subsection.

(vii) An *E. coli* positive groundwater source sample may be invalidated only if the following conditions apply:

(A) The system provides the department with written notice from the laboratory that improper sample analysis occurred; or

(B) The department determines and documents in writing that there is substantial evidence that the *E. coli* positive groundwater sample is not related to source water quality.

(viii) If the department invalidates an *E. coli* positive groundwater source sample, the system must collect another source water sample within twenty-four hours of being notified by the department of its invalidation decision and have it analyzed using the same analytical method. The department may extend the twenty-four hour time limit under (g)(iv)(A) of this subsection.

(ix) Groundwater systems that fail to meet any of the monitoring requirements of (g) of this subsection must conduct Tier 2 public notification under Part 7, Subpart A of this chapter.

(3) Inorganic chemical and physical follow-up monitoring shall be conducted in accordance with the following:

(a) For nonnitrate/nitrite primary inorganic chemicals, 40 CFR 141.23 (a)(4), 141.23 (b)(8), 141.23 (c)(7), 141.23 (c)(9), 141.23 (f)(1), 141.23(g), 141.23(m) and 141.23(n);

(b) For nitrate, 40 CFR 141.23 (a)(4), 141.23 (d)(2), 141.23 (d)(3), 141.23 (f)(2), 141.23(g), 141.23(m), 141.23(n), and 141.23(o);

(c) For nitrite, 40 CFR 141.23 (a)(4), 141.23 (e)(3), 141.23 (f)(2), and 141.23(g); or

(d) The purveyor of any public water system providing service that has secondary inorganic MCL exceedances shall take follow-up action as required by the department. Follow-up action shall be commensurate with the degree of consumer acceptance of the water quality and their willingness to bear the costs of meeting the secondary standard. For new community water systems and new nontransient noncommunity water systems without active consumers, treatment for secondary contaminant MCL exceedances will be required.

(4) Lead and copper follow-up monitoring shall be conducted in accordance with 40 CFR 141.85(d), 141.86 (d)(2), 141.86 (d)(3), 141.87(d) and 141.88(b) through 141.88(d).

(5) Turbidity.

Purveyors monitoring turbidity in accordance with Part 6 of this chapter shall provide follow-up under WAC 246-290-634.

(6) Organic chemicals. Follow-up monitoring shall be conducted in accordance with the following:

(a) For VOCs, 40 CFR 141.24 (f)(11) through 141.24 (f)(15), and 141.24 (f)(22); or

(b) For SOCs, 40 CFR 141.24(b), 141.24(c) and 141.24 (h)(7) through 141.24 (h)(11), and 141.24 (h)(20).

(7) Radionuclide follow-up monitoring shall be conducted under 40 CFR 141.26 (a)(2)(iv), 141.26 (a)(3)(ii) through (v), 141.26 (a)(4), 141.26 (b)(6), and 141.26 (c)(5).

(8) The department shall determine the purveyor's follow-up action when a substance not included in this chapter is detected.

**AMENDATORY SECTION** (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-415 Operations and maintenance.** (1)

The purveyor shall ensure that the system is operated in accordance with the operations and maintenance program as established in the approved water system plan required under WAC 246-290-100 or the small water system management program under WAC 246-290-105.

(2) The operations and maintenance program shall include the following elements as applicable:

(a) Water system management and personnel;

(b) Operator certification;

(c) Comprehensive monitoring plan for all contaminants under WAC 246-290-300;

(d) Emergency response program;

(e) Cross-connection control program; and

(f) Maintenance of service reliability in accordance with WAC 246-290-420.

(3) The purveyor shall ensure that the system is operated in accordance with good operations procedures such as those available in texts, handbooks, and manuals available from the following sources:

(a) American Water Works Association (AWWA), 6666 West Quincy Avenue, Denver, Colorado 80235;

(b) American Society of Civil Engineers (ASCE), 345 East 47th Street, New York, New York 10017-2398;

(c) Ontario Ministry of the Environment, 135 St. Clair Avenue West, Toronto, Ontario M4V1B5, Canada;

(d) The Chlorine Institute, 2001 "L" Street NW, Washington, D.C. 20036;

(e) California State University, 600 "J" Street, Sacramento, California 95819;

(f) Health Research Inc., Health Education Services Division, P.O. Box 7126, Albany, New York 12224; and

(g) Any other standards acceptable to the department.

(4) The purveyor shall not establish or maintain a bypass to divert water around any feature of a treatment process, except by written approval from the department.

(5) The purveyor shall take preventive or corrective action as directed by the department when results of an inspection conducted by the department indicate conditions which are currently or may become a detriment to system operation.

(6) The purveyor of a system using surface water or GWI shall meet operational requirements specified in Part 6 of this chapter.

(7) The purveyor shall have a certified operator if required under chapter 70.119 RCW and chapter 246-292 WAC.

(8) The purveyor shall at all times employ reasonable security measures to assure the raw water intake facilities, water treatment processes, water storage facilities, and the distribution system are protected from possible damage or compromise by unauthorized persons, animals, vegetation, or similar intruding agents. Such measures include elements such as locks on hatches, fencing of facilities, screening of reservoir vents or openings, and other recommendations as may be found in the current edition of the *Recommended Standards for Water Works, A Committee Report of the Great Lakes - Upper Mississippi River Board of State Public Health and Environmental Managers*.

(9) All purveyors utilizing (~~(ground-water)~~) groundwater wells shall monitor well levels from ground level to the static water level on a seasonal basis, including low demand and high demand periods, to document the continuing availability of the source to meet projected, long-term demands. Purveyors shall maintain this data and provide it to the department upon request.

(10) All operation and maintenance practices shall conform to Part 5 of this chapter.

**AMENDATORY SECTION** (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-416 Sanitary surveys.** (1) All public water systems shall submit to a sanitary survey conducted by

the department, or the department's designee, based upon the following schedule:

(a) For community ~~((and nontransient noncommunity))~~ water systems, every ~~((five))~~ three years ~~(, or more frequently as determined by the department. The sanitary surveys shall be consistent with the schedules presented in 40 CFR 141.21; and))~~. In accordance with 40 CFR 141.21 (d)(3), community water systems may qualify to be surveyed every five years if the system meets the following criteria:

(i) Provides at least 4-log treatment of viruses (using inactivation, removal, or a department-approved combination of 4-log inactivation and removal) before or at the first customer for all its groundwater sources; or

(ii) Has no total coliform MCL violations since the last sanitary survey;

(iii) Has no more than one total coliform monitoring violation since the last sanitary survey; and

(iv) Has no unresolved significant deficiencies from the current sanitary survey.

(b) For transient noncommunity and nontransient noncommunity water systems, every five years ~~((unless the system uses only disinfected ground water and has an approved wellhead protection program, in which case the survey shall be every ten years. The sanitary surveys shall be conducted consistent with schedules presented in 40 CFR 141.21)).~~

(c) For community ~~((public))~~ water systems that use a surface water or GWI source, every three years. Sanitary surveys may be reduced to every five years upon written approval from the department.

(d) The department may schedule a sanitary survey or increases the frequency of surveys if it determines a public health threat exists or is suspected.

(2) All public water system purveyors shall be responsible for:

(a) Ensuring cooperation in scheduling sanitary surveys with the department, or its designee; ~~((and))~~

(b) At the department's request, provide any existing information that will enable the department to conduct a sanitary survey;

(c) Ensuring the unrestricted availability of all facilities and records at the time of ((the)) a sanitary survey or special purpose investigation; and

(d) Taking preventive or corrective action as directed by the department when results of a sanitary survey indicate conditions which are currently or may become a detriment to system operation or public health.

(3) All public water systems that use a surface water or GWI source shall, within forty-five days following receipt of a sanitary survey report that identifies significant deficiencies, identify in writing to the department how the system will correct the deficiencies and propose a schedule to complete the corrections. The department may modify the schedule if necessary to protect the health of water system users.

(4) A groundwater system with significant deficiencies must meet the treatment technique requirements of WAC 246-290-453(1) and the special notification requirements under WAC 246-290-71005 (4) and (5) except where the department determines that the significant deficiency is in a portion of the distribution system that is served solely by surface water or GWI.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-451 Disinfection of drinking water.** (1)

No portion of a public water system containing potable water shall be put into service, nor shall service be resumed until the facility has been effectively disinfected.

(a) In cases of new construction, drinking water shall not be furnished to the consumer until satisfactory bacteriological samples have been analyzed by a laboratory certified by the state; and

(b) In cases of existing water mains, when the integrity of the main is lost resulting in a significant loss of pressure that places the main at risk to cross-connection contamination, the purveyor shall use standard industry practices such as flushing, disinfection, and/or bacteriological sampling to ensure adequate and safe water quality prior to the return of the line to service;

(c) If a cross-connection is confirmed, the purveyor shall satisfy the reporting requirements as described under WAC 246-290-490(8).

(2) The procedure used for disinfection shall conform to standards published by the American Water Works Association, or other industry standards acceptable to the department.

(3) The purveyor of a system using surface water or GWI shall meet disinfection requirements specified in Part 6 of this chapter.

(4) The purveyor of a system using ((ground water and required to disinfect, shall meet the following disinfection requirements, unless otherwise directed by the department:

(a) Minimum contact time at a point at or before the first consumer of:

(i) Thirty minutes if 0.2 mg/L free chlorine residual is maintained;

(ii) Ten minutes if 0.6 mg/L free chlorine residual is maintained; or

(iii) Any combination of free chlorine residual concentration (C), measured in mg/L, and contact time (T), measured in minutes, that results in a CT product (C X T) of greater than or equal to six; or

(iv) Contact time (T) for surface water or GWI sources shall be determined in accordance with WAC 246-290-636.

(b) Detectable residual disinfectant concentration in all active parts of the distribution system, measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide;

(c) Water in the distribution system with an HPC level less than or equal to 500 organisms/mL is considered to have a detectable residual disinfectant concentration.

(4) The department may require the purveyor to provide longer contact times, higher chlorine residuals, or additional treatment to protect the health of consumers served by the public water system.

(5) The purveyor of a system using surface water or GWI shall meet disinfection requirements specified in Part 6 of this chapter.

(6) The purveyor of a system adding a chemical disinfectant shall monitor residual disinfectant concentration at representative points in the system on a daily basis, and at the same time and location of routine and repeat coliform sample collection. Frequency of disinfection residual monitoring may be reduced upon written request to the department if it can be

shown that disinfection residuals can be maintained on a reliable basis without the provision of daily monitoring, but shall be no less frequent than specified in WAC 246-290-300 (3)(a)(i).

(7) The analyses shall be conducted in accordance with "standard methods." To assure adequate monitoring of chlorine residual, the department may require the use of continuous chlorine residual analyzers and recorders)) groundwater shall meet the requirements under subsection (6) of this section if required by the department to disinfect for any of the following reasons:

(a) Determination that the groundwater source is in hydraulic connection to surface water under WAC 246-290-640(4);

(b) A history of unsatisfactory source coliform sampling;  
or

(c) A microbiological contaminant threat within the sanitary control area as defined in WAC 246-290-135.

(5) The purveyor of a groundwater system that is required to disinfect as a result of becoming a SSNC due to repeated total coliform MCL or major repeat violations shall meet the requirements under subsection (7) of this section.

(6) If disinfection is required under subsection (4) of this section, the following requirements must be met:

(a) Provide a minimum contact time at or before the first customer of:

(i) Thirty minutes if 0.2 mg/L free chlorine residual is maintained;

(ii) Ten minutes if 0.6 mg/L free chlorine residual is maintained; or

(iii) Any combination of free chlorine residual concentration (C), measured in mg/L and contact time (T), measured in minutes, that result in a CT product (C x T) of greater than or equal to six; and

(b) Maintain a detectable residual disinfectant concentration in all active parts of the distribution system, measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide.

(c) The department may require the purveyor to provide longer contact times, higher chlorine residuals, or additional treatment to protect the health of consumers served by the water system.

(d) To demonstrate the required level of treatment is maintained, the purveyor shall:

(i) Monitor the residual disinfectant concentration at the point of entry to the distribution system, or at a department-approved location, at least once every Monday through Friday (except holidays) that water is supplied;

(ii) Calculate the daily CT value at or before the first customer; and

(iii) Submit monthly groundwater treatment reports to the department using a department-approved form by the tenth day of the following month.

(e) All analyses required in this subsection shall be conducted in accordance with EPA standard methods.

(f) The purveyor may be required to monitor the residual disinfectant concentration each calendar day water is supplied to the distribution system if the department considers treatment operation is unreliable.

(g) The department may require the use of continuous residual analyzers and recorders to assure adequate monitoring of residual concentrations.

(7) If disinfection is required under subsection (5) of this section, or a chemical disinfectant is added to a groundwater source for any other reason, the following requirements must be met:

(a) Monitor residual disinfectant concentration at representative points throughout the distribution system once each day, excluding weekends and holidays, and at the same time and location of routine and repeat coliform sample collection. Frequency of disinfection residual monitoring may be reduced upon written request to the department if it can be shown that disinfection residuals can be maintained on a reliable basis without the provision of daily monitoring.

(b) Maintain a detectable residual disinfectant concentration in all active parts of the distribution system, measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide. Water in the distribution system with an HPC level less than or equal to 500 organisms/mL is considered to have a detectable residual disinfectant concentration.

(c) The department may require the purveyor to provide higher chlorine residuals, or additional treatment to protect the health of consumers served by the water system.

(d) All analyses required in this subsection shall be conducted in accordance with EPA standard methods.

(e) The department may require the use of continuous residual analyzers and recorders to assure adequate monitoring of residual concentrations.

#### NEW SECTION

**WAC 246-290-453 Treatment techniques for groundwater systems.** (1) Groundwater systems with significant deficiencies identified under WAC 246-290-416, or source fecal contamination as determined under WAC 246-290-320 (2)(g)(v)(C) or 246-290-300 (3)(e), or as directed by the department under WAC 246-290-320 (2)(g)(v)(B) must:

(a) Take one or more of the following corrective actions:

(i) Correct all significant deficiencies;

(ii) Provide an alternate source of water;

(iii) Eliminate the source of contamination; or

(iv) Provide treatment that reliably achieves at least 4-log treatment of viruses (using inactivation, removal, or a department-approved combination of 4-log virus inactivation and removal) before or at the first customer for the groundwater source.

(b) Consult with the department regarding appropriate corrective action within thirty days unless otherwise directed by the department to implement a specific corrective action.

(c) Complete corrective action as directed by the department or be in compliance with an approved corrective action plan within one hundred twenty days (or earlier if directed by the department) of receiving written notice from the department of a significant deficiency or source fecal contamination under this subsection. Any modifications of a corrective action plan must be approved by the department.

(2) When treatment is installed to provide at least 4-log treatment of viruses under subsection (1)(a)(iv) of this section, compliance monitoring must be conducted as follows:

(a) For chemical disinfection, conduct compliance monitoring under 40 CFR 141.403 (b)(3)(i).

(i) For groundwater systems serving greater than three thousand three hundred people, conduct compliance monitoring under 40 CFR 141.403 (b)(3)(i)(A).

(ii) For groundwater systems serving three thousand three hundred or fewer people, conduct compliance monitoring under 40 CFR 141.403 (b)(3)(i)(B).

(b) For membrane filtration, conduct compliance monitoring under 40 CFR 141.403 (b)(3)(ii).

(c) For alternative treatment, conduct compliance monitoring under 40 CFR 141.403 (b)(3)(iii).

(d) For new sources, conduct compliance monitoring under 40 CFR 141.403 (b)(2)(i) and (ii).

(3) A groundwater system may discontinue 4-log treatment of viruses installed under subsection (1)(a)(iv) of this section or WAC 246-290-451(4) if the department determines and documents in writing that 4-log treatment of viruses is no longer necessary for that groundwater source. A system that discontinues 4-log treatment of viruses is subject to the triggered source water monitoring requirements under WAC 246-290-320 (2)(g).

(4) Failure to meet the compliance monitoring requirements under subsection (2) of this section is a monitoring violation and requires Tier 3 public notification under Part 7, Subpart A of this chapter.

(5) Failure to provide 4-log treatment of viruses under subsection (1)(a)(iv) of this section is a treatment technique violation if the failure is not corrected within four hours of the time the purveyor determines that at least 4-log treatment of viruses is not maintained and requires Tier 2 public notification under Part 7, Subpart A of this chapter.

(6) Failure to complete corrective action as directed by the department or be in compliance with an approved corrective action plan within one hundred twenty days (or earlier if directed by the department) of receiving notice from the department of a significant deficiency or an *E. coli* positive groundwater sample that is not invalidated under WAC 246-290-320 (2)(g)(vii) is a treatment technique violation and requires Tier 2 public notification under Part 7, Subpart A of this chapter.

**AMENDATORY SECTION** (Amending WSR 09-21-045, filed 10/13/09, effective 1/4/10)

**WAC 246-290-480 Recordkeeping and reporting.** (1) Records. The purveyor shall keep the following records of operation and water quality analyses:

(a) Bacteriological and turbidity analysis results shall be kept for five years. Chemical analysis results shall be kept for as long as the system is in operation. Records of source meter readings shall be kept for ten years. Other records of operation and analyses required by the department shall be kept for three years. All records shall bear the signature of the operator in responsible charge of the water system or his or her representative. Systems shall keep these records available for inspection by the department and shall send the records to the department if requested. Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided the following information is included:

(i) The date, place, and time of sampling, and the name of the person collecting the sample;

(ii) Identification of the sample type (routine distribution system sample, repeat sample, source or finished water sample, or other special purpose sample);

(iii) Date of analysis;

(iv) Laboratory and person responsible for performing analysis;

(v) The analytical method used; and

(vi) The results of the analysis.

(b) Records of action taken by the system to correct violations of primary drinking water standards. For each violation, records of actions taken to correct the violation, and copies of public notifications shall be kept for no less than ~~(three)~~ ten years after the last corrective action taken.

(c) Copies of any written reports, summaries, or communications relating to sanitary surveys or SPIs of the system conducted by system personnel, by a consultant or by any local, state, or federal agency, shall be kept for ten years after completion of the sanitary survey or SPI involved.

(d) Copies of project reports, construction documents and related drawings, inspection reports and approvals shall be kept for the life of the facility.

(e) Where applicable, records of the following shall be kept for a minimum of three years:

(i) Chlorine residual;

(ii) Fluoride level;

(iii) Water treatment plant performance including, but not limited to:

(A) Type of chemicals used and quantity;

(B) Amount of water treated;

(C) Results of analyses; and

(iv) Other information as specified by the department.

(f) The purveyor shall retain copies of public notices made under Part 7, Subpart A of this chapter and certifications made to the department under 40 CFR 141.33(e) for a period of at least three years after issuance.

(g) Purveyors using conventional, direct, or in-line filtration that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes within their treatment plant shall, beginning no later than June 8, 2004, collect and retain on file the following information for review and evaluation by the department:

(i) A copy of the recycle notification and information submitted to the department under WAC 246-290-660 (4)(a)(i).

(ii) A list of all recycle flows and the frequency with which they are returned.

(iii) Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes.

(iv) Typical filter run length and a written summary of how filter run length is determined.

(v) The type of treatment provided for the recycle flow.

(vi) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.

(h) Purveyors required to conduct disinfection profiling and benchmarking under 40 CFR 141.530 through 141.544 shall retain the results on file indefinitely.

(i) Copies of monitoring plans developed under this chapter shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under (a) of this subsection.

(j) Purveyors using surface water or GWI sources must keep the records required by 40 CFR 141.722.

(2) Reporting.

(a) Unless otherwise specified in this chapter, the purveyor shall report to the department within forty-eight hours the failure to comply with any national primary drinking water regulation (including failure to comply with any monitoring requirements) as set forth in this chapter. For violations assigned to Tier 1 in WAC 246-290-71001, the department must be notified as soon as possible, but no later than twenty-four hours after the violation is known.

(b) The purveyor shall submit to the department reports required by this chapter, including tests, measurements, and analytic reports. Monthly reports are due before the tenth day of the following month, unless otherwise specified in this chapter.

(c) The purveyor shall submit to the department copies of any written summaries or communications relating to the status of monitoring waivers during each monitoring cycle or as directed by the department.

(d) Source meter readings shall be made available to the department.

(e) Water facilities inventory form (WFI).

(i) Purveyors of **community** and **NTNC** systems shall submit an annual WFI update to the department;

(ii) Purveyors of **TNC** systems shall submit an updated WFI to the department as requested;

(iii) Purveyors shall submit an updated WFI to the department within thirty days of any change in name, category, ownership, or responsibility for management of the water system, or addition of source or storage facilities; and

(iv) At a minimum the completed WFI shall provide the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system.

(f) Bacteriological. The purveyor shall notify the department of the presence of:

(i) Coliform in a sample, within ten days of notification by the laboratory; and

(ii) Fecal coliform or *E. coli* in a sample, by the end of the business day in which the purveyor is notified by the laboratory. If the purveyor is notified of the results after normal close of business, then the purveyor shall notify the department before the end of the next business day.

(g) Systems monitoring for disinfection byproducts under WAC 246-290-300(6) shall report information to the department as specified in (a) and (b) of this subsection, and 40 CFR 141.134(b).

(h) Systems monitoring for disinfectant residuals under WAC 246-290-300(6) shall report information to the department as specified in ~~((subsection (2)))~~ (a) and (b) of this ((section)) subsection, and 40 CFR 141.134((b)) (c).

(i) Systems required to monitor for disinfection byproduct precursor removal under WAC 246-290-300(6) shall

report information to the department as specified in (a) and (b) of this subsection, and 40 CFR 141.134(d).

(j) Systems required to monitor for disinfection byproducts under WAC 246-290-300(6) shall report information to the department as specified in (a) and (b) of this subsection, and 40 CFR 141.600 - 629.

(k) Systems subject to the enhanced treatment requirements for *Cryptosporidium* under WAC 246-290-630(4) shall report information to the department as specified in 40 CFR 141.706 and 141.721.

(l) Systems that use acrylamide and epichlorohydrin in the treatment of drinking water, must certify annually in writing to the department that the combination (or product) of dose and monomer level does not exceed the levels specified in (l)(i) and (ii) of this subsection. Certifications shall reference maximum use levels established by an ANSI-accredited listing organization approved by the department.

(i) Acrylamide = 0.05 percent dosed at 1 ppm (or equivalent); and

(ii) Epichlorohydrin = 0.01 percent dosed at 20 ppm (or equivalent).

(m) Use of products that exceed the specified levels constitutes a treatment technique violation and the public must be notified under the public notice requirements under Part 7, Subpart A of this chapter.

(n) Systems shall submit to the department, in accordance with 40 CFR 141.31(d), a certification that the system has complied with the public notification regulations (Part 7, Subpart A of this chapter) when a public notification is required. Along with the certification, the system shall submit a representative copy of each type of notice.

#### NEW SECTION

**WAC 246-290-485 Recordkeeping and reporting for groundwater systems.** (1) Records. In addition to the requirements of WAC 246-290-480, the purveyor shall keep the following records:

(a) Records of corrective actions. For each action, records shall be kept for at least ten years.

(b) Records of public notification as required under WAC 246-290-71005 (4) and(5) and shall be kept for at least three years.

(c) Records of invalidation of groundwater source samples under WAC 246-290-320 (2)(g)(vii), and shall be kept for at least five years.

(d) For consecutive systems, records of notification to the wholesale system of total-coliform positive routine samples that are not invalidated under WAC 246-290-320 (2)(d), and shall be kept for at least five years.

(e) For all systems that are required to perform compliance monitoring under WAC 246-290-453:

(i) Records of department-specified minimum disinfectant residual, and shall be kept for at least ten years.

(ii) Records of the lowest residual disinfectant concentration, and the date and duration of any failure to maintain the department-prescribed minimum residual disinfectant concentration for a period of more than four hours, and shall be kept for at least five years.

(iii) Records of department-specified compliance requirements for membrane filtration and of department-specified parameters for department-approved alternative treatment, and shall be kept for at least five years.

(iv) Records of the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours, and shall be kept for at least five years.

(2) Reporting. In addition to the requirements of WAC 246-290-480:

(a) Systems conducting compliance monitoring under WAC 246-290-453(2) must notify the department any time the system fails to meet department-specified requirements as soon as possible, but no later than the next business day, for the following requirements:

- (i) Minimum residual disinfectant concentration;
- (ii) Membrane operating criteria or membrane integrity;

and

(iii) Alternative treatment operating criteria, if operation in accordance with the criteria or requirements is not restored within four hours.

(b) The system must notify the department within thirty days of completing corrective action under WAC 246-290-453(1).

**AMENDATORY SECTION** (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-620 Applicability of surface water treatment requirements.** (1) The requirements of Part 6 of this chapter apply to water systems that:

(a) Use surface sources or (~~(ground water)~~) groundwater sources under the direct influence of surface water (GWI); or

(b) Purchase surface or GWI water from an approved public water system or other entity acceptable to the department.

(2) The requirements of Part 6 of this chapter do not apply to water systems that use unfiltered surface or GWI sources as emergency sources, provided the source is physically disconnected from the system at all times until it is needed, and the purveyor meets the following conditions:

(a) Has a department-approved emergency response plan; and

(b) Provides disinfection treatment that meets the requirements under WAC 246-290-662 (2)(d).

(3) The requirements of WAC 246-290-640 apply to **Group A** systems that use sources potentially under the influence of surface water as determined by the department.

**AMENDATORY SECTION** (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

**WAC 246-290-630 General requirements.** (1) The purveyor shall ensure that treatment is provided for surface and GWI sources consistent with the treatment technique requirements specified in Part 6 of chapter 246-290 WAC.

(2) The purveyor shall install and properly operate water treatment processes to ensure at least:

(a) 99.9 percent (3 log) removal and/or inactivation of *Giardia lamblia* cysts;

(b) 99.99 percent (4 log) removal and/or inactivation of viruses; and

(c) 99 percent (2 log) removal of *Cryptosporidium* oocysts if required to filter.

(3) The purveyor shall ensure that the requirements of subsection (2) of this section are met between a point where the source water is not subject to contamination by untreated surface water and a point at or before the first consumer.

(4) The department may require higher levels of removal and/or inactivation of *Giardia lamblia* cysts, *Cryptosporidium* oocysts, and viruses than specified in subsection (2) of this section if deemed necessary to protect the health of consumers served by the system.

(5) The purveyor shall ensure that personnel operating a system subject to Part 6 of chapter 246-290 WAC meet the requirements under chapter 70.119 RCW and chapter 246-292 WAC.

(6) The purveyor of a **Group A community** system serving water from a surface or GWI source to the public before January 1, 1991, shall comply with applicable minimum treatment requirements. The purveyor shall meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662 respectively;

(b) The criteria to remain unfiltered under WAC 246-290-690 and the disinfection requirements under WAC 246-290-692; or

(c) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(7) The purveyor of a **Group A noncommunity** system serving water from a surface or GWI source, shall meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662, respectively; or

(b) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(8) The purveyor of a **Group A** system first serving water from a surface or GWI source to the public after December 31, 1990, shall meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662, respectively; or

(b) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(9) The purveyor of a system required to install filtration may choose to provide a limited alternative to filtration or abandon the surface or GWI source as a permanent or seasonal source and develop an alternate, department-approved source. Purveyors that develop alternate (~~(ground water)~~) groundwater sources or purchase water from a department-approved public water system using a (~~(ground water)~~) groundwater source shall no longer be subject to Part 6 of chapter 246-290 WAC, once the alternate source is approved by the department and is on line.

(10) A purveyor that chooses to provide a limited alternative to filtration shall submit an application to the department that contains the information necessary to determine whether the source can meet the criteria.

(11) If a limited alternative to filtration is provided, then the purveyor shall install and properly operate treatment processes to ensure greater removal and/or inactivation efficiencies of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of public health concern (including *Cryptosporidium* oocysts) than would be achieved by the combination of filtration and chlorine disinfection.

(12) Systems that were required to develop a disinfection profile under 40 CFR 141.172 shall provide that profile and a calculated disinfection benchmark, as described in 40 CFR 141.172 (c)(2) and (3), along with other project information specified in WAC 246-290-110, when proposing any change to the disinfection treatment system. The proposal for change shall include an analysis of how the proposed change will affect the current level of disinfection. The profile must also be available for inspection during routine sanitary surveys conducted under WAC 246-290-416.

(13) Community and nontransient noncommunity systems serving less than ten thousand persons must meet the disinfection profiling and benchmarking provisions required under 40 CFR 141.530 through 141.544.

(14) Systems required to develop a disinfection profile under 40 CFR 141.530 shall provide that profile and a calculated disinfection benchmark, as described in 40 CFR 141.543 along with other project information specified in WAC 246-290-110, when proposing any change to the disinfection treatment system. The proposal for change shall include an analysis of how the proposed change will affect the current level of disinfection. The profile must also be available for inspection during routine sanitary surveys conducted under WAC 246-290-416.

(15) A system using conventional, direct, or in-line filtration that must arrange for the conduct of a CPE, under 40 CFR 141.175 (b)(4) or 40 CFR 141.563, may be required to arrange for CTA. The department will determine the need for CTA on a case-by-case basis.

(16) Water systems subject to the requirements of Part 6 of this chapter must also comply with the enhanced treatment requirements for *Cryptosporidium* under 40 CFR Subpart W. The requirements are in addition to the requirements of Part 6 of this chapter and include:

- (a) General requirements under 40 CFR 141.700;
- (b) Source monitoring requirements under 40 CFR 141.701-707;
- (c) Disinfection profiling and benchmarking requirements under 40 CFR 141.708-709;
- (d) Treatment technique requirements under 40 CFR 141.710-714;
- (e) Requirements for microbial toolbox components under 40 CFR 141.715-720; and
- (f) Reporting and recordkeeping requirements under 40 CFR 141.721-722.

(17) Water systems using UV reactors to obtain treatment credit for *Cryptosporidium* removal must:

- (a) Validate the reactors using the validation testing procedures specified under 40 CFR 141.720 (d)(2); or
- (b) Validate the reactor under Austrian ONORM Standards or German DVGW Standards.

**AMENDATORY SECTION** (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

**WAC 246-290-634 Follow-up to treatment technique violations.** When a treatment technique violation occurs, the purveyor:

- (1) Shall report to the department in accordance with:
  - (a) WAC 246-290-666 for purveyors providing filtration or required to filter;
  - (b) WAC 246-290-674 for purveyors installing filtration; or
  - (c) WAC 246-290-696 for purveyors meeting the criteria to remain unfiltered or providing a limited alternative to filtration;
- (2) Shall notify the public in accordance with Part 7, Subpart A of this chapter;
- (3) Shall determine the cause of the violation;
- (4) Shall take action as directed by the department which may include conducting a CCP. A CCP may include both a CPE and CTA; ((and))
- (5) Shall identify and systematically address plant-specific factors identified in the CPE during the CTA, if required; and
- (6) May be subject to enforcement under WAC 246-290-050.

**AMENDATORY SECTION** (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-640 Determination of GWI sources.**

(1) Until the department has made a source GWI determination, the purveyor shall monitor in accordance with the requirements for ~~((ground water))~~ groundwater sources in WAC 246-290-300 or as directed by the department and provide follow-up in accordance with WAC 246-290-320.

(2) The purveyor, after being notified by the department that one or more of the system sources have been classified as potential GWI, may elect to seek approval from the department to modify the potential GWI source to mitigate surface water influences prior to compliance with subsection (3) of this section, and if so, shall:

(a) Complete a project report, for departmental approval, that describes the proposed source-related modifications, including the schedule for their completion and an explanation of why the source should be reclassified upon completion of the source modifications; and

(b) Demonstrate compliance, if directed by the department, with the requirements of subsection (3) of this section upon completion of the source-related modifications.

(3) The purveyor using a source identified as a potential GWI shall provide to the department all information necessary to determine whether the source is under direct surface water influence. Information shall include, but not be limited to:

- (a) Site-specific source water quality data, including temperature, conductivity, ~~((and))~~ or other appropriate parameters as determined by the department;
- (b) Documentation of source construction characteristics;
- (c) Documentation of hydrogeology;
- (d) Distance to surface water; and

(e) Water quality results from nearby surface water(s), including temperature, conductivity, and/or other appropriate parameters as determined by the department.

(4) Upon a determination by the department that one or more potential GWI source(s) being used are in hydraulic connection to a surface water, the purveyor shall:

(a) Secure the services of a professional engineer to direct further evaluation and actions regarding the source;

(b) Provide disinfection treatment of the source in accordance with WAC 246-290-451; and

(c) Provide microscopic particulate analyses (MPA) results for review by the department based upon a sampling plan approved by the department.

(5) A purveyor notified by the department that one or more GWI sources are in use shall:

(a) Within ninety days of notification submit a project report to the department that includes an implementation schedule for compliance with the treatment techniques specified in Part 6 of this chapter;

(b) Notify consumers served by the system; and

(c) Comply with the applicable requirements of WAC 246-290-670.

(6) After completion of the requirements in subsection (3) of this section, the purveyor may modify a GWI source to mitigate direct surface influence. In such cases, the purveyor shall:

(a) Include in a project report, for submittal to the department for approval, a description of the proposed approaches and schedule for source modification; and

(b) Comply again with subsection (3) of this section upon completion of source modifications to be considered for source reclassification.

(7) The department may reevaluate a (~~ground water~~) groundwater source for direct surface influence, if conditions impacting source classification have changed.

**AMENDATORY SECTION** (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-670 Compliance requirements for existing unfiltered systems installing filtration.** (1) The purveyor of an existing unfiltered system shall:

(a) Install filtration within eighteen months after department notification; and

(b) Be subject to the interim compliance requirements as determined by the department and in conformance with 40 CFR 141.13 and WAC 246-290-632.

(2) The purveyor under an enforcement action or compliance agreement that is dated prior to the effective date of Part 6 of chapter 246-290 WAC, shall adhere to the compliance schedule for installation of filtration established in the departmental order or bilateral compliance agreement in lieu of the dates specified in subsection (1) of this section.

(3) The purveyor required to install filtration shall submit an action plan and schedule to the department for review and approval. The plan shall:

(a) Be submitted within ninety days of departmental notification; and

(b) Document the purveyor's plan and implementation schedule to comply with one of the following:

(i) Subparts A and B of Part 6 of chapter 246-290 WAC, if continuing to use the surface or GWI source as a permanent source and installing filtration;

(ii) Subparts A and D of Part 6 of chapter 246-290 WAC, if abandoning the surface or GWI source and purchasing completely treated water from a department-approved public water system using surface or GWI water; or

(iii) All other applicable sections of this chapter, if abandoning the surface or GWI source and developing an alternate department-approved (~~ground water~~) groundwater source.

(4) Between written departmental notification of the filtration requirement and installation of filtration, the purveyor shall meet:

(a) The interim disinfection requirements under WAC 246-290-672 or as otherwise directed by the department;

(b) The interim monitoring and reporting requirements under WAC 246-290-674; and

(c) All other applicable requirements of this chapter.

(5) The purveyor installing filtration shall ensure that when completed, the final treatment processes, consisting of filtration and disinfection, will comply with the requirements under WAC 246-290-660 and 246-290-662, respectively.

**AMENDATORY SECTION** (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

**WAC 246-290-686 Compliance requirements for unfiltered systems.** (1) The purveyor using an unfiltered surface or GWI source shall comply with:

(a) Subparts A and D of Part 6 of chapter 246-290 WAC; and

(b) All other applicable sections of this chapter.

(2) The purveyor purchasing water from a system using a surface or GWI source shall comply with:

(a) The applicable requirements of Subpart A of Part 6 of chapter 246-290 WAC;

(b) The disinfection, monitoring and reporting requirements under WAC 246-290-692 (5)(b), 246-290-694 (8)(b) and 246-290-696(4) respectively when purchasing completely treated surface or GWI water; or

(c) The treatment technique, monitoring and reporting requirements as directed by the department when the purveyor is purchasing incompletely treated surface or GWI water.

(3) The purveyor using an unfiltered GWI source shall be subject to the effective dates, compliance requirements, and violations specified in Table 12.

**Table 12**  
**COMPLIANCE REQUIREMENTS FOR**  
**SYSTEMS USING UNFILTERED GWI SOURCES**

REQUIREMENTS BECOME EFFECTIVE	APPLICABLE PART 6 REQUIREMENTS	VIOLATION TYPE	
		Turbidity MCL	Treatment Technique
Six months after GWI determination	Only Analytical, Monitoring and Reporting Requirements (WAC 246-290-638, 246-290-694 and 246-290-696 respectively)	Refer to 40 CFR 141.13 and 141.22	Not in effect yet
Eighteen months after GWI determination	Subparts A and D	No longer in effect	In effect as defined in WAC 246-290-632

(4) Purveyors of **community** systems using surface water sources had the option to remain unfiltered if they demonstrated compliance with the department's criteria to remain unfiltered by December 30, 1991.

(5) A purveyor that served water to the public before January 1, 1991, using a GWI source may have that source remain unfiltered, if, within eighteen months of GWI determination, the purveyor complies with Part 6 of this chapter and, the source water quality and site-specific conditions under WAC 246-290-690 or 246-290-691 as demonstrated through monitoring conducted in accordance with WAC 246-290-694.

(6) The purveyor with sources that are approved to remain unfiltered shall comply with the source water quality and site-specific conditions under WAC 246-290-690 or 246-290-691 as demonstrated through monitoring conducted in accordance with WAC 246-290-694.

(7) The purveyor shall install filtration when the system fails to meet one or more of the source water quality and site-specific conditions under WAC 246-290-690 and 246-290-691, or the department determines that installation of filtration is necessary to protect the health of consumers served by the water system.

(8) The purveyor, in response to a written notification by the department, shall install filtration within eighteen months.

(9) The purveyor may comply with the requirements to install filtration by:

(a) Constructing a water treatment facility that is designed, operated, and maintained in accordance with Subparts A, B, and C of Part 6 of this chapter;

(b) Satisfying the source water quality and site-specific criteria specified in WAC 246-290-691 and constructing treatment facilities that are designed, operated, and maintained to provide a limited alternative to filtration in accordance with WAC 246-290-692; or

(c) Abandoning the surface water or GWI source, and:

(i) Developing an alternate, department-approved (~~ground water~~) groundwater source; or

(ii) Purchasing completely treated water from a department-approved public water system.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

**WAC 246-290-71005 Special public notification requirements.** (1) The purveyor of community or NTNC water systems required to monitor under (~~WAC 246-290-300(7))~~ 40 CFR 141.40 shall notify the water system users of the availability of the results of monitoring for unregulated contaminants no later than twelve months after the monitoring results are known. The form and manner of the public notice to the water system users shall be in accordance with 40 CFR 141.204 (c), (d)(1), and (d)(3). The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.

(2) The purveyor of a community water system that (~~experiences a secondary MCL violation for~~) exceeds the fluoride secondary MCL of 2.0 mg/L but does not exceed the fluoride primary MCL of 4.0 mg/L shall provide notice, in accordance with the form, manner, timing, distribution, and content requirements of 40 CFR 141.208.

(3) The purveyor of a water system using surface water or GWI sources that repeatedly fails to monitor for *Cryptosporidium* or determine the bin classification or mean *Cryptosporidium* level, must notify the public under 40 CFR 141.211.

(4) The purveyor of a community groundwater system that receives notice from the department of a significant deficiency or an *E. coli* positive groundwater source sample that is not invalidated by the department, must notify the public under WAC 246-290-72013.

(5) The purveyor of a noncommunity groundwater system with a significant deficiency that has not been corrected within twelve months of being notified or earlier if directed must notify the public under WAC 246-290-72013. The system must continue to notify the public annually until the significant deficiency is corrected. The information must include:

(a) The nature of the significant deficiency and the date it was identified by the department;

(b) A department-approved plan and schedule for correcting the significant deficiency including interim measures, progress to date, and which interim measures have been completed;

(c) In communities with a large proportion of non-English speaking consumers, the notice must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where the consumers may contact the system to obtain a translated copy of the notice or assistance with the appropriate language; and

(d) If directed by the department, a system with significant deficiencies that have been corrected must inform its customers of the significant deficiencies, how the deficiencies were corrected, and the date(s) of correction under (a) through (c) of this subsection.

AMENDATORY SECTION (Amending WSR 00-15-080, filed 7/19/00, effective 8/19/00)

**WAC 246-290-72003 Report contents—Source water.** Information on the source of the water delivered:

(1) Each report must identify the source(s) of the water delivered by the community water system by providing information on:

(a) The type of the water, for example, surface water, (~~ground water~~) groundwater, spring water, or purchased water; and

(b) The commonly used name (if any) and location of the body (or bodies) of water.

(2) If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it. In addition, systems are encouraged to highlight in the report significant sources of contamination in the source water area if they have readily available information.

(3) Where a system has received a source water assessment from the department, the report must include a brief summary of the system's susceptibility to potential sources of contamination, using language provided by the department or written by the purveyor.

**AMENDATORY SECTION** (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

**WAC 246-290-72012 Regulated contaminants.**

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
<b>Microbiological Contaminants</b>						
Total Coliform Bacteria	MCL: (systems that collect ≥ 40 samples/ month) more than 5% of monthly samples are positive; (systems that collect < 40 samples/ month) 2 or more positive samples per monthly sampling period	=	MCL: (systems that collect ≥ 40 samples/ month) more than 5% of monthly samples are positive; (systems that collect < 40 samples/ month) 2 or more positive samples per monthly sampling period	0	Naturally present in the environment	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
Fecal coliform and <i>E. coli</i>	0	=	0	0	Human and animal fecal waste	Fecal coliforms and <i>E. coli</i> are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely-compromised immune systems.
Fecal indicators ( <i>E. coli</i> )	TT	=	TT	N/A	Human and animal fecal waste	<u>Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.</u>

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Total organic carbon (ppm)	TT	-	TT	<u>N/A</u>	Naturally present in the environment	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection by-products. These by-products include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these by-products in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
Turbidity (NTU)	TT((-))	-	TT	<u>N/A</u>	Soil runoff	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
<i>Giardia lamblia</i> Viruses <i>Cryptosporidium</i>	TT((-))	-	TT((-))	<u>N/A</u>	Human and animal fecal waste	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Heterotrophic plate count (HPC) bacteria	TT((-))	-	TT((-))	<u>N/A</u>	HPC measures a range of bacteria that are naturally present in the environment	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Legionella	TT((-))	-	TT((-))	<u>N/A</u>	Found naturally in water; multiplies in heating systems	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
<b>Radioactive Contaminants</b>						
Beta/photon emitters (mrem/yr)	4 mrem/yr	-	4	<u>N/A</u> 0	Decay of natural and man-made deposits	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Alpha emitters (pCi/l)	15 pCi/l	-	15	<u>N/A</u> 0	Erosion of natural deposits	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined radium (pCi/l)	5 pCi/l	-	5	<u>N/A</u> 0	Erosion of natural deposits	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium (pCi/l)	30 micro g/l	-	30	0	Erosion of natural deposits	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
<b>Inorganic Contaminants</b>						
Antimony (ppb)	.006	1000	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
Arsenic (ppb)	.05	1000	50	<u>N/A</u>	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
*Effective 1/23/06	0.010	1000	10	0		
Asbestos (MFL)	7 MFL	-	7	7	Decay of asbestos cement water mains; Erosion of natural deposits	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium (ppm)	2	-	2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
Beryllium (ppb)	.004	1000	4	4	Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
Cadmium (ppb)	.005	1000	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; Runoff from waste batteries and paints	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Chromium (ppb)	.1	1000	100	100	Discharge from steel and pulp mills; Erosion of natural deposits	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
Copper (ppm)	AL = 1.3	-	AL = 1.3	1.3	Corrosion of household plumbing systems; Erosion of natural deposits	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Cyanide (ppb)	.2	1000	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
Fluoride (ppm)	4	-	4	4	Erosion of natural deposits; Water additive which promotes strong teeth; Discharge from fertilizer and aluminum factories	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
Lead (ppb)	AL = .015	1000	AL = 15	0	Corrosion of household plumbing systems; Erosion of natural deposits	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
Mercury [inorganic] (ppb)	.002	1000	2	2	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Nitrate (ppm)	10	-	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Nitrite (ppm)	1	-	1	1	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Selenium (ppb)	.05	1000	50	50	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
Thallium (ppb)	.002	1000	2	0.5	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
<b>Synthetic Organic Contaminants including Pesticides and Herbicides</b>						
2,4-D (ppb)	.07	1000	70	70	Runoff from herbicide used on row crops	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5-TP [Silvex](ppb)	.05	1000	50	50	Residue of banned herbicide	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
Acrylamide	TT	-	TT	0	Added to water during sewage/ wastewater treatment	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
Alachlor (ppb)	.002	1000	2	0	Runoff from herbicide used on row crops	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Atrazine (ppb)	.003	1000	3	3	Runoff from herbicide used on row crops	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
Benzo(a)pyrene [PAH] (nanograms/l)	.0002	1,000,000	200	0	Leaching from linings of water storage tanks and distribution lines	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran (ppb)	.04	1000	40	40	Leaching of soil fumigant used on rice and alfalfa	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
Chlordane (ppb)	.002	1000	2	0	Residue of banned termiticide	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
Dalapon (ppb)	.2	1000	200	200	Runoff from herbicide used on rights of way	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
Di(2-ethylhexyl) adipate (ppb)	.4	1000	400	400	Discharge from chemical factories	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects or reproductive difficulties.
Di(2-ethylhexyl) phthalate (ppb)	.006	1000	6	0	Discharge from rubber and chemical factories	Some people who drink water containing di (2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
Dibromochloropropane (ppt)	.0002	1,000,000	200	0	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive problems and may have an increased risk of getting cancer.
Dinoseb (ppb)	.007	1000	7	7	Runoff from herbicide used on soybeans and vegetables	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
Diquat (ppb)	.02	1000	20	20	Runoff from herbicide use	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Dioxin [2,3,7,8-TCDD] (ppq)	.00000003	1,000,000,000	30	0	Emissions from waste incineration and other combustion; Discharge from chemical factories	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Endothall (ppb)	.1	1000	100	100	Runoff from herbicide use	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
Endrin (ppb)	.002	1000	2	2	Residue of banned insecticide	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
Epichlorohydrin	TT	-	TT	0	Discharge from industrial chemical factories; An impurity of some water treatment chemicals	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
Ethylene dibromide (ppt)	.00005	1,000,000	50	0	Discharge from petroleum refineries	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
Glyphosate (ppb)	.7	1000	700	700	Runoff from herbicide use	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
Heptachlor (ppt)	.0004	1,000,000	400	0	Residue of banned pesticide	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
Heptachlor epoxide (ppt)	.0002	1,000,000	200	0	Breakdown of heptachlor	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.
Hexachlorobenzene (ppb)	.001	1000	1	0	Discharge from metal refineries and agricultural chemical factories	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Hexachlorocyclo-pentadiene (ppb)	.05	1000	50	50	Discharge from chemical factories	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane (ppt)	.0002	1,000,000	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
Methoxychlor (ppb)	.04	1000	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
Oxamyl [Vydate] (ppb)	.2	1000	200	200	Runoff/leaching from insecticide used on apples, potatoes and tomatoes	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
PCBs [Polychlorinated biphenyls] (ppt)	.0005	1,000,000	500	0	Runoff from landfills; Discharge of waste chemicals	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Pentachlorophenol (ppb)	.001	1000	1	0	Discharge from wood preserving factories	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
Picloram (ppb)	.5	1000	500	500	Herbicide runoff	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
Simazine (ppb)	.004	1000	4	4	Herbicide runoff	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene (ppb)	.003	1000	3	0	Runoff/leaching from insecticide used on cotton and cattle	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
<b>Volatile Organic Contaminants</b>						
Benzene (ppb)	.005	1000	5	0	Discharge from factories; Leaching from gas storage tanks and landfills	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
Bromate (ppb)	.010	1000	10	0	By-product of drinking water disinfection	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.
Carbon tetrachloride (ppb)	.005	1000	5	0	Discharge from chemical plants and other industrial activities	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chloramines (ppm)	MRDL = 4	-	MRDL = 4	MRDLG = 4	Water additive used to control microbes	Some people who use drinking water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine (ppm)	MRDL = 4	-	MRDL = 4	MRDLG = 4	Water additive used to control microbes	Some people who use drinking water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chlorite (ppm)	1	-	1	0.8	By-product of drinking water disinfection	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Chlorine dioxide (ppb)	MRDL = .8	1000	MRDL = 800	MRDLG = 800	Water additive used to control microbes	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Chlorobenzene (ppb)	.1	1000	100	100	Discharge from chemical and agricultural chemical factories	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene (ppb)	.6	1000	600	600	Discharge from industrial chemical factories	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
p-Dichlorobenzene (ppb)	.075	1000	75	75	Discharge from industrial chemical factories	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane (ppb)	.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
1,1-Dichloroethylene (ppb)	.007	1000	7	7	Discharge from industrial chemical factories	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
cis-1,2-Dichloroethylene (ppb)	.07	1000	70	70	Discharge from industrial chemical factories	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
trans-1,2-Dichloroethylene (ppb)	.1	1000	100	100	Discharge from industrial chemical factories	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane (ppb)	.005	1000	5	0	Discharge from pharmaceutical and chemical factories	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane (ppb)	.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
Ethylbenzene (ppb)	.7	1000	700	700	Discharge from petroleum refineries	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
Haloacetic Acids (HAA) (ppb)	.060	1000	60	n/a	By-product of drinking water disinfection	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Styrene (ppb)	.1	1000	100	100	Discharge from rubber and plastic factories; Leaching from landfills	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
Tetrachloroethylene (ppb)	.005	1000	5	0	Discharge from factories and dry cleaners	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
1,2,4-Trichlorobenzene (ppb)	.07	1000	70	70	Discharge from textile-finishing factories	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
1,1,1-Trichloroethane (ppb)	.2	1000	200	200	Discharge from metal degreasing sites and other factories	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane (ppb)	.005	1000	5	3	Discharge from industrial chemical factories	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
Trichloroethylene (ppb)	.005	1000	5	0	Discharge from metal degreasing sites and other factories	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
TTHMs [Total trihalomethanes] (ppb)	.080	1000	80	<u>N/A</u>	By-product of drinking water disinfection	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.
Toluene (ppm)	1	-	1	1	Discharge from petroleum factories	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
Vinyl Chloride (ppb)	.002	1000	2	0	Leaching from PVC piping; Discharge from plastics factories	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes (ppm)	10	-	10	10	Discharge from petroleum factories; Discharge from chemical factories	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
<b>Treatment Technique Violations</b>						
Groundwater rule TT violations	TT	=	TT	N/A	=	Inadequately treated or inadequately protected water may contain disease-causing organisms. These organisms can cause symptoms such as diarrhea, nausea, cramps, and associated headaches.
<b>Key</b> AL = Action Level MCL = Maximum Contaminant Level MCLG = Maximum Contaminant Level Goal MFL = million fibers per liter MRDL = Maximum Residual Disinfectant Level MRDLG = Maximum Residual Disinfectant Level Goal mrem/year = millirems per year (a measure of radiation absorbed by the body) N/A = Not Applicable NTU = Nephelometric Turbidity Units (a measure of water clarity) pCi/l = picocuries per liter (a measure of radioactivity) ppm = parts per million, or milligrams per liter (mg/l) ppb = parts per billion, or micrograms per liter (µg/l) ppt = parts per trillion, or nanograms per liter ppq = parts per quadrillion, or picograms per liter TT = Treatment Technique						

**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.

**NEW SECTION**

**WAC 246-290-72013 Report contents—Groundwater systems.** (1) This section specifies the requirements for information to be included in each report for groundwater systems. It applies to the following situations:

- (a) A significant deficiency that is uncorrected at the time of the report;
- (b) An *E. coli* positive groundwater sample that is not invalidated under WAC 246-290-320 (2)(g)(vii) at the time of the report.

(2) The system must report annually the information in subsection (1)(a) and (b) of this section until the department determines the significant deficiency or *E. coli* positive groundwater sample is addressed under WAC 246-290-453(1).

(3) Each report must include:

- (a) The nature of the significant deficiency or the source of the fecal contamination and the date the significant deficiency was identified by the department or the dates of the *E. coli* positive source water samples;
- (b) If the fecal contamination has been addressed under WAC 246-290-453(1) and the date of such action;
- (c) For each significant deficiency or fecal contamination that has not been addressed under WAC 246-290-453(1), the department-approved plan and schedule for correction, including interim measures, progress to date, and any interim measures completed;

(d) If the system receives notice as described in subsection (1)(b) of this section, the potential health effects language in WAC 246-290-72012, regulated contaminants.

(4) If directed by the department, a system with significant deficiencies that have been corrected before the next report must inform its customers of:

- (a) The significant deficiency;
- (b) How the significant deficiency was corrected; and
- (c) The date of correction.

**WSR 10-20-072  
PERMANENT RULES  
DEPARTMENT OF HEALTH**

[Filed September 29, 2010, 10:52 a.m., effective October 30, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule is to update the department of health (department) process for designating the responsible official for major State Environmental Policy Act (SEPA) actions for which the department is the lead agency when the responsible official has not already been identified in chapter 246-03 WAC, State Environmental Policy Act—Guidelines.

Citation of Existing Rules Affected by this Order: Amending WAC 246-03-010 and 246-03-140.

Statutory Authority for Adoption: RCW 43.21C.120 and 43.70.040.

Adopted under notice filed as WSR 10-15-118 on July 21, 2010.

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 2, 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 2, Repealed 0.

Date Adopted: September 29, 2010.

Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending Order 122, filed 12/27/90, effective 1/31/91)

**WAC 246-03-010 Definitions.** In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings throughout this chapter unless clearly indicated otherwise:

(1) "Acting agency" means an agency with jurisdiction which has received an application for a license, or which is proposing an action.

(2) "Agency guidelines" (~~shall~~) means chapter 246-03 WAC.

(3) "Department" (~~shall~~) means the department of health.

(4) "Environmental report" (~~shall~~) means a document prepared by the applicant, when required by the department, for use in the preparation of a draft EIS.

(5) "Licensing" means the agency process in granting, renewing or modifying a license.

(6) "Private applicant" means any person or entity, other than an agency as defined in this section, applying for a license from an agency.

(7) "Secretary" (~~shall~~) means the secretary of the department of health or the secretary's designee.

~~((SEPA committee means the departmental committee which oversees the department's SEPA activities. The committee's composition and responsibilities are outlined in WAC 246-03-140.))~~

(8) "SEPA guidelines" (~~shall~~) means chapter 197-11 WAC.

AMENDATORY SECTION (Amending Order 224, filed 12/23/91, effective 1/23/92)

**WAC 246-03-140 ((SEPA committee)) Designation of a responsible official.** ~~((1) There is hereby created a SEPA committee to oversee the department's SEPA activities.~~

~~(2) The SEPA committee shall be composed of:~~

~~(a) One representative from the division of drinking water, environmental health programs;~~

~~(b) One representative from the facility licensing and certification section;~~

~~(c) One capital programs representative from the controller's office, management services division; and~~

~~(d) One representative from the division of radiation protection, environmental health programs.~~

~~(3) A representative from the office of the attorney general will provide legal support to the committee.~~

~~(4) The SEPA committee shall:~~

~~(a) Oversee the department's SEPA activities to ensure compliance with these agency guidelines, the state SEPA guidelines, and the policies and goals set forth in the State Environmental Policy Act;~~

~~(b) Oversee the future revision of these agency guidelines so as to reflect:~~

~~(i) Future amendment of SEPA or the state SEPA guidelines;~~

~~(ii) The creation of new department programs.~~

~~(e)) The secretary shall designate the responsible official for any major action for which the department is lead agency when such designation has not occurred elsewhere in these agency guidelines.~~

## WSR 10-20-079

### PERMANENT RULES

### PROFESSIONAL EDUCATOR

### STANDARDS BOARD

[Filed September 29, 2010, 1:49 p.m., effective October 30, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amending WAC 181-85-033 to provide continuing education credits for teachers successfully completing the professional certificate assessment.

Citation of Existing Rules Affected by this Order: Amending X [WAC 181-85-033].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 10-13-040 on June 8, 2010.

Changes Other than Editing from Proposed to Adopted Version: For purposes of salary calculation, provides credit hours to teachers successfully completing the ProTeach Portfolio.

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 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 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 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: September 22, 2010.

David Brenna  
Legislative and  
Policy Coordinator

AMENDATORY SECTION (Amending WSR 08-03-101, filed 1/20/08, effective 2/20/08)

**WAC 181-85-033 Continuing education credit hour—Definition—Professional growth team consultation and collaboration—School accreditation site visit team participation—National Board for Professional Teaching Standards assessment—Supervisors—First peoples' language, culture and oral tribal traditions.** (1) Notwithstanding any provisions of this chapter to the contrary, for consultation and collaboration as a member of an approved professional growth team, as defined by WAC 181-78A-010 and 181-78A-505, members of a professional growth team, excluding the candidate, shall receive the equivalent of ten continuing education credit hours. The team member may not receive more than the equivalent of twenty continuing education credit hours, as defined by this section, during a calendar year period.

(2) A person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of ten continuing education credit hours for serving on a school accreditation site visit team. The person may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period.

(3)(a) Notwithstanding any provisions of this chapter to the contrary, individuals officially designated as a supervisor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students or the superintendent of public instruction, a person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of ten continuing education credit hours for service as a supervisor. The person may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period.

(b) The term "supervisor" shall mean individuals officially designated as a supervisor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students, or the office of superintendent of public instruction for supervising the training of teacher interns, administrative interns, educational staff associate interns, and paraprofessionals.

(4) A person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of forty-five continuing education credit hours for completion of an assessment process as part of the National Board for Professional Teaching Standards certificate application.

Upon achieving National Board certification, the individual shall receive the equivalent of an additional forty-five continuing education credit hours for a total of ninety continuing education credit hours per National Board certificate.

(5) Teachers who achieve the professional certification through the external assessment per WAC 181-79A-206 will receive the equivalent of one hundred fifty continuing education credit hours.

(6) Notwithstanding any provisions of this chapter to the contrary, for designing and completing a professional growth plan under the provisions of WAC 181-85-034, participants shall receive the equivalent of no more than sixty continuing education credit hours over a period of two school years, as defined by this chapter.

~~((6))~~ (7) Notwithstanding any provision of this chapter to the contrary, individuals who receive in-service training or continuing education according to RCW 28A.415.020(6) in first peoples' language, culture and oral tribal traditions provided by a sovereign tribal government participating in the Washington state first peoples' language, culture and oral tribal traditions teacher certification program authorized under RCW 28A.410.045 shall be considered approved in-service training or approved continuing education under this section.

## WSR 10-20-081

### PERMANENT RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed September 29, 2010, 4:11 p.m., effective October 30, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rule provides that the department will not refuse to accept a claim, a signed appeal, or a petition properly filed under WAC 192-04-170. An exception is provided that an individual must provide his or her name and Social Security account number before a claim for benefits can be filed.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 10-17-117 on August 18, 2010.

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 1, 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: September 29, 2010.

Paul Trause  
Deputy Commissioner

#### NEW SECTION

**WAC 192-110-001 May the department refuse to accept my claim, appeal or petition?** (1) Except as provided in subsection (2) of this section, no employee or agent of the department may refuse to accept your claim, a signed appeal, or a petition properly filed under WAC 192-04-170 relating to any program administered by this department regardless of the employee or agent's opinion concerning its merits.

(2) You must provide the department with your name and Social Security account number in order to file a claim for benefits.

#### WSR 10-20-082

##### PERMANENT RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed September 29, 2010, 4:46 p.m., effective October 30, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The amendment to WAC 192-04-175 establishes the circumstances under which an individual designated by the commissioner may, as an interested party, request the commissioner's review office to take a decision issued by the office of administrative hearings under advisement. Other changes to rules are primarily made for purposes of clarity and ease of administration.

Citation of Existing Rules Affected by this Order: Amending WAC 192-04-040, 192-04-060, 192-04-063, 192-04-170, 192-04-175, and 192-04-190.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 10-17-118 on August 18, 2010.

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 6, 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 6, Repealed 0.

Date Adopted: September 29, 2010.

Paul Trause  
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-04-040 Interested parties.** In all cases adjudicated under Title 50 RCW the employment security department is an interested party. ~~((Other interested parties are:))~~

(1) Other interested parties in benefit appeals(-) are:

(a) The claimant;

(b) Any employer entitled to notice under WAC 192-130-060~~(-);~~ and

(c) An interested employer as defined in WAC ~~((492-28-125,))~~ 192-220-060 in cases involving the ~~((payment or))~~ recovery of benefits~~((, including but not limited to the entitlement to, eligibility for or qualification for waiting period credit or benefits)).~~

(2) Other interested parties in tax appeals(-) are employers whose contributions, experience rating, benefit charges, or rate of contribution are affected by:

(a) An assessment for contributions;

(b) A denial of a claim for refund of contributions, interest, penalties;

(c) A denial of a request for relief of benefit charges made to their account; or

(d) Their determined or redetermined rate of contribution.

AMENDATORY SECTION (Amending WSR 99-15-069, filed 7/19/99, effective 8/19/99)

**WAC 192-04-060 Appeals—Petitions for hearing—Petitions for review—Time limitation(~~(—Forms)~~).** (1) **Appeals and petitions for hearing.** Any interested party who is aggrieved by any decision of the department set forth in WAC 192-04-050 or for which the department has provided notice of appeal or petition for hearing rights may file a written appeal or petition for hearing by mailing it or sending it ~~((via electronic telefacsimile))~~ by fax to the ~~((unemployment claims telecenter))~~ address or fax number indicated on the determination notice or ~~((order and notice of assessment))~~ other appealable document.

The appeal or petition for hearing ~~((shall))~~ must be filed within thirty days of the date the decision is delivered or mailed, whichever is the earlier. The appeal and/or petition for hearing shall be filed in accordance with the provisions of RCW 50.32.025.

(2) **Petitions for review.** Any interested party other than the department who is aggrieved by a decision of the office of administrative hearings, other than an order approving a withdrawal of appeal, an order approving a withdrawal of a petition for hearing, a consent order, or an interim order, may file a written petition for review in accordance with the provisions of WAC 192-04-170. The petition for review ~~((shall))~~ must be filed within thirty days of the date of delivery or mailing of the decision of the office of administrative hearings, whichever is the earlier. The petition for review shall be filed in accordance with the provisions of RCW 50.32.025.

~~((3) **Forms.** At the request of an interested, aggrieved party, the employment security department shall furnish forms for the filing of a notice of appeal, petition for hearing, or petition for review, but the use of such forms is not a jurisdictional requirement.))~~

AMENDATORY SECTION (Amending WSR 95-18-055, filed 8/31/95, effective 10/1/95)

**WAC 192-04-063 Aggrieved party.** An aggrieved party is:

(1) A claimant or an employer who receives an adverse decision of the department set forth in WAC 192-04-050 or for which the department has provided notice of appeal or petition for review rights; or

(2) The department, a claimant, or an employer who receives an adverse decision of the office of administrative hearings.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

**WAC 192-04-170 Decision of commissioner—Petition for review—Filing—Reply.** (1) The written petition for review shall be filed by mailing it to the Agency Records Center, Employment Security Department, Post Office Box ((9046) 9555, Olympia, WA ((98507-9046)) 98507-9555, within thirty days of the date of mailing or delivery of the decision of the office of administrative hearings, whichever is the earlier.

(2) Any written argument in support of the petition for review must be attached to the petition for review and be filed ~~((contemporaneously therewith))~~ at the same time. The commissioner's review office will acknowledge receipt of the petition for review by assigning a review number to the case, entering the review number on the face of the petition for review, and setting forth the ~~((acknowledgement))~~ acknowledgment date on the petition for review. The commissioner's review office will also mail copies of the acknowledged petition for review and attached argument in support thereof to the petitioning party, nonpetitioning party and their representatives of record, if any.

(3) Any reply to the petition for review and any argument in support thereof by the nonpetitioning party shall be mailed to the Commissioner's Review Office, Employment Security Department, Post Office Box ((9046) 9555, Olympia, WA ((98504-9046)) 98504-9555. The reply must be received by the commissioner's review office within fifteen days of the date of mailing of the acknowledged petition for review. An informational copy shall be mailed by the nonpetitioning party to all other parties of record and their representatives, if any.

(4) The petition for review and argument in support thereof and the reply to the petition for review and argument in support thereof shall:

(a) Be captioned as such, set forth the docket number of the decision of the office of administrative hearings, and be signed by the party submitting it or by his or her representative.

(b) Be legible, reproducible and five pages or less.

(5) Arrangements for representation and requests for copies of the hearing record and exhibits will not extend the period for the filing of a petition for review, argument in support thereof, or a reply to the petition for review.

(6) Any argument in support of the petition for review or in reply thereto not submitted in accordance with the provisions of this regulation shall not be considered in the disposi-

tion of the case absent a showing that failure to comply with these provisions was beyond the reasonable control of the individual seeking relief.

AMENDATORY SECTION (Amending WSR 95-18-055, filed 8/31/95, effective 10/1/95)

**WAC 192-04-175 Advisement order.** ~~((On behalf of the commissioner,))~~ (1) The commissioner's review office may prevent finality of any decision of the office of administrative hearings and take jurisdiction of the proceedings for review thereof by issuing an advisement order ~~((so providing))~~.

(2)(a) The commissioner may designate one or more individuals employed by the department to request an advisement order on decisions that the individual identifies as:

(i) Cases of first impression;

(ii) Cases that may impact significant numbers of other similarly situated cases;

(iii) Cases that involve United States Department of Labor conformity or compliance issues; or

(iv) Cases in which the interpretation of the law is clearly erroneous.

(b) Upon receipt of the request of the designated individual, the commissioner's review office shall determine if the request meets the criteria outlined in this subsection and shall notify the requestor in writing if the decision will not be taken under advisement and the reasons why.

(3) When the commissioner's review office determines subject matter review of any decision of the office of administrative hearings is warranted, it shall issue an advisement order which accepts review and ((mailing)) mail a copy of the advisement order to the parties of record and their representatives within the same period allowed for the filing of a petition for review.

(4) The parties of record will be given fifteen days to submit argument in support of or in opposition to the decision of the office of administrative hearings ~~((, as well as in response to any departmental memorandum suggesting to the commissioner's review office that it consider taking a decision of the office of administrative hearings under advisement)).~~ That argument ~~((and/or response))~~ from the parties of record must be hand delivered or mailed to the commissioner's review office and received by that office within fifteen days from the date of mailing of the order taking the decision of the office of administrative hearings under advisement.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

**WAC 192-04-190 Petition for reconsideration—Filing—Consideration—Disposition—Judicial review.** (1) A written petition for reconsideration and argument in support thereof may be filed within ten days of the date of mailing or delivery of the decision of the commissioner, whichever is the earlier. It shall be mailed to the Commissioner's Review Office, Employment Security Department, Post Office Box ((9046) 9555, Olympia, WA ((98507-9046)) 98507-9555, and to all other parties of record and their representatives.

(2) No matter will be reconsidered by the commissioner unless it clearly appears from the face of the petition for reconsideration and the argument submitted in support thereof that (a) there is obvious material, clerical error in the decision or (b) the petitioner, through no fault of his or her own, has been denied a reasonable opportunity to present argument or respond to argument pursuant to WAC 192-04-170.

(3) A petition for reconsideration shall be deemed to have been denied if, within twenty days from the date the petition for reconsideration is filed, the commissioner does not either (a) dispose of the petition for reconsideration or (b) mail or deliver to the parties a written notice specifying the date by which he or she will act on the petition for reconsideration. If no action is taken by the date specified in such written notice, the petition will be deemed to have been denied.

(4) A petition for reconsideration does not stay the effectiveness of the decision of the commissioner. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review. An order denying reconsideration or a written notice specifying the date upon which action will be taken on the petition for reconsideration is not subject to judicial review.

**WSR 10-20-085**  
**PERMANENT RULES**  
**LIQUOR CONTROL BOARD**

[Filed September 30, 2010, 8:50 a.m., effective October 31, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: As part of the liquor control board's ongoing rules review process, chapter 314-36 WAC was reviewed for relevance, clarity, and accuracy.

Citation of Existing Rules Affected by this Order: Repealing WAC 314-36-030, 314-36-050, 314-36-070, 314-36-110 and 314-36-150; and amending WAC 314-36-010, 314-36-020, 314-36-040, 314-36-060, 314-36-080, 314-36-090, 314-36-100, and 314-36-130.

Statutory Authority for Adoption: RCW 66.08.030, chapter 66.24 RCW.

Adopted under notice filed as WSR 10-17-046 on August 11, 2010.

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 8, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 5.

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: September 29, 2010.

Sharon Foster  
Chairman

AMENDATORY SECTION (Amending Order 238, Resolution No. 247, filed 3/9/88)

**WAC 314-36-010 Sales between (~~liquor~~) importers.** One licensed (~~liquor~~) importer may sell to, or purchase from, or exchange with, another licensed (~~liquor~~) importer, (~~intoxicating~~) liquor for purposes of export only.

AMENDATORY SECTION (Amending Order 238, Resolution No. 247, filed 3/9/88)

**WAC 314-36-020 Liquor importation—General.** (1) No liquor shall be imported into this state unless (~~such~~):

(a) Liquor (~~be~~) is consigned to the Washington state liquor control board; (~~or unless such~~)

(b) Liquor (~~be~~) is consigned to a holder of a liquor, beer or wine importer's license and delivered at a public storage warehouse authorized by the Washington state liquor control board to store liquor(~~or at~~); or

(c) Liquor is consigned to the warehouse of the holder of the liquor, beer or wine importer's license in those cases where the board has authorized storage at such warehouse.

"Consigned" as used in this section means to turn over to another's control.

(2) No carrier shall accept or deliver liquor except in accordance with this regulation.

AMENDATORY SECTION (Amending Order 238, Resolution No. 247, filed 3/9/88)

**WAC 314-36-040 Principal office—Record.** (1) Each liquor, beer or wine importer shall establish and maintain a principal office within the state (~~at which shall be kept~~) where full and complete records are kept for three years of:

(a) All importations(~~is~~);

(b) All storage(~~is~~);

(c) All removals(~~is~~); and

(d) All exportations of liquor(~~is such~~).

(2) Records are to be kept in such manner and in such form as (~~the board shall from time to time prescribe~~) required by the board.

(3) Each liquor, beer or wine importer shall keep the board informed at all times of the location of such principal office.

AMENDATORY SECTION (Amending Order 238, Resolution No. 247, filed 3/9/88)

**WAC 314-36-060 Public storage warehouses.** (1) No public storage warehouse shall accept, receive, or store or otherwise handle any liquor, including beer or wine, without first obtaining from the Washington state liquor control board a letter of authorization (~~so to do~~).

(2) No consumption of liquor, including beer or wine, is allowed at public storage warehouses.

AMENDATORY SECTION (Amending Order 238, Resolution No. 247, filed 3/9/88)

**WAC 314-36-080 Authorization for private liquor storage warehouse.** ~~((Any))~~ A holder of a liquor, beer or wine importer's license, who maintains a storage warehouse ~~((exclusively for the storage of goods, wares or merchandise belonging to such holder,))~~ and who desires to store liquor imported under such liquor, beer or wine importer's license, shall apply to the board for a letter of authorization ~~((so to do. Such authorization shall be granted only upon such terms and conditions as the board shall from time to time prescribe)).~~ If ~~((such))~~ authorization ~~((be))~~ is granted, ~~((such))~~ the warehouse shall ~~((thereafter))~~ be known as a private liquor storage warehouse.

AMENDATORY SECTION (Amending Order 238, Resolution No. 247, filed 3/9/88)

**WAC 314-36-090 Liquor shall be stored in original packages.** No shipments of liquor shall be accepted or stored in ~~((a private or public))~~ an approved storage warehouse except in original packages or combinations of original packages as authorized by the board.

AMENDATORY SECTION (Amending Order 238, Resolution No. 247, filed 3/9/88)

**WAC 314-36-100 Removal of liquor.** (1) No liquor importer or public storage warehouse shall ~~((be removed))~~ remove liquor from any storage warehouse, ~~((either public or private,))~~ except:

(a) For sale and delivery to the board ~~((or));~~

(b) For export from the state ~~((or));~~

(c) For delivery to persons, firms or corporations authorized by Title 66 RCW to receive such liquor products ~~((; Provided, however, That));~~ or

(d) Liquor may be removed from an authorized private liquor storage warehouse to ~~((a))~~ an authorized public storage warehouse ~~((; or may be removed from one authorized public storage warehouse to another authorized public storage warehouse, or may be removed from an authorized public storage warehouse to the authorized private liquor storage warehouse of the owner of the liquor. Liquor, beer or wine importers may remove liquor for sample purposes only, but only after permission thereto has been specifically granted by the board or its accredited representatives)).~~

(2) Any and all removals of liquor must be made in full compliance with the Washington state liquor laws ~~((; Title 66 RCW (Alcoholic beverage control,))~~ and the rules ~~((and regulations))~~ of the board.

AMENDATORY SECTION (Amending Order 238, Resolution No. 247, filed 3/9/88)

**WAC 314-36-130 Complete records kept.** (1) Each public storage warehouse shall keep full and complete records showing:

(a) All liquor received for storage ~~((; together with));~~ and

(b) All removals and exportations ~~((thereof, such records to be kept in such manner and in such form as the board shall~~

~~prescribe, and in case of removal, releases or shipments, shall)).~~

(2) Records shall preserve for ~~((two))~~ three years, ~~((subject to the order of the board,))~~ all bills of lading or certified copies thereof, and all authorizations of the board for withdrawals of samples.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 314-36-030 Importation by licensed liquor importer.
- WAC 314-36-050 Customs bonded locker.
- WAC 314-36-070 Storage of liquor.
- WAC 314-36-110 Release of liquor.
- WAC 314-36-150 Special importation permit.

**WSR 10-20-086**

**PERMANENT RULES**

**LIQUOR CONTROL BOARD**

[Filed September 30, 2010, 8:51 a.m., effective October 31, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: As part of the liquor control board's ongoing rules review process, chapter 314-45 WAC was reviewed for relevance, clarity, and accuracy.

Citation of Existing Rules Affected by this Order: Amending WAC 314-45-010.

Statutory Authority for Adoption: RCW 66.08.030, 66.28.010, 66.20.010.

Adopted under notice filed as WSR 10-17-047 on August 11, 2010.

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 0, Repealed 0.

Date Adopted: September 29, 2010.

Sharon Foster  
Chairman

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-45-010 Convention defined—Hospitality rooms, display booths, receptions and similar activities—Permits required—Fees—Procedures.** Activities pursuant to RCW 66.20.010 (8), (9), a manufacturer, importer, distributor, or agent thereof, may serve or donate liquor without charge to delegates and guests at a bona fide convention of a trade association composed of licensees of the board, subject to conditions set forth in this regulation.

(1) For the purposes of this section a "convention" is defined as a bona fide session or assembly of the general membership of a trade association composed of licensees of the board.

(2) Such manufacturer, importer, distributor, or agent thereof, must hold a special permit issued by the board to engage in such an activity at such convention. The fee for each such special permit shall be \$25.00. A permit is required for each booth or room a manufacturer, importer, distributor, or agent thereof is serving or donating liquor. Application for such permit shall be submitted on a form prescribed by the board. The statutory permits applicable to such activities are:

(a) A special permit provided for in RCW 66.20.010(8) which authorizes the holder thereof to serve liquor without charge to delegates and guests in a hospitality room or from a booth in a board-approved suppliers' display room at such convention.

(b) A special permit provided for in RCW 66.20.010(9) which authorizes the holder thereof to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at such convention.

(3) Any liquor served or donated as provided herein is authorized only for consumption within a specific area designated on an application for permit and approved by the board.

(4) A special permit holder who serves or donates any beer or wine on which state taxes have not been paid, must file a report of the quantity so served or donated and remit the amount of the taxes to the board, in conformity with RCW 66.20.010 (8), (9).

(5) Any spirituous liquor served or donated shall be purchased from the board or a spirit, beer and wine restaurant licensee.

(6) Any licensee promoting a trade show event shall submit a list of all suppliers attending the event.

**WSR 10-20-089**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)

[Filed September 30, 2010, 10:16 a.m., effective November 1, 2010]

Effective Date of Rule: November 1, 2010.

Purpose: The department is amending sections of chapter 388-448 WAC to eliminate the use of administrative review teams, replace obsolete terminology, and revise functional assessment language.

Citation of Existing Rules Affected by this Order: Amending WAC 388-448-0050, 388-448-0080, 388-448-0090, 388-448-0100, and 388-448-0110.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Adopted under notice filed as WSR 10-13-158 on June 23, 2010.

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 5, 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: August 17, 2010.

Katherine I. Vasquez  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-08-036, filed 3/31/10, effective 5/1/10)

**WAC 388-448-0050 PEP step II—How we determine the severity of mental impairments.** If you are diagnosed with a mental impairment by a professional described in WAC 388-448-0020, we use information from the provider to determine how the impairment limits work-related activities.

(1) We review the following psychological evidence to determine the severity of your mental impairment:

- (a) Psychosocial and treatment history records;
- (b) Clinical findings of specific abnormalities of behavior, mood, thought, orientation, or perception;
- (c) Results of psychological tests; and
- (d) Symptoms observed by the examining practitioner that show how your impairment affects your ability to perform basic work-related activities.

(2) We exclude diagnosis and related symptoms of alcohol or substance abuse or addiction;

(3) ~~((We exclude disorders that don't impair thought, mood, memory, or cognition, such as:~~

- ~~(a) Passive behaviors;~~
- ~~(b) Learning deficits;~~

(4)) If you are diagnosed with mental retardation, the diagnosis must be based on the Wechsler Adult Intelligence Scale (WAIS). The following test results determine the severity rating:

Intelligence Quotient (IQ) Score	Severity Rating
<del>((76))</del> 85 or above	None (1)
<del>((65))</del> 71 to <del>((75))</del> 84	Moderate (3)
<del>((64))</del> 70 or lower	Severe (5)

~~((5))~~ (4) If you are diagnosed with a mental impairment with physical causes, we assign a severity rating based on the most severe of the following four areas of impairment:

- (a) Short term memory impairment;
- (b) Perceptual or thinking disturbances;
- (c) Disorientation to time and place; or
- (d) Labile, shallow, or coarse affect.

~~((6))~~ (5) We base the severity of an impairment diagnosed as a mood, thought, memory, or cognitive disorder on a clinical assessment of the intensity and frequency of symptoms that:

- (a) Affect your ability to perform basic work related activities; and
- (b) Are consistent with a diagnosis of a mental impairment as listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV).

~~((7))~~ (6) We base the severity rating for a functional mental impairment on accumulated severity ratings for the symptoms in subsection (5)(a) of this section as follows:

Symptom Ratings or Condition	Severity Rating
(a) You are diagnosed with a functional disorder with psychotic features; (b) You have had two or more hospitalizations for psychiatric reasons in the past two years; (c) You have had more than six months of continuous psychiatric inpatient or residential treatment in the past two years; (d) The objective evidence and global assessment of functional score are consistent with a significant limitation on performing work activities.	Moderate (3)
(e) The objective evidence and global assessment of functioning score are consistent with very significant limitations on ability to perform work activities.	Marked (4)
(f) The objective evidence and global assessment of functioning score are consistent with the absence of ability to perform work activities.	Severe (5)

~~((8))~~ (7) If you are diagnosed with any combination of mental retardation, mental impairment with physical causes, or functional mental impairment, we assign a severity rating as follows:

Condition	Severity Rating
(a) Two or more disorders with moderate severity (3) ratings; or (b) One or more disorders rated moderate severity (3); and one rated marked severity (4).	Marked (4)
(c) Two or more disorders rated marked <del>((4))</del> severity (4).	Severe (5)

~~((9))~~ (8) We deny incapacity when you haven't been diagnosed with a significant physical impairment and your overall mental severity rating is one or two;

~~((10))~~ (9) We approve incapacity when you have an overall mental severity rating of severe (five).

AMENDATORY SECTION (Amending WSR 10-08-036, filed 3/31/10, effective 5/1/10)

**WAC 388-448-0080 PEP step V—How we determine your ability to function in a work environment if you have a mental impairment.** If you have a mental impairment we evaluate your cognitive and social functioning in a work setting. Functioning means your ability to perform typical tasks that would be required in a routine job setting and your ability to interact effectively while working.

(1) We evaluate cognitive and social functioning by assessing your ability to:

- (a) Understand, remember, and persist in tasks by following simple instructions of one or two steps.
- (b) Understand, remember, and persists in tasks by following complex instructions of three or more steps.
- (c) Learn new tasks.
- (d) Perform routine tasks without undue supervision.
- (e) Be aware of normal hazards and take appropriate precautions.

(f) Communicate and perform effectively in a work setting with public contact.

(g) Communicate and perform effectively in a work setting with limited public contact.

(h) Maintain appropriate behavior in a work setting.

(2) We approve incapacity when we have objective medical evidence, including a mental status exam (MSE) per WAC 388-448-0050, that demonstrates you are:

(a) At least moderately impaired in your ability to understand, remember, and persist in tasks following simple instructions, and at least moderately limited in your ability to:

(i) Learn new tasks;

(ii) Be aware of normal hazards and take appropriate precautions; and

(iii) Perform routine tasks without undue supervision; or

(b) At least moderately impaired in the ability to understand, remember, and persist in task following complex instructions; and

(c) Markedly impaired in the ability to learn new tasks, be aware of normal hazards and take appropriate precautions, and perform routine tasks without undue supervision.

(3) We approve incapacity when you are moderately (rated three) impaired in your ability to:

(a) Communicate and perform effectively in a work setting with public contact;

(b) Communicate and perform effectively in a work setting with limited public contact; and

(c) Markedly (rated four) impaired in your ability to maintain appropriate behavior in a work setting.

AMENDATORY SECTION (Amending WSR 10-08-036, filed 3/31/10, effective 5/1/10)

**WAC 388-448-0090 PEP step V—How we determine your ability to function in a work environment if you have**

**a physical impairment.** In Step V of the PEP we review the medical evidence you provide and make a determination of how your physical impairment prevents you from working. This determination is then used in Steps VI and VII of the PEP to determine your ability to perform either work you have done in the past or other work.

(1) **"Exertion level"** means having strength, flexibility, and mobility to lift, carry, stand or walk as needed to fulfill job duties in the following work levels. For this section, "occasionally" means less than one-third of the time and "frequently" means one-third to two-thirds of the time.

The following table is used to determine your exertion level. Included in this table is a strength factor, which is your ability to perform physical activities, as defined in Appendix C of the Dictionary of Occupational Titles (DOT), Revised Edition, published by the U.S. Department of Labor as posted on the Occupational Information Network (O\*NET).

<b>If you are able to:</b>	<b>Then we assign this exertion level</b>
(a) Lift no more than two pounds or unable to stand or walk.	Severely limited
(b) Lift ten pounds maximum and frequently lift or carry lightweight articles. Walking or standing only for brief periods.	Sedentary
(c) Lift twenty pounds maximum and frequently lift or carry objects weighing up to ten pounds. Walk six out of eight hours per day or stand during a significant portion of the workday. Sitting and using pushing or( <del>/</del> ) pulling arm or leg movements most of the day.	Light
(d) Lift fifty pounds maximum and frequently lift or carry up to twenty-five pounds.	Medium
(e) Lift one hundred pounds maximum and frequently lift or carry up to fifty pounds.	Heavy

(2) **"Exertionally related limitation"** means a restriction in mobility, agility or flexibility in the following twelve activities: Balancing, bending, climbing, crawling, crouching, handling, kneeling, pulling, pushing, reaching, sitting, and stooping. If you have exertionally related limitations, we consider them in determining your ability to work.

(3) **"Functional physical capacity"** means the degree of strength, agility, flexibility, and mobility you can apply to work-related activities. We consider the effect of the physical impairment on the ability to perform work-related activities when the physical impairment is assigned an overall severity rating of three or four. We determine functional physical capacity based on your exertional, exertionally related and nonexertional limitations. All limitations must be substantiated by the medical evidence and directly related to the diagnosed impairment(s).

(4) **"Nonexertional physical limitation"** means a restriction on work activities that does not affect strength, mobility, agility, or flexibility. Examples are:

(a) Environmental restrictions which could include, among other things, your inability to work in an area where you would be exposed to chemicals; and

(b) Workplace restrictions, such as impaired hearing or speech, which would limit the types of work environments you could work in.

AMENDATORY SECTION (Amending WSR 10-08-036, filed 3/31/10, effective 5/1/10)

**WAC 388-448-0100 PEP step VI—How we evaluate capacity to perform relevant past work.** If your overall severity rating is moderate (three) or marked (four) and we have reached this stage of the PEP and have not approved or denied your application, we decide if you can do the same or similar work as you have done in the past. We look at your current physical and/or mental limitations from cognitive, social, and vocational factors to make this decision. Vocational factors are education, relevant work history, and age.

(1) We evaluate education in terms of formal schooling or other training to acquire skills that enables you to meet job requirements. We classify education as:

<b>If you</b>	<b>Then your education level is</b>
(a) Can't read or write a simple communication, such as two sentences or a list of items.	Illiterate
(b) Have no formal schooling or vocational training beyond the ( <del>tenth</del> ) <u>elev-enth</u> grade; or (c) Had participated in special education in basic academic classes of reading, writing, or mathematics in high school.	Limited education
(d) Have received a high school diploma or general equivalency degree (GED); or (e) Have received skills training and were awarded a certificate, degree or license.	High school and above level of education

(2) We evaluate your work experience to determine if you have relevant past work. "Relevant past work" means work:

(a) Defined as gainful employment per WAC 388-448-0010(~~(-)~~);

(b) Has been performed in the past (~~(ten)~~) five years(~~(-)~~);

(c) You performed long enough to acquire the knowledge and skills to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation you have had, we determine:

(a) The exertional or skill requirements of the job.

(b) Current cognitive, social, or nonexertional factors that significantly limit your ability to perform past work.

(4) After considering vocational factors, we deny incapacity when you have:

(a) The physical and mental ability to perform past work, and there is no significant cognitive, social or nonexertional limitation that would prevent you from performing past work; or

(b) Recently acquired specific work skills through completion of schooling or training, for jobs within your current physical or mental capacities.

(5) We approve incapacity when you are fifty-five years of age or older and don't have the physical or mental ability to perform past work.

AMENDATORY SECTION (Amending WSR 10-08-036, filed 3/31/10, effective 5/1/10)

**WAC 388-448-0110 PEP step VII—How we evaluate your capacity to perform other work.** If we decide you cannot do work that you've done before, we then decide if you can do any other work.

(1) We approve incapacity if you have a physical impairment and meet the vocational factors below:

<b>Highest work level assigned by the practitioner</b>	<b>Your age</b>	<b>Your education level</b>	<b><del>((Your education level))</del> Other vocational factors</b>
Sedentary	<del>((Fifty five and older))</del> Any age	Any level	<del>((Any level))</del> Does not apply
<del>((Sedentary))</del> Light	<del>((Any age))</del> Fifty and older	Any level	<del>((Limited education or limited English proficiency (LEP)))</del> Does not apply
Light	<del>((Fifty))</del> Thirty-five and older	Illiterate or limited English proficiency (LEP)	<del>((Limited education or LEP))</del> Does not apply
Light	Eighteen and older	Limited education	Does not have any past work
Medium	Fifty- <del>((five))</del> and older	Limited education	<del>((Limited education or LEP))</del> Does not have any past work

(2) We approve incapacity when you have a (moderate three) or marked (four) mental health impairment and we have objective medical evidence, including a mental status exam (MSE) per WAC 388-448-0050, that demonstrates social or cognitive factors described in WAC 388-448-0080, interfere with working as follows:

~~((a) You have a moderate impairment in your ability to:~~

~~(i) Be aware of normal hazards and take appropriate precautions;~~

~~(ii) Communicate and perform effectively in a work setting with public contact;~~

~~(iii) Understand, remember, and persist in tasks by following complex instructions of three or more steps;~~

~~(b) You have marked impairment in your ability to:~~

~~(i) Be aware of normal hazards and take appropriate precautions;~~

~~(ii) Communicate and perform effectively in a work setting with limited public contact;~~

~~(c) You have a marked impairment in your ability to:~~

~~(i) Understand, remember, and persist in tasks by following simple instructions of one or two steps;~~

~~(ii) Perform routine tasks without undue supervision;~~

~~(iii) Communicate and perform effectively in a work setting with limited public contact.))~~

<b>Social limitation</b>	<b>Age</b>
<del>(b) You have a severe (five) impairment in your ability to: (i) Communicate and perform effectively in a work setting with public contact; or (ii) Communicate and perform effectively in a work setting with limited public contact.</del>	Any age
<del>(c) A mental disorder of marked severity (rated four): (i) One or more severe (rated five) mental impairment symptoms; and (ii) Moderately impaired (rated three) in the ability to communicate and perform effectively in a work setting with public or limited public contact.</del>	Any age

(3) We approve incapacity when you have ~~((at least a moderate (three) mental health impairment, a moderate (three) physical impairment and we have objective medical evidence, including a mental status exam (MSE) per WAC 388-448-0050, that demonstrate social or cognitive factors, as described in WAC 388-448-0080,))~~ both mental and physical impairments and we have objective medical evidence, including a mental status exam (MSE) per WAC 388-448-0050, that demonstrate social or cognitive factors, as described in WAC 388-448-0080 interfere with working as follows:

<b>Social limitation</b>	<b>Age</b>
<del>(a) Moderately impaired (rated three) in your ability to: (i) Communicate and perform effectively in a work setting with limited public contact; and (ii) Maintain appropriate behavior in a work setting.</del>	Fifty years and older

<del>((Work-Level))</del> <u>Your age</u>	<u>Your education</u>	<u>Your other restrictions</u>
<del>((Sedentary))</del> <u>Any age</u>	<u>Any level</u>	(a) You are moderately impaired in your ability to( (i) <del>Understand, remember, and persist in tasks by following complex instructions of three or more steps;</del> (ii) <del>Learn new tasks;</del> (iii) <del>Perform routine tasks without undue supervision</del> ) <u>communicate and perform effectively in a work setting with limited public contact; and</u> (b) You are markedly impaired in your ability to <u>communicate and perform effectively in a work setting with public contact.</u>
<del>((Sedentary))</del> <u>Fifty or older</u>	<u>Limited education</u>	<del>((b) You are moderately impaired in your ability to:</del> (i) <del>Communicate and perform effectively in a work setting with public contact</del> ) (c) <u>Restricted to medium work level or less.</u>
<del>((Light))</del> <u>Any age</u>	<u>Limited education</u>	<del>((e) You are markedly impaired in your ability to:</del> (i) <del>Understand, remember, and persist in tasks by following complex instructions of three or more steps;</del> (ii) <del>Learn new tasks;</del> (iii) <del>Perform routine tasks without undue supervision</del> ) (d) <u>Restricted to light work level.</u>
<del>((Light))</del>		<del>((d) You are markedly impaired in your ability to:</del> (i) <del>Communicate and perform effectively in a work setting with public contact.</del> )

<del>((Work-Level))</del> <u>Your age</u>	<u>Your education</u>	<u>Your other restrictions</u>
<del>((Medium))</del>		<del>((e) You are markedly impaired in your ability to:</del> (i) <del>Understand, remember, and persist in tasks by following simple instructions of one or two steps.</del> (ii) <del>Learn new tasks.</del> (iii) <del>Perform routine tasks without undue supervision.</del> )

(4) We deny incapacity if we decide you don't meet the criteria listed above.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 10-20-091**

**PERMANENT RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed September 30, 2010, 11:26 a.m., effective October 31, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department proposed to amend chapter 16-30 WAC to establish three types of restricted holding facilities. The first type of holding facility is one where imported animals are held in quarantine until they meet animal health import requirements. The second type of holding facility is a dry feed yard with no provision for grazing where cattle that have been imported into the state and are destined for slaughter only are confined for feeding. These cattle can only be moved to a federally inspected slaughter plant. The third type of holding facility is a holding facility for permanently quarantined animals.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-30-050, 16-30-060 and 16-30-070; and amending WAC 16-30-010, 16-30-025, 16-30-030, 16-30-035, 16-30-038, 16-30-039, and 16-30-040.

Statutory Authority for Adoption: Chapter 16.36 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 10-13-162 on June 23, 2010.

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 7, Repealed 3.

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 7, Repealed 3.

Date Adopted: September 30, 2010.

Dan Newhouse  
Director

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

**WAC 16-30-010 Definitions.** In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of the department of agriculture or the director's authorized representative.

"Official individual identification" means identifying an animal or group of animals using devices or methods including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of brand inspection from a brand inspection authority who is recognized by the director.

"Restricted ~~((cattle))~~ animals" means ~~((cattle))~~ animals being held in a restricted holding facility or a restricted feedlot.

~~("Restricted feedlot" means a dry feed yard with no provision for grazing where cattle specified in this rule are confined for feeding and kept separate and apart from all other cattle.~~

~~"Restricted holding facility" means a dry feed yard with no provision for grazing where cattle are held to meet import test requirements.~~

~~"Test-eligible" means bulls over six months of age, brucellosis vaccinated female dairy cattle over twenty months of age, and brucellosis vaccinated beef breed female cattle over twenty-four months of age.)~~

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

**WAC 16-30-025 Restricted feedlots.** (1) A restricted feedlot is a designated area that is isolated from all other non-restricted areas within a feedlot. A restricted feedlot is a category 2 restricted holding facility and subject to all the requirements pertaining to category 2 restricted holding facilities in addition to the requirements applicable to restricted feedlots.

(2) Restricted feedlots must meet the following standards:

(a) All cattle in a restricted feedlot must remain in slaughter channels.

(b) Cattle in the restricted feedlot must not share water or feeding facilities accessible to other areas.

~~((b))~~ (c) Restricted feedlots must be clearly identified as such by signs permanently affixed at all corners stating "restricted feeding area" in letters a minimum of six inches in height.

~~((e))~~ (d) There must be a minimum of thirty feet between restricted feedlots and other lots and facilities.

~~((f))~~ (e) No common fences and gates may be used.

~~((2))~~ (3) The purpose of a restricted feedlot is to accept for feeding purposes with no provision for grazing or commingling with unrestricted cattle:

(a) Female cattle from a Class Free state that are not officially brucellosis vaccinated and not knowingly exposed to brucellosis;

(b) Cattle that enter Washington state on a brand certificate that includes the entry permit number and without a certificate of veterinary inspection; and

(c) Cattle imported from Canada. These cattle must be confined to the initial restricted feedlot until moved to slaughter.

~~((3))~~ (4)(a) Restricted feedlots may buy and import cattle from a Class A state if the cattle do not originate from a herd known to be exposed to brucellosis. Female cattle entering a restricted feedlot from a Class A state must be:

(i) Officially brucellosis vaccinated; or

(ii) Brucellosis tested negative within thirty days prior to movement.

(b) Cattle may not be imported from restricted feedlots that accept cattle known to be exposed to brucellosis.

~~((4))~~ (5) The classification of states and areas as Class Free and Class A is designated by United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) in Title 9 CFR Part 78.41 (January 1, 2006) and is defined in *Brucellosis Eradication: Uniform Methods and Rules*, effective October 1, 2003.

AMENDATORY SECTION (Amending WSR 09-03-018, filed 1/9/09, effective 2/9/09)

**WAC 16-30-030 Conditions of permit to operate a restricted feedlot.** The operator of a restricted feedlot must abide by the following conditions:

(1) There shall be no contact between animals not also similarly restricted.

(2) No cattle shall be removed from the restricted feedlot except to a federally inspected slaughter plant, a slaughter plant of like status, or a restricted feedlot of like status.

(3) The restricted feedlot will be maintained in a condition that follows common industry practices to mitigate disease risk.

(4) The owner or manager of a restricted feedlot will notify the department ~~((will be notified))~~ immediately of any outbreak of any infectious or contagious disease.

(5) The disposal of dead livestock will be in accordance with the laws relating to the disposal of dead livestock and in accordance with chapter 16-25 WAC.

(6) Accurate records will be kept for six years accounting for all cattle entering and leaving the restricted feedlot. Records must be open for review by authorized department of agriculture personnel during normal business hours, and must be provided to the department upon the director's request.

(7) Proper facilities shall be provided for inspection of brands, branding, and identification of cattle.

(8) The state veterinarian has the authority to enter the restricted feedlot at any reasonable time to conduct tests, examinations, and inspections.

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

**WAC 16-30-035 Types of restricted holding facilities.**

(1) Restricted holding facilities are isolated areas approved and licensed by the director, as advised by the ((designated brucellosis and tuberculosis epidemiologist. Such facilities are specifically for cattle that have been imported into the state but have not met the department's brucellosis and tuberculosis entry requirements.

(2) The restricted holding facility area shall house restricted cattle separate and apart from all other cattle.

(3) Upon negative brucellosis and tuberculosis test results, restricted cattle will be released from the holding facility.

(4) Milk from restricted cattle may not be used for human consumption.

(5) Restricted holding facilities must be clearly identified as such by signs permanently affixed at all corners stating "restricted holding facility" in letters a minimum of six inches in height.) state veterinarian. Fees associated with restricted holding facilities are referenced under chapter 16-91 WAC.

(2) There are three categories of restricted holding facilities.

(a) A category 1 restricted holding facility is a facility where imported animals are held in quarantine until they meet animal health import requirements.

(b) A category 2 restricted holding facility is a dry feed yard with no provision for grazing where cattle that have been imported into the state and are destined for slaughter only are confined for feeding. Cattle in a category 2 restricted holding facility must remain in slaughter channels and move only to a federally inspected slaughter plant or other restricted facilities of like status.

(c) A category 3 restricted holding facility is a holding facility for permanently quarantined animals.

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

**WAC 16-30-038 Conditions of permit to operate ((a) restricted holding ((facility)) facilities.** (1) The following requirements are applicable to all categories of restricted holding facilities:

(a) The restricted holding facility area shall house restricted animals separate and apart from all other nonrestricted animals. There may be no contact between animals not also similarly restricted and no commingling between separate shipments of animals.

(b) The restricted holding facility will be maintained in a sanitary condition to mitigate disease risk.

(c) The department of agriculture will be notified immediately of any outbreak of any infectious or contagious disease.

(d) Milk from restricted animals may not be used for human consumption.

(e) Restricted holding facilities must be clearly identified as such by signs permanently affixed at all corners stating "restricted holding facility" in letters a minimum of six inches in height.

(f) The disposition of dead animals will be in accordance with the laws relating to the disposal of dead livestock and in accordance with chapter 16-25 WAC.

(g) Accurate records will be kept for six years to account for all animals entering and leaving the restricted holding facility. Records must be open for review by authorized department of agriculture personnel during normal business hours, and must be provided to the department upon the director's request.

(h) The state veterinarian has the authority to enter the restricted holding facility at any reasonable time to conduct tests, examinations, and inspections.

(2) **Additional requirements for a category 1 restricted holding facility.** In addition to the requirements of subsection (1) of this section for all types of restricted holding facilities, the operator of a category 1 restricted holding facility must abide by the following conditions:

((+)) (a) All ((cattle)) animals entering a category 1 restricted holding ((facilities)) facility must have official individual identification listed on the certificate of veterinary inspection.

((2)) (b) No animals may be removed from the category 1 restricted holding facility until they meet state and federal import regulations.

(c) Animals may be removed from the restricted holding facility without meeting state and federal import regulations if they are sent to a federally inspected slaughter establishment and have not commingled with any other animals not also similarly restricted. Animals that have commingled with others not also similarly restricted will be quarantined and must be tested negative for disease as determined by the state veterinarian within thirty days before being released from the holding facility.

(3) **Additional requirements for a category 2 restricted holding facility.** In addition to the requirements of subsection (1) of this section for all types of restricted holding facilities, the operator of a category 2 restricted holding facility must abide by the following conditions:

(a) There may be no contact between cattle not also similarly restricted ((and no commingling between separate shipments of cattle)).

((3) No cattle may be removed from the restricted holding facility until they meet state and federal import regulations.

((4)) (b) Cattle may be removed from the restricted holding facility without meeting state and federal import regulations if they are sent immediately to a federally inspected slaughter plant.

((5) The restricted holding facility will be maintained in a sanitary condition.

(6) The department of agriculture will be notified immediately of any outbreak of any infectious or contagious disease.

(7) The disposition of dead cattle will be in accordance with the laws relating to the disposal of dead livestock and in accordance with chapter 16-25 WAC.

(8) Accurate records will be kept for six years to account for all cattle entering and leaving the restricted holding facility. Records must be open for review by authorized department of agriculture personnel during normal business hours, and must be provided to the department upon the director's request.)) (c) There must be a minimum of thirty feet between the restricted holding facility and other lots and facilities.

(d) No common fences and gates may be used.

(e) Cattle in the restricted holding facility must not share water or feeding facilities accessible to other areas.

(f) The state veterinarian will conduct at least two and up to four random, unannounced audits during each licensing period. The audits will consist of a physical inspection. The licensee is also required to periodically confirm with the department cattle shipments identified on state import permits as destined to the restricted holding facility by telephone or e-mail. The rate for audits is established in WAC 16-91-040, but the total amount charged per licensed restricted holding facility shall not exceed one thousand five hundred dollars in a calendar year.

(g) (f) of this subsection shall not limit the number of inspections necessary to investigate potential violations or limit the number of inspections or total amount charged to ensure compliance after a violation is found. Category 2 restricted holding facilities that have been found to be in violation of animal health or import regulations may be charged for audits and inspections in excess of the one thousand five hundred dollar limit in (f) of this subsection. This section shall not limit the department from charging the time and mileage fee for inspecting livestock and related records during an investigation of a proven violation of section 3, chapter 66, Laws of 2010.

**(4) Additional requirements for category 3 restricted holding facilities.** In addition to the requirements of subsection (1) of this section for all types of restricted holding facilities, the operator of a category 3 restricted holding facility must abide by the following conditions:

(a) The operator of a category 3 restricted holding facility must abide by quarantine conditions set forth by the state veterinarian.

(b) Accurate records will be kept accounting for all animals entering the category 3 restricted holding facility for the length of the quarantine.

(c) An animal in a category 3 restricted holding facility may be legally removed from the facility only upon the animal's death or if the animal is moved from the location by permit from the state veterinarian's office on a United States Department of Agriculture VS form 1-27 for the movement of restricted or quarantined animals to another category 3 restricted holding facility.

(d) If an animal dies or is moribund in a category 3 restricted holding facility, the operator of the holding facility will immediately notify the state veterinarian of the animal's condition. The state veterinarian may require inspection and testing of the animal before disposal.

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

**WAC 16-30-039 ((Permit)) Applications for a restricted feedlot or restricted holding facility.** (1) Application forms to establish a restricted feedlot or restricted holding facility may be obtained from:

Washington State Department of Agriculture  
Animal Services Division  
1111 Washington St. S.E.  
P.O. Box 42577  
Olympia, Washington 98504-2577  
Phone: 360-902-1878.

(2) Applicants for restricted feedlots and restricted holding facilities must provide the following information on the application form:

(a) Name and address of applicant;

(b) Location of the restricted feedlot or restricted holding facility; and

(c) Drawing of the layout of the restricted feedlot or restricted holding facility.

AMENDATORY SECTION (Amending WSR 08-01-095, filed 12/17/07, effective 1/17/08)

**WAC 16-30-040 Expiration and revocation of restricted feedlot and restricted holding facility permits.**

(1) All permits for restricted feedlots and holding facilities expire on the 30th day of June of the year following the date of issue. Restricted feedlots and holding facilities must be inspected annually upon renewal and at any other time as determined by the director. Renewal of a restricted feedlot or a restricted holding facility is contingent upon accurate recordkeeping.

(2) Any violation of chapter 16.36 RCW or any of the rules adopted under that chapter is sufficient cause for the suspension or revocation of any permit to operate a restricted feedlot or restricted holding facility. In all proceedings for suspension or revocation of a restricted feedlot or restricted holding facility permit, the owner or manager has the right to request a hearing before revocation is made permanent. Any action shall be taken under the provisions of chapter 34.05 RCW, the Administrative Procedure Act.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-30-050	Brands.
WAC 16-30-060	Brand time.
WAC 16-30-070	Place of brand.

**WSR 10-20-092**  
**PERMANENT RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed September 30, 2010, 11:28 a.m., effective October 31, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department proposed to amend chapter 16-54 WAC to update import requirements to be consistent with other states. The department proposed to add a feral swine definition, a restricting holding facility definition and amend the virgin bull definition. Feral swine can carry the diseases of brucellosis and pseudorabies. The department prohibits entry of feral swine; therefore, it was necessary to define the difference of domestic swine and feral swine. This rule proposal added contagious equine metritis (CEM) to the import restrictions. CEM is a foreign animal disease that was introduced in the United States in 2009 and has the potential to be detrimental to our equine industry. This rule proposal also clarified bovine tuberculosis entry requirements and exemptions, and amended the trichomoniasis section in that accredited veterinarians may not perform official trichomoniasis testing of bulls in Washington state until they have successfully completed a training provided by the department and pass a proficiency examination.

Citation of Existing Rules Affected by this Order: Amending WAC 16-54-010, 16-54-068, 16-54-082, 16-54-085, and 16-54-086.

Statutory Authority for Adoption: Chapter 16.36 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 10-13-156 on June 23, 2010.

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 5, 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 5, Repealed 0.

Date Adopted: September 30, 2010.

Dan Newhouse  
 Director

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

**WAC 16-54-010 Definitions.** In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited free state" means a state that has been determined by United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) to have a zero prevalence of cattle and bison herds affected with

bovine tuberculosis as listed in Title 9 CFR Part 77.79 (January 1, 2006).

"Approved veterinary laboratory" means a laboratory that has been approved by National Veterinary Services Laboratories.

"Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official form (electronic or paper) from the state of origin or from APHIS, USDA executed by a licensed and accredited veterinarian or a veterinarian approved by APHIS, USDA. The certificate of veterinary inspection is also known as an "official health certificate."

"Class free and Class A, B, and C states" means states that are classified for brucellosis by USDA, APHIS in Title 9 CFR Part 78.41 (January 1, 2006).

"Consigned" means to deliver for custody or sale.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of WSDA or the director's authorized representative.

"Domestic bovine" means domesticated cattle, including bison.

"Domestic equine" means horses, donkeys, mules, ponies, and other animals in the *Equidae* family.

"Entry permit" means prior written permission issued by the director to admit or import animals or animal reproductive products into Washington state.

"Exotic animal" means species of animals that are not native to Washington state but exist elsewhere in the world in the wild state.

"Feral swine" means animals included in any of the following categories:

- Animals of the genus *Sus* that are free roaming on public or private lands and do not appear to be domesticated;

- Swine from domesticated stocks that have escaped or been released or born into the wild state;

- European wild hogs and their hybrid forms (also known as European wild boars or razorbacks), regardless of whether they are free roaming or kept in confinement; or

- Animals of the family *Tayassuidae* such as peccaries and javelinas, regardless of whether they are free roaming or kept in confinement.

"Immediate slaughter" means livestock will be delivered to a federally inspected slaughter plant within (~~three days~~) twelve hours of entry into Washington state.

"Mature vaccinate" means a female bovine over the age of twelve months that has been vaccinated, under directions issued by the state of origin, with a mature dose of brucellosis vaccine.

"Modified accredited state" means a state that has been determined by USDA, APHIS to have a prevalence of bovine tuberculosis of less than 0.1 percent of the total number of herds of cattle and bison as listed in Title 9 CFR Part 77.11 (January 1, 2006).

"Movement permit" means an entry permit that is valid for six months and permits the entry of domestic equine into Washington state.

"NPIP" means the National Poultry Improvement Plan.

"Official brucellosis test" means the official test defined by Title 9 CFR Part 78.1 (January 1, 2006).

"Official brucellosis vaccinate" means an official adult vaccinate or official calthood vaccinate as defined by Title 9 CFR Part 78.1 (January 1, 2006).

"Official individual identification" means identifying an animal or group of animals using USDA-approved or WSDA-approved devices or methods, including, but not limited to, official tags, unique breed registry tattoos, and registered brands when accompanied by a certificate of inspection from a brand inspection authority who is recognized by the director.

"Poultry" means chickens, turkeys, ratites, waterfowl, game birds, pigeons, doves, and other domestic fowl (~~(designated by statute)~~). (~~(Poultry does not mean free ranging birds defined as wildlife in RCW 77.08.010(16).)~~)

"Restricted feedlot" means a feedlot holding a permit issued under chapter 16-30 WAC.

"Restricted holding facility" means an isolated area approved and licensed by the director, as advised by the state veterinarian.

"Stage I, II, III, IV, or V pseudorabies state" means states as classified by the Pseudorabies Eradication State-Federal-Industry Program Standards (November 1, 2003).

"USDA, APHIS" means the United States Department of Agriculture Animal and Plant Health Inspection Service.

"Virgin bull" means a sexually (~~(active)~~) intact male bovine less than twelve months of age (~~(or a sexually intact male bovine between twelve and twenty-four months of age)~~) that is certified by the owner or the owner's designee as having had no breeding contact with female cattle.

"Wild animals" is defined in RCW 77.08.010(~~((17))~~) (61).

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

**WAC 16-54-068 Restrictions.** (1) It is a violation to import animals into Washington state that do not comply with the requirements of this chapter or any other Washington state regulation relating to animal health and care, or to the importation and movement of poultry, hatching eggs, and wildlife.

(2) All animals entering Washington state must comply with the requirements of USDA, APHIS regulations found at Title 9 CFR for movement or importation from foreign countries.

(3)(a) Livestock entering Washington state from a state where a reportable disease listed in WAC 16-70-010 has been diagnosed within the past thirty days must be accompanied by a valid entry permit and a certificate of veterinary inspection.

(b) The certificate of veterinary inspection shall also include written verification that the animals have not been exposed to any reportable disease (~~(nor located within ten miles of an area where such a disease has been diagnosed)~~).

(c) In the case of a state where vesicular stomatitis has been diagnosed, the certificate of veterinary inspection for susceptible livestock must be issued within twenty-four hours of shipment to Washington state and must contain:

(i) The temperature reading of each (~~(animal)~~) equine at the time of inspection; and

(ii) The following statement written by an accredited veterinarian:

"All animals identified on this certificate have been examined and found to be free from clinical signs of vesicular stomatitis. During the past thirty days, these animals have not been exposed to vesicular stomatitis (~~(or located within ten miles of an area where vesicular stomatitis has been diagnosed)~~)."

(d) Cattle entering Washington state from a state or a foreign state or province where vesicular stomatitis has been diagnosed must be held at their destination separate and apart from all other cattle for a period of seven days and reexamined by (~~(an accredited veterinarian)~~) the state veterinarian or designee at the end of that period.

(e) In the case of a state where contagious equine metritis (CEM) has been diagnosed, the certificate of veterinary inspection for equine must contain the following statement: "The equine and equine reproductive products listed in this document have not originated from a premises where *T. equigenitalis* has been isolated during the sixty days immediately preceding importation to Washington or from a location currently under quarantine or investigation for CEM. No female equine in the shipment has been bred naturally to, or inseminated with, semen from an intact male positive for CEM or from an intact male resident upon positive premises or under quarantine or investigation for CEM. The equine showed no clinical signs of CEM on the day of inspection or semen collection."

(4) Dogs, cats, and ferrets must be accompanied by an entry permit and proof of current rabies vaccination if they originate from a rabies quarantined area (~~(or an area where the state or country of origin has designated terrestrial rabies as endemic)~~).

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

**WAC 16-54-082 Domestic bovine animals—Importation requirements. Import health requirements.**

(1) Domestic bovine entering Washington state must have a certificate of veterinary inspection and an entry permit issued by the office of the state veterinarian prior to entry. Entry permits are required on all (~~(feeder)~~) cattle entering (~~(restricted feedlots and are to be obtained by the brand inspector of the state of origin and recorded on the brand document)~~) the state.

(2) Before entering Washington state, Canadian cattle, including calves, must be identified on the right hip by a "CAN" brand (C open-A N).

**Exemptions to import health requirements.**

(3) Unless an emergency rule is in effect, a certificate of veterinary inspection is not required for domestic bovine that are:

(a) Consigned to federally inspected slaughter plants for immediate slaughter; or

(b) Consigned to state-federal approved livestock markets for sale for immediate slaughter only; or

(c) Consigned to specifically approved livestock markets or restricted holding facilities where import requirements can be met; or

(d) Consigned to a restricted feedlot or a category 2 restricted holding facility, unless originating from a state or country with less than free status; or

(e) Cattle moving interstate from contiguous states on grazing permits.

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

**WAC 16-54-085 ((Domestic)) Bovine tuberculosis requirements.** (1) All domestic bovine ~~((from a modified accredited advanced or lower state))~~ must have a negative tuberculosis (TB) test within sixty days before entry into Washington state and must be identified with a USDA silver identification ear tag, or a USDA-approved RFID tag, or an orange brucellosis vaccination tag when:

(a) Originating from a state or country where a tuberculosis affected herd has been identified within the past twelve months;

(b) Originating from a state or country where there is an ongoing epidemiological investigation related to bovine infected with tuberculosis;

(c) Originating from a state or country where tuberculosis is endemic or present in wildlife populations; or

(d) Originating from a modified accredited advanced or lower state as defined by USDA, APHIS in Title 9 CFR, Chapter 1, Part 77 (January 1, 2010) or a country equivalent in status. Such domestic bovine ((from a modified accredited or lower state)) shall be held separate and apart from native cattle for sixty days and retested negative at least sixty days after entry into Washington state.

**(2) Dairy cattle (including steers and spayed heifers) six months of age or older** must:

(a) Test negative for bovine tuberculosis within sixty days before entering Washington state; and

(b) Be identified with a USDA silver identification ear tag, or a USDA-approved RFID tag, or an orange brucellosis vaccination tag.

**(3) Dairy heifers, steers, and bull calves less than six months of age** must:

(a) Be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility;

(b) Be held separate and apart from all other domestic bovine until they test negative for bovine tuberculosis after six months of age; and

(c) Be identified with a USDA silver identification ear tag, or a USDA-approved RFID tag, or an orange brucellosis vaccination tag.

(4) Dairy cattle are exempt from bovine tuberculosis testing requirements of subsections (2) and (3) of this section if they:

(a) Originate from an accredited bovine tuberculosis-free herd, as defined by USDA, APHIS in Title 9 CFR, Chapter 1, Part 77 (January 1, 2010), and if an accredited herd number and the date of the last bovine tuberculosis test are shown on the certificate of veterinary inspection;

(b) Are consigned to federally inspected slaughter plants for immediate slaughter;

(c) Are consigned to slaughter through state and federally approved public livestock markets and remain in slaughter channels; or

(d) Enter a category 2 restricted holding facility (restricted feedlot) to be fed for slaughter.

**(5) Cattle used for rodeo or timed events.**

(a) All cattle used for rodeo or timed events, except those imported directly from Mexico, must be accompanied by proof recorded on a certificate of veterinary inspection of a negative bovine tuberculosis test within twelve months before entry into Washington state.

(b) Calves under six months old that were born and have continuously resided in the state of Washington are excluded from this requirement.

~~((5))~~ **(6) Mexican cattle** - All cattle imported from Mexico that enter Washington, including those imported for rodeo or recreation purposes, must be sexually neutered and must bear official Mexican identification and brand before entry.

(a) All Mexican cattle must be accompanied by proof of two negative bovine tuberculosis tests conducted in the United States after entry from Mexico. The second negative test must be a minimum of sixty days after the first test and within thirty days before entry into Washington state.

(b) All Mexican cattle that remain in the state of Washington shall be tested annually for tuberculosis.

(c) If Mexican cattle entering Washington state are not accompanied by proof of two negative bovine tuberculosis tests prior to entry, they will be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility and kept separate and apart from Washington cattle until the completion of required tests.

(d) Sexually intact Mexican beef cattle may enter only with a prior entry permit and at the discretion of the director.

~~((Exemptions to domestic bovine tuberculosis test requirements:~~

~~(6) Dairy cattle are exempt from bovine tuberculosis testing requirements if they:~~

~~(a) Originate from an accredited bovine tuberculosis-free herd, as defined by USDA, APHIS in Title 9 CFR Chapter 1 Part 77 (January 1, 2006), and if an accredited herd number and the date of the last bovine tuberculosis test are shown on the certificate of veterinary inspection;~~

~~(b) Are consigned to federally inspected slaughter plants for immediate slaughter; or~~

~~(c) Are consigned to slaughter through state and federally approved sale yards and remain in slaughter channels;))~~

(e) Mexican cattle are exempt from the second bovine tuberculosis test and isolation requirements if their official Mexican identification remains intact and they are consigned to a federally inspected slaughter plant for immediate slaughter.

(7)(a) Cattle that have not met the ~~((department's))~~ tuberculosis requirements in this subsection may enter, with approval from the director, a category 1 restricted holding facility in Washington state until testing requirements have been met.

(b) The category 1 restricted holding facility must be approved by the director and operated in accordance with a written agreement between the facility owner and the director.

(c) The restricted holding facility must be maintained and all inspections and testing done at the owner's expense.

~~((8) Dairy steers and spayed heifers are exempt from bovine tuberculosis testing requirements before entry into Washington state if they are entering restricted feedlots to be fed for slaughter.~~

~~(9) Mexican cattle are exempt from the second bovine tuberculosis test and isolation requirements if their official Mexican identification remains intact and they are consigned to a federally inspected slaughter plant for immediate slaughter.))~~

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

**WAC 16-54-086 Bovine trichomoniasis requirements.** (1) **Breeding bulls** may be imported into the state of Washington if they meet the following requirements:

(a) The bulls originate from a herd wherein all bulls have tested negative for bovine trichomoniasis since they were removed from female cattle; ~~((and))~~ or

(b) The bulls have tested negative to a bovine trichomoniasis ~~((culture))~~ quantitative polymerase chain reaction (qPCR) test within thirty days before import and have had no contact with female cattle from the time of the test to the time of import; or

(c) The bulls have tested negative to a bovine trichomoniasis culture test, if from a state that recognizes a culture test as an official test; or

~~((d) If the bulls originate from a herd where one or more bulls or cows have been found infected with bovine trichomoniasis within the past twelve months, the bulls must have ((three consecutive negative bovine trichomoniasis culture tests one week apart or one)) two negative ((polymerase chain reaction (PCR))) qPCR tests one week apart. The samples for each test must be collected within thirty days before cattle are imported into Washington state, and an import permit must be obtained from the director and include a certifying statement that the bulls originated from an infected herd.~~

(2) Before arrival at their destination in Washington state, all imported bulls must be identified with official identification or an official trichomoniasis bangle tag.

(3) Bulls that enter Washington state without meeting the bovine trichomoniasis requirements of this section will be quarantined at the owner's expense until they have had ~~((three consecutive negative bovine trichomoniasis culture tests one week apart or one))~~ two negative ((PCR)) qPCR tests one week apart.

(4)(a) Any bull or cow that is positive to a trichomoniasis ~~((culture))~~ test, and any herd in which one or more bulls or cows are found infected with trichomoniasis is considered infected.

(b) In the case of bulls testing positive to trichomoniasis, the herd shall be quarantined pending an epidemiological investigation to determine the source of the infection, and as long as infection persists in the herd.

(c) Infected bulls will be quarantined and will not be used for breeding. They must be slaughtered, sold for slaughter, or sent to a restricted feedlot or category 2 restricted holding facility to remain in slaughter channels.

(5) **Certification and proficiency testing and types of tests.** The state veterinarian will determine trichomoniasis training for veterinarians and laboratories, and the types of tests used to determine trichomoniasis infection. All sampling will be obtained by pipette scrapings from the prepuce and glans of a bull.

~~(a) ((Only veterinarians registered with WSDA shall collect samples for official tests for trichomoniasis. Prior to being granted registered status, all veterinarians who will collect samples for trichomoniasis testing shall attend an educational seminar conducted by the animal services division on trichomoniasis and proper sample collection techniques.)) All trichomoniasis testing of bulls in Washington state shall be performed by a veterinarian accredited by the United States Department of Agriculture, Animal and Plant Health Inspection Service (USDA APHIS). In addition, all accredited veterinarians testing bulls in Washington state for trichomoniasis are required to successfully complete training and pass a trichomoniasis testing procedure proficiency examination provided by the department. Effective January 1, 2011, accredited veterinarians may not perform official trichomoniasis testing of bulls in Washington state until they have successfully completed the training and passed the proficiency examination.~~

A schedule of training opportunities is available by contacting the department at:

Washington State Department of Agriculture  
Animal Services Division  
1111 Washington Street S.E.  
P.O. Box 42577  
360-902-1878

(b) Registered veterinarians shall only utilize official laboratories recognized by the state veterinarian for ~~((culture))~~ testing of trichomoniasis samples.

(c) Registered veterinarians collecting samples in the state of Washington shall submit results of all trichomoniasis tests and all official identification on official trichomoniasis test and report forms to the animal services division within five business days of receiving test results from an official laboratory or identifying virgin bulls with official trichomoniasis bangle tags.

(d)(i) Polymerase chain reaction is accepted as an official test when completed by a qualified laboratory approved by the director and when the sample is received by the laboratory within forty-eight hours of collection.

(ii) Other tests for trichomoniasis may be approved as official tests by the state veterinarian after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established.

(iii) An official test is one in which the sample is received in the official laboratory in good condition within forty-eight hours of collection. Samples in transit for more than forty-eight hours will not be accepted for official testing and must be discarded. Samples that have been frozen or exposed to high temperatures must also be discarded.

**Exemptions to bovine trichomoniasis test requirements.**

(6) **Virgin bulls** are exempt from bovine trichomoniasis test requirements. If sold, virgin bulls must be officially identified and accompanied by a certificate signed by the owner or the owner's designee that they have had no breeding contact with female cattle.

**WSR 10-20-093**

**PERMANENT RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed September 30, 2010, 11:30 a.m., effective October 31, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department proposed to amend chapter 16-86 WAC to add trichomoniasis to the rule. The department proposed to add definitions, add a new section outlining the process and testing requirements, and add training requirements for veterinarians that will be performing the trichomoniasis testing.

Citation of Existing Rules Affected by this Order: Amending WAC 16-86-005.

Statutory Authority for Adoption: Chapter 16.36 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 10-13-160 on June 23, 2010.

Changes Other than Editing from Proposed to Adopted Version: Adding "or unknown breeding history" to WAC 16-86-115 (4)(c) to clarify.

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 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 2, Amended 1, Repealed 0.

Date Adopted: September 30, 2010.

Dan Newhouse  
Director

AMENDATORY SECTION (Amending WSR 09-03-019, filed 1/9/09, effective 2/9/09)

**WAC 16-86-005 Definitions.** In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited veterinarian" means a veterinarian licensed to practice veterinary medicine, surgery, and dentistry in the state of Washington and approved by the United States

Department of Agriculture (USDA) Veterinary Services to participate in state-federal cooperative programs.

"Breed registry tattoo" means individual registry tattoos issued by breed associations.

"Brucellosis vaccine" means only those *Brucella abortus* products that are approved by and produced under license of the USDA for injection into cattle to enhance their resistance to brucellosis.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of WSDA or the director's authorized representative.

"Herd plan" means a written management agreement between the animal owner and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner, in which each participant agrees to undertake actions specified in the herd plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd and to work toward eradicating the disease in the infected herd.

"Official calfhoo d vaccinate" means female cattle between four and twelve months of age that are vaccinated with brucellosis vaccine at a calfhoo d dose (2cc subcutaneously).

"Official individual identification" means identifying an animal or group of animals using devices or methods approved by the director, including, but not limited to, official tags, unique breed registry tattoos, and registered brands when accompanied by a certificate of inspection from a brand inspection authority who is recognized by the director.

"Official Washington mature vaccinate" means female cattle over the age of twelve months that are native to Washington state, or originate from other class free states or countries to be determined on a case-by-case investigation by the director, and vaccinated with a reduced dose of brucellosis vaccine (0.25cc subcutaneously) under directions issued by the director.

"Premises" means a location or physical address.

"Timed events" means competitive events that take place where time elapsed is the factor that determines the placing of individuals competing in the event.

"USDA" means the United States Department of Agriculture.

"Vaccination tattoo" means a tattoo in the right ear bearing the United States registered shield and V preceded by a number indicating the quarter of the year and followed by a number corresponding to the last digit of the year in which the animal was vaccinated with strain 19 *Brucella* vaccine. For strain RB-51 calfhoo d vaccination, an R precedes the shield and V. In the case of strain RB-51 mature vaccination, an M precedes the shield and V. For strain RB-51 vaccinates, the last number of the tattoo corresponds to the last digit of the year in which vaccine was administered.

"Virgin bull" means a sexually intact male bovine less than twelve months of age that is certified by the owner or the owner's designee with a signed statement as having had no breeding contact with female cattle.

**TRICHOMONIASIS**NEW SECTION

**WAC 16-86-115 Trichomoniasis in Washington cattle.** (1) Any sexually intact bovine, except for bison, that is found test-positive for trichomoniasis, and any herd in which one or more bulls or cows are found test-positive for trichomoniasis, is considered infected. Test-positive means a positive result on a quantitative polymerase chain reaction (qPCR) test for trichomoniasis.

(2) In the case of infected sexually intact bovine, the herd shall be quarantined pending an epidemiological investigation to determine the source of the infection.

(3) All exposed herds will be identified by an accredited veterinarian in conjunction with the department. An exposed herd is defined as a cattle herd which has had, within the past twelve months, direct commingling or cross-fence contact with an infected herd during a time of potential breeding activity. The owner of exposed herds will be notified of the possible exposure and requested to test the herd using a qPCR test. All testing will be at the owner's expense.

(4)(a) Infected bulls will be quarantined and branded high on the tail head by the department with a USDA regulatory S-brand, and will not be used for breeding.

(b) Infected bulls must be slaughtered, sold for slaughter, sent to a restricted feedlot, or to a category 2 restricted holding facility to remain in slaughter channels. Infected bulls shall only be moved when accompanied by a USDA form VS 1-27.

(c) Bulls of unknown origin or unknown breeding history offered for sale at a livestock market must be tested negative for trichomoniasis by a qPCR test before being turned out with breeding stock or must be sold for slaughter, sent to a restricted feedlot, or to a category 2 restricted holding facility to remain in slaughter channels.

(d) A nonpregnant female, with no calf at side, which is identified by the owner as being from an infected herd and is offered for sale at a livestock market, must remain in slaughter channels.

(5) The quarantine will be removed when all remaining bulls in the herd test negative to a second qPCR test for trichomoniasis and following proof of removal of infected bulls. Bulls must have a minimum of two negative qPCR tests at least one week apart for quarantine release. All bulls from infected herds, except virgin bulls, will be tested using a qPCR test the following trich-year before breeding. A trich-year means the period from September 1st to August 31st of any given year. Bulls from infected herds may not have to be tested the following trich-year if a herd plan has been approved by the state veterinarian.

(6) Information that cattle have tested positive for trichomoniasis may be supplied to county extension agents, accredited veterinarians, and industry representatives. Each month, the department may publish a press release of counties that have infected herds.

NEW SECTION

**WAC 16-86-116 Duties of certified, accredited veterinarians—Training requirement for veterinarians performing trichomoniasis testing in cattle.** (1) Effective January 1, 2011, accredited veterinarians may not perform official trichomoniasis testing of bulls in Washington state until they are certified to do so by having successfully completed training and passed a proficiency examination provided by the department.

(2) All official trichomoniasis testing of bulls in Washington state shall be performed by a certified, accredited veterinarian.

(3) A schedule of training opportunities is available by contacting the department at:

Washington State Department of Agriculture  
Animal Services Division  
1111 Washington Street S.E.  
P.O. Box 42577  
Olympia, Washington 98504-2577  
360-902-1878

(4) Certified veterinarians shall utilize only official laboratories recognized by the state veterinarian for testing trichomoniasis samples. Positive test results will be sent to the department by the next business day.

(5)(a) Quantitative polymerase chain reaction (qPCR) is the test method for official tests accepted by the department.

(b) An official test is one in which the sample is collected by a certified veterinarian and received in the official laboratory in good condition within forty-eight hours of collection. Samples in transit for more than forty-eight hours or have been frozen or exposed to high temperatures will not be accepted for official testing. All samples shipped to the laboratory must be in pouch media, lactated Ringer's solution, or in normal saline solution. All sampling will be obtained by pipette scrapings from the prepuce and glans of a bull.

**WSR 10-20-094****PERMANENT RULES****DEPARTMENT OF AGRICULTURE**

[Filed September 30, 2010, 11:32 a.m., effective October 31, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department proposed to amend chapter 16-604 WAC to correct references to the Code of Federal Regulation[s] as well as make it clear and readable. The department also proposed to change the name of this WAC to Public livestock markets—Health, facilities, and sanitation.

Citation of Existing Rules Affected by this Order: Amending WAC 16-604-009, 16-604-020, and 16-604-025.

Statutory Authority for Adoption: Chapter 16.36 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 10-13-157 on June 23, 2010.

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 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: September 30, 2010.

Dan Newhouse  
Director

### Chapter 16-604 WAC

#### **PUBLIC LIVESTOCK MARKETS—HEALTH, (~~BRANDS AND WEIGHTS AND MEASURES~~) FACILITIES, AND SANITATION**

AMENDATORY SECTION (Amending WSR 92-21-022, filed 10/13/92, effective 11/13/92)

**WAC 16-604-009 Definitions.** For the purposes of this order:

~~((1)) "Market" means public livestock market as defined in RCW 16.65.010(1).~~

~~((2)) "C.F.R." means Code of Federal Regulations.~~

"Consigned" means to deliver for sale at a public livestock market.

"Department" means the department of agriculture of the state of Washington.

~~((3)) "Director" means the director of the department or (his) the director's~~ duly authorized representative.

~~((4)) "Licensee" means any person licensed to operate a public livestock market.~~

~~((5)) "Livestock" ((except as used in the brand inspection regulations of this order)) means ((all)) cattle, bison, horses, mules, donkeys, swine, sheep, goats, rabbits, llamas, alpacas, ratites, poultry ((and rabbits)), waterfowl, game birds, and other species so designated by statute. "Livestock" does not mean free ranging wildlife as defined in Title 77 RCW.~~

~~((6)) "Livestock" as used in the brand inspection regulations of this order means all cattle of whatever species, breed or age.~~

~~((7)) "Lot" means livestock of one ownership.~~

~~((8)) "Market" means public livestock market as defined in RCW 16.65.010(1).~~

"Market veterinarian" means a (~~graduate~~) veterinarian licensed in the state of Washington, accredited by USDA, and (~~employed by~~) contracted with a public livestock market.

"Official individual identification" means identifying an animal or group of animals using USDA-approved or WSDA-approved devices or methods including, but not limited to, official tags, unique breed registry tattoos, and regis-

tered brands when accompanied by a certificate of inspection from a brand inspection authority who is recognized by the director.

AMENDATORY SECTION (Amending WSR 92-21-022, filed 10/13/92, effective 11/13/92)

**WAC 16-604-020 Facilities and sanitation.** Licensees shall provide facilities and sanitation for the prevention of livestock diseases at their public livestock markets, as follows:

(1) The licensee shall be responsible for the moving and yarding of livestock necessary for (~~brand~~) animal disease traceability, brand, or animal health inspection. Personnel employed by the (~~salesmarket~~) public livestock market will be required to sort and designate any (~~apparent~~) unhealthy animals, as determined by the market veterinarian, before they are admitted into trade channels.

(2) The floors of all pens and alleys that are part of a public livestock market shall be constructed of concrete or similar impervious material and kept in good repair, with a slope of not less than one-fourth inch per foot to adequate drains leading to an approved system(~~—Provided, That~~). The director may designate certain pens within such public livestock markets as feeding and holding pens and the floors and alleys of such pens shall not be subject to the aforementioned surfacing requirements.

(3) Feeding and holding pens maintained in an area adjacent to a public livestock market shall be constructed and separated from such public livestock market, in a manner prescribed by the director, in order to prevent the spread of communicable diseases to the livestock sold or held for sale in such public livestock market.

(4) All yards, chutes and pens used in handling livestock shall be constructed of such material which will render them easily cleaned and disinfected, and such yards, pens and chutes shall be kept clean, sanitary and in good repair at all times, as required by the director.

(5) Sufficient calf pens of adequate size to prevent overcrowding shall be provided, and such pens when used shall be cleaned and disinfected no later than the day subsequent to each sale.

(6) All swine pen facilities shall be covered and when used shall be cleaned and disinfected no later than the day subsequent to each sale.

(7) A water system carrying a pressure of forty pounds psi and supplying sufficient water to thoroughly wash all pens, floors, alleys and equipment shall be provided.

(8) Sufficient quarantine pens of adequate capacity shall be provided. Such pens shall be used to hold only cattle reacting to brucellosis and tuberculosis or to quarantine livestock with other contagious or communicable diseases and shall be:

(a) Hard surfaced with concrete or similar impervious material and shall be kept in good repair.

(b) Provided with separate watering facilities.

(c) Painted white with the word "quarantine" painted in red letters not less than four inches high on such quarantine pen's gate.

(d) Provided with a tight board fence not less than five and one-half feet high.

(e) Cleaned and disinfected not later than one day subsequent to the date of sale.

To prevent the spread of communicable diseases among livestock, the director shall have the authority to cause the cleaning and disinfecting of any area or all areas of a public livestock market and equipment or vehicles with a complete coverage of disinfectants approved by the director.

AMENDATORY SECTION (Amending WSR 92-21-022, filed 10/13/92, effective 11/13/92)

**WAC 16-604-025 Health regulations.** (1) The director shall require such testing, treating, identifying, examining and recordkeeping of livestock by a market veterinarian and/or livestock market as in the director's judgment may be necessary to prevent the spread of brucellosis, tuberculosis, or any other infectious, contagious or communicable disease among the livestock of this state.

(2) For livestock health purposes, the director shall establish procedures for inspection of livestock markets for compliance with sanitary requirements and to observe livestock being handled. Such inspections shall be conducted by animal health inspection personnel working under the jurisdiction of the director. Such inspectors will not issue health certificates, perform "private treaty work" or engage in functions other than those in connection with surveillance for communicable, infectious animal diseases and sanitary measures. Operators of markets shall arrange with a market veterinarian to perform animal health inspections, issue health certificates or certificates of veterinary inspection, perform private treaty work, and perform any testing, quarantine, or movement restrictions of animals as directed by the director of agriculture or required by federal law. Departmental inspectors will work in cooperation with any market veterinarians in performing yard inspections.

(3) Markets handling swine shall be required to identify all boars and sows with official identification. Markets must comply with chapters 16-54 and 16-80 WAC and ~~((Title 9, Code of Federal Regulations, Parts 71 and 76;))~~ 9 C.F.R. Sec. 71.19 and 71.20 when handling swine for market.

(4) No livestock may leave the market for points outside the state of Washington without first meeting the requirements of the state of destination and ~~((Title 9, Subchapter C, Code of Federal Regulations))~~ 9 C.F.R. Parts 71 through 89, interstate transportation of animals (including poultry) and animal products.

(5) Any animal or animals which have been found by the ~~((inspector))~~ market veterinarian to be diseased or unhealthy shall be handled in accordance with instructions ~~((of a))~~ from the state veterinarian as to disposition. ~~((He))~~ The market veterinarian may require they be marked "slaughter only" and:

(a) Be sold only to immediate slaughter at a federally inspected slaughter plant;

(b) Require they be sold "as is" with an announcement;

(c) Require they be returned to consignor with or without quarantine; or

(d) Require they be held under quarantine in the yard.

(6) ~~((Brucellosis.))~~ Market requirements.

(a) Animal health requirements as prescribed in chapters 16-54 and 16-86 WAC shall be met for animals entering or

released from the public livestock markets. Those public livestock markets that are not specifically approved as per ~~((Title 9, Part 78, Subchapter C, Code of Federal Regulations))~~ 9 C.F.R. Part 78 that wish to provide brucellosis blood testing as approved by the director shall comply with the facilities requirements for specifically approved ~~((saleyards))~~ public livestock markets. Specifically approved ~~((yards (Title 9, Part 78, Code of Federal Regulations))~~ markets (9 C.F.R. Part 78) can accept cattle and bison from out-of-state without meeting the import requirements provided that all Washington state animal health requirements are met at the ~~((yard))~~ market upon arrival and the animals are consigned to sell through that market. Those ~~((yards))~~ markets not specifically approved can receive from out-of-state only those cattle and bison that have met all animal health requirements prior to entering the state.

(b) Animals released from Washington markets to points outside the state shall be in compliance with ~~((Federal Interstate Regulations and must meet the import requirements of the state of destination))~~ subsection (4) of this section.

(c) ~~((Salesyard))~~ Public livestock market brucellosis reactors will be:

(i) Tagged with reactor identification tags in the left ear and branded "B" ~~((on the left jaw))~~ according to 9 C.F.R. Sec. 78.1.

(ii) Placed in a "quarantine pen."

(iii) Sold at the close of the regular sale to licensed slaughterer or their designated agent operating under federal or state inspection or return to the farm of origin under a written quarantine.

(iv) The market veterinarian shall issue VS Form 1-27 on all suspects or reactors immediately after their sale or detection and the original copy must accompany the animals to slaughter or back to the farm of origin. The pink and yellow copies are to be mailed immediately to the state ~~((veterinarian))~~ veterinarian's office at P.O. Box 42560, Olympia, Washington, 98504-2560 and the green copy mailed immediately to the destination of shipment ~~((or shall accompany shipment)).~~

(v) All brucellosis reactors consigned and transported directly to a licensed slaughtering establishment for immediate slaughter cannot be transported with any animals not so consigned. All trucks and railway cars or other conveyances used for the transportation of such reactors shall be cleaned and disinfected at destination under state and federal supervision.

(7) ~~((For the purpose of tracing dealer consigned livestock to herds of origin for health purposes, the certificates of permit (S.F. No. 4847) will be the accepted document for transferring tracing information to the director at the market.~~

Exceptions — this section does not apply to dairy cattle under twenty months nor beef cattle under twenty-four months of age.) The market must provide to the department a certificate of permit (haul slip) for all livestock consigned to the market.

(8) All public livestock markets shall officially identify all sexually intact cattle and bison over eighteen months of age with ~~((an))~~ official ((backtag)) individual identification prior to being presented for sale. Records of ~~((the backtags))~~ official individual identification applied to the animal indi-

cating seller, buyer, and brucellosis vaccination status if animal is a female shall be maintained by the market for a period of one year.

(9) ~~((Immediate slaughter))~~ Slaughter-only livestock.

(a) Livestock purchased through a market in the state of Washington for ~~((slaughter in the state of Washington may))~~ slaughter-only must be consigned ~~((only))~~ to a ~~((licensed slaughtering establishment,))~~ federally inspected slaughter plant, restricted ((feed lot) feedlot, or ((another market for sale for immediate slaughter)) a category 2 restricted holding facility. Such animals will be cleared from the market on a Washington state cattle brand certificate and must reach the declared point of destination ~~((at))~~, slaughter establishment, category 2 restricted holding facility or restricted ((feed lot) feedlot, within ((ten days)) twelve hours of first being declared ~~((immediate slaughter))~~ slaughter-only livestock. Official individual identification ((tags may)) must not be removed and ~~((clearance papers))~~ cattle brand certificates must be presented with the animals at declared point of destination and livestock shall not be diverted to any other point.

(b) Cattle that have been declared ~~((immediate slaughter))~~ slaughter-only cattle shall not be commingled with cattle not so declared.

(c) No Washington state cattle brand certificate will be issued at any market unless the purchaser first ~~((certifies the exact))~~ provides the full name of the purchaser and seller and the complete physical address of the destination ((of such domestic animals or animal)), and ((such animals)) the cattle are identified to herd of origin ~~((in a manner prescribed by the director))~~.

(10) Health of swine.

(a) Intrastate consignments. Washington swine that are healthy, ~~((unexposed))~~ not known to be affected with or exposed to any contagious or infectious swine diseases, and not under quarantine may enter and leave any market in the state after veterinary inspection.

(b) Interstate consignments.

(i) Slaughter swine. Swine not known to be affected with or exposed to infectious or communicable swine diseases may be ~~((moved))~~ imported into the state without ~~((health))~~ a certificate of veterinary inspection to a recognized ~~((slaughtering center))~~ federally inspected slaughter plant, ((public stockyards under federal supervision)) or ((livestock market)) specifically approved livestock market under ((Part 76, Title 9, Code of Federal Regulations)) 9 C.F.R. Sec. 71.19 for immediate slaughter, and may not be diverted ~~((enroute))~~ en route. The waybills or certificates for shipment must contain an entry permit number obtained from the office of the state veterinarian and must state for "slaughter only to a federally inspected slaughter plant."

(ii) Feeder and breeder swine - must have originated from states in Stage IV or Stage V pseudorabies free status and/or comply with the entry requirements as stated in chapter 16-54 WAC. Animals must be accompanied by an official ((health)) certificate of veterinary inspection stating that they are clinically free of symptoms of infectious and contagious disease or exposure thereto, unless consigned to a specifically approved livestock market ((approved)) under ((Part 76, Title 9, CFR)) 9 C.F.R. Part 85. The certificate of veterinary inspection will contain an entry permit number obtained from

the office of the state veterinarian and the consignor and consignee will be properly listed with exact ~~((mailing))~~ physical origin and destination addresses clearly shown. Such ~~((hogs))~~ swine must not come in contact with ~~((hogs))~~ swine from states of unlike status prior to or during shipment, and must have been transported in one continuous movement.

(c) Swine brucellosis. All interstate swine over six months of age entering public livestock markets to be sold for breeding purposes must have been tested and found negative to swine brucellosis within thirty days prior to entry or originate in a validated swine brucellosis free herd or state. Swine not in compliance with this requirement will not be sold as breeder swine. ~~((Swine originating from a herd where brucellosis is known to exist will not be sold as breeder swine.))~~

## WSR 10-20-095

### PERMANENT RULES

### DEPARTMENT OF LICENSING

[Filed September 30, 2010, 12:27 p.m., effective October 31, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Consumers need to know which real estate brokerage they are contracting with. This change would allow marketing and branding, but still keep the consumer knowledgeable on which real estate firm they are transacting business with.

Citation of Existing Rules Affected by this Order: Amending 1 [WAC 308-124B-210].

Statutory Authority for Adoption: RCW 18.85.041(1).

Other Authority: RCW 18.85.041(5).

Adopted under notice filed as WSR 10-16-030 on July 26, 2010.

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: September 30, 2010.

Walt Fahrner  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124B-210 Advertising.** A firm must operate under their firm name or an assumed name as licensed.

(1) All advertising or solicitations without limitation for brokerage services, to include the internet-based advertising,

web pages, e-mail, newspaper, and other visual media must include the firm name or an assumed name as licensed.

(2) Brokers and managing brokers advertising using a name, title, or brand without obtaining an assumed name license must:

(a) Always use and display the firm's licensed name or the firm's licensed assumed name in a clear and conspicuous manner in conjunction with the use of such name, title, or brand.

(b) Not use a name, title, or brand which suggests a legal entity separate and distinct from the firm, such as "Inc.," "LLC," "LLP," "Corp.," "firm," or "company."

(c) Not use name, title, or brand commonly understood to reference a firm or an office, such as "realty," "realtors," "firm," or "real estate."

(d) Receive advance written approval from the firm's designated broker to use an unlicensed title or brand.

### WSR 10-20-100

#### PERMANENT RULES

#### DEPARTMENT OF LICENSING

[Filed September 30, 2010, 2:28 p.m., effective October 31, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Consumers need to know which real estate brokerage they are contracting with. This change would allow marketing and branding, but still keep the consumer knowledgeable on which real estate firm they are transacting business with.

Citation of Existing Rules Affected by this Order: Amending WAC 308-124E-100, 308-124C-125, 308-124C-130, 308-124C-135, 308-124C-137, 308-124C-140, and 308-124C-145.

Statutory Authority for Adoption: RCW 18.85.041(1).

Other Authority: RCW 18.85.041 (7), (12)(a) and 18.85.275.

Adopted under notice filed as WSR 10-16-031 on July 26, 2010.

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 7, 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 7, Repealed 0.

Date Adopted: September 30, 2010.

Walt Fahrner  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124C-125 Designated broker responsibilities.** Designated broker responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Ensuring accessibility of the firm's offices and records to the director's authorized representatives, and ensure that copies of required records are made available upon demand.

(4) Ensuring monthly reconciliation of trust bank accounts are completed, up-to-date and accurate.

(5) Ensuring monthly trial balances are completed, accurate and up-to-date.

(6) Ensuring that the trial balance and the reconciliation show the account(s) are in balance.

(7) Ensuring policies or procedures are in place to account for safe handling of customer or client funds or property.

(8) Maintaining up-to-date written assignments of delegations of managing brokers and branch manager duties. The delegation agreement(s) must be signed by all parties to the agreement. Delegations must:

(a) Only be made to managing brokers licensed to the firm.

(b) Address duties of record maintenance, advertising, trust accounting, safe handling of customer/client funds and property, authority to bind, review of contracts, modify or terminate brokerage service contracts on behalf of the firm, supervision of brokers and managing brokers, and heighten supervision of brokers that are licensed for less than two years.

(c) Address hiring, transferring and releasing licensees to or from the firm.

(9) Maintaining, implementing and following a written policy that addresses:

(a) Referral of home inspectors in compliance with Washington Administrative Code.

(b) Levels of supervision of all brokers (~~and~~), managing brokers and branch managers of the firm.

(c) ~~((The))~~ Review of all brokerage service contracts ((which involve)) involving any ((affiliated licensee)) broker of the firm ((that has been)) licensed for less than two years. ((This)) Review must be completed by the designated broker or their delegated managing broker within five ((calendar)) business days of ((client's signature and shall be evidenced by the reviewer's initials and date on the first page of the documents)) mutual acceptance. Documented proof of review shall be maintained at the firm's record locations.

(10) Ensuring that all persons performing real estate brokerage services on behalf of the firm and the firm itself are appropriately licensed.

(11) Ensuring affiliated licensees submit their transaction documents to the designated broker, branch manager or delegated managing broker in a ~~((timely manner))~~ within two business days of mutual acceptance.

(12) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124C-130 Branch manager responsibilities.** Branch manager responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Ensuring accessibility of the firm's offices and records to the director's authorized representatives, and ensuring that copies of required records are made available upon demand.

(4) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

~~((Following the written policy on referral of home inspectors.~~

~~((6))~~ (6) Ensuring all persons employed, contracted or representing the firm at the branch location are appropriately licensed.

~~((7))~~ (6) Overseeing of the branch licensees, employees and contractors.

~~((8))~~ (7) Ensuring ~~((brokers, managing brokers and branch managers))~~ affiliated licensees are ~~((timely))~~ submitting their transaction documents to the designated broker or delegated managing broker ~~((, if delegated))~~ within two business days of mutual acceptance.

~~((9))~~ (8) Hiring, transferring and releasing licensees to and from the branch.

~~((10))~~ (9) Overseeing all activity within the branch office including supervision of brokers and managing brokers, and heightened supervision of brokers ~~((that are))~~ licensed for less than two years.

~~((11))~~ (10) If delegated - client/customer funds or property:

(a) Ensuring monthly reconciliation of trust bank accounts are completed, up-to-date and accurate.

(b) Ensuring monthly trial balances are completed, accurate and up-to-date.

(c) Ensuring that the trail balance and the reconciliation show the account(s) are in balance.

(d) Ensuring safe handling of customer/client funds and property.

(e) Ensuring policies or procedures are in place to account for safe handling of customer or client funds or property.

~~((12))~~ (11) If delegated - other duties:

(a) Record maintenance.

(b) Proper and legal advertising.

(c) Review of contracts.

(d) Modify or terminate brokerage service contracts on behalf of the firm.

(e) Following and implementing the designated brokers written policy:

(i) On referral of home inspectors.

(ii) Addressing levels of supervision of all brokers and managing brokers.

~~((ii))~~ That includes a review of all ~~((brokers (with less than two years of licensure) transactions within five calendar days of client's signature.~~

This review must be evidenced with the designated broker or delegated managing broker's initials and date on each brokerage service contract)) brokerage service contracts involving any broker licensed for less than two years. Review must be completed within five business days of mutual acceptance. Documented proof of review shall be maintained at the firm's record locations.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124C-135 Managing broker responsibilities.** Managing broker responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

(4) Keeping the real estate program informed of his or her current mailing address.

(5) Following the designated broker's written policy on referral of home inspectors.

(6) Being appropriately licensed.

(7) Delivering transaction documents and brokerage service contracts to designated broker or delegated managing broker within two business days of mutual acceptance.

(8) Following licensing laws and rules regarding:

(a) Safe handling of customer/client funds and property.

(b) Timely delivery of customer/client funds or property.

(c) Proper and legal advertising.

(d) Modifying or terminating brokerage service contract on behalf of the firm.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124C-137 Managing broker delegated responsibilities.** If delegated by the designated broker, the managing brokers responsibilities include, but are not limited to, ensuring:

(1) Monthly reconciliation of trust bank accounts are completed, up-to-date and accurate.

(2) Monthly trial balances are completed, accurate and up-to-date.

(3) ~~((The))~~ Trial balance and the reconciliation show the account(s) are in balance.

(4) Policies or procedures are in place to account for safe handling of customer or client funds or property.

(5) Required records are maintained and up-to-date.

(6) Advertising is proper and legal.

(7) Timely review of contracts.

(8) Brokerage service contracts are modified or terminated appropriately on behalf of the firm.

(9) Persons employed, contracted or representing the firm that the managing broker has delegated authority to supervise are appropriately licensed.

(10) Brokers and managing brokers (~~(timely)~~) submit their transaction documents to the designated broker or delegated managing broker (~~(-if delegated)~~) within two business days of mutual acceptance.

(11) Proper and adequate supervision of brokers and managing brokers, and heighten supervision of brokers that are licensed for less than two years.

(12) Accessibility of the firm's offices and records to the director's authorized representatives, and must ensure that copies of required records are made available upon demand.

(13) All affiliated licensees are following the designated brokers written policy on:

(a) Referral of home inspectors.

(b) Levels of supervision for all brokers and managing brokers.

(c) ~~((All brokers' (with less than two years of licensure) transactions are reviewed within five calendar days of client's signature.~~

~~This review must be evidenced with the designated broker or delegated managing broker's initials and date on the first page of each brokerage service contract.)~~ Review of all brokerage service contracts involving any broker licensed for less than two years. Review must be completed within five business days of mutual acceptance. Documented proof of review shall be maintained by the firm at their record locations.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124C-140 Broker responsibilities.** Broker responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

(4) Keeping the real estate program informed of his or her current mailing address.

(5) Following the designated broker's written policy on referral of home inspectors.

(6) Being appropriately licensed.

(7) Delivering transaction documents and brokerage service contracts to designated broker or delegated managing broker within two business days of mutual acceptance.

(8) Following licensing laws and rules regarding:

(a) Safe handling of customer/client funds and property.

(b) Timely delivery of ~~((transaction documents, brokerage service contracts and))~~ customer/client funds or property.

(c) Proper and legal advertising.

(d) Modifying or terminating brokerage service contracts on behalf of the firm.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124C-145 Broker responsibilities (with less than two years experience).** Broker responsibilities (with less than two years experience) include, but are not limited to:

(1) All the responsibilities listed in WAC 308-124C-140.

(2) Being subject to a heightened degree of supervision for the initial two years of licensing which includes:

(a) Participating in all required reviews of real estate brokerage agreements and services by the designated broker or appointed managing broker.

(b) Submitting evidence of completion of department required clock hour education courses to the designated broker or appointed managing broker.

(c) Securing advice or assistance from the designated broker or appointed managing broker when offering brokerage services beyond the broker's level of expertise.

(d) Timely submission of brokerage service contracts, documents and funds to the appropriate managing broker or designated broker in accordance with designated broker's document and contract review policy.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

**WAC 308-124E-100 Delivery of client funds(~~(s)~~) and negotiable instruments (~~(and transaction documents)~~).**

All brokers and managing brokers will ~~((deliver or transmit all transaction records and brokerage agreements; and))~~ physically deliver all funds, moneys, negotiable instruments or items of value to the appropriate managing broker, branch manager or their designated broker within the shorter of the following:

(1) Two business days of the client's/customer's signature (business days are not Saturday, Sunday or other legal holidays as defined in RCW 1.16.050); or

(2) Sooner if the terms of the client/customer contract necessitate quicker delivery than two business days.

**WSR 10-20-102  
PERMANENT RULES**

**OFFICE OF  
FINANCIAL MANAGEMENT**

[Filed October 1, 2010, 8:29 a.m., effective November 1, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: A hearing was held and a comment period was established to receive comments for new chapter 82-65 WAC, the updated rules for health and welfare (H/W) programs. The purpose of this rule making was threefold: Create a separate set of rules for H/W programs; replace temporary guidelines with updated rules specific to both individual and joint H/W programs; and remove the provision for waivers from rules and guidelines and allow the state risk manager to consistently regulate all programs. After receiving comments on the rules, changes to the proposed rules were made. The changes proposed for five of the proposed rules may

result in a substantial variance from the rules as originally published. A supplemental notice to enable an additional comment period on the five rules that were substantially changed was held. No additional comments were received for these five rules.

Statutory Authority for Adoption: RCW 48.62.061.

Adopted under notice filed as WSR 10-04-036 on January 27, 2010, and WSR 10-14-035 on June 28, 2010.

Changes Other than Editing from Proposed to Adopted Version: In responding to comments received during the first hearing on these rules; the following changes were made: WAC 82-65-290 and 82-65-300 are not going to be adopted as they are not necessary.

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 5, 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: October 1, 2010.

Roselyn Marcus  
Director of Legal Affairs  
Rules Coordinator

## NEW SECTION

**WAC 82-65-020 Definitions.** (1) "Actuary" means any person who is a member of the American Academy of Actuaries.

(2) "Assessment" means the moneys paid by the members to a joint self-insurance program.

(3) "Beneficiary" means any individual entitled to payment of all or part of a covered claim under a local government health and welfare self-insurance program.

(4) "Broker of record" means the insurance producer licensed in the state of Washington who, through a contractual agreement with the self-insurance program, procures insurance on behalf of the self-insurance program.

(5) "Claim" means a demand for payment for the delivery of a covered service or services.

(6) "Claim adjustment expense" means expenses, other than claim payments, incurred in the course of processing and settling claims.

(7) "Claims auditor" means a person who has the following qualifications:

(a) Has experience in auditing the same manner of claims filed against the program being audited;

(b) Provides proof of professional liability insurance; and

(c) Provides a statement that the auditor is independent from the program being audited, its brokers and third-party administrators.

(8) "Competitive solicitation" means a documented competitive selection process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(9) "Consultant" means an independent individual or firm contracting with a self-insurance program to perform actuarial, claims auditing or third-party administration services, represent the program as broker of record, or render an opinion or recommendation according to the consultant's methods, all without being subject to the control of the program, except as to satisfaction of the contracted deliverables.

(10) "Contingent reserve policy" means a policy adopted by the governing body of an individual or joint program which establishes the amount of money (contingent reserves) necessary to fund the termination costs of the program and to insulate the program against unusual severity or frequency of claims.

(11) "Contingent reserves" means:

(a) For joint programs, an amount of money equal to eight weeks of program expenses as stated in the contingent reserve policy established by ordinance or resolution of the governing body;

(b) For individual programs, an amount of money equal to eight weeks of program expenses as recommended by the state risk manager or equal to a different amount as stated in the contingent reserve policy established by ordinance or resolution of the governing body.

(12) "Contribution" means the amount paid or payable by the employee into a health and welfare self-insurance program.

(13) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(14) "Individual self-insurance program" means a formal program established and maintained by a local government entity to provide advance funding to self-insure health and welfare benefits on its own behalf as opposed to risk assumption, which means a decision to absorb the entity's financial exposure to a risk of financial loss without the creation of a formal program of advance funding of anticipated losses.

(15) "Interlocal agreement" means an agreement joining local government members of a self-insurance program that is established under the Interlocal Cooperation Act defined in chapter 39.34 RCW.

(16) "Joint self-insurance program" means any two or more local government entities which have entered into a cooperative risk sharing agreement pursuant to the provisions of the Interlocal Cooperation Act (chapter 39.34 RCW) and/or subject to regulation under chapter 48.62 RCW.

(17) "Member" means a local government entity that:

(a) Is a signatory to a joint insurance program's interlocal agreement;

(b) Agrees to pay assessments as part of the program's joint self-insurance program; and

(c) Is a past or present participant in a joint self-insurance program subject to regulation under chapter 48.62 RCW.

(18) "Program liability" means an amount as of fiscal year end determined by each program to be either:

(a) Eight weeks of total program expenses based on total program expenses paid during the previous year; or

(b) The program's liability as determined by an actuary.

(19) "Program reserves" means moneys set aside to pay expenses of an individual or joint self-insurance program.

(20) "Risk sharing" means a decision by the members of a joint self-insurance program to jointly absorb certain or specified financial exposures to risks of loss through the creation of a formal program of advance funding of anticipated losses; and/or joint purchase of insurance as a member of a joint self-insurance program formed under chapter 48.62 RCW.

(21) "Self-insurance program" means any individual or joint local government entity self-insurance program required by chapter 48.62 RCW to comply with this chapter.

(22) "Services" means administrative, electronic, management, training, wellness or other ongoing significant support services which do not include the participation in or purchase of the pool's commercial or self-insured insurance programs.

(23) "Stop-loss insurance" means a promise by an insurance company that it will cover losses of the entity it insures over and above an agreed-upon individual or aggregated amount.

(24) "Termination cost" means an estimate of the program's liabilities at the time the program ceases to operate, which shall include, at a minimum, final claim payments, claim adjustment expenses, unallocated loss adjustment expenses, and costs attributed to increased utilization.

(25) "Third-party administrator" means an independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services: Program management or administration services, claims administration services, risk management services, or services for the termination of an individual or joint self-insurance program.

(26) "Unallocated loss adjustment expense (ULAE)" means costs that cannot be associated with specific claims but are related to the claims adjustment process, such as administrative and internal expenses related to settlement of claims at the termination of the program.

#### NEW SECTION

**WAC 82-65-040 Standards for solvency—Program funding requirements.** (1) All individual and joint health and welfare programs self-insuring medical benefits shall:

(a) Establish program reserves in an amount equal to eight weeks of program expenses;

(b) Maintain an aggregate stop-loss insurance policy with an attachment point set at or below one hundred twenty-five percent of annual expected claim costs; and

(c) Establish by ordinance or resolution of the governing body, an additional contingency reserve in the following amounts:

(i) For joint programs, an amount equal to at least eight weeks of program expenses;

(ii) For individual programs, an amount equal to at least eight weeks of program expenses (recommended), or a different amount approved by the state risk manager in writing.

(2) In lieu of the requirements stated in WAC 82-65-040(1), all individual and joint health and welfare programs self-insuring medical benefits must obtain an independent actuarial study and fund to the actuarially determined program liability.

(3) All individual and joint health and welfare self-insurance programs providing either vision, dental or prescription drug benefit programs or any combination of programs thereof shall establish and maintain program reserves in an amount not less than eight weeks of program expenses for each program offered. An additional contingency reserve established by the governing body is recommended, but not required.

(4) All programs in existence less than one year shall establish reserves according to the initial plan submitted and approved by the state risk manager.

(5) Self-insurance programs that do not meet requirements for program reserves as of the program's year end shall notify the state risk manager of the condition. The state risk manager shall require the program submit a corrective action plan within sixty days of year end. The state risk manager will notify the program in writing of denial or approval of the corrective action plan within thirty days of submission.

(6) Failure to meet the requirements of the approved corrective action plan may result in further remedial action by the state risk manager, including the service of a cease and desist order upon the program.

#### NEW SECTION

**WAC 82-65-100 Standards for management—Standards for contracts—Third-party administrator contracts.** Before contracting for third-party administrator professional services, all self-insurance programs shall establish and maintain written procedures for contracting with third-party administrators. Entering a contract for services shall not relieve the governing body of the self-insurance program of its ultimate governing, managerial and financial responsibilities. The procedures shall, as a minimum:

(1) Provide a method of third-party administrator selection using a competitive solicitation process;

(2) Require a complete written description of the services to be provided, remuneration levels, contract period and expiration date;

(3) Provide for the confidentiality of the program's information, data and other intellectual property developed or shared during the course of the contract;

(4) Provide for the program's ownership of the information, data, and other intellectual property developed or shared during the course of the contract;

(5) Provide for the expressed authorization of the self-insurance program, consultants to the program, the state auditor, the state risk manager, or their designees, to enter the third-party administrator's premises to inspect and audit the records and performance of the third-party administrator which pertains to the program and to obtain such records electronically with audit travel costs can be eliminated or reduced;

(6) Require the compliance with all applicable local, state and federal laws;

(7) Establish a monitoring and acceptance procedure to determine compliance with third-party administrator contract requirements; and

(8) Establish indemnification provisions and set forth insurance requirements between the parties.

#### NEW SECTION

**WAC 82-65-110 Standards for contracts—Competitive solicitation standards for consultant contracts.** Every joint self-insurance program shall use a competitive solicitation process in the selection of consultants. The process shall provide an equal and open opportunity to qualified parties and shall culminate in a selection based on preestablished criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts. Bid responses, solicitation documents and evidence of publication shall be retained in accordance with laws governing public records and shall be available for review by the state risk manager and state auditor.

#### NEW SECTION

**WAC 82-65-130 Standards for management and operations—State risk manager reports.** (1) Every individual and joint health and welfare self-insurance program authorized to transact business in the state of Washington shall electronically submit the annual report to the state risk manager no later than one hundred fifty days following the completion of the program's fiscal year. Programs that terminate operations shall continue to submit annual reports until all claims have been paid.

(2) Joint self-insurance programs shall electronically submit financial statements in the format prescribed by the state auditor's office. Individual programs shall electronically submit the revenue, expenses and other financial data on a form provided by the state risk manager.

(3) All individual and joint self-insurance programs maintaining reserves of less than eight weeks of program expenses shall submit an actuarial study.

(4) All individual and joint self-insurance programs shall submit electronically a list of contracted consultants with the annual report to the state risk manager.

(5) Joint self-insurance programs shall submit electronically the following additional information as part of the annual report to the state risk manager:

(a) Details of changes in articles of incorporation, bylaws or interlocal agreement;

(b) Details of ongoing significant services provided by contract to nonmembers;

(c) List of local government members added to or terminated from the program.

(6) All individual and joint self-insurance programs not meeting reserve requirements described in WAC 82-65-040 shall submit quarterly reports in electronic form until notified by the state risk manager that reserving standards have been met.

(7) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:

(a) Increase in frequency of examinations;

(b) On-site monitoring by the state risk manager;

(c) Service of a cease and desist order upon the program.

**WSR 10-20-122**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Division of Consumer Services)

[Filed October 5, 2010, 9:06 a.m., effective November 5, 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 chapter 35, Laws of 2010, and to generally amend the rules for clarity and consistency.

Citation of Existing Rules Affected by this Order: Repealing WAC 208-620-380 and 208-620-390; and amending WAC 208-620-010, 208-620-105, 208-620-235, 208-620-250, 208-620-260, 208-620-271, 208-620-310, 208-620-320, 208-620-325, 208-620-327, 208-620-328, 208-620-370, 208-620-371, 208-620-373, 208-620-374, 208-620-420, 208-620-430, 208-620-431, 208-620-440, 208-620-460, 208-620-499, 208-620-510, 208-620-515, 208-620-520, 208-620-530, 208-620-550, 208-620-555, 208-620-560, 208-620-565, 208-620-620, 208-620-630, 208-620-700, 208-620-710, 208-620-725, and 208-620-830.

Statutory Authority for Adoption: RCW 43.320.040.

Other Authority: RCW 31.04.165; chapter 35, Laws of 2010.

Adopted under notice filed as WSR 10-16-137 on August 4, 2010.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 208-620-010, the definition of "annual percentage interest rate" is deleted because the term is not used other than in the definitions section.

2. WAC 208-620-010, the definition of "mortgage loan originator" is amended to clarify the compensation or gain component of the definition.

3. WAC 208-620-010, the definition of "mortgage loan originator" is amended to clarify that the inapplicability of

the definition to persons performing administrative or clerical tasks does not apply if the person holds themselves out as being able to perform the services of a mortgage loan originator.

4. WAC 208-620-010, the definition of "simple interest method" is amended to remove the reference to annual percentage interest rate. See No. 1 above, these two amendments clarify the meaning.

5. WAC 208-620-235, this section is amended to clarify the meaning of the interest rate maximum allowed under the law.

6. WAC 208-620-320(2), this section is amended to reflect the final determination of the bonding requirements for loan servicers based on the department's analysis of the industry.

7. WAC 208-620-328, this section is amended to better inform licensees that the department will give specific direction on how to comply with the call report requirement.

8. WAC 208-620-420, this section is amended to clarify the issue.

9. WAC 208-620-421, this section is moved to WAC 208-620-621 and amended based on comments.

10. WAC 208-620-422, this section is moved to WAC 208-620-622 and amended based on comments.

11. WAC 208-620-430, subsection (4) is added to give better direction to licensees to enable them to maintain their residential mortgage loan data with the content and in the format the department requires.

12. WAC 208-620-440 (1)(b), this section is amended to reflect the department's analysis of the servicing industry and comments received on the assessment methodology when determining the assessment method that will result in the industry paying for the cost to the department to regulate the industry.

13. WAC 208-620-499, language is added to clarify the licensee's requirement to provide document to the department directly if their NMLS account is locked.

14. WAC 208-620-510 (3)(d), this language is amended based on comments received.

15. WAC 208-620-510 (4)(a), new language is added to further clarify the department's requirement for certain disclosures.

16. WAC 208-620-510 (4)(e), this language is amended based on comments received.

17. WAC 208-620-520 (1) and (3)(a), the language is amended to more clearly describe the licensee's obligations under both state and federal law.

18. WAC 208-620-520(5), this subsection is added to remind licensees of their obligation to properly maintain or destroy records, or reimburse the department if the department has to rescue and then maintain or destroy records a licensee has abandoned.

19. WAC 208-620-531, a sentence is added to remind licensees that policies they develop must be maintained with their books and records.

20. WAC 208-620-550(16), this section is new language prohibiting licensees from receiving compensation or gain from a specific behavior that occurs during short sales.

21. WAC 208-620-560(2), this section is amended based on comments received.

22. WAC 208-620-567, the section is amended to clarify a loan servicer's responsibilities when charging fees for default related services.

23. WAC 208-620-620, this section is amended based on comments received.

24. WAC 208-620-621, this section is the amended prior WAC 208-620-421.

25. WAC 208-620-622, this section is the amended prior WAC 208-620-422.

26. WAC 208-620-710 (1)(f), this subsection is added to provide additional information to mortgage loan originators.

27. WAC 208-620-710 (18)(ii), this sentence is added to provide additional information to mortgage loan originators.

28. WAC 208-620-900 (6)(a), this language is added based on comments received.

29. WAC 208-620-900 (8)(g), this language is added based on comments received.

30. WAC 208-620-900 (9)(d), the language is amended based on comments received to clarify the licensee's obligation.

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 3, 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 13, Amended 35, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 13, Amended 35, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 13, Amended 35, Repealed 2; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 5, 2010.

Deborah Bortner, Director  
Division of Consumer Services

**AMENDATORY SECTION** (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**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.

"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 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 direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain (1) takes a residential mortgage loan application; or (2) offers or negotiates terms of a residential mortgage loan, including short sale transactions.

Mortgage loan originator also includes an individual who for compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

Mortgage loan originator also includes an individual who holds himself or herself out as being able to perform any of the activities described in this definition. 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 loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

"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. An individual who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

"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.

This definition does not apply to employees of a housing counseling agency approved by the United States department of Housing and Urban Development unless the employees of

a housing counseling agency are required under federal law to be individually licensed as mortgage loan originators.

"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.

"Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage. This definition is limited to implementation of the S.A.F.E. Act.

"Out-of-state licensee" means 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.

"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.

"Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms

(length), or loan types; capitalizations of arrearages; or principal reductions.

"Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform residential mortgage loan modification services. Residential mortgage loan modification services also includes the collection of data for submission to an entity performing mortgage loan modification services. Residential mortgage loan modification services do not include actions by individuals servicing a mortgage loan before July 1, 2011.

"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.

"Service or servicing a loan" means on behalf of the lender or investor of a residential mortgage loan:

(a) Collecting or receiving payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due;

(b) Collecting fees due to the servicer;

(c) Working with the borrower and the licensed lender or servicer to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently;

(d) Otherwise finalizing collection through the foreclosure process; or

(e) Servicing a reverse mortgage loan. See RCW 31.04.-015(26).

"Service or servicing a reverse mortgage loan" means, pursuant to an agreement with the owner of a reverse mortgage loan: Calculating, collecting, or receiving payments of interest or other amounts due; administering advances to the borrower; and providing account statements to the borrower or lender. See RCW 31.04.015(27).

"Simple interest method" means the method of computing interest payable on a loan by applying the ~~((annual percentage interest))~~ rate of interest specified in the note, or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Each payment 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 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 residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

"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.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**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 Washington 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))~~ who do not take residential mortgage loan applications or negotiate the terms of residential mortgage loans for compensation or gain.

NEW SECTION

**WAC 208-620-231 Which companies must have a consumer loan license to service residential mortgage loans secured by Washington residential real estate or**

**obligating Washington residents?** (1) Companies servicing loans they originated.

(2) Companies servicing loans purchased post closing.

(3) Companies servicing loans owned by other companies.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-235 When making loans, is there a maximum rate of interest allowed under the act?** Yes. The ~~((note))~~ rate of interest ~~((may))~~ specified in the note must not exceed twenty-five percent per annum.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-250 If my out-of-state company applies for a license under the Consumer Loan Act do we have to have a branch in the state of Washington?** (1) You are not required to maintain a physical presence in this state to ~~((get))~~ hold a license but any location doing business under the act, wherever located, must be licensed.

(2) If you employ mortgage loan originators, those licensed employees must work from a licensed location. A licensed location can be a branch office or an individual loan originator's home.

NEW SECTION

**WAC 208-620-251 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.

(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.

NEW SECTION

**WAC 208-620-252 If I am offering loans by mail or internet to Washington residents, do I have to license those locations?** Yes. Any person that conducts business under the act with Washington residents must obtain a license for all locations including those that offer loans by mail or internet.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-260 If I am licensed under the Consumer Loan Act, can I broker residential mortgage loans in the state of Washington?** Yes. You may broker residential mortgage loans under the Consumer Loan Act or Mortgage Broker Practices Act.

(1) If you broker loans under the Consumer Loan Act license, you are subject to the act and the loans are subject to the annual assessment under WAC 208-620-240.

(2) If you 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.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**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. See also WAC 208-620-550 and 208-620-551.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-310 Is it necessary to license an office that is only providing underwriting and other back-office services?** A location that is solely providing underwriting and other back-office services on Washington loans and has only incidental contact with the borrower, is not required to be licensed. Back office services do not include loan servicing.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-320 What is the amount of the bond required for my consumer loan license?** (1) If you originate loans the bond amount is based on the annual dollar amount of loans you originate. See the following chart:

1. Zero to twenty million in loans originated:	\$30,000
2. Twenty million to forty million:	\$50,000
3. Forty million to fifty million:	\$100,000
4. Fifty million and above:	\$150,000

(2) If you only service residential mortgage loans, your bond amount at application is thirty thousand dollars. Thereafter and subject to annual adjustment, your bond amount is based on the annual dollar amount of the residential mortgage loans serviced pursuant to the following schedule (see RCW 31.04.045(6)):

<u>1. Zero to fifty million in loan principal:</u>	<u>\$30,000</u>
<u>2. Fifty million and above:</u>	<u>\$50,000</u>

(3) If you only offer residential mortgage loan modification services, your bond amount is thirty thousand dollars.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-325 What will my bond amount be in the first year of licensing?** (1) 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.

(2) If you only service residential mortgage loans your initial bond amount is thirty thousand dollars. For subsequent years see the bonding chart in WAC 208-620-320.

(3) If you only provide residential mortgage loan modification services, your bond amount is thirty thousand dollars initially and thereafter.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-327 How often will my bond amount change?** Your bond amount may change annually depending on your volume of loan origination and residential mortgage loans serviced in Washington. See RCW 31.04.045(6). 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 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-328 How often must I report my loan origination and residential mortgage loan servicing volume?** You must report your loan origination and loan servicing volume (~~each quarter when filing your call report (see WAC 208-620-431) and~~) as directed on the form prescribed 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 09-24-090, filed 12/1/09, effective 1/1/10)

**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~~) you or any principal, officer, or board director of the applicant:

(1) Fails to pay a fee due the department or the NMLSR;

(2) 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 gross misdemeanor charge involving dishonesty or financial misconduct (RCW 31.04.055 (1)(d)); 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; or

(e) The person has had a license to conduct lending, residential mortgage loan servicing, or to provide settlement services associated with lending or residential mortgage loan servicing revoked or suspended by this state, another state, or by the federal government within five years of the date of submittal of a complete application for a license (see RCW 31.04.093 (6)(c)).

(3) Has misrepresented, omitted or concealed a material fact from the department or has misrepresented a material fact to the department;

(4) 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) 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.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**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. (1) 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:

~~((+))~~ (a) During the seven-year period preceding the date of the proposed employment; or

~~((+))~~ (b) 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.

~~((+))~~ (2) 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.

(3) 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.

(4) 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.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-373 What happens to residential mortgage 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. You may pay the original loan originator for the work he or she performed prior to leaving.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-374 What action must I take in the NMLSR if I fire a residential mortgage loan originator or if ~~(the)~~ a residential mortgage 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 208-620-420 May I transact business in a name other than the name on my license?** ~~(No. A licensee may transact business such as making a loan or providing applicable disclosures only under the name on the license. A licensee)~~ (1) You may only transact business using the name on the license or as further described in this section.

(2) You may apply to the department to add a trade or doing business as (DBA) name to ~~(its)~~ your main office license but ~~(it)~~ you may not use the DBA ~~((doing business as))~~ alone to transact business. DBA names will only be attached to the main office license. Branch offices cannot have DBAs attached to the branch office license. The director may deny an application for a proposed DBA name if the proposed DBA name is similar to a currently existing licensee name.

(3) If you transact business using a DBA you must use either the main office license number or main office license name with the DBA. See also WAC 208-620-620, 208-620-621 and 208-620-622.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**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 reports on ~~((a))~~ forms provided by the department. You must also pay a fee (assessment) based on your ~~((loan portfolio balance at the end of the prior calendar year, plus the loan activity conducted))~~ activities during the reporting year.

(1) Annual reports and assessment on activity due March 1st. You must provide the ~~((completed consolidated))~~ annual reports ~~((, through the NMLSR))~~ by March 1st of each year. The worksheet and annual ~~((fee))~~ assessment must also be provided ~~((directly))~~ to the department by March 1st of each year.

(2) Late penalties. A licensee that fails to submit the required annual reports, 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 reporting year.

(3) Failure to file. If a licensee fails to pay its annual assessment ~~((and))~~ or file ~~((a worksheet))~~ the annual reports 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.

(4) Annual reporting of residential mortgage loan data. On an annual basis the company licensee must provide information on the characteristics of residential mortgage loan originations in an electronic format prescribed by the direction.

(5) Residential mortgage loan annual reports content.

(a) The director will provide the report format or forms and worksheet for the reporting requirement described in subsection (4) of this section.

(b) For the annual reporting of loan data, the company licensee must provide:

(i) Information sufficient to identify the mortgage loan and the unique identifier of the mortgage loan originator, mortgage broker (if applicable), and mortgage lender for the loan;

(ii) Information sufficient to enable a computation of key items in the federal truth in lending disclosures, including the annual percentage rate, finance charge, amount financed, a schedule of payments, and any deviations between the final disclosures and the most recent disclosures issued prior to the final disclosures;

(iii) Information included in the initial and any subsequent good faith estimate (GFE) disclosures required under the federal Real Estate Settlement Procedures Act including the rate, the date of any interest rate lock, itemization of settlement charges and all compensation;

(iv) Information included in the final HUD-1 Settlement Statement;

(v) Information related to the terms of the loans, including adjustable rate loan features (including timing of adjustments, indices used in setting rates, maximum and minimum adjustments, floors and ceilings of adjustments), the undiscounted interest rate (if maintained by the mortgage lender in an electronic format), penalties for late payments, and penalties for prepayment (including computation of the penalty amount, duration of prepayment penalty, the maximum amount of penalty);

(vi) Information typically used in underwriting, including the appraised value of the property, sales price of the property (if a purchase loan), loan to value, borrowers' income, monthly payment amount, housing debt-to-income

ratio including taxes and insurance, total debt-to-income ratio including taxes and insurance, and credit score(s) of borrowers; and

(vii) Information included in a loan application register for mortgage lenders required to submit information pursuant to the federal Home Mortgage Disclosure Act.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-431 What are my quarterly call report filing requirements if I make, broker, or service 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 (see RCW 31.04.277).

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-440 How do I calculate my annual assessment for activity in Washington?** (1)(a) **Calculation of the annual assessment for loans made, brokered or purchased.** 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.

**(b) Calculation of the annual assessment for residential mortgage loans serviced.** The industry will be assessed the cost to DFI of regulating the industry. Costs include, but are not limited to, the cost of employee compensation, travel expenses, and goods and services expended in regulating the industry. Each licensee will pay a percentage of the cost based on the total annual volume of Washington residential mortgage loans serviced. The maximum amount assessed to any individual licensee will not exceed twenty-five thousand dollars.

(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 08-15-125, filed 7/22/08, effective 8/22/08)

**WAC 208-620-460 Must I file my annual reports even if I go out of business during the year?** (1) A licensee that ceases operations during the year must file the ~~((consolidated))~~ annual reports and pay the annual assessment required in WAC 208-620-430 within thirty days of closure.

(2) Failure to file within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**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; and

(2) File the final closure form, annual reports, 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 your license to the department.))~~ If your license has expired or you are otherwise locked out of the NMLS data base, you must provide the documents described in subsection (2) of this section directly to the department.

Any Washington loans in your portfolio and ~~((CLA))~~ activity under the act remain subject to the director's authority including investigation and examination, and the fees associated with those activities.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-510 What are my disclosure obligations to consumers?** (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 business 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) **Residential mortgage loans—Rate locks.** Within three business days, including Saturdays, of receipt of a residential mortgage loan application you must provide the borrower with the following disclosure about the interest rate:

(a) If a ~~((lock-in))~~ rate lock 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))~~ rate lock agreement has been entered into you must disclose to the borrower whether the ~~((lock-in))~~

rate lock agreement is guaranteed and whether and under what conditions any ~~((lock-in))~~ rate lock fees are refundable to the borrower.

(c) If the borrower wants to lock the rate after the initial disclosure, you must provide a new rate lock disclosure and a rate lock agreement within three business days of the ~~((lock-in))~~ rate lock date that includes the following:

- (i) The length of the ~~((lock-in))~~ rate lock period;
- (ii) The expiration date of the ~~((lock-in))~~ rate lock;
- (iii) The ~~((lock-in-interest))~~ rate of interest locked;
- (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))~~ rate lock agreement.

(d) You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209 with "P.O.C. (borrower)" recorded to the left of the borrower column.

(4) **Residential mortgage loans—Brokered loans.** ~~((a))~~ Within three business days following receipt of a residential mortgage loan application you must provide to each borrower:

(a) An estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty;

(b) 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 (c) 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) A rate lock disclosure containing the following:

(i) If a ~~((lock-in))~~ rate lock agreement has been entered into you must disclose to the borrower whether the ~~((lock-in))~~ rate lock agreement is guaranteed and whether and under what conditions any ~~((lock-in))~~ rate lock fees are refundable to the borrower.

~~((a))~~ (ii) If the borrower wants to lock the rate after the initial disclosure, you must provide a new rate lock disclosure and a rate lock agreement within three business days of the ~~((lock-in))~~ rate lock date ~~((that))~~. The rate lock agreement must include~~((s))~~ the following:

~~((i))~~ (A) The length of the ~~((lock-in))~~ rate lock period;

~~((ii))~~ (B) The expiration date of the ~~((lock-in))~~ rate lock;

~~((iii))~~ (C) The ~~((lock-in-interest))~~ rate of interest locked;

~~((iv))~~ (D) 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))~~ (E) Any other terms of the ~~((lock-in))~~ rate lock agreement.

(e) You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be

recorded in section 204-209 with "P.O.C. (borrower)" recorded to the left of the borrower column.

(5) **Residential mortgage loans—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, in addition to the disclosures required by federal law or by this chapter, 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) **Loan modifications.** You must immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

(7) Each licensee must maintain in its files sufficient information to show compliance with state and federal law.

**AMENDATORY SECTION** (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-515 What authority do I have as a licensee?** As a licensee you may:

(1) Lend money with a note rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed. This applies only to nonmortgage 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))~~ authorized in RCW 31.04.115 provided that:

(a) The annual fee allowed in RCW 31.04.115(3) may not exceed fifty dollars; and

(b) The annual fee must be charged in advance as a lump sum. It must not be charged monthly and must not be financed.

(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 unem-

ployment of the borrower, or other insurance products approved by the Washington state office of the insurance commissioner.

(4) Service residential mortgage loans. See also WAC 208-620-320, 208-620-325, 208-620-550, 208-620-551, and 208-620-900.

(5) Provide loan modification services for residential mortgage loans. See also WAC 208-620-320, 208-620-325, 208-620-545, 208-620-550, and 208-620-552.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-520 How long ~~((do))~~ must 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))~~ maintain the books, accounts, records, papers, documents, files, and other information relevant to a loan for a minimum of twenty-five months, or the period of time required by federal law, whichever is longer, 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.** 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) **Other 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))~~ All loan agreements or notes and all addendums, riders, or other documents that supplement the final loan agreements;

(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.

(4) Loan servicing documents. See subsection (1) of this section.

(5) Abandoned records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, or proper destruction of the records.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

**WAC 208-620-530 Can I maintain my records electronically? Yes.** (1) **Records must be available.** The records required to be maintained by RCW 31.04.145 may be maintained by means of electronic display equipment if such equipment is made available upon request to the director or his or her representatives for purposes of examination or investigation.

(2) The hardware or software needed to display the record must also be maintained during the required retention period under WAC 208-620-520(1).

(3) **Hard copy upon request.** ~~((A licensee))~~ You must provide the records in hard copy upon request of the director.

#### NEW SECTION

**WAC 208-620-531 Must I have a records disaster recovery and information security plan? Yes.** You must have written policies and procedures in place that detail your response to any event that results in damage or destruction to your records. You must maintain the policies and procedures as part of your books and records.

#### NEW SECTION

**WAC 208-620-545 Must I provide a written fee agreement when I provide residential mortgage loan modification services? Yes.** You must provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. You must provide a copy of the signed fee agreement to the consumer and you must keep a copy as part of your books and records.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-550 What business practices are prohibited? ~~((Under))~~ In addition to RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:**

(1) 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) 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) 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) **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) 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) 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) Leaving blanks on a document that is signed by the borrower or providing the borrower with documents with blanks;

(8) 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;

(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;

(10) Willfully filing a lien on property without a legal basis to do so;

(11) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;

(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 origi-

nator's unique identifier, and the date the application was taken;

(16) Receiving compensation or anything of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter.

#### NEW SECTION

**WAC 208-620-551 Residential mortgage loan servicers—What business practices are prohibited?** In addition to RCW 31.04.027, you are prohibited from requiring or encouraging a borrower to:

(1) Waive his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(2) Waive his or her right to contest a future foreclosure;

(3) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(4) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(5) Cease communication with the lender or investor.

(6) You are further prohibited from:

(a) Purchasing insurance on a property secured by a loan you service without providing one or more notices to the borrower's last known address in order to verify that the property is not otherwise insured.

(b) Knowingly misapplying or recklessly applying loan payments to the outstanding balance of a loan.

(c) Knowingly misapplying or recklessly applying payments to escrow accounts.

(d) Charging excessive or unreasonable fees to provide loan payoff information.

(e) Knowingly or recklessly providing inaccurate information to a credit bureau, thereby harming a borrower's creditworthiness.

(f) Collecting private mortgage insurance beyond the date for which private mortgage insurance is no longer required.

(g) Knowingly or recklessly facilitating the illegal foreclosure of real property collateral.

#### NEW SECTION

**WAC 208-620-552 Residential loan modification service providers—What business practices are prohibited?** In addition to RCW 31.04.027, you are prohibited from:

(1) Collecting an advance fee of more than seven hundred fifty dollars.

(2) Collecting an advance fee without a written fee agreement. See also WAC 208-620-545.

(3) As a condition to providing loan modification services requiring or encouraging a borrower to:

(a) Waive his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(b) Waive his or her right to contest a future foreclosure;

(c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(e) Cease communication with the lender, investor, or loan servicer or stop or delay making regularly scheduled payments on an existing mortgage unless a mortgage loan modification is completely negotiated and executed with the lender or investor and the modification agreement itself provides for a cessation or delay in making regularly scheduled payments; or

(f) Enter into any contract or agreement to purchase a borrower's property.

(4) You are further prohibited from failing in a timely manner to:

(a) Communicate with or on behalf of the borrower;

(b) Act on any reasonable request from or take any reasonable action on behalf of a borrower.

(5) Engaging in false or misleading advertising. In addition to WAC 208-620-630, examples of false or misleading advertising include:

(a) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower.

(b) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists.

(6) Leading a borrower to believe that the borrower's credit record will not be negatively affected by a mortgage loan modification when the licensee has reason to believe that the borrower's credit record may be negatively affected by the mortgage loan modification.

**AMENDATORY SECTION** (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-555 What fees are allowed when making loans under the Consumer Loan Act?** (1) Residential mortgage loan 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. On 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.

(2) ~~((On nonmortgage loans and junior lien mortgage loans;))~~ Nonmortgage loan origination fees. 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 fees. 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 fees. 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. See also WAC 208-620-510(3).

(6) Underwriting fees. On first lien mortgages made by licensees that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act, an underwriting fee.

(7) Late payment 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 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-560 What fees are not allowed when making loans under the Consumer Loan Act?** (1) Filing fees. You must not charge or collect any funds from the bor-

rower 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 you collect((s)) 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.** You ((~~must not~~)) may charge or collect ((~~a fee in excess of~~)) twenty-five dollars or the actual amount charged by the financial institution for a check, draft, ACH, or other transfer if returned unpaid or denied by the 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 returned or denied more than once.

(3) **Credit and noncredit insurance.**

(a) Except for the transaction described in (b) of this subsection, you may include the premiums for credit and non-credit 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) 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.

(4) **Fees on existing loans.** Unless otherwise preempted under the Depository Institutions Deregulatory and Monetary Control Act, if you make 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 must be limited as follows:

(a) You must only charge an origination fee on that part of the new loan not used to pay the amount due on the previous loan;

(b) You must only charge an origination fee 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 you refund the origination fee on the existing loan or credit line;

(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) You must not collect a fee from the borrower for lowering the interest rate unless the interest rate is actually reduced.

(b) Any applicable program add-on fees must be disclosed as part of the discount points.

(6) **Administrative fees.** On nonmortgages, 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.

(7) **Underwriting fees.** On nonmortgage and junior lien mortgage loans you must not collect an underwriting fee.

(8) **Prepayment penalty.** You must not collect a prepayment penalty on the following loans:

(a) Any nonmortgage loan;

(b) Any adjustable rate residential mortgage loan, except as allowed by RCW 19.144.040;

(c) Any junior lien mortgage loan; or

(d) Any loan you made if you are not a "creditor" under DIDMCA.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-565 What fees am I allowed to charge or receive when acting as a residential mortgage loan broker under the act?** (1) 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 credited to the borrower on the good faith estimate and as applicable on the settlement statement.

(3) A processing fee when paid to an independent third-party processor.

NEW SECTION

**WAC 208-620-567 What fees can I charge when servicing residential mortgage loans under the act?** (1) You may charge servicing fees authorized by the loan documents, by law, or by the borrower. Examples include, but are not limited to, late fees as authorized by the loan documents, insufficient check fees as authorized by law, and wire transfer fees for wire transfers requested by the borrower.

(2) You may only charge a fee for a default related service that is usual and customary or reasonable in light of the service provided.

(3) You may not charge fees paid to third parties in excess of the fee charged by the third party.

NEW SECTION

**WAC 208-620-568 What fees am I not allowed to charge when providing residential mortgage loan modification services under the act?** You must not charge total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**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~~)) name ((~~on your Washington main~~

~~office consumer loan license)), or using an approved DBA name with the main office license name or license number (CLA-123456). For use of URL addresses and web pages, see WAC 208-620-621 and 208-620-622.~~

#### NEW SECTION

**WAC 208-620-621 May I advertise over the internet using a URL address that is not my licensed business name?** Yes, provided that any URL address you advertise takes the user directly to your main or home web page. If you want the user to be directed to a different main or home web page, the URL address must contain your license name in addition to any other names or words in the URL address. URL addresses may be used as DBA names upon request to and approval from DFI.

#### NEW SECTION

**WAC 208-620-622 When I advertise using the internet or any electronic form (including, but not limited to, text messages), is there specific content my web pages must contain?** Yes. You must provide the following language, in addition to any other, on your web pages or in any medium where you hold yourself out as being able to provide the services:

- (1) Main or home page.
  - (a) The company's license name and NMLS unique identifier must be displayed on the licensee's main or home web page.
  - (b) If mortgage loan originators are named, their NMLS numbers must follow the names.
  - (c) The main or home page must also contain a link to the NMLS consumer access web site page for the company.
- (2) Branch office web page - no DBA. Comply with subsection (1) of this section.
- (3) Main or branch office web page - DBA. If the company uses a DBA on a web page the web page must contain the main office license name, comply with subsection (1)(b) of this section, and the web page must contain a link to the NMLS consumer access web site page for the company.
- (4) Mortgage loan originator web page. If a loan originator maintains a separate home or main page, the URL address to the site must be a DBA of the licensee and the licensee's name must appear on the web page. The web page must also contain the loan originator's NMLS number and a link to the NMLS consumer access web page for the company.
- (5) Compliance with other laws. Web site content used to solicit Washington consumers must comply with all relevant state and federal statutes for specific services and products advertised on the web site.
- (6) Oversight. The company is responsible for web site content displayed on all company web pages used to solicit Washington consumers including main, branch, and mortgage loan originator web pages.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-630 What are the advertising 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. Some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws 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 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))) 31.04.027.

(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 31.04.027 (2), (7), and (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 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-700 Mortgage 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)~~) as long as the out-of-state company licenses a branch in Washington for you to work from. See subsection (1) of this section.

(8) **May I hire employees or independent contractors to assist me?** No. Only the consumer loan company can (~~(have))~~ hire employees or independent contractors to work for the company. 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.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-710 Mortgage 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 judgments or other government liens ~~(and)~~ or 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) **Complete prelicensing education.** You must complete prelicensing education. See WAC 208-620-720.

(g) **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))~~ (h) **Prove your identity.** You must provide information to prove your identity.

~~((h))~~ (i) **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))~~ (j) 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,))~~ meet the minimum requirements to obtain a license under the S.A.F.E. Act 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. You will not have a continuing education requirement in the year in which you complete preclicensing education. See WAC 208-620-730.

(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."

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-725 Mortgage 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~~) four consecutive times, you must then wait at least six months before taking the test again.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

**WAC 208-620-830 What disclosures or statements must I provide to a borrower in a reverse mortgage transaction?** 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.

(3) Benefits and tax disclosure. You must provide the following statement prior to or simultaneously with receiving an initial loan application:

"If you receive advances under the terms of a reverse mortgage, you may lose your right to receive certain public funds, such as Medicaid, and possibly others. Also, receiving advances under the terms of a reverse mortgage may have tax consequences for you. You may wish to obtain advice from

a tax professional or an attorney before you decide on a reverse mortgage."

#### NEW SECTION

**WAC 208-620-835 Under what circumstances will the department determine that the making of a reverse mortgage was unsuitable for a particular borrower and therefore an unfair and deceptive practice in violation of RCW 31.04.027?** Examples of circumstances which might indicate that an offered reverse mortgage loan is unsuitable include reverse mortgage loans when the applicant:

- (1) Does not intend to reside in the property on a long-term basis.
- (2) Does not want nonborrower residents of the property to be displaced at the maturity of the loan because they will not be able to pay off the reverse mortgage loan.
- (3) Will use the proceeds of the reverse mortgage loan to purchase a product, such as annuities or other investments, which are not appropriate for the borrower.
- (4) Does not understand the terms and conditions of a reverse mortgage loan or what happens to the collateral when the reverse mortgage loan matures.
- (5) Would receive disbursements from the reverse mortgage loan that are insufficient to meet the applicant's stated needs or is not enough to justify the initial cost of a reverse mortgage loan.

### **RESIDENTIAL MORTGAGE LOAN SERVICING REQUIREMENTS**

#### NEW SECTION

**WAC 208-620-900 What requirements must I comply with when servicing residential mortgage loans?** In addition to complying with all other provisions of the act you must:

- (1)(a) Comply with applicable federal laws or regulations when servicing a residential mortgage loan.
- (b) Comply with applicable federal laws or regulations when servicing a residential mortgage loan guaranteed or insured by a government program.
- (c) Comply with applicable federal laws or regulations when servicing a residential mortgage loan guaranteed or insured by Fannie Mae or Freddie Mac.
- (d) A violation of an applicable federal law or regulation is a violation of this act.
  - (2) Comply with chapter 19.148 RCW.
  - (3) You must assess fees to a borrower's account within forty-five days of the date on which the fee was incurred. You must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee.
  - (4)(a) You must accept and credit all amounts received within one business day of receipt when the borrower has made the payment to the address where instructed, provided that the borrower has provided sufficient information to credit the account. If you use the scheduled method of accounting, any regularly scheduled payment made prior to

the scheduled due date must be credited no later than the due date.

(b) You may enter into a written contract with the borrower whereby you hold funds of a certain type or sent by a certain method for a period of time until the funds are available.

(5) You must notify the borrower if a payment is received but not credited. You must mail the notification to the borrower within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the residential mortgage loan current.

(6)(a) If you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with respect to the property, you must collect and make all payments from the escrow account and, to the extent you have control, ensure that no late penalties are assessed or other negative consequences result for the borrower.

(b) You may enter into a written agreement with the borrower whereby you are not required to make escrow payments unless funds are available in the escrow account. The agreement must include language that puts the borrower on notice that the borrower is responsible for the payment of the escrow amounts if a sufficient amount is not maintained in the escrow account. See also subsection (1)(c) of this section.

(c) You must notify the borrower within ten business days of any change to the escrow account other than the changes brought about by the borrower's regularly scheduled payment. Examples of changes requiring notification include, but are not limited to, a reduction in the required cushion amount for the account, or a change in the property's tax assessment.

(7) You must make a reasonable attempt to comply with a borrower's request for information about the residential mortgage loan account and to respond to any dispute initiated by the borrower about the loan account. A reasonable attempt includes, but is not limited to:

(a) Maintaining written or electronic records of each written request for information regarding a dispute or error involving the borrower's account until the residential mortgage loan is paid in full, sold, or otherwise satisfied;

(b) Providing a written statement to the borrower within fifteen business days of receipt of a written request from the borrower. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply.

(8) You must provide at a minimum the following information to a borrower's request described in subsection (7) of this section:

(a) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(b) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer;

(c) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and

(d) The telephone number and mailing address of a servicer representative with the information and authority to answer questions and resolve disputes.

(e) You may charge a fee for preparing and furnishing the statement described in this subsection not exceeding thirty dollars per statement.

(f) You must promptly correct any errors and refund any fees assessed to the borrower resulting from an error you made.

(g) If the content of your response meets the requirements under RESPA for a response to a qualified written request, you will be deemed in compliance with this subsection.

(9) In addition to the statement described in subsection (6) of this section, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower, this statement must also include:

(a) A copy of the original note, or if unavailable, an affidavit of lost note; and

(b) A statement that identifies and itemizes all fees and charges assessed under the loan servicing transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any.

(c) The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year time period, the servicer must provide the information going back to the date on which the servicer began servicing the home loan and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the residential mortgage loan up to the date of the request for the information.

(d) If the borrower requests this statement, you must provide it free of charge; but the borrower is only entitled to one free statement annually. If the borrower requests more than one statement annually, you may charge thirty dollars for the second and subsequent statements.

(10) If a borrower's property goes into foreclosure and the foreclosure sale occurs, you must notify the borrower within three business days of sale of the completion of the sale. You must mail the notification to the borrower's last known address provided to you. If the notification is returned

to you because the address is deficient in some manner, you must post the notification of the foreclosure sale on the property itself within three days of the notification being returned to you.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-620-380	Are there any additional requirements for out-of-state licensees?
WAC 208-620-390	If I am offering loans by mail or internet to Washington residents, do I have to license those locations?

**WSR 10-20-123**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
 (Division of Consumer Services)

[Filed October 5, 2010, 9:15 a.m., effective November 5, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amending the rules in chapter 208-690 WAC to implement the Uniform Money Services Act, chapter 19.230 RCW, as amended by chapter 73, Laws of 2010, and to generally amend the rules for clarity and consistency.

Citation of Existing Rules Affected by this Order: Amending WAC 208-690-010, 208-690-020, 208-690-050, 208-690-060, 208-690-070, 208-690-110, 208-690-170 and 208-690-180; and new section WAC 208-690-200; [the following sections do not exist] WAC 208-690-210, 208-690-320, and 208-690-330.

Statutory Authority for Adoption: RCW 43.320.040.

Other Authority: RCW 19.230.310; chapter 37, Laws of 2010.

Adopted under notice filed as WSR 10-16-133 on August 4, 2010.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 208-690-010, the definition of "subdelegate" is amended to clarify.

2. WAC 208-690-035(6), this subsection is new and is added to provide further guidance to licensees.

3. WAC 208-690-035(7), this subsection is amended to provide further guidance to licensees.

4. WAC 208-690-040(2), this subsection is amended to lower the reporting frequency and to clarify "year" to "twelve months."

5. WAC 208-690-040(3), this subsection reflects the final determination of the initial bonding amount.

6. WAC 208-690-060(1), this subsection is amended to state the maximum tangible net worth amount.

7. WAC 208-690-075, this section is amended to clarify the requirement.

8. WAC 208-690-110(2), this subsection is amended to clarify the requirement.

9. WAC 208-690-130 (1) and (2), these subsections are amended to clarify the required fees.

10. WAC 208-690-130(3), this subsection is amended to clarify the required fees when licenses are withdrawn or denied.

11. WAC 208-690-200, this section is amended to clarify the receipt requirement.

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 13, 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 13, 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 5, 2010.

Deborah Bortner, Director  
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-010 Definitions.** What definitions are applicable to these rules? The definitions in RCW 19.230.010 and this section apply throughout this chapter unless the context clearly requires otherwise.

((+)) "Act" means the Uniform Money Services Act, chapter 19.230 RCW.

((2)) "Audited financial statement" means a statement prepared by an independent accountant according to generally accepted accounting principles.

"Authorized delegate" means a person a licensee designates to provide money services on behalf of the licensee. A person that is exempt from licensing under this chapter cannot have an authorized delegate. An authorized delegate must only perform the contractual duties as authorized by the licensee in the contract between the licensee and the authorized delegate.

"Bill payment" service means a type of money transmission when an intermediary accepts funds from a consumer for transmission to a merchant for payment on a consumer's account. The intermediary may or may not charge a fee for this service.

"Money transmission" means receiving money or its equivalent value to transmit, deliver, or instruct to be delivered the money or its equivalent value to another location, inside or outside the United States, by any means including, but not limited to, by wire, facsimile, or electronic transfer. Money transmission does not include the provision solely of connection services to the internet, telecommunications ser-

vices, or network access. Money transmission includes selling, issuing, or acting as an intermediary for open-loop stored value devices and payment instruments, but not closed-loop stored value devices.

"Payment instrument" means a check, draft, money order, or traveler's check for the transmission or payment of money or its equivalent value, whether or not negotiable. Payment instrument does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

((3)) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership, company, corporation, or association, or the owner of a sole proprietorship.

((4)) "RCW" means the Revised Code of Washington.

"Stored value" means the recognition of value or credit stored on a device. Stored value is either open loop, meaning the value is redeemable at multiple, unaffiliated merchants or service providers, or closed loop meaning the value is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the stored value, its affiliates, or others involved in transactions functionally related to the issuer or its affiliates.

"Stored value device" means a card or other device that electronically stores or provides access to funds and is available for transferring the funds or value to others.

"Subdelegate" means a person that provides money services on behalf of an authorized delegate without having a direct contractual relationship with a licensee.

"Tangible net worth" means the physical worth of a licensee, calculated by taking a licensee's assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property, and goodwill.

((5)) "Unsafe or unsound practice" means a practice or conduct by a person licensed or required to be licensed by the act to provide money services, or an authorized delegate of such a person, which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the financial condition of the licensee or the interests of its customers.

## PART B EXEMPTIONS

### NEW SECTION

**WAC 208-690-015 What are some activities that are exempt from the act?** (1) The issuance, sale, use, redemption, or exchange of closed-loop stored value devices.

(2) The issuance, sale, use, redemption, or exchange of payment instruments by a person licensed under chapter 31.45 RCW.

(3) The selling or issuing of open-loop stored value devices when the value on the devices are covered by federal deposit insurance immediately upon sale or issue. See the Federal Deposit Insurance Corporation (FDIC) Financial Institution Letter 129-2008 dated November 13, 2008, to determine if the underlying funds of stored value devices are covered by FDIC insurance immediately upon sale or issue.

(4) See also RCW 19.230.020.

#### NEW SECTION

**WAC 208-690-016 Can the director waive the licensing provisions of the act?** Yes. The director has the authority to waive the licensing provisions of the act upon a determination the waiver facilitates commerce and protects consumers.

### **PART ~~(B)~~ (C) LICENSING**

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-020 Voluntary license application.** May I apply for and receive a license under this chapter even though I am exempt from licensing?

(1) Any person otherwise exempt from licensing under the provisions of the act may voluntarily submit an application to the director for a money transmitter or currency exchange license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and subject to payment of the same fees as are applicable to persons required to be licensed.

(2) Upon receipt of a license under this section, the licensee is required to maintain a valid license and is subject to all the provisions of the act and these rules until the license is surrendered or revoked.

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-030 License application. What must I do to apply for a license?** ~~((Each person required to have a money transmitter or currency exchange license))~~ You must ((apply to the director by filing)) file:

(1) A completed application in a form and in a medium prescribed by the director. The application must contain:

(a) The legal name, business address, and residential address, if applicable, of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(b) The legal name, residential and business address, date of birth, Social Security number, employment history for the five-year period preceding the submission of the application of the applicant's proposed responsible individual, and documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States. In addition, the applicant ~~((shall))~~ must provide the fingerprints of the proposed responsible individual and a personal credit report from a recognized independent credit reporting agency on the proposed responsible individual;

(c) For the ten-year period preceding submission of the application, a list of any criminal convictions of the proposed responsible individual of the applicant, any material litigation in which the applicant has been involved, and any litigation involving the proposed responsible individual relating to the provision of money services;

(d) A description of any money services previously provided by the applicant and the money services the applicant seeks to provide in this state;

(e) A list of the applicant's authorized delegates including the business name and any additional names by which the business may be known, the business address and name of the primary contact person for each authorized delegate, and the locations in this state where the applicant and its authorized delegates propose to engage in the provision of money services;

(f) A list of other states in which the applicant is licensed to engage in money transmission, or provide other money services, and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state;

(g) A list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the proposed responsible individual;

(h) Information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the proposed responsible individual;

(i) A sample form of the contract for authorized delegates, if applicable;

(j) A description of the source of money and credit to be used by the applicant to provide money services; and

(k) A full description of the screening process used by the applicant in selecting authorized delegates, including a sample of any forms used, and the method used to screen for criminal history.

(2) If the applicant is a corporation, limited liability company, partnership, or other entity, the applicant ~~((shall))~~ must also provide:

(a) The date of the applicant's incorporation or formation and the state or country of incorporation or formation;

(b) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(c) A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(d) The legal name, any fictitious or trade name, all business and residential addresses, date of birth, Social Security number, and employment history in the ten-year period preceding the submission of the application for each executive officer, board director, or person that has control of the applicant;

(e) If the applicant or its corporate parent is not a publicly traded entity, the fingerprints of each executive officer, board director, or person that has control of the applicant;

(f) A list of any criminal convictions, material litigation, and any litigation related to the provision of money services, in the ten-year period preceding the submission of the application in which any executive officer, board director, or person in control of the applicant has been involved;

(g) A copy of the applicant's audited financial statements for the most recent fiscal year or, if the applicant is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the applicant's most recent audited consoli-

dated annual financial statement, and in each case, if available, for the two-year period preceding the submission of the application;

(h) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period preceding the submission of the application;

(i) If the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m);

(j) If the applicant is a wholly owned subsidiary of:

(i) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m); or

(ii) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(k) If the applicant has a registered agent in this state, the name and address of the applicant's registered agent in this state.

(3) If the application is for money transmission, a surety bond as required by WAC 208-690-040 or an assignment of a certificate of deposit, as required by WAC 208-690-045.

(4) An application fee as prescribed by WAC 208-690-130(1). The application fee is not refundable.

(5) An initial license fee as prescribed by WAC 208-690-130(2). The initial license fee will be refunded if the license application is denied.

(6) If the application is for money transmission, a certification that the applicant's investment portfolio includes only permissible investments under RCW 19.230.200 and 19.230.210.

The director may waive one or more requirements of subsection (1) or (2) of this section or permit an applicant to submit other information in lieu of the required information.

#### NEW SECTION

**WAC 208-690-031 What will happen if I abandon my license application?** If you do not respond as directed within forty-five days to the department's request for additional required information, your money transmission or currency exchange 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.

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-035 Authorized delegates(~~(-limitation, inclusion)~~). What are the rules for having authorized delegates?**

(1) Only a licensee may designate an authorized delegate. A person that is exempt or excluded from licensing

under RCW 19.230.020 cannot have an authorized delegate. A person accepting consumers' funds for transmission through an exempt or excluded entity under RCW 19.230.020 is a money transmitter and must be licensed under the act.

(2) An authorized delegate, or any other person exempt or excluded from the licensing requirements of chapter 19.230 RCW, cannot have an authorized delegate.

(3) Any person who is designated by a licensee to provide money services on behalf of the licensee is an authorized delegate, regardless of whether that person would be exempt or excluded from the application of chapter 19.230 RCW if they provided money services on their own behalf.

(4) A written contract between a licensee and an authorized delegate must contain, among all the other contract provisions, provisions with language substantially similar to the following:

(a) The authorized delegate must operate in full compliance with chapter 19.230 RCW and the rules adopted under this chapter.

(b) The authorized delegate is prohibited from using sub-delegates or conducting business from locations not authorized by the department.

(c) A description of the specific money services the licensee has permitted the authorized delegate to perform on behalf of the licensee.

(5) The authorized delegate may only conduct activities authorized by the licensee in the written agreement, unless the authorized delegate is also a licensee.

(6) You may contract with another licensee to use that other licensee's existing authorized delegates to load funds onto your existing open-loop stored value cards. If the shared authorized delegate sells new open-loop stored value cards for you, you must add the authorized delegate to your authorized delegate roster.

(7) You must maintain your authorized delegate agreements and contracts with other licensees to share existing authorized delegates as part of your books and records pursuant to RCW 19.230.170 and make them available to the department upon request.

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-040 Surety bond. What are the bonding requirements?**

(1) Each money transmitter licensee (~~(shall)~~) must continuously maintain a surety bond as required by RCW 19.230.050, issued by a company authorized to do surety business in this state, as a surety. The surety may not be a wholly owned subsidiary or affiliate of the applicant or licensee.

(2) The penal sum of the bond (~~(shall)~~) must be calculated (~~(annually according to the following schedule:~~

~~(a) Ten thousand dollars if the applicant or licensee had money transmission receipts of less than one million dollars for the previous twelve months, including applicants who have not previously engaged in providing money transmission services.~~

~~(b) Twenty thousand dollars if the applicant or licensee had money transmission receipts of at least one million but less than two million dollars for the previous twelve months.~~

~~(c) Thirty thousand dollars if the applicant or licensee had money transmission receipts of at least two million but less than three million dollars for the previous twelve months.~~

~~(d) Forty thousand dollars if the applicant or licensee had money transmission receipts of at least three million but less than four million dollars for the previous twelve months.~~

~~(e) Fifty thousand dollars if the applicant or licensee had money transmission receipts of four million dollars or more for the previous twelve months.~~

~~In addition to these amounts, the penal sum of the bond is increased by ten thousand dollars for each additional location where that applicant provides money services, including each location of authorized delegates, and each location owned and operated by the applicant, up to a maximum total amount of five hundred thousand dollars)) quarterly during the first year of licensing and thereafter annually. The calculation must be based on the previous twelve months' money transmission and payment instrument dollar volume. The bond amount must be calculated at ten thousand dollars for every one million dollars of money transmission and payment instrument dollar volume. The minimum surety bond amount is ten thousand dollars. The maximum surety bond amount is five hundred fifty thousand dollars.~~

~~(3) The initial bond amount will be ten thousand dollars and must be reevaluated based on the schedule set forth in subsection (2) of this section.~~

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-045 Alternatives to the surety bond((~~certificate of deposit~~)).** May I hold a certificate of deposit instead of the bond? In lieu of the surety bond required under WAC 208-690-040, an applicant or licensee may substitute an assignment of a certificate of deposit in favor of the director in a form provided by the director. The certificate of deposit must be issued by a financial institution in the state of Washington whose shares or deposits are insured by an agency of the government of the United States. The depositor is entitled to receive all interest and dividends on the certificate of deposit. The assignment of a certificate of deposit will be held for at least five years after the date when a replacement security instrument is filed with the director, or at least five years after the date the money transmitter licensee ceases to provide money services in this state.

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-050 Increase of security.** Will DFI ever require me to increase the amount of security I hold? The director may increase the amount of security required, to a maximum of one million dollars, if the financial condition of a money transmitter licensee so requires. The director may consider, without limitation, the following criteria:

- (1) Significant reduction of net worth.
- (2) Financial losses.

(3) Potential losses resulting from violations of chapter 19.230 RCW, or these rules;

(4) Licensee filing for bankruptcy.

(5) The initiation of any proceedings against the licensee in any state or foreign country.

(6) The filing of a state or federal criminal charge against the licensee, person in control, responsible individual, executive officer, board director, employee, authorized delegate or principal, based on conduct related to providing money services or money laundering.

(7) A licensee, executive officer, board director, person in control, responsible individual, principal or authorized delegate being convicted of a crime.

(8) Any unsafe or unsound practice.

(9) A judicial or administrative finding against a money transmitter licensee under chapter 19.86 RCW, or an examination report finding that the money transmitter licensee engaged in an unfair or deceptive act or practice in the conduct of its business.

(10) Other events and circumstances that, in the judgment of the director, impair the ability of the licensee to meet its obligations to its money services customers.

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-060 Tangible net worth.** What are the rules for my tangible net worth requirements?

(1) A money transmitter applicant or licensee must demonstrate and maintain a tangible net worth ((~~of at least the amounts set forth in the following schedule:~~

~~(a) Ten thousand dollars if the applicant has not previously engaged in the provision of money services, or the applicant or licensee had money transmission receipts of less than one million dollars for the previous twelve months;~~

~~(b) Twenty thousand dollars if the applicant or licensee had money transmission receipts of at least one million dollars but less than two million dollars for the previous twelve months;~~

~~(c) Thirty thousand dollars if the applicant or licensee had money transmission receipts of at least two million dollars but less than three million dollars for the previous twelve months;~~

~~(d) Forty thousand dollars if the applicant or licensee had money transmission receipts of at least three million dollars but less than four million dollars for the previous twelve months; or~~

~~(e) Fifty thousand dollars if the applicant or licensee had money transmission receipts of four million dollars or more for the previous twelve months)) calculated at ten thousand dollars for every one million dollars of money transmission and payment instrument dollar volume. The minimum tangible net worth is ten thousand dollars; the maximum three million dollars.~~

(2) Determinations of tangible net worth must be made according to generally accepted accounting principles.

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-070 License denial. When may DFI deny my license application?**

(1) Director may deny a money services license if the director determines that:

(a) The application is incomplete;

(b) The surety bond or net worth requirements of WAC 208-690-040 through 208-690-060 have not been met;

(c) The general fitness and character requirements of RCW 19.230.070 or 19.230.100 have not been met as demonstrated by findings including, but not limited to, the following:

(i) The applicant, an executive officer, proposed responsible person, board director, person in control or authorized delegate has been convicted of any felony within the past ten years;

(ii) The applicant, an executive officer, proposed responsible person, board director, person in control or authorized delegate has been convicted of a crime involving a financial transaction within the past ten years;

(iii) The applicant, an executive officer, proposed responsible person, board director or person in control has criminal, civil, or administrative charges issued against him/them in any jurisdiction for violations relating to a financial transaction(s) within the past ten years;

(iv) The applicant, an executive officer, proposed responsible person, board director, or person in control has falsified any information supplied in connection with the application;

(v) The applicant, or any proposed authorized delegate thereof, has had an adverse action taken against any business license related to providing financial services by a jurisdiction within the United States within the past five years;

(vi) The applicant has allowed a business under its control to deteriorate to a condition of insolvency determined by the fact that its liabilities exceed its assets or it cannot meet its liabilities as they mature;

(d) The applicant, or any authorized delegate thereof, fails to respond to a request for information from the director;

(e) The description of the screening process used by the applicant in selecting authorized delegates supplied by the applicant describes a process that is ineffective in determining the fitness of proposed authorized delegates;

(f) The applicant has failed to register with the United States Department of the Treasury as required by 31 U.S.C. Section 5330;

(g) The applicant, an executive officer, proposed responsible individual, board director, or person in control is listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

(2) In lieu of denying an application as authorized by any of the findings in subsection (1) of this section, the director may return the application or extend the review period if the director determines that the condition or circumstances that would likely lead to denial may be temporary and resolved satisfactorily within a reasonable period of time. The director may resume processing the application if the director deter-

mines that a favorable resolution of the disqualifying condition has occurred.

(3) The director may revoke or suspend a license and issue an order to cease and desist operations as a money services licensee if:

(a) Another jurisdiction initiates an adverse action against the money services license of the licensee; or

(b) Upon finding the existence of any condition or fact that would have led to denial of a license if known by the director during the processing of the application.

## **PART ((C)) (D) RECORDKEEPING AND REPORTING**

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-075 Transaction records. Must I keep records pursuant to federal law in addition to keeping them for Washington law? Yes.** In addition to the records required to be retained under RCW 19.230.170, ~~((a money transmitter licensee shall))~~ **you must** maintain a record of money transmittals in accordance with applicable sections of Financial Recordkeeping and Reporting of Currency and Foreign Transactions, Title 31, Code of Federal Regulations, Part ~~((403.33(f)))~~ 103, as now appearing or hereafter amended.

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-080 Audited annual financial statement. Am I required to have audited financial statements? ((A money transmitter licensee is)) Yes.** You are required to have an audited financial statement prepared annually in accordance with generally accepted accounting principles.

## NEW SECTION

**WAC 208-690-085 Permissible investments.** How do I structure permissible investments? You must maintain permissible investment levels pursuant to RCW 19.230.200 and 19.230.210.

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-090 Annual report and annual assessment. What are the annual report and assessment requirements?** Every licensee must submit a completed annual report and annual license assessment fee prescribed by WAC 208-690-140. The completed report and the fee must be received in the department office no later than 5:00 p.m. July 1, or 5:00 p.m. the next business day if July 1 is not a business day. A form for the preparation of the annual report and license assessment will be made available by the department by electronic transmission or mailed upon request. The report ~~((shall))~~ **must** include the following:

(1) If the licensee is a money transmitter, a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corpo-

ration, the most recent audited consolidated annual financial statement of the parent company.

(2) A list of current authorized delegates in a form and in a medium prescribed by the director.

(3) If the licensee is a money transmitter, a certification that the licensee's investment portfolio includes only permissible investments under RCW 19.230.200 and 19.230.210.

(4) If the licensee is a money transmitter, proof that the licensee has an adequate surety bond or assignment of a certificate of deposit and net worth as required by WAC 208-690-040 through 208-690-060.

(5) A description of each material change, as defined by WAC 208-690-110, which has not been previously reported to the director.

**AMENDATORY SECTION** (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-110 Report of material change. What must I report to DFI if something about my business changes?** Material changes described in this section must be reported to the director within thirty business days of the occurrence of the change. "Material change" means any change that is not trivial, and that, if not reported, would cause an investigation or examination to be misled or delayed. Such changes include, but are not limited to:

- (1) A change of the physical and/or mailing address;
- (2) A change of the responsible individual, compliance officer, or other executive officers or board members;
- (3) A change of the licensee's name or DBA (doing business as);
- (4) A change in the location where the records of the licensee that are required to be retained under RCW 19.230-170 are kept;
- (5) The obtaining, revocation or surrender of a money services license in any other jurisdiction;
- (6) The conviction of the licensee, an executive officer, responsible individual, board director, principal, or person in control of a misdemeanor or gross misdemeanor involving a financial transaction; and
- (7) Other similar activities or events.

The fee prescribed by WAC 208-690-150 must accompany each report.

**AMENDATORY SECTION** (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-112 Other reports. What events about my business must I report to DFI?** ~~((A licensee shall))~~ You must file a report with the director within one business day after ~~((the licensee has))~~ you have reason to know of the occurrence of any of the following events:

- (1) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, under the United States Bankruptcy Code (11 U.S.C. 101-110) for bankruptcy or reorganization;
- (2) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of creditors;

(3) The commencement of a proceeding to revoke, suspend, restrict, or condition its license, or otherwise discipline or sanction the licensee, in a state or country in which the licensee engages in business or is licensed;

(4) The cancellation or other impairment of the licensee's bond or other security;

(5) A charge or conviction of the licensee or of an executive officer, responsible individual, board director of the licensee, principal, or person in control of the licensee, for a felony; or

(6) A charge or conviction of an authorized delegate for a felony.

**AMENDATORY SECTION** (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-115 Request for approval of change of control.** ~~((A request for))~~ What must I do to request approval for a change of control of my business? You must request approval of a change of control ((as required by RCW 19.230.160 shall be made within fifteen days after learning of the proposed change of control and)) at least thirty days prior to the proposed change of control. The request for approval ~~((shall))~~ must include:

- (1) A comprehensive description of the proposed change that sets forth:
  - (a) The identity of all persons acquiring control under the proposed change;
  - (b) The ownership interest and managerial authority of all persons in control under the proposed change.
- (2) For each new person in control under the proposed change:
  - (a) Biographical information, including employment history for the immediate previous five years;
  - (b) A personal credit report issued by a recognized independent credit reporting agency;
  - (c) A signed authorization for a background investigation on a form prescribed by the director.
- (3) A transaction fee as prescribed by WAC 208-690-150.

**AMENDATORY SECTION** (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-120 Quarterly reports—Deletion of authorized delegates, locations—Address or name change. When must I notify DFI of certain changes to information about my business?**

(1) ~~((A licensee shall))~~ You must file with the director within forty-five days after the end of each fiscal quarter:

- (a) Any addition or deletion of licensee-owned locations where money services are provided, including mobile locations;
- (b) Any change in the name or trade name (DBA or doing business as) or business address of an existing authorized delegate;
- (c) Any additions or deletions from its roster of authorized delegates; and
- (d) The fee required by WAC 208-690-150.

(2) If there is no change in the roster of authorized delegates or locations where money services are provided, or no

changes in the name or trade name (DBA or doing business as) or business address of any authorized delegate during a fiscal quarter, no report is required.

### **PART ((D)) E FEES**

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-130 License fees. What are the fees I must pay to get a license? You must pay the following fees:**

(1) A ~~((nonrefundable))~~ license ~~((application))~~ fee of ~~((five hundred))~~ one thousand dollars ~~((shall be paid by each license applicant, plus fifty)).~~

(2) An additional license fee of one hundred dollars for each additional location where ((the licensee)) you or an authorized delegate will provide money services, up to a maximum of ((fifteen)) five thousand dollars. ~~((A nonrefundable application fee of fifty dollars shall be paid by a licensee for each authorized delegate or company owned location the licensee seeks to add to its roster after the company license has been issued.~~

~~((2) An applicant shall pay an initial license fee of five hundred dollars, plus fifty dollars for each additional location where the applicant or an authorized delegate will provide money services, up to a maximum of fifteen thousand dollars. This initial license fee is refundable if the application is denied. The fee is not refundable is [if] the application is withdrawn. A licensee shall pay an initial license fee of fifty dollars for each authorized delegate the licensee seeks to add to its roster after the license has been issued.))~~

(3) The license fee in subsection (1) of this section may be partially refundable if the application is withdrawn or denied.

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-150 Transaction fee. What fees must I pay to make changes to my license?** (1) ~~((A fee of))~~ You must pay fifty dollars to add an authorized delegate to your quarterly roster of authorized delegates. The fee for adding authorized delegates is capped at five thousand dollars.

(2) You must pay thirty dollars ((shall be paid by a licensee for the administrative costs connected with processing each)) for the following changes to your license:

(a) Change of ~~((a licensee's))~~ physical or mailing address, name or trade name (DBA or doing business as);

(b) Request for approval of a change in control ~~((of a licensee));~~

(c) Change of the responsible individual;

(d) Change in the business/trade name ~~((or))~~ location of an existing authorized delegate, ~~((or))~~ company-owned location ~~((, or deletions from the roster or authorized delegates));~~  
or

(e) Material change. Material changes include, but are not limited to, the addition or deletion of executive officers or board directors.

~~((2))~~ (3) Transaction fees ~~((to cover administrative costs))~~ are separate, distinct from, and in addition to investigation and examination fees under WAC 208-690-170.

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-170 Investigation ((and examination)) fee. What fee will I be charged if DFI investigates my business?**

(1) The director will collect fees of seventy-five dollars per hour for investigations ~~((and examination))~~, including, but not limited to, the following services:

(a) The review and attendant investigation of:

(i) Changes in control changes in the responsible individual((s));

(ii) Changes in the identity or location of authorized delegates((s)); and

(iii) Other material changes.

(b) The review and attendant investigation of permissible investments ~~((of the licensee)).~~

~~((c) Any examination of the licensee's books, records and files deemed necessary by the director.))~~

(2) The licensee, applicant or person subject to licensing under this chapter who is the subject of an examination or investigation ~~((shall))~~ must pay the actual expenses of required out-of-state travel including, but not limited to, travel, lodging and per diem expense.

(3) Investigation ~~((and examination))~~ fees are separate, distinct from, and in addition to transaction fees imposed by WAC 208-690-150.

### **PART ((E)) F ENFORCEMENT**

AMENDATORY SECTION (Amending WSR 04-15-005, filed 7/7/04, effective 8/7/04)

**WAC 208-690-180 Authority to conduct examinations and investigations. When may DFI examine or investigate my business?**

(1) For the purposes of discovering violations of chapter 19.230 RCW or these rules, discovering unsafe and unsound practices, or securing information lawfully required under chapter 19.230 RCW, the director may at any time, either personally or by designee, investigate or examine the business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of every licensee or its authorized delegates, and of every person who is engaged in the business of providing money services, whether the person acts or claims to act under or without the authority of chapter 19.230 RCW. For these purposes, the director or designated representative ~~((shall))~~ must have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons. The director may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of any investigation, examination, or hearing and may require such person to produce

books, accounts, papers, documents, records, files and any other information the director or designated person declares is relevant to the inquiry. The director may require the production of original books, accounts, papers, documents, records, files, and other information; may require that such original books, accounts, papers, documents, records, files, and other information be copied; or make copies himself or herself or by designee of such original books, accounts, papers, documents, records, files, or other information. If the director determines that there is a danger that original records may be destroyed, altered, or removed to deny access, or hinder an examination or investigation, or that original documents are necessary for the preparation of a criminal referral, the director may take possession of originals of any items described in this section, regardless of the source of such items. Originals and copies taken by the director may be held, returned, or forwarded to other regulatory or law enforcement officials as determined necessary by the director. The director or designated person may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, documents, records, files, or other information.

(2) The licensee, applicant, or person subject to licensing under this chapter (~~shall~~) must pay the cost of examinations and investigations as specified in RCW 19.230.320 and WAC 208-690-170.

(3) Information obtained during an examination or investigation under these rules may be disclosed only as provided in RCW 19.230.190.

(4) The director may retain attorneys, accountants, or other professionals and specialists as examiners, auditors or investigators, to conduct or assist in the conduct or examinations or investigations. The cost of these services (~~shall~~) must be borne by the person who is the subject of the examination or investigation.

## PART G DISCLOSURES

### NEW SECTION

**WAC 208-690-200 What documentation must I provide to consumers to be in compliance with RCW 19.230.330(2)?** (1) For general money transmission transactions, the receipt must include the name, address, and phone number of the licensee in addition to the fee and exchange rate disclosure information as required by RCW 19.230.330 (2).

(2) For stored value transactions the receipt may include the name, address, and telephone number of the authorized delegate, provided that the licensee's contact information is provided in or on the stored value device packaging or on the stored value device itself.

(3) For bill payment transactions, the receipt may include the name, address, and telephone number of the authorized delegate; provided the licensee's name accompanies the authorized delegate's information on the receipt.

## WSR 10-20-124 PERMANENT RULES DEPARTMENT OF FINANCIAL INSTITUTIONS

[Filed October 5, 2010, 9:23 a.m., effective November 5, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rules are being amended to implement the Laws of 2010, to generally increase clarity and consistency, and to reorganize the chapter to consolidate existing subchapters A-G into a single chapter to allow ease of use and on-line searching.

Citation of Existing Rules Affected by this Order: Repealing chapters 208-680A through 208-680G WAC (all sections); and amending [new] chapter 208-680 WAC (all sections).

Statutory Authority for Adoption: RCW 43.320.040.

Other Authority: Chapter 18.44 RCW (as amended by chapter 34, Laws of 2010).

Adopted under notice filed as WSR 10-16-135 on August 4, 2010.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 208-680-030, a definition was added for "principal officers." The term was used in several places in the rules, as were "responsible persons" and "controlling persons." All three were similar, so this definition was added.

2. WAC 208-680-030, "responsible persons" was removed. It was used in few places, and "principal officers" covered the relevant persons.

3. WAC 208-680-110, requirements for proof of good character and credit were updated to more closely reflect the statute and to incorporate the newly defined "principal officers."

4. WAC 208-680-135, clarified that fingerprint identification for escrow officer (EO) and designated escrow officer (DEO) applicants must be submitted on standard FBI card-stock rather than a department of financial institutions (DFI)-provided form. This mirrors DFI's other fingerprint identification rules and brings the rules into line with existing practice.

5. WAC 208-680-145, changed to reflect DFI's willingness to accept passage of the Washington bar exam in lieu of the EO exam for attorneys that either must or choose to license as escrow officers, as stated in DFI's interim guidance document.

6. WAC 208-680-176, when an escrow agent loses its DEO or a branch designated escrow officer (BDEO), an agent may continue and finish existing clients and files but cannot accept new clients or files until a replacement is found and approved, or DFI otherwise consents. Escrow agents (EA) must identify a replacement within five days, or seek approval of the department. This change is intended to provide clarity in the even [event] that an EA loses its DEO or BDEO suddenly.

7. WAC 208-680-245(2), because the definition of responsible person was removed, DEOs or other controlling persons must inform DFI if an escrow office closes.

8. WAC 208-680-245(4), if a DEO or BDEO has left an agent before or during the closing of an office, another principal officer is responsible for filing monthly reconciliation reports. This was added because the prior draft did not clarify

who was responsible for monthly reconciliation reports if the DEO or BDEO is no longer with the EA.

9. WAC 208-680-265 (4)(e), requires a ten-day postnotification for any change in a principal officer.

10. WAC 208-680-270, prior versions of the rules did not include the seven year limitation on employment bars for convictions/no contest pleas. This change aligns the rules with the statute.

11. WAC 208-680-410(6), clarifies that only employees that are included on a bank's signature card can have signatory authority over escrow trust accounts. This was the result of discussions with industry and with DFI examination staff.

12. WAC 208-680-410(8), the CR-102 version of the rules didn't address remotely deposited funds (other than wire deposits), and several comments asked for clarification as it is already a common industry practice.

13. WAC 208-680-530(7), adds a new section to address questions of what obligations an escrow agent has regarding its records when it closes. This was added to provide clarity.

14. WAC 208-680-540 (8)(c), allows escrow agents to put their full itemization on an addendum if they don't fit on the closing statement, as long as the addendum is provided to the principal parties. This was added at the request of commenters.

15. WAC 208-680-540(10), allows escrow agents to not obtain original signatures for the escrow file where not required by the escrow instructions.

16. WAC 208-680-648, removed the specific rules for challenging DFI taking possession and clarified that it is subject to the Administrative Procedure Act. This was done to make the appeals process more uniform with the rest [of] the division's procedures.

17. WAC 208-680-660, removed some pieces of the abandoned escrow records provisions in order to clarify that former licensees are financial [financially] responsible for maintaining, storing, and converting their records.

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 13, 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 54, Amended 0, Repealed 44.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 54, Amended 0, Repealed 44.

Number of Sections Adopted Using Negotiated Rule Making: New 54, Amended 0, Repealed 44; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 5, 2010.

Deborah Bortner, Director  
Division of Consumer Services

## Chapter 208-680 WAC

### ESCROW AGENT REGISTRATION ACT

#### GENERAL PROVISIONS

#### NEW SECTION

**WAC 208-680-030 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 Escrow Agent Registration Act, codified under chapter 18.44 RCW.

"Applicant" means any person applying for an escrow officer license or any person or group of persons applying for an escrow agent license. The term "applicant" includes the officers and controlling persons of the applicant, as well as any escrow officer seeking to become an escrow agent's designated escrow officer or branch designated escrow officer.

"Branch designated escrow officer" means any licensed escrow officer designated by a licensed escrow agent and approved by the director to supervise a specific branch office. The branch designated escrow officer is the licensed escrow officer responsible for supervising an agent's handling of escrow transactions, management of the agent's trust account, and supervision of all other licensed escrow officers employed by the agent at his or her branch designated office.

"Cash deposit" means funds deposited, in lieu of an errors and omissions policy, in an account in a recognized Washington state depository which account is maintained separate and apart from the escrow agent's own funds. The funds shall be deposited in such a manner to permit only the director to withdraw from the principal amount. The escrow agent may withdraw any interest accumulated to the account.

"Closing" means the transfer of title of real or personal property or execution of a real estate contract whichever event occurs first.

"Completed escrow" means a transaction in which the escrow agent has fully discharged its duties to the principal parties to the transaction. This includes, but is not limited to: Obtaining all necessary documents, obtaining required signatures, completing reconveyance or title elimination, and disbursing funds to the principal parties to the transaction, the agents to the transaction, and to third parties to the transaction as agreed by the principal parties in the escrow instructions or on the settlement form (such as HUD-1 or HUD-1A).

"Department" means the department of financial institutions.

"Designated escrow officer" means any licensed escrow officer designated by a licensed escrow agent and approved by the director as the licensed escrow officer responsible for supervising that agent's handling of escrow transactions, management of the agent's trust account, and supervision of all licensed escrow officers and other persons employed by the agent.

"Director" means the director of the department of financial institutions or his or her duly authorized representative. For purposes of this act, the division of consumer services is deemed to be the director's authorized representative.

"Escrow instructions" are the instructions, signed by the principal parties to the transaction that identify the duties and responsibilities of the escrow agent in carrying out the escrow, that identify the thing or things of value held by the escrow agent and the specified condition or set of conditions under which the thing or things of value are to be transferred.

"Good funds" means funds in a bank account that are immediately usable by the owner of the account. Good funds may be derived from the monetary instruments described in RCW 18.44.400(3).

"Handling escrow transactions" means participating in escrow transactions. It includes, but is not limited to, having access to a client's: Personal information, financial records, or funds. Employees that perform administrative functions like payroll or human resources services are not handling escrow transactions unless such persons also perform duties meeting this definition.

"Investigation" means an inquiry undertaken for the purpose of detection of violations of the act and these rules or securing information lawfully required under the act and these rules. The director may make private or public investigations.

"Officers" of the escrow agent shall include the president, secretary, treasurer, vice-president, and any other equivalent persons with control over management decisions of the escrow agent.

"Overdue instrument" means a negotiable instrument that is overdue as defined in RCW 62A.3-304.

"Permanent record" means any record required to be kept under RCW 18.44.400 for a period of six years from the completion of the escrow transaction.

"Principal officers" means natural person applicants for escrow agent licenses; corporate officers, vice-president and above; directors, shareholders, members, or anyone else owning ten percent or more of the escrow agent's equity; general or managing partners; sole proprietors and spouses of sole proprietors; designated and branch designated escrow officers; and any person defined as a "controlling person" in RCW 18.44.011(1).

"Principal parties" means the buyers and sellers in a purchase transaction, and the borrower and lender in a refinance transaction.

"Providing escrow services" means conducting transactions, except the acts of a qualified intermediary in facilitating an exchange under section 1031 of the Internal Revenue Code, wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he or she is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

"Reconveyance" means an instrument used to transfer title from an individual holding such title in trust to the equi-

table owner of real estate, when title is held as collateral security for a debt.

"Third party to the transaction" means those persons providing professional services necessary for the closing of the escrow, including, but not limited to: Real estate brokers, lenders, mortgage brokers, attorneys, tax facilitators or underlying lien holders.

"Transfer of title" occurs at the time the seller executes a deed or bill of sale and such is delivered to the purchaser or recorded.

"Trust" means a fiduciary relationship whereby a thing of value is delivered to an escrow agent with the intention that such thing of value be administered by the escrow agent for the benefit of the principal parties to the transaction.

"Trust account" means a bank account holding funds of any party to the transaction.

"Unclaimed funds" means any funds that are abandoned under the Uniform Unclaimed Property Act, chapter 63.29 RCW.

#### NEW SECTION

**WAC 208-680-040 Exceptions—General.** (1) **Do I need an escrow license to provide escrow services?** Unless you fall into one of the exceptions in RCW 18.44.021, you must have a license under the act before providing escrow services.

(2) **I only plan on performing one or two escrow transactions. Do I need an escrow license?** Yes. You must license unless you meet one of the above exceptions. There is no exception under the act for persons performing limited numbers of transactions.

#### NEW SECTION

**WAC 208-680-045 Exceptions—Attorneys.** (1) **I am licensed to practice law in Washington. Am I excepted from licensing as an escrow agent?** Yes, as long as you only perform escrow services as part of your law practice. You are excepted from licensure as an escrow agent while you are engaged in the practice of law, but you are required to apply for and receive an escrow license before you perform escrow services outside of your legal practice. Your attorney exception may be extended to your bona fide legal practice, but is otherwise an individual exception and may not be extended to a separate business entity. Your exception may not be extended to nonattorney individuals unless they are employees of your bona fide law practice and you supervise all of their transactions.

You or your attorney-owned business entity will be required to license as an escrow agent if you or your business entity do one or more of the following:

(a) Principally provide escrow services, not including escrow services provided incidentally to the practice of law;

(b) Advertise yourself or your business entity as providing the services of an escrow agent without identifying yourself or your business entity as an attorney or law practice;

(c) Receive compensation or gain for providing escrow services through a business entity other than a bona fide law practice; or

(d) Permit nonattorney associates or employees to conduct escrow transactions without either a valid escrow officer license or an attorney's supervision.

**(2) I am licensed to practice law in Washington. Am I subject to the department's investigative authority?** Yes. The department has broad investigative authority under the act and these rules, and its investigatory authority is not restricted to persons who are required to obtain a license. The department has the power to investigate unlicensed persons and entities at least to the extent necessary to determine whether a violation of the act or these rules has occurred. This includes preliminary investigations of attorneys and business entities that claim the attorney exception from licensure.

Among other actions, the department may:

(a) Compel written statements from or subpoena any person with relevant information;

(b) Compel production of written materials and take evidence; and

(c) Apply to a superior court for an order compelling compliance with its authority under the act.

For further information on the department's investigative authority, see RCW 18.44.420 and WAC 208-680-620.

**(3) I am licensed to practice law in Washington. Am I subject to the department's examination authority?** Generally, no. Unless the department determines that the attorney exception from licensure does not apply to you or your business, you will not be subject to the department's examination authority under WAC 208-680-610. If the department has determined that the exception does not apply, you will be required to license the escrow portion of your business and it may be subject to regular examinations.

**(4) I am licensed to practice law in Washington and excepted from licensing under the act. Am I subject to other provisions of the act?** You may be subject to other provisions of the act for activities you conduct outside the practice of law. The attorney exception is a limited, individual exception from the act's licensure provision for actions undertaken while engaged in your professional, legal duties, and is not a general exemption from the act.

## LICENSING AND THE ESCROW OFFICER EXAMINATION

### NEW SECTION

**WAC 208-680-110 Credit and character report. What kinds of credit and character reports must I provide with my application?**

(1) If you are applying for an escrow officer license, or are applying to be a designated escrow officer, you must provide:

(a) Proof that you have passed the escrow officer examination; and

(b) Satisfactory proof of your good character; and

(c) Satisfactory proof of your good credit rating, as evidenced by a report from a recognized credit-reporting agency, and in a form approved by the director.

(2) If you are applying for an escrow agent license, you must provide satisfactory proof of character and credit rating

for all principal officers. If your applicant is a business entity and not a natural person, you must provide satisfactory proof of your entity's credit rating. This proof must be obtained and provided by a recognized credit-reporting agency in a form approved by the department.

(3) If you are reporting a change in principal officer, you will be required to provide with your escrow agent amendment application, for any new principal officer:

(a) Satisfactory proof of his or her good character; and

(b) Satisfactory proof of his or her good credit as evidenced by a report from a recognized credit-reporting agency, and in a form approved by the director.

### NEW SECTION

**WAC 208-680-125 License not transferable. (1) Can I transfer my license to another person or entity?** No. Neither an escrow agent license nor an escrow officer's license may be transferred.

**(2) Can all or substantially all of the assets of an escrow agent be transferred to another person?** Yes. A licensed escrow agent may transfer all or substantially all of its assets to another person as long as the transfer is approved by the department and the receiving party (the transferee) has been issued an escrow agent license under the act prior to the transfer.

**(3) If I am transferring my assets to another escrow agent, what notification must I provide to the department?** You must provide written notice to the department at least thirty days before the effective date of the transfer. The written notice must include a copy of the signed transfer agreement that contains, at a minimum:

(a) A stipulation that the transferee is responsible for obtaining an escrow agent license and finding or designating a licensed escrow officer as a designated escrow officer before completion of the transfer;

(b) A stipulation that the transferee will obtain and submit to the director evidence of financial responsibility in the form of the required bond or bonds and errors and omission insurance in compliance with RCW 18.44.201 and these rules before completion of the transfer;

(c) A stipulation that the transferee is either restricted from using or authorized to use, the escrow agent's business name, unless this requirement is waived by the director; and

(d) A stipulation indicating which of the parties will:

(i) Make all payments due to principal parties on or before the effective date of the transfer;

(ii) Maintain and preserve the accounting and other records as required by RCW 18.44.400 and WAC 208-680-520 and 208-680-530; and

(iii) Provide notice of the transfer to all principal parties who have pending escrows or deposited funds with the escrow agent, or who have executed some other form of written agreement with the escrow agent. Such notice must be provided within five days of your notice to the department, and must comply with RCW 18.44.465.

**(4) If I am acquiring all or substantially all of the assets of an escrow agent, what notifications must I provide?** The department treats this kind of sale of assets as a change in a principal officer. If you do not have an escrow

agent license, you must apply for and receive one. If you already have an escrow agent license, at least thirty days before you acquire all or substantially all of the assets of an escrow agent you must provide the department with all the information required of a principal officer or controlling person as if you were applying for a new license. The change of control transaction may not be completed until the transferee has received a license and provided the department with appropriate notices.

NEW SECTION

**WAC 208-680-130 What kind of background check and fingerprinting information may the department require with my application for an escrow agent license?**

- (1) If you are applying for an escrow agent license:
  - (a) You must submit fingerprint identification for the natural person making the application, and for your principal officers, designated escrow officer or branch designated escrow officers, and any controlling person. This identification must be submitted on standard Federal Bureau of Investigation fingerprint cardstock or another form acceptable to the department.
  - (b) You may be required, at the department's discretion, to provide additional background information any applicant, principal officer, designated escrow officer, controlling person, or partner. This may include any information the department deems necessary to satisfy the director that the requirements under RCW 18.44.031(2) have been met. The director may require that such information be reported in writing and signed by the reporting individuals.
  - (c) If you have been issued an escrow agent license and experience a change in one or more principal officers or controlling persons, you must submit fingerprints and such other information as the director may request under (b) of this subsection to the department thirty days prior to the effective date of the change in principal officer or controlling person.

(2) The department will collect a fingerprinting fee from you equal to the department's cost for processing fingerprints through the Washington state patrol.

NEW SECTION

**WAC 208-680-135 What kind of background check and fingerprinting information may the department require with my application for an escrow officer license?**

- (1) If you are applying for an escrow officer license or to be a designated escrow officer:
  - (a) You must submit fingerprint identification for the applicant. This identification must be submitted on standard Federal Bureau of Investigation fingerprint cardstock or another form acceptable to the department.
  - (b) You may be required, at the department's discretion, to provide additional background information about yourself to ascertain your honesty, truthfulness, and good reputation. This information may include, but is not limited to: Residential address and telephone number, qualifications, employment history, a personal credit report, and other information that the director may deem appropriate under RCW 18.44.-031(2).

(2) The department will collect a fingerprinting fee from you equal to the department's cost for processing fingerprints through the Washington state patrol.

NEW SECTION

**WAC 208-680-145 Escrow officer examination. (1)**

**How do I take the escrow officer examination?** While the director determines the form and content of the escrow officer examination with the advice of the escrow commission, the test is administered by a third-party company under a contract with the department. It is given at least annually. For information about the examination process and available dates, applicants should consult the department's web site, which will redirect them to the current testing service provider for more detailed information.

(2) **Do I need to take and pass the escrow officer examination before filing my application and paying my application fee to the department?** Yes. You must submit a copy of your test pass certificate with your application to the department. You must have passed the escrow examination no more than one year before your initial application for a license. If your license is not issued within two years of your successful completion of the examination, you will be required to retake the examination.

(3) **Will the department review my application before I take the test to see if I meet the other requirements?** No. Due to volume and resource limitations, the department does not review escrow officer applications unless they are accompanied by a test pass certificate.

(4) **I am an attorney licensed to practice law in Washington. If I am required to license as an escrow officer, will I be required to take and pass the escrow officer examination?** No, the department will accept membership in the Washington bar in lieu of taking and passing the escrow officer exam.

NEW SECTION

**WAC 208-680-155 What escrow officer and agent fees will I be required to pay?** Escrow officer and agent fees:

Title of Fee	Fee
Escrow officer:	
First examination (test)	\$168.00
Reexamination (test)	168.00
Application	179.26
License renewal	179.26
Transfer of license to a new escrow agent, name or address change, or license activation	28.01
Duplicate license	28.01
Escrow agent:	
Application	386.55
Renewal	386.55
Late renewal with penalty	579.81

Title of Fee	Fee
Change of designated escrow officer, or name or address change, per license generated	28.01
Duplicate license	28.01
Escrow agent branch office:	
Application and original license	386.55
Renewal	386.55
Late renewal with penalty	579.81
Change of branch designated escrow officer, or name or address change, per license generated	28.01
Duplicate license	28.01

NEW SECTION

**WAC 208-680-165 May the director waive fees under the act?** Yes. The director may waive any or all of the fees and assessments imposed under WAC 208-680-155, in whole or in part, when he or she determines that both of the following factors are present:

- (1) The consumer services program fund exceeds the projected acceptable minimum fund balance level approved by the office of financial management;
- (2) The fees paid by escrow agents equals or exceeds the costs of the licensing, examinations, and enforcement escrow program; and
- (3) That such course of action would be fiscally prudent.

NEW SECTION

**WAC 208-680-170 What happens if my check is dishonored or my payment of an escrow fee is insufficient?** Payment of any fee required under chapter 18.44 RCW by a check that is dishonored or is an insufficient payment will be considered nonpayment. The license action for which the dishonored check or insufficient payment was tendered will not be completed by the department, and a fifteen dollar non-sufficient funds fee may be charged.

NEW SECTION

**WAC 208-680-175 May my designated escrow officer or branch designated escrow officer supervise more than one of my locations?** No, unless the director provides written consent. Designated escrow officers and branch designated escrow officers may not simultaneously supervise more than one location without the prior written consent of the department.

NEW SECTION

**WAC 208-680-176 If my designated escrow officer or branch designated escrow officer leaves, may I continue to operate my escrow business?** You may continue to complete existing client files to the extent necessary to avoid prejudicing those existing clients and files, provided you notify

the department within one business day of the loss of or change of your designated escrow officer or branch designated escrow officer. You must notify the department of your proposed replacement designated escrow officer within five days of the loss or change, and you may not accept new clients or new files until your designated escrow officer has been approved by the department or the department has otherwise authorized new activities. If you need more than five days to identify your replacement designated escrow officer, you must seek approval from the department. Failure to replace your designated escrow officer or to receive approval from the director for an extension may result in an enforcement action against you and the suspension or revocation of your license. If your identified replacement is rejected by the department, you will have an additional thirty days to find a new replacement.

NEW SECTION

**WAC 208-680-177 What must I do to replace my designated escrow officer?** You must apply to the department for approval of the new designated escrow officer or branch designated escrow officer. The new designated escrow officer must meet the requirements of WAC 208-680-110 and 208-680-135.

NEW SECTION

**WAC 208-680-180 May a designated escrow officer or a branch designated escrow officer work for two or more escrow agents?** No, unless the director provides written consent. A designated escrow officer or branch designated escrow officer may perform escrow services for only one escrow agent at a time without the prior written consent of the director or his/her designee. A designated escrow officer or branch designated escrow officer may only supervise those escrow agent and escrow agent employees for whom the officer has been designated by the director or his/her designee.

NEW SECTION

**WAC 208-680-185 What constitutes the misuse of my escrow officer license?** Regardless of whether or not you are compensated, it is misuse of your escrow license to:

- (1) Allow another person to use it to establish and carry on an escrow agent business over which you do not have full management and supervisory responsibilities; or
- (2) Fail to adequately supervise any individual conducting escrow or assisting in escrow under the authority of your license.

NEW SECTION

**WAC 208-680-195 Can an escrow agent prohibit its designated escrow officer from accessing its trust account books and records?** Yes, provided the agent notifies the department within twenty-four hours of the prohibition. Notification must include the reason for the prohibition, a current address and telephone number for the prohibited designated escrow officer, a request for a replacement designee.

nated escrow officer, and a notice that no escrow business will be conducted until a new designated escrow officer is approved or the director has given prior written consent. Unless this notice is given under this section, an escrow agent may not prohibit the designated escrow officer from accessing the escrow agent's trust account books and records.

## ORGANIZATION AND ADMINISTRATION

### NEW SECTION

**WAC 208-680-210 How must I identify my location or locations?** Any main or branch office of an escrow agent must be identified by displaying the escrow agent's name in a manner visible to the public. The displayed name must be the name recorded on the license for that particular location. Any physical location where an escrow agent holds itself out to the public as able to perform escrow services as defined under RCW 18.44.011(4) is considered an office for the purposes of this section.

### NEW SECTION

**WAC 208-680-225 Do I need to display my licenses?** (1) The licenses of a designated escrow officer, branch designated escrow officer, and all other escrow officers must be prominently displayed in the office at the address on each individual license.

(2) An escrow agent license must be displayed in the main office of that escrow agent, and any branch licenses must be displayed in the appropriate branch office.

### NEW SECTION

**WAC 208-680-235 If I move the location of one or more of my offices, what notification requirements must I meet?** You must notify the department of any change of the location or mailing address of your main or branch offices before engaging in business at your new locations or addresses. You must file your change of address application with the department at least ten business days before the change in business location or address. The application and required attachments must be accompanied by all applicable fees specified under WAC 208-680-155.

### NEW SECTION

**WAC 208-680-240 Escrow agent renewal and reinstatement. (1) How long is an escrow agent license valid?** All escrow agent licenses expire on December 31st of every year.

(2) **Can I renew my escrow agent license?** Yes. Escrow agent licenses may be renewed by paying the applicable fee to the department.

(3) **I did not renew my escrow agent license on time, did not pay my escrow agent renewal fee by my renewal date, or my renewal fee payment was rejected. Can my escrow officers still provide escrow services?** No. Your escrow agent license is now expired, and any escrow services your escrow officers perform are considered unlicensed activities and are in violation of the act. If they continue to

perform escrow services on behalf of your agent after expiration of your license, the department may investigate and bring an enforcement proceeding against them.

For additional information about failed payments, see WAC 208-680-170.

(4) **I did not renew my escrow agent license on time. Can I still renew my license, or do I need to file a new application?** Once your license has expired, you have thirty days to file for renewal and to pay the renewal fee, and the department may assess a penalty. If you don't renew, your license will be canceled on the thirty-first day. A canceled license cannot be renewed or reinstated. If your escrow agent license is canceled and you wish to provide escrow services, you will have to apply for a new escrow agent license. Any escrow services your escrow officers perform after your license is canceled are unlicensed activities and are in violation of the act.

Even if you renew your license before it is canceled, you (and your escrow officers) are still liable for any unlicensed activities conducted while your license was expired.

### NEW SECTION

**WAC 208-680-243 Escrow officer renewal and reinstatement. (1) How long is an escrow officer license valid?** Escrow officer licenses are valid for one year from the date of issuance.

(2) **Can I renew my escrow officer license?** Yes. Escrow officer licenses may be renewed by completing the on-line renewal application and paying the annual renewal license fee specified under WAC 208-680-155 by your renewal date. Your renewal date is the date one year after the day your license was issued.

(3) **I did not complete the on-line escrow officer renewal process, did not pay my renewal fee by my renewal date, or my renewal fee payment was rejected. Can I still provide escrow services?** No. Your license is now expired, and any escrow services you perform are considered unlicensed activities and are in violation of the act. If you continue to perform escrow services after expiration of your license, the department may investigate and bring an enforcement proceeding against you.

For additional information about failed payments, see WAC 208-680-170.

(4) **I did not complete the on-line escrow officer form and pay my renewal fee by my renewal date. Can I still renew my license, or do I need to reapply?** Once your license has expired, you have sixty days to file for renewal and to pay the renewal fee, and the department may assess a penalty. If you don't renew, your license will be canceled on the sixty-first day. A canceled license cannot be renewed or reinstated. If your license is canceled and you wish to provide escrow services, you will have to apply for a new license. You should note that if your new license is not issued within two years of your passing the escrow examination, you will have to take the escrow examination again. See WAC 208-680-135.

Even if you renew your license before it is canceled, you are still liable for any unlicensed activities you conducted while your license was expired.

For the renewal fee structure, see WAC 208-680-155.

#### NEW SECTION

**WAC 208-680-245 Closure of office.** (1) **If I close one of my offices, what effect does that have on any other offices?** When the main office of an escrow agent closes, all branch offices must close. When a branch office closes and the main office remains licensed, the responsibility for records maintenance and trust accounting for the branch's transactions reverts to the main office.

(2) **If I close an office, what are my notification requirements?** When either the main office or a branch office of an escrow agent closes, either the designated escrow officer or a controlling person are jointly and severally obliged to notify the department within twenty-four hours of closure.

In addition to notifying the department, the designated escrow officer or a controlling person must:

(a) Within thirty days of office closure, provide the department with an itemized accounting of funds held in trust at the time of closure, including the names of the principal parties to the transaction, the escrow number, the amount of funds held and the purpose of the funds. If the trust account balance is zero, the escrow agent must provide a reconciliation of the trial balance supporting the zero balance;

(b) Within thirty days of office closure, provide the department with the name, residence address and telephone number of the person responsible for the records;

(c) Within thirty days of office closure, the street address where the records are located;

(d) Within thirty days of any change in the person responsible for the records or the place the records are maintained, notify the department of the change;

(e) Within thirty days of closure, provide the department with an itemized list of your retained records, specifying their location and quantity, including the number of files and the number of boxes they are stored in; and

(f) Within thirty days of closure, provide the department with a records retention plan that identifies the ways that you will store, retrieve, and destroy your required records in compliance with the act and this section. Your plan must identify how you will continue to pay any costs associated with your storage location.

(3) **How long do I need to maintain my records after closure?**

(a) Your records must be maintained for at least six years, and must be maintained in the state of Washington. They must be available upon demand of the department during business hours and must be maintained in a readily retrievable manner. Closing one or more of your offices does not discharge your obligation to retain your records.

(b) If there is a change in the person responsible for your records, or if the location of your records change, you must notify the department within thirty days.

(c) Your records must be stored, retrievable, and destroyed in accordance with the records retention plan you have submitted to the department.

(4) **What are my obligations regarding my trust account after I close a branch office?** If the closed branch

office has an associated trust account that contains client funds at the time of closure, the designated escrow officer or branch designated escrow officer responsible for that location must provide the department with monthly reports and reconciliations of the trust account to the trial balance, in compliance with WAC 208-680-410(9), until the trust account balance is zero. These reconciliations are due within thirty days of the end of the preceding month. If the designated or branch designated escrow officer is no longer with the escrow agent, another principal officer must file the monthly reports and reconciliations.

(5) **What are my obligations regarding my trust account after I close my main office?** If your trust account contains client funds at the time of closure, the designated escrow officer must provide the department with monthly reports and reconciliations of the trust bank account to the trial balance, in compliance with WAC 208-680-410(9), until the trust bank account balance is zero. These reconciliations are due within thirty days of the end of the preceding month.

(6) **If I close my main office, what obligation do I have regarding winding up my business?** You must wind up your business in a reasonably prompt manner. Until your account balances are zero, you must also maintain your fidelity and surety bonds under WAC 208-680-310 and your errors and omissions policy under WAC 208-680-320.

#### NEW SECTION

**WAC 208-680-255 Deceptive names prohibited.** **What restrictions affect the name I may use for my business?** At the discretion of the director, an escrow agent may not receive a license or advertise in any manner using names or trade styles which: Are similar to current licensees; imply that the agent is a nonprofit organization, research organization, title insurance company, public bureau or public group; or are otherwise deceptive or in violation of RCW 30.04.020, 31.12.025, 32.04.020(2), 33.08.010, or any other statute that limits the use of names. A bona fide franchisee may be issued a license using the name of the franchisor with the firm name of the franchisee. Licensees and applicants should be aware that other statutes may further restrict the trade names that they may use.

#### NEW SECTION

**WAC 208-680-265 Reporting significant events.** **What significant events am I required to report to the department, and how quickly must I report them?** Depending on the significant event, you will have different reporting periods.

(1) **Ten-day prenotification required.** You must report to the director, in writing, changes to the following information at least ten days before they occur:

(a) Your location or mailing address. See RCW 18.44.-061 and WAC 208-680-235;

(b) The form of your business organization or its place of organization. For example, if your business is changing from a sole proprietorship to a corporation, or from a corporation to a limited liability corporation, you must notify the department and may be required to file a new escrow agent application;

(c) The name and mailing address of your registered agent if you are an out-of-state escrow agent; or

(d) Your legal or trade name.

(2) **Twenty-four hour post-notification required.** You must notify the director in writing within twenty-four hours of any change to the trust status of your trust account. For example, if you use an interest-bearing trust account because you are required to under a limited practice officer or attorney license, and the status of your interest-bearing account changes for any reason, you must notify the department in writing within twenty-four hours. This notification does not affect your responsibility to comply at all times with the trust account requirements of the act and WAC 208-680-410.

(3) **Five-day post-notification required.** You must notify the director in writing within five business days of any changes to the escrow agent's surety or fidelity bonds or errors and omissions policy. See RCW 18.44.201.

(4) **Ten-day post-notification required.** You are required to notify the director in writing within ten days of the occurrence of any of the following:

(a) The cancellation or expiration of your Washington state master business license;

(b) For an in-state escrow agent, a change in your standing with the Washington secretary of state, including the resignation or change of your registered agent. If you are an out-of-state escrow agent, you are subject to subsection (1) of this section, which requires ten-day prenotification;

(c) The escrow agent filing for bankruptcy;

(d) The personal bankruptcy filing of one or more of your principal officers, controlling persons, licensed escrow officers, designated escrow officers, or branch designated escrow officers; or

(e) Any change in a principal officer, if no other reporting period is specified in the act or these rules. This includes changes in ownership affecting ten percent or more of the escrow agent's equity.

(5) **Other notification requirements.** In addition to the notice requirements under this section, you are required to follow any other notification requirements in the act or in these rules. These include, but are not limited to:

(a) For an escrow office closure, see WAC 208-680-245.

(b) For a transfer involving all or substantially all of its assets, the escrow agent must comply with WAC 208-680-125.

(c) For a change in principal officer or controlling person of a licensed escrow agent, the escrow agent must comply with WAC 208-680-125 and 208-680-110 and may be required to file a new application for an escrow agent license.

(d) For changes in designated escrow officer or branch designated escrow officer, see WAC 208-680-510.

(e) For termination of a licensed escrow officer, the escrow agent must notify the department within three business days that the escrow officer no longer represents the escrow agent. If the escrow officer was terminated for dishonesty or financial misconduct involving the business, the escrow agent must provide the department with that information. Within ten business days of the termination, the escrow agent must deliver the escrow officer's license to the department. See RCW 18.44.101.

(f) For the filing of quarterly reports, see WAC 208-680-425.

(g) For suit or complaint notification, see WAC 208-680-570.

(h) Within five business days of the escrow agent's license being revoked, surrendered, suspended, or the license expiring, the escrow agent shall notify the principal parties of preexisting escrows of the action. The contents of the notification must comply with RCW 18.44.465.

#### NEW SECTION

**WAC 208-680-275 Employment restrictions. (1) What criminal background restrictions are there on the persons I may employ?** You may not employ any person to handle escrow transactions who has been convicted of or plead no contest within the last seven years to either:

(a) A felony; or

(b) A gross misdemeanor involving dishonesty.

(2) **What financial responsibility restrictions are there on the persons I may employ to handle client funds?** In addition to the criminal background restrictions that apply to all employees handling escrow transactions, an employee that receives money, disburses funds, or acts as a signatory on trust accounts may not have demonstrated disregard in the management of his or her financial condition in the last three years. Disregard for his or her financial condition may be shown by, but is not limited to:

(a) Being subject to 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, the Check Cashers and Sellers Act, or other similar laws in this or another state;

(b) An independent credit report issued by a recognized credit reporting agency that indicates the person has a history of unpaid debts; or

(c) Any other demonstration of his or her inability to appropriately manage his or her personal finances in a way that may endanger the funds of either the escrow agent or the escrow agent's client.

(3) **Do I need to examine my current employee's backgrounds to ensure that I am in compliance with this requirement?** Yes. The restrictions are on all employees, not just new hires.

(4) **How will the department enforce these provisions?**

(a) Each escrow agent must develop written policies and procedures to document its efforts to comply with section 4, chapter 34, Laws of 2010 and this section. You must make your policies and procedures available to the department upon request, and they must be maintained as part of your books and records;

(b) Your actual practices must be consistent with your written policies and procedures and your employees must be trained in those policies and procedures;

(c) Each year, each escrow agent's designated escrow officer must submit to the department a statement along with the agent's renewal paperwork attesting to its compliance with its internal policies and procedures. Failure to truthfully submit this statement is a violation of the act. A branch des-

igned escrow officer may sign and submit the statement of compliance for a branch office; and

(d) The department reserves the right to perform its own background checks on escrow agent employees to determine compliance during examinations, investigations, and enforcement proceedings.

## FINANCIAL RESPONSIBILITY

### NEW SECTION

#### **WAC 208-680-310 Fidelity and surety bonds. (1)**

**What is a fidelity bond under the act?** For purposes of the act, a fidelity bond is a primary commercial blanket bond or an equivalent bond that is acceptable to the department, regardless of the name used to identify the specific insurance product. A bond is an acceptable equivalent if it meets the requirements of the act. At a minimum, it must:

(a) Provide an aggregate minimum coverage of two hundred thousand dollars;

(b) Have a deductible of no more than ten thousand dollars;

(c) Cover fraudulent or dishonest acts committed by one or more corporate officers, partners, sole practitioners, escrow officers, and employees, acting alone or in concert; and

(d) Run to the benefit of the escrow agent, unless the fraudulent or dishonest act is committed by one or more corporate officers, partners, or sole practitioners, in which case it runs to the benefit of the harmed consumer.

**(2) I am unable to find a fidelity bond that permits third parties to claim on the bond. Can I use a bond that does not allow a third party to claim on the bond?** If you make a good faith effort to find a bond that complies with the statutory and regulatory requirements, and are unable to do so, the department may accept a bond that meets the other fidelity requirements but does not permit third-party claims. The department may relax this requirement only until a determination can be made about the general availability of conforming bonds.

Licenses that use a nonconforming bond as authorized under this subsection should be aware that the department may consider a refusal to file a claim on a fidelity bond for fraudulent or dishonest acts committed by a corporate officer, partner, or sole practitioner, to be conducting business in an unsafe or unsound manner under section 11, chapter 34, Laws of 2010 and WAC 208-680-645.

**(3) Am I required to maintain any other kind of bond?** If your fidelity bond has a deductible, you must maintain a surety bond in the amount of ten thousand dollars. The surety bond must run to the benefit of the state and any person harmed by an escrow agent or its employees. The surety bond must be an original signed and sealed document with power of attorney attached, not a certificate of insurance.

**(4) How long must I maintain my bonds?** All bonds must be kept in effect while you are conducting escrow business. Additionally, after closure of your office you must maintain your fidelity and surety bonds until your escrow trust accounts have been reconciled and all balances are zero.

**(5) How do I demonstrate compliance with this requirement?** Along with your application or renewal, you must provide the department with a certificate of insurance. You must also provide coverage information to the department upon demand. The certificate of insurance does not need to be entitled a certificate of insurance, but must include at a minimum:

(a) Your escrow agent's name;

(b) The insurer's name;

(c) The aggregate amount of coverage;

(d) The amount of any deductible; and

(e) A statement of compliance with RCW 18.44.201.

To ensure compliance with the bonding requirement, you must provide a copy of the full bond language to the department during your first year of compliance, and then upon demand in subsequent years.

### NEW SECTION

#### **WAC 208-680-320 Errors and omissions policies. (1)**

**What errors and omissions policy must I carry?** You must carry an errors and omissions policy in the minimum aggregate amount of fifty thousand dollars or provide the department with a cash or securities alternative as described in subsection (2) of this section. Either a bond or the cash or securities deposit must be maintained until you have closed your office, all of your accounts have been reconciled, and all balances are zero.

**(2) If I want to use a securities alternative to the errors and omissions bond requirement in RCW 18.44.201 (1)(b), what are the requirements?**

(a) Securities used as an alternative to an errors and omissions policy must be effectively delivered to the director along with a properly executed irrevocable assignment and any supporting documentation as required by the director.

(b) Only those securities that meet the definition of "investment securities" under chapter 208-512 WAC may be used to satisfy RCW 18.44.201. Securities issued by the licensed escrow agent or its affiliates are not acceptable securities for the purposes of fulfilling the requirements of RCW 18.44.201.

### NEW SECTION

**WAC 208-680-330 When will the cash deposit or securities I used in lieu of an errors and omissions policy be returned to me?** (1) If your cash deposit or securities were deposited with the department to allow you to conduct escrow business, and you are closing, they will be returned to you the later of:

(a) One year from the date of the expiration, cancellation, surrender, or revocation of your license, unless there are any pending actions commenced under WAC 208-680-340 prior to the expiration, cancellation, surrender, or revocation of the escrow agent's license; or

(b) The day your trust accounts are fully reconciled and show a zero balance.

(2) If your cash deposit or securities were provided to the department to allow you to conduct escrow business and you have obtained an errors and omissions policy, your deposit or securities will be returned within thirty days of your provid-

ing the department with proof that you have obtained an errors and omissions policy.

(3) If your cash deposit or securities were provided to the department as part of a licensing application, they will be returned to you within thirty days of the department's denial of your application for an escrow agent license.

#### NEW SECTION

**WAC 208-680-340 How are claims filed on my cash deposit or securities in lieu of an errors and omissions policy?** (1) Upon receipt of notification of a legal action for which notice is required to be given to the department under WAC 208-680-570, the department will notify the complaining party of the existence of any cash deposit or securities and the provisions of this chapter.

(2) A claim against the cash deposit or securities must be in the form of certified copy of a final judgment from a court of competent jurisdiction. Upon receipt of a claim in the proper form, the department will release the amount of cash deposit or securities sufficient to pay the final judgment.

(3) The department will notify the escrow agent of the receipt of the claim and advise the escrow agent that it must deposit additional cash or securities with the department to maintain the required principal amount of fifty thousand dollars after payment of the claim.

#### NEW SECTION

**WAC 208-680-350 How long do I have to maintain my cash deposit and securities, and what are the consequences of failure to do so?** If you assign, transfer, or set over a cash or securities deposit in lieu of an errors and omissions policy, you must keep the deposit in full force and effect at all times as a condition precedent to your authority to transact escrow business. Your deposit or securities must be at least the principal amount of fifty thousand dollars. After closure, you must maintain your cash deposit until your trust account has a zero balance.

Failure to maintain the deposit or securities at the minimum level is sufficient grounds for the suspension or revocation of your license.

#### NEW SECTION

**WAC 208-680-360 What happens if my errors and omissions policy or my fidelity or surety bonds expire or are canceled?** In the event of cancellation or expiration of your errors and omissions policy or your fidelity or surety bonds, you must file satisfactory evidence of a new policy, bond, or reinstatement with the director before conducting any escrow business. Failure to file a new policy, bond, or reinstatement is sufficient grounds for the suspension or revocation of your license. During the time you do not have full insurance and bonding coverage in effect, you may not transact escrow business.

## TRUST ACCOUNT PROCEDURES

### NEW SECTION

**WAC 208-680-410 Administration of funds held in trust.** (1) **Who is responsible for funds received from the principal parties to an escrow?** The designated escrow officer or branch designated escrow officer is responsible for all funds received from the principal parties to an escrow transaction or escrow collection account. He or she must hold the funds in trust for the purposes of the transaction or agreement and must not utilize such funds for the benefit of the agent or any person not entitled to such benefit. The escrow agent must establish a trust account or accounts in a recognized Washington state depository. The escrow agent, through the designated escrow officer, is responsible for depositing, holding, disbursing, and accounting for funds in the trust account as provided in the act and the rules. For branch offices, the branch designated escrow officer is also responsible for depositing, holding, disbursing, and accounting for funds in the branch's trust account. The escrow agent is ultimately responsible for all the actions of the designated escrow officer or branch designated escrow officer.

(2) **What kind of an account can I use as a trust account for my escrow services?** Your trust account or accounts must be designated as a trust account or accounts in the certified name of the escrow agent. Your trust accounts must be noninterest bearing demand deposit accounts unless they are one of the following:

(a) An interest-bearing trust account or dividend earning investment account containing funds pertaining to an individual escrow transaction or escrow collection account, if directed to use one by a written agreement between and signed by all principal parties to the transaction. The agreement must specify the manner of distribution of accumulated interest to the parties to the transaction;

(b) An interest-bearing trust account or dividend-earning investment account containing only funds held on behalf of an owner, vendor, lessor, etc., involving escrow collections, if directed to use one by a written agreement or directive signed by the principal parties. The agreement must specify the manner of distribution of accumulated interest to the parties to the transaction;

(c) An interest-bearing trust account containing funds related to transactions in which a limited practice officer has prepared documents under authorization set forth in APR 12(h); or

(d) An interest-bearing trust account containing funds related to transactions in which a licensed attorney has prepared documents.

(3) **What information do I need to provide to the department regarding my trust account?** Each time you renew your escrow agent license, you must provide the department with an authorization to examine your trust account. This authorization must be on a form specified by the department, signed by a representative of the bank, and notarized.

(4) **Can I set up a system of records and procedures that varies from this section?** You must establish and maintain a system of records and procedures as provided in this

section unless you receive approval from the department. Any alternative records or procedures proposed for use by the escrow agent must be approved in advance by the department.

(5) **Who is responsible for disbursements of funds and funds held in trust?** The escrow agent is ultimately responsible for the disbursement of all funds received and held in trust, regardless of how they are disbursed.

(6) **Who may have signatory authority over trust account disbursements?** The designated escrow officer must have signatory authority on all trust accounts, and he or she may authorize any employee that he or she supervises to sign disbursements by including them on a bank account signature card. Branch designated escrow officers must have signature authority for trust accounts at their branch, and may have signature authority for other branches if the designated escrow officer authorizes it on either a temporary or permanent basis. The signatory authority of any employee other than a designated or branch designated escrow officer is discretionary, may be conditional or temporary, and may be revoked by the designated escrow officer at any time.

(7) **When must my client's funds be deposited into a trust account?** You must deposit any funds you receive for an escrow transaction or collection account into the escrow agent's trust account on the first banking day following receipt.

This requirement does not apply to funds owned exclusively by the agent.

(8) **What do I need to do when I receive escrow funds?**

(a) When you receive funds, you must record the date, amount, source, and purpose on either a cash receipts journal or duplicate receipt. If you use a duplicate receipt, you must keep it as a permanent record.

(b) When you deposit funds into your trust account or accounts, the deposit must be documented by:

(i) For traditionally deposited funds, a duplicate bank deposit slip that is validated by bank imprint or an attached deposit receipt that bears the signature of the authorized representative of the agent indicating that the funds were actually deposited into the proper trust account;

(ii) For funds received via wire transfer, posting of the deposit in the same manner as other receipts with a traceable identifying name or number supplied by the financial institution or transferring entity. You must also make arrangements for a follow-up "hard copy" receipt for the deposit; or

(iii) For remotely deposited funds, a follow-up "hard copy" receipt for the deposit.

(c) The traceable identifying name or number supplied by the financial institution in (b) of this subsection does not need to be a name or number you use to identify the transaction, but must be enough to allow the department to track and verify the transfer.

(9) **What are my responsibilities regarding my individual client ledgers?** You must maintain an individual client ledger for each escrow transaction or collection account for which funds are received in trust. All receipts and disbursements must be posted in the individual client ledger. Your client ledgers are subject to the following requirements:

(a) Credit entries must show the date of deposit or wire transfer, amount, and name of remitter.

(b) Debit entries must show the date of check or wire transfer, check number (if funds are disbursed via check), amount of check or wire transfer, and name of payee.

(c) You must prepare monthly trial balances of each client ledger. You must reconcile the ledger with both the trust account bank statement and the trust account receipts and disbursement records. The reconciliation must be signed by the designated escrow officer or branch designated escrow officer, and must be maintained as permanent records.

(10) **What are my obligations regarding a reconciled trust account?** Your reconciled trust account or accounts must be equal at all times to your outstanding trust liability to clients. Your outstanding trust liability to clients must equal the trial balance of all of your escrows with undisbursed balances.

(11) **What requirements must I meet for disbursements of trust funds?**

(a) Disbursed funds must be good funds.

(b) Unless otherwise authorized in the escrow instructions, you must make trust fund disbursements by check. Checks must be drawn on your trust account or accounts, and must identify which specific escrow transaction or collection account the disbursement relates to. The number of each check and its amount, date, payee, and the specific client's ledger sheet debited must be shown in the cash register or cash disbursement journal. All data must agree exactly with the check as written.

(c) You may make disbursements via wire transfer if both of the following are true:

(i) You have made arrangements with the financial institution that holds your trust account or accounts to provide you with a follow-up "hard copy" debit memo when funds are disbursed via wire transfer; and

(ii) You retain in the transaction file a copy of instructions signed by the owner of the funds to be wire transferred identifying the receiving entity and account number.

(d) You may make appropriate transfers between escrow accounts by ledger entries alone if you use either:

(i) A transfer form containing the date of the transfer, the amount being transferred, the identity of the accounts being debited and credited, and the signature of a person authorized to approve disbursements; or

(ii) An intrabank debit memo transfer form, and all escrow accounts involved in the transaction are closed through the same bank account.

(e) If you are making recurring transfers between collection escrows, they must be authorized by standing escrow instructions on file from all appropriate parties.

(12) **I have a voided check written on the trust account. What do I need to do with it?** You must permanently deface the check and retain it.

(13) **What are my obligations regarding fees payable to me for my escrow services?** You must be paid via a separate check or bank transfer, drawn on the trust account and bearing the escrow or transaction number, for escrow and service fees. This payment must be provided for in the escrow instructions. All of your fees relating to a transaction may be combined in a single check, or transfer, but either the closing

or settlement statement or an addendum signed by the principal parties must itemize the included charges.

(14) **What are my obligations regarding fees payable to me for my collection account services?** Your collection account fees may be paid with a single check for each collection period as long as such a check is supported by a schedule of fees and identified to each individual account. Your fees must be paid monthly unless the collection contract agreement provides a longer collection period.

(15) **May I have funds in my trust account that are not related to an escrow transaction or collection account?** No. Only funds related to an escrow transaction or an escrow collection account may be placed in your trust account. None of your funds may be in the trust account for any reason.

(16) **What kinds of disbursements am I not allowed to make from my trust account?** You may only make disbursements from your trust account for authorized purposes. Specifically, you may not make disbursements:

(a) For items not related to a specific escrow transaction or escrow collection account, including aggregate disbursements to the department of revenue of unclaimed funds from multiple transactions. Such disbursements must be made for each specific account with unclaimed funds;

(b) To any person or for any reason before the closing of an escrow transaction, or before the happening of a condition set forth in the escrow instructions. You may make a disbursement before the closing of a transaction or before a triggering condition if you receive a written release from all principal parties of the escrow transaction or collection account. Unless the disbursement is disputed under WAC 208-680-560, you are permitted to disburse earnest money funds without a written release if the earnest money agreement terminates according to its own terms prior to closing and provides for such disbursement.

(c) Relating to a specific escrow transaction or collection account in excess of the actual amount held in your trust account in connection with such transaction or collection account;

(d) To pay any fee owed to your employees or for your own business expenses. Such fees or expenses must be paid from your own regular business bank account and not from your trust account or accounts;

(e) For bank charges of any nature. You must make arrangements with your bank to have any bank charges applicable to the trust accounts charged to your regular business bank account, or to provide a separate statement of bank charges so they may be paid from your regular business bank account. However, you may pay bank charges from the interest you receive on trust accounts allowed under subsection (2)(c) or (d) of this section;

(f) For preauthorization of payments by the financial institution for recurring expenses such as mortgage payments on behalf of the owner if the account contains tenant security deposits or funds belonging to more than one client;

(g) Of funds received as a damage or security deposit involving a lease or rental contract, to the property owner or any other person or persons, without the written authority of the lessee. You must hold these funds until the end of the tenancy, at which point you must disburse them to the person or

persons entitled to the funds under the terms of the rental or lease agreement, and as consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act, or other appropriate statute.

(h) If the financial institution's automated system does not have the ability to charge fees to another account, or does not provide a separate statement for the service fees as required by (e) of this subsection, and the account is debited for service fees, you must deposit funds from your general business or other nontrust account to cover the service fee charged within one banking day after receipt of notice.

(17) **If I choose to use a computer accounting system, what additional requirements do I need to meet?** The provisions of this section apply to both manual and computerized accounting systems. However, there are some additional requirements if you choose to use a computer accounting system.

(a) Your computer accounting system must provide a capability to back-up all data files;

(b) You must print receipt and check registers at least once monthly. You must retain printed records as permanent records. Reconciliations and trial balances must be conducted at least once monthly, and then printed and retained as a permanent record;

(c) You must maintain a printed, dated source document file to support any changes to existing accounting records;

(d) If your computer accounting system has the ability to write checks by filling in fields on existing checks, the check number must be preprinted on the check or a voucher copy retained by the supplier. Your computer accounting system may assign suffixes or subaccount codes before or after the check number for identification purposes;

(e) If your computer accounting system has the ability to print entire checks on blank check stock using MICR toner or a similar system, it must track all checks that are printed. Those checks must be verifiable against your check register to ensure no duplication or skipping of check numbers;

(f) The check number must appear in the magnetic coding which also identifies the account number for readability by the financial institution's computer; and

(g) All checks you write must be included within the computer accounting system.

(18) **I have unclaimed funds in my trust account. What do I need to do with them?** Unclaimed funds are governed by and defined in the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW. If you have unclaimed funds in your trust account, your designated escrow officer or branch designated escrow officer must contact the department of revenue for disposition instructions. You must maintain a record of the correspondence relating to unclaimed funds for at least five years.

You must dispose of unclaimed funds in accordance with this section on a rolling basis to ensure that you do not have unclaimed funds in your trust account. You must examine your books at least once a quarter to determine if you have unclaimed funds. If you have unclaimed funds in your trust account, they must be purged at least quarterly in order to comply with the completed quarterly reconciliation as required in WAC 208-680-425.

NEW SECTION

**WAC 208-680-425 What are the requirements for my quarterly reports?** (1) In order to determine compliance with chapter 18.44 RCW and chapter 208-680 WAC, each escrow agent must file with the director, within thirty days following the end of each fiscal quarter, the following in a form prescribed by the director:

(a) A report concerning its operations, including the number of escrow transactions conducted and the total dollar volume of those transactions;

(b) A report concerning the trust account administration; and

(c) A one page summary of the completed three way reconciliation from the last month of the quarter.

(2) A three way reconciliation is completed if it demonstrates:

(a) You have no unclaimed funds in your trust account;

(b) You have no overdue instruments; and

(c) You have no outstanding balances more than nine months old, unless:

(i) The outstanding balance is authorized by valid instructions from the principal parties stating a finite period the funds should be held; or

(ii) You have conducted a quarterly examination of your records to ensure compliance with the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW.

(3) For trust account matters, your designated escrow officer must certify that he or she has reviewed the trust account report and any exhibits filed with it and that the information contained in the report and any exhibits is true and correct. This certification must be under penalty of perjury in a manner consistent with RCW 9A.72.085. The chief executive officer or chief financial officer of the escrow agent, or other knowledgeable person acceptable to the director, may certify the information on the report not related to trust account matters.

(4) Failure to file these reports within the time period specified in this rule is a violation of RCW 18.44.430 and may result in legal action by the department. False certifications of compliance may result in revocation of your license and referral to a prosecuting attorney.

**RECORDS AND RESPONSIBILITIES**NEW SECTION

**WAC 208-680-510 What are the designated escrow officer's responsibilities?** (1) The designated escrow officer is responsible for the custody, safety, and correctness of entries of all required escrow records. He or she retains this responsibility even if he or she has assigned the duties of preparation, custody, recording or disbursing to another person or persons. The designated escrow officer also bears responsibility for all actions of branch designated escrow officers.

(2) The branch designated escrow officer bears responsibility for the custody, safety and correctness of entries of all required escrow records at his or her assigned branch office. The designated escrow officer bears responsibility for all actions of the branch designated escrow officer.

(3) Before issuing a new license reflecting a change of the designated escrow officer or branch designated escrow officer of a licensed escrow agent, the department must receive evidence that the responsibility for preexisting escrows is being transferred to the incoming designated escrow officer or incoming branch designated escrow officer. Such evidence must be demonstrated by a statement signed by both the outgoing designated escrow officer and the incoming designated escrow officer that lists all outstanding trust liabilities and certifies that funds in the trust account maintained by the agent are adequate to meet all trust liabilities. This statement must be received by the department before the changeover can occur. In the case of a change in branch designated escrow officer, the outgoing and incoming branch designated escrow officers must sign the statement.

(4) If the department is concerned that the licensee's trust accounting records may not comply with the requirements of WAC 208-680-410, and before accepting a new designated escrow officer or branch designated escrow officer, the department may retain or instruct the licensee to retain a certified public accountant, or other person acceptable to the department, to reconcile the trust account or accounts and report whether they have been maintained in compliance with WAC 208-680-410 and to report on the adequacy of the licensee's internal routines and controls to ensure continuing compliance with WAC 208-680-410.

NEW SECTION

**WAC 208-680-520 What records am I required to keep?** (1) You are required to keep the following trust account records:

(a) Copies of all duplicate deposit slips, validated by the bank or bearing the signature of the designated escrow officer or branch designated escrow officer, and including the date of actual deposit; wires; separate receipts; or other evidence of the deposit of funds into the trust account;

(b) Copies of all checks, wires, or other evidence of any disbursement from the trust account;

(c) Copies of all bank statements for the trust account, including all paid checks or copies of paid checks, electronic or otherwise, provided that such copies are made in such a manner that the endorsement on the paid check is visible and readable;

(d) A client's ledger containing an individual ledger sheet for each escrow transaction or collection account, unless you use a computer accounting system. If you use a computer accounting system, an individual ledger sheet does not need to be maintained in the transaction files until the closing of the escrow transaction or collection account as long as the computer accounting system records provide the status of the escrow transaction or collection account funds on a daily basis;

(e) Copies of all written receipts and prenumbered checks, if you use a manual trust accounting system to administer the trust account.

(2) In addition to trust account records, you are required to keep additional records, including:

(a) Transaction files containing all agreements, contracts, documents, leases, escrow instructions, closing statements and correspondence for each transaction;

(b) Reconciled bank statements and canceled checks for all bank accounts of the escrow agent, including but not limited to the pooled escrow trust accounts, individual escrow trust accounts, and general business operating accounts of the agent;

(c) All checks and receipts produced by any computer accounting system. These checks and receipts must be sequentially numbered. You must retain the original of any voided or incomplete sequentially numbered check or receipt which was not issued.

(3) All records other than the reconciled bank statements must identify the transaction they relate to, either by escrow number or some other clear identifying information.

#### NEW SECTION

**WAC 208-680-530 Records.** (1) **What requirements are there for my records?** All of your records must be accurate, posted, and kept current to the date of the most recent activity.

(2) **How long do I need to retain my records?** You must keep required records and make them available for inspection by the department for a minimum of six years from completion of a transaction. Records must be retained in their original format until the related transaction is completed and the client's trust account balance is zero.

(3) **Where do I need to retain my records?** You must at all times maintain your records in a location that is reasonably likely to preserve them. For the first year after completion, records of a transaction must be maintained at an address where you are licensed to maintain an escrow office. Records of transactions that have been completed for more than one year may be stored at another location within the state of Washington. Records stored at a remote location must be available during business hours upon demand of the department and must be maintained in a manner that is readily retrievable.

(4) **When can I convert my records to an electronic format?** Once a transaction is completed and a client's trust account balance is zero, you may convert that client's file into a permanent storage format and destroy the originals.

(5) **How can I store my records electronically?** Records stored electronically must be electronically imaged and stored on permanent storage media like optical disks or microfilm. The storage media must meet the following requirements:

(a) The retrieval process must provide the ability to view and print the records on-site in their original form, including any signatures or other writings placed on the records prior to imaging;

(b) The equipment must be made available on- and off-site to the department for the purposes of an examination or investigation;

(c) The records must be stored exclusively in a non-writable and nonerasable format;

(d) The hardware and software necessary to display and print the records must be maintained by the escrow agent dur-

ing the required retention period under subsection (2) of this section.

Permanent storage does not affect your duties under subsection (3) of this section to maintain files in your licensed location for the first year.

(6) **Are there records that I cannot store in an unlicensed location or in an electronic format?** Transactions and accounting records may not be stored at a remote location or on permanent storage media as described under this section if there are funds relating to the transaction, including reconveyances or holdbacks, remaining in the trust account.

(7) **I am closing my escrow agent business. What are my obligations regarding my records?** You must ensure that all records retention requirements are met and that records are properly destroyed when appropriate. You also have an ongoing duty to ensure the department is informed about who has your records and where they are being maintained.

#### NEW SECTION

**WAC 208-680-540 What are my obligations regarding escrow transactions?** The escrow agent is responsible for conducting escrow agreements between the principal parties. The agent must at a minimum:

(1) **Escrow instructions.** Prepare or accept an instrument of escrow instructions from and agreed to by the principal parties and the escrow agent. The escrow instructions must be signed by the principal parties. Escrow instructions must contain any and all agreements between the principal parties and the escrow agent or incorporate other written agreements by reference. The escrow instructions must not be modified except by written agreement signed by all principal parties and accepted by the escrow agent.

(2) **Fee disclosures.** Disclose in writing to the principal parties when fees for services provided may be earned by the escrow agent. The disclosure must specifically identify the fees using the same terminology as that provided on the closing statement (for example the HUD-1 or HUD-1A), and reflect the dollar amount associated with each item identified as a fee payable to the escrow agent. For purposes of this section, fees payable to the escrow agent mean any item payable directly to the escrow agent whether accounted for by the escrow agent as profit, potential for profit, or the offset of justifiable costs.

(3) **Justifiable fees.** Ensure that all fees are for bona fide services and bear a reasonable relationship in value to the services performed, regardless of whether the services are performed by the escrow agent or by a third party under contract with the escrow agent. No charges known at the time of closing for services performed by a third party to the transaction may exceed the actual cost of the third-party service. When the cost of a third-party service cannot be known with certainty at the time of closing, an escrow agent may:

(a) Provide an estimate of the charge for the third-party service on the preliminary closing statement, disclose the actual charge for the third-party service on the final disclosure statement, and refund any amounts collected in excess of the actual charge for the third-party service to the principal parties;

(b) Assume responsibility for performing the service and charge the principal parties a one-time fee for performing the service. The one-time fee must be reasonably related to the value of the service provided. The escrow agent may contract with a third party to perform the service. The escrow agent must disclose to the principal parties in the preliminary and final settlement statement that the fee is being paid to the escrow agent. The escrow agent may transfer such fees earned into the general account in compliance with WAC 208-680-410; or

(c) If conducting a subescrow transaction, charge the principal parties the average charges as determined by the master escrow agent or title insurance company.

(4) **Escrow instructions.** Comply with the escrow instructions for completing the closing statement. All funds disbursed on the closing statement should be bona fide and supported with adequate documents.

(5) **Recordkeeping.** Maintain copies of the escrow instructions and closing statement (for example, HUD-1 or HUD-1A) in the escrow transaction file.

(6) **Addendums.** Require an addendum to the purchase agreement for any and all material changes in the terms of the escrow transaction, including but not limited to, changes in the financing of the transaction.

(7) **Services.** Provide the services and perform all acts pursuant to the escrow instructions.

(8) **Closing statements.** Provide a complete detailed closing statement (for example HUD-1 or HUD-1A) as it applies to each principal at the time the transaction is closed. The escrow agent must retain a copy of all closing statements in the transaction file, even if funds are not handled by the agent. The closing statements must show, at a minimum:

(a) The date of closing;

(b) The total purchase price;

(c) An itemization of all adjustments, moneys or things of value received or paid in compliance with requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, and Regulation X, 24 C.F.R. Section 3500, and all other applicable rules and regulations. Such itemization must include the name of the person or company to whom each individual amount is paid, or from whom each individual amount is received. If there is not enough room on the closing statement for a full itemization, itemization may be provided on an addendum as long as a copy of the addendum was also provided to the principal parties and is included in the transaction file;

(d) A detail of debits and credits identified to each principal party; and

(e) Names of payees, makers and assignees of all notes paid, made or assumed.

(9) **Payment of proceeds.** Pay the net proceeds of sale directly to the seller unless otherwise provided in writing by the seller or a court of competent jurisdiction.

(10) **Obtain signatures.** Obtain original signatures of the principal parties on either the preliminary or final closing statement and maintain a copy of the signed closing statement in the escrow transaction file, unless the escrow instructions authorize use of faxed or electronic signatures. If an escrow agent completes a transaction based on faxed signatures in accordance with the escrow instructions, it must

obtain original signatures for the file only if the escrow instructions so require.

(11) **Final closing statements.** Provide a copy of the final closing statement to each principal party and to each real estate broker or agent involved with the transaction.

#### NEW SECTION

**WAC 208-680-550 Am I obligated to conduct escrow transactions within the time period specified in the escrow instructions?** Yes. An escrow agent must perform all acts required of the escrow agent as expeditiously as possible and within any time period identified in the escrow instructions. Intentional or negligent delay in such performance is a violation of RCW 18.44.430 (1)(i), and may result in enforcement action by the department.

#### NEW SECTION

**WAC 208-680-560 What requirements must I follow when disbursing funds or other things of value?** (1) The escrow agent must disburse funds as set forth in the escrow instructions. Disbursement of any money or other or other things of value in violation before the happening of the conditions of the escrow instructions is a violation of RCW 18.44.430 (1)(e). Funds and other items or documents must be paid and/or disbursed immediately upon closing of the transaction or as specifically agreed to in writing by the principal parties, and all funds must be disbursed in compliance with RCW 18.44.400(3).

(2) Upon written notice from any principal party that the ownership of the funds is in dispute or is unclear based on the written agreements of the parties, the escrow agent must hold such funds until it receives written notice from all principal parties that the dispute has been resolved. In lieu of holding such funds, the escrow agent may interplead the funds into a court of competent jurisdiction pursuant to chapter 4.08 RCW. Upon notification of a bona fide dispute between the principal parties, the department may, at its discretion, order the escrow agent to interplead the funds into a court of competent jurisdiction. If the department orders an escrow agent to interplead funds, the escrow agent may deduct only the actual costs of interpleading from the escrow funds.

(3) Except as provided otherwise in this section, at no time may an escrow agent disburse or delay the disbursement of funds without the written consent of the principal parties unless the delay is necessary to ensure the funds being disbursed are good funds.

#### NEW SECTION

**WAC 208-680-570 When do I have to notify the department about a lawsuit or complaint against me?** Every escrow agent and escrow officer must, within twenty days after service or knowledge of a suit or complaint, notify the department of the following:

(1) Any criminal complaint, information, indictment, or conviction (including a plea of guilty or nolo contendere) in which the licensee is named as a defendant.

(2) Entry of a civil court order, verdict, or judgment, against the licensee in any court of competent jurisdiction in

which the subject matter involves any escrow or business related activity by the licensee. Notification is required regardless of any pending appeal.

(3) Any administrative action or Washington state bar association disciplinary action taken against an escrow officer or any of an escrow agent's employees for subject matter involving escrow or related business activities, if the designated or branch designated escrow officer is aware of such action. Notification is required regardless of any pending appeal.

(4) If an escrow agent or escrow officer is aware of it, any criminal complaint, information, indictment, or conviction of any of a licensee's employees where the complaint, information, indictment, or conviction is for a felony or a gross misdemeanor involving dishonesty. Notification is required regardless of any pending appeal, and notifying the department under this section does not change an escrow agent's responsibilities under WAC 208-680-275.

#### NEW SECTION

**WAC 208-680-580 What are the responsibilities of a licensed escrow officer?** (1) It is the responsibility of every licensed escrow officer to be knowledgeable of and keep current with chapter 18.44 RCW and the rules implementing chapter 18.44 RCW.

(2) It is the responsibility of every licensed escrow officer to keep the department informed of his or her current home address.

(3) It is the responsibility of every licensed escrow officer to ensure accessibility of their escrow agent's offices and records to representatives of the department.

(4) It is the responsibility of every licensed escrow officer to promptly inform the department if he or she loses his or her affiliation with an escrow agent, and to stop conducting escrow transactions until he or she associates with a licensed escrow agent.

#### NEW SECTION

**WAC 208-680-590 What practices are violations of the act?** It is a violation of the act for you or your employees to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the conduct of the business of escrow, or relative to the business of escrow or relative to any person engaged therein;

(5) Knowingly receive or take possession for personal use of any property of any escrow business, other than in payment authorized by this chapter, and with intent to defraud, omit to make, or cause or direct to be made, a full and true entry thereof in the books and accounts of the business;

(6) Make or concur in making any false entry, or omit or concur in omitting to make any material entry, in its books or accounts;

(7) Knowingly make or publish, or concur in making or publishing, any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein;

(8) Willfully fail to make any proper entry in the books of the escrow business required by law;

(9) Fail to disclose in a timely manner to the other officers, directors, controlling persons, designated escrow officer, or other licensed escrow officers the receipt of service of a notice of an application for an injunction or other legal process affecting the property or business of an escrow agent, including in the case of a licensed escrow agent an order to cease and desist or other order of the director;

(10) Fail to make any report or statement lawfully required by the director or other public official;

(11) Fail to comply with any requirement of any applicable federal or state act as described in RCW 18.44.301;

(12) Collect a fee for tracking unclaimed funds that is not a bona fide out-of-pocket expense;

(13) Convert unclaimed funds for personal use; or

(14) Receive compensation or any thing of value from any party for assisting in "real estate flopping." "Real estate flopping" is a short sale transaction where the value of a property is misrepresented to the lender, who then authorizes sale of the property for less than market value. The property is resold to another person at market value or closer to market value, creating a profit. The failure to disclose the nature of the transactions or the true value of the property to the lender constitutes fraud on the lender, the original property owner, or the second buyer, and is a violation of this chapter.

#### **EXAMINATIONS, INVESTIGATIONS, ENFORCEMENT, SANCTIONS, AND COSTS**

#### NEW SECTION

**WAC 208-680-610 What are the department's examination powers under the act?** (1) For the purposes of determining compliance with chapter 18.44 RCW and chapter 208-680 WAC, the department may examine, wherever located, the records used in the business of every licensee and any person who must be licensed under the act.

(2) The department may make necessary inquiry of the business or personal affairs of each person identified in subsection (1) of this section for the purposes of determining compliance with the act and these rules. In conducting examinations, the department may:

(a) Access, during reasonable business hours, the offices and places of business, books, accounts, papers, files, records, including electronic records, computers, safes, and vaults of all such persons. Access must be given to both the trust account records and general business account records;

(b) Interview or take sworn testimony of any person subject to RCW 18.44.021, or any employee or independent contractor of any person subject to RCW 18.44.021;

(c) Interview or take sworn testimony of any principal party or agent to the transaction;

(d) Require the filing of statements in writing by any person, under oath or otherwise, as to all facts and circumstances concerning the matters under examination;

(e) Copy, or request to be copied, any items described in this section;

(f) Analyze and review any items described in this section;

(g) Require assistance, as necessary, from any employee or person subject to the act;

(h) Conduct meetings and exit reviews with owners, management, officers, or employees of any person subject to the act; and

(i) Prepare and deliver, as necessary, a report of examination requiring a response from the recipient.

(3) The department may make examinations as frequently as it deems necessary or appropriate; and

(4) The department may charge an appropriate hourly audit fee for examination under RCW 18.44.121(5).

#### NEW SECTION

**WAC 208-680-620 What are the department's investigatory powers under the act?** (1) The department may make at any time public or private investigations within or outside of this state to determine whether any person has violated or is about to violate chapter 18.44 RCW, or any rule, regulation, or order under chapter 18.44 RCW, or to aid in the enforcement of chapter 18.44 RCW. For that purpose, the department may conduct inquiries, interviews, and examinations of any person deemed relevant to the investigation.

(2) The department may investigate the escrow business or other business or personal financial records of any person subject to investigation under subsection (1) of this section. In conducting investigations, the department may:

(a) Access, during reasonable business hours, any location where any escrow business records are or may be located, including offices, places of business, personal residences, storage facilities, computers, safes, and vaults, for the purposes of obtaining, reviewing, or copying books, accounts, papers, files, or records, including electronic records, or records stored in any format;

(b) Administer oaths or affirmations;

(c) Subpoena witnesses and compel their attendance at a time and place determined by the director or designated person;

(d) Subpoena the production of any evidence or matter which is relevant to the investigation, including the taking of such evidence;

(e) Subpoena any person to determine the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence;

(f) Interview, publicly or privately, under administration of oath or otherwise, or take the sworn testimony of: Any principal party, any agent to the transaction, any employee or independent contractor of any person subject to the act, or

any other person whose testimony is deemed relevant to the department's investigation;

(g) Require the filing of statements, affidavits, or declarations in writing by any person, under administration of oath, notary or otherwise, as to all facts and circumstances concerning the matters under investigation;

(h) Copy, or request to be copied, any items described in this section, or if the department makes a determination that there is a danger that original records may be destroyed, altered, or removed to deny the director access, or that original documents are necessary for the preparation of a criminal referral, the department may take originals of any items described in this section, regardless of the source of such items. Originals and copies taken by the department may be held, returned, or forwarded to other regulatory or law enforcement officials as deemed necessary;

(i) Analyze and review any items described in this section;

(j) Receive assistance, as necessary, from any employee or other person subject to RCW 18.44.021;

(k) Conduct meetings and exit reviews with owners, management, officers, or employees of any person subject to RCW 18.44.021;

(l) Conduct meetings and share information with other regulatory or law enforcement agencies;

(m) Prepare and deliver, as necessary, a report of investigation requiring a response from the recipient.

(3) For purposes of this section and RCW 18.44.420(1), "public" means open to the public as determined by the department.

(4) For purposes of this section and RCW 18.44.420(1), "private" means closed to the public or any person, including attorneys for witnesses, as determined by the department.

#### NEW SECTION

**WAC 208-680-630 What are the department's enforcement powers under the act?** The department may conduct the following types of enforcement activity:

(1) Enter orders, including temporary orders to cease and desist, compelling any person to cease and desist from an unlawful practice, and to take such affirmative action as in the judgment of the department will carry out the purposes of this chapter;

(2) Enter charges for violations of chapter 18.44 RCW and chapter 208-680 WAC;

(3) Bring an action, with or without prior administrative proceedings, in the superior court to enjoin conduct or to enforce compliance with chapter 18.44 RCW, or any rule, regulation, or order of the department;

(4) Appoint a receiver or conservator to take over, operate, or liquidate any licensed escrow agent;

(5) Hold hearings;

(6) Make referrals to other regulatory or law enforcement agencies; or

(7) Under specific circumstances, take control of an escrow agent. See WAC 208-680-645.

NEW SECTION

**WAC 208-680-640 Sanctions.** (1) **What sanctions may the department impose on a licensed escrow agent or officer?** The department may take any or all of the following actions against escrow licensees:

(a) Deny, suspend, or revoke the escrow agent's license for any violation of RCW 18.44.430;

(b) Remove or prohibit any corporate officer, controlling person, director, employee, or licensed escrow officer from participation in the conduct of the affairs of any licensed escrow agent, for any violation of RCW 18.44.430;

(c) Order a licensed escrow agent or officer to pay restitution to an injured party; or

(d) Impose a fine of up to one hundred dollars per day against any escrow officer or agent for each day's violation of chapter 18.44 RCW or these rules.

(2) **I work as an escrow agent, but I am excepted from licensure. What sanctions may the department impose on me for violations of the act?** The department may deny a future application for a license under the act.

(3) **I have been sanctioned in the past for providing unlicensed escrow services in Washington. May I apply for an escrow license?** Yes, if you were sanctioned more than five years ago. Under RCW 18.44.430, the department may deny a license to anyone who has violated the act or its implementing rules, including the licensure requirements. The department will not issue a license to a person who has provided unlicensed escrow services within the last five years, but may issue a license to a person whose unlicensed activity took place more than five years before his or her application. If your unlicensed activity was particularly widespread or egregious, or if it posed a particular risk to the public interest, the department may still deny you an escrow license even if your unlicensed activity took place more than five years before your application.

NEW SECTION

**WAC 208-680-645 Seizure of business.** (1) **When may the department take control of my escrow business?** The department may take control of a licensed escrow agent if, as a result of an examination, report, investigation, or complaint, it appears to the department that the licensee:

(a) Is conducting business in an unsafe and unsound manner that poses a risk to the public;

(b) Has suspended payment of its trust obligations;

(c) Has refused to comply with a lawfully issued order of the department and one or more consumers are likely to be harmed by noncompliance.

A licensee may be considered to be conducting its business in an unsafe and unsound manner that is injurious to the public if it refuses to file a valid claim against its fidelity bond or errors and omissions policy for claims that affect a consumer and his or her property.

(2) **What can the department do with a business it has taken control of?** The department may take any action that the licensee would be able to take. At a minimum, the department may:

(a) Work with other licensees to complete pending escrow transactions;

(b) Discontinue unsafe or unsound practices and violations of laws or regulations;

(c) Make good any deficiencies;

(d) Make claims against the licensee's fidelity or surety bonds or errors and omissions insurance to make consumers harmed by employee activities whole;

(e) Make restitution to injured parties;

(f) Renew the licensee's license;

(g) Renew or make premium payments to maintain the licensee's bonds and insurance; and

(h) Take necessary steps to wind down the business of the escrow agent where it is clear that the escrow agent cannot be safely operated.

(3) **How long may the department keep control of a business?** The department may maintain control over a business until the licensee is able to resume business or the business is fully liquidated.

(4) **I also conduct nonescrow business through my licensed escrow agent business. If the department seizes my escrow business, will it also seize these other areas of business?** When possible, the department will only take control of the portion of a business related to escrow. If the portions of a business are not clearly divisible, the department will determine its actions on a case-by-case basis, based in part on the relationship between and degree of commingling of the business lines.

(5) **I am an attorney whose law practice is licensed as an escrow agent. Will the department seize my law practice under this section?** Where an attorney's law practice is excepted from licensure, the law practice is not subject to seizure under the act. For attorneys with a business entity licensed under the act, the department will generally not exercise its seizure authority against a business entity or portion of a business entity supervised by the Washington state bar association. In any event, the department will only take control of the portion of a business related to escrow as set forth in subsection (4) of the section.

NEW SECTION

**WAC 208-680-647 Seizure of business—Notice to licensee.** Under the circumstances set forth in WAC 208-680-645, the department may give the licensee notice to correct an unsafe or unsound condition. If the licensee fails to comply with the terms of the notice within thirty days of its issuance or within such further time as the department may allow, then the department may take possession of the licensee.

NEW SECTION

**WAC 208-680-648 What can I do if the department takes possession of my business without cause?** You may challenge the department's decision to take possession of your business under the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

**WAC 208-680-650 What examination and investigation fees may the department charge me, and what specialists may the department retain in connection to its**

**examination or investigation of an escrow agent or officer?** (1) The director may retain attorneys, appraisers, independent certified public accountants, or other professionals and specialists as examiners, auditors, or investigators, the cost of which shall be borne by the person who is the subject of the examination, audit, or investigation.

(2) The expense of an examination or investigation pursuant to WAC 208-680-610 or 208-680-620 inside or outside this state shall be borne by the person examined or investigated.

(3) The expenses of an examination or investigation pursuant to this section may include, but are not limited to, staff time, travel, lodging, per diem, and any other expenses related to the examination or investigation. At a reasonable time following each examination or investigation performed, the director must provide the person examined with an invoice for the expenses incurred during the examination or investigation. Payment of the invoiced amount is due within thirty days of the date of the invoice.

#### NEW SECTION

**WAC 208-680-660 Abandoned escrow records. What happens if I fail to maintain my records after closing?** If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic formats, or proper destruction.

#### ESCROW COMMISSION

#### NEW SECTION

**WAC 208-680-710 Organization of commission. (1) What is the escrow commission, and what are its duties?** The escrow commission is composed of the director or his or her designee and five board members appointed by the director. The commission provides advice on the escrow officer examination, acts in an advisory capacity to the department regarding the activities of escrow agents and escrow officers, and performs such other duties and functions as prescribed by chapter 18.44 RCW.

(2) **Are escrow commission meetings open to the public?** Yes. Meetings of the escrow commission are open to the public. Records, minutes, and recordings of each meeting are also available on the department's web site, [www.dfi.wa.gov](http://www.dfi.wa.gov).

#### NEW SECTION

**WAC 208-680-720 Escrow commission meeting notice. I would like to know when the next meeting of the escrow commission will be held. How can I get this information?** If you would like to know about the date, time, place and agenda of the escrow commission meetings, you may make a request of the department, or may join the department's escrow e-mail distribution list, the listserv, at <http://dfi.wa.gov/about/listservs.htm>.

Dates and times of the escrow commission's meetings are also posted on the department's web site, [www.dfi.wa.gov](http://www.dfi.wa.gov).

**WSR 10-20-125**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(Division of Consumer Services)

[Filed October 5, 2010, 9:23 a.m., effective November 5, 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 chapter 35, Laws of 2010, and to generally amend the rules for clarity and consistency.

Citation of Existing Rules Affected by this Order: Amending WAC 208-660-006, 208-660-155, 208-660-175, 208-660-350, 208-660-430, and 208-660-500.

Statutory Authority for Adoption: RCW 43.320.040.

Other Authority: RCW 19.146.223; chapter 35, Laws of 2010.

Adopted under notice filed as WSR 10-16-134 on August 4, 2010.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 208-660-006, the definition of loan originator is amended to clarify that the definition does apply in short sale transactions.

2. WAC 208-660-006, the definition of loan originator is amended to clarify that individuals (not persons) who hold themselves out as being able to provide the services are not excluded by also providing administrative or clerical duties.

3. WAC 208-660-175 [(1)](f) and (g) [doesn't exist], these bonding sections for loan modification service providers are amended to reflect the final determination that the initial and subsequent bonding amount for these persons is \$20,000.

4. WAC 208-660-350 [(1)](g), this section is added to provide additional guidance to licensees.

5. WAC 208-660-350 (15)[(a)](ii), this section is added to provide additional guidance to licensees.

6. WAC 208-660-430(9), this section is added to provide additional guidance to licensees.

7. WAC 208-660-500 (3)(bb), the language in this section is amended to further clarify the prohibited practice.

8. WAC 208-660-500 (3)(cc), this section is added to provide additional guidance to licensees about their existing requirement to maintain records.

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 2, Amended 6, 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 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 2, Amended 6, 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 5, 2010.

Deborah Bortner, Director  
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

**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 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 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 the good faith estimate and settlement statement as a 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))) 41-58.

- "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), 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 NMLSR 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.

"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 or mortgage 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, including short sale transactions.

"Loan originator" also includes a person who holds themselves out to the public as able to perform any of ~~((these))~~ the activities described in this definition. 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.

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.

"Loan originator" also includes a natural person who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan modification services.

"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))~~ An individual 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.))~~ The definition of loan originator does not apply to employees of a housing counseling agency approved by the United States department of Housing and Urban Development unless the employees of a housing counseling agency are required under federal law to be licensed individually as loan originators.

"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 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 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.

"Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage. This definition is limited to implementation of the S.A.F.E. Act.

"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.

"Rate lock 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.

"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 mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms, or loan types; capitalizations of arrearages; or principal reductions. Loan modification does not include services that result in refinancing a residential mortgage loan.

"Residential mortgage loan modification services" includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a residential mortgage loan modification. "Residential mortgage loan modification services" also includes the collection of data for submission to any entity performing mortgage loan modification services.

"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 fragile, fee simple interest in any of the above.
- Residential real estate does not include:
  - An apartment building or dwelling of five or more units; ~~or~~
  - 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.

"Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the 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 09-24-091, filed 12/1/09, effective 1/1/10)

**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) 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 31.04 RCW. See also WAC 208-660-430(23), 208-660-500(4), 208-660-550 (3)(c) and (4).

**(4) 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))~~ **(5) 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))~~ **(6) What is the nature of my relationship with the borrower?** You have a fiduciary relationship with the borrower. See RCW 19.146.095.

~~((6))~~ **(7) 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.

~~((7))~~ **(8) May I charge fees when the loan does not close, or does not close on the terms and conditions agreed upon by me and the borrower?** You may charge a fee, and may bring a suit for collection of the fee, not to exceed three hundred dollars, for services 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) You have obtained a written commitment from a lender on the same terms and conditions agreed upon by you and the borrower; and
- (b) The borrower fails to close on a loan through no fault of yours; and
- (c) The fee is not otherwise prohibited by the Truth in Lending Act.

~~((8))~~ **(9) 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))~~ **(10) 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))~~ **(11) How do I sponsor a loan originator?** You must file a sponsorship request through the NMLSR.

~~((11))~~ **(12) 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))~~ **(13) 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))~~ **(14) 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 09-24-091, filed 12/1/09, effective 1/1/10)

**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 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 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 mortgage broker's full name, unified business identifier (UBI), and NMLSR unique identifier.

(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 loan origination volume of the licensee in the state of Washington:

Loan Volume in Millions	Bond Amount
\$40+	\$60,000
\$20 to \$40	\$40,000
\$0 to \$20	\$20,000

(f) If you only offer residential mortgage loan modification services, your bond amount is twenty thousand dollars, initially and thereafter.

**(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.

**(3) What do I do with the surety bond once I receive it from my insurance company?** You must sign the original surety bond and include the surety bond and the attached power-of-attorney with your license application package.

**(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.

**(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.

**(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 you or your employees or independent contractors.

**(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.

**(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.

**(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.

(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.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

**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)(c)(i) and (ii).**

(c) **Pass a licensing test.** You must take and pass the national and state components of the NMLSR tests. See WAC 208-660-360, Loan originators—Testing.

(d) **Submit an application.** You must submit an on-line application 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.

(g) **Complete prelicensing education.** You must complete prelicensing education. See WAC 208-660-355.

**(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. This investigation may also include a review of whether you have had a license issued under the act or any similar state statute suspended.

(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).~~

(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.

(ii) For purposes of (b) and (c) of this subsection, a "similar statute" may include ~~((states))~~ statutes 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 judgments or other government liens ~~((and))~~ or 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.

(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 as directed by the department's 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 license sent to you electronically that you may print.

(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. 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.

(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.

(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. In no case shall these requirements be less than the minimum requirements to obtain a license under the S.A.F.E. Act.

~~((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.))~~

(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.

(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. You will not have a continuing education requirement in the year in which you complete preclicensing education. See WAC 208-660-370.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

(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 on or before February 28th each year, 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 (15) 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 prior to March 1st each year. If you fail to comply with the renewal request requirements prior to March 1st, you must apply for a new license.

(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.

(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.

(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.

(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.

(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.

(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.

(23) **Must I include my 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.

(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.

(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.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

**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 con-

tent 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)) the yield spread premium (YSP) from the lender?**

(a) You must disclose the YSP as a dollar amount credited to the borrower on the GFE.

(b) You must direct the settlement service provider to disclose the YSP on line 802 on the HUD-1 or equivalent settlement statement. The YSP must be 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)) locks?** 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)) rate lock agreement with a borrower or represents to the borrower that the borrower has entered into a ((lock-in)) rate lock 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)) rate lock 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)) rate lock agreement?** If a ((lock-in)) rate lock 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)) rate lock agreement always guarantee the interest rate and terms?** No. A ((lock-in)) rate lock agreement may or may not be guaranteed by the mortgage broker or lender. The ((lock-in)) rate lock agreement must clearly state whether the ((lock-in)) rate lock agreement is guaranteed by the mortgage broker or lender.

(9) ~~(Must a mortgage broker enter into a lock-in agreement with a borrower?)~~ **How do I disclose the payment of a rate lock fee?** You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209 with "P.O.C. (borrower)" recorded to the left of the borrower column.

(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?** 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 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) 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.

**(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.

**(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.

**(23) Must I provide a written fee agreement when I provide residential mortgage loan modification services?** Yes. You must provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. You must provide a copy of the signed fee agreement to the consumer and you must keep a copy as part of your books and records.

#### NEW SECTION

**WAC 208-660-445 May I advertise over the internet using a URL address that is not my licensed business name?** Yes, provided that any URL address you advertise takes the user directly to your main or home web page. If you want the user to be directed to a different main or home web page, the URL address must contain your license name in addition to any other names or words in the URL address. URL addresses may be used as DBA names upon request to and approval from DFI.

#### NEW SECTION

**WAC 208-660-446 When I advertise using the internet or any electronic form (including, but not limited to, text messages), is there specific content advertisements must contain?** Yes. You must provide the following language, in addition to any other, on your web pages or in any medium where you hold yourself out as being able to provide the services:

(1) Main or home page.

(a) The company's license name and NMLS unique identifier must be displayed on the licensee's main or home web page.

(b) If loan originators are named, their NMLS numbers must follow the names.

(c) The main or home page must also contain a link to the NMLS consumer access web site page for the company.

(2)(a) Branch office web page - no DBA. Comply with subsection (1) of this section.

(b) Main office, or branch office web page - DBA. If the company uses a DBA on a web page the web page must contain the main office license name, and the information in subsection (1)(b) of this section, and the web page must contain a link to the NMLS consumer access web site page for the company.

(3) Loan originator web page. If a loan originator maintains a separate home or main page, the URL address to the site must be a DBA of the licensee and the licensee's name must appear on the web page. The web page must also contain the loan originator's NMLS number and a link to the NMLS consumer access web page for the company.

(4) Compliance with other laws. Web site content used to solicit Washington consumers must comply with all relevant Washington state and federal statutes for specific services and products advertised on the web site.

(5) Oversight. The company is responsible for web site content displayed on all web pages used to solicit Washington consumers including main, branch, and loan originators' web pages.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

**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.

(iv) Charging total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided when providing residential mortgage loan modification services.

(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(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.

(bb) Receiving compensation or any thing of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter.

(cc) Abandoning records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, or proper destruction of the records.

**(4) What additional practices are prohibited when providing residential mortgage loan modification services? You are prohibited from:**

(a) Collecting an advance fee of more than seven hundred fifty dollars;

(b) Collecting an advance fee without a written fee agreement (see also WAC 208-660-XXX);

(c) As a condition to providing loan modification services requiring or encouraging a borrower to:

(i) Sign a waiver of his or her legal defenses, counter-claims, and other legal rights against the servicer for future acts;

(ii) Sign a waiver of his or her right to contest a future foreclosure;

(iii) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(iv) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan;

(v) Cease communication with the lender, investor, or loan servicer or stop or delay making regularly scheduled payments on an existing mortgage unless a mortgage loan modification is completely negotiated and executed with the lender or investor and the modification agreement itself provides for a cessation or delay in making regularly scheduled payments; or

(d) Entering into any contract or agreement to purchase a borrower's property;

(e) Failing in a timely manner to:

(i) Communicate with or on behalf of the borrower;

(ii) Act on any reasonable request from or take any reasonable action on behalf of a borrower;

(f) Engaging in false or misleading advertising. In addition to WAC 208-620-630, examples of false or misleading advertising include:

(i) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower;

(ii) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists;

(g) Leading a borrower to believe that the borrower's credit record will not be negatively affected by a mortgage loan modification when the licensee has reason to believe that the borrower's credit record may be negatively affected by the mortgage loan modification.

~~((4))~~ **(5) 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))~~ **(6) 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))~~ **(7) 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))~~ **(8) 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))~~ **(9) 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))~~ **(10) 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 the good faith estimate and HUD-1/1A Settlement Statement or similar document.

~~((10))~~ **(11) 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).

**WSR 10-20-127**

**PERMANENT RULES**

**SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed October 5, 2010, 10:19 a.m., effective November 5, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Add a new section and revise one existing section for rules regarding provision of state funding for juvenile students in adult jails. The 2010 legislature passed SB 6702 which provides public education for juvenile students in adult jails. This rule change provides procedures and processes for the implementation of this law.

CORRECTED COPY – THE WSR 10-20-055 FILING DID NOT INCLUDE THE CHANGES THAT WERE MADE SO AGENCY IS REFILED THE RULE.

Citation of Existing Rules Affected by this Order: Amending WAC 392-122-205.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 10-13-018 on July 4, 2010.

Changes Other than Editing from Proposed to Adopted Version: The following changes have been made to the new proposed WAC 392-122-228:

- A paragraph break has been added to subsection (1).
- The WAC reference in subsection (5)(a) has been changed from WAC 392-121-122 to WAC 392-122-225.

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 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 0, Repealed 0.

Date Adopted: June 4 [July 27], 2010.

Randy Dorn  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 07-23-023, filed 11/9/07, effective 12/10/07)

**WAC 392-122-205 State institutional education program—Eligible programs.** Programs supported as state institutional education programs include those provided in:

(1) State operated group homes—i.e., facilities maintained by the division of juvenile rehabilitation of the department of social and health services to house adjudicated youth twenty-four hours a day;

(2) Juvenile detention centers—i.e., facilities meeting the definition of a "detention facility" in RCW 13.40.020.

(3) Institutions for juvenile delinquents—i.e., facilities maintained by the division of juvenile rehabilitation of the department of social and health services for the diagnosis, confinement and rehabilitation of juveniles committed by the courts.

(4) Residential habilitation centers—i.e., facilities maintained by the division of developmental disabilities of the department of social and health services for care and treatment of persons with exceptional needs by reason of mental and/or physical deficiency.

Programs providing educational services to youth in a residential rehabilitation center may include services provided at facilities controlled and operated by the school district providing those services.

(5) Adult jails and correctional facilities housing juveniles—i.e., facilities maintained by the state department of corrections for juvenile inmates under eighteen years of age.

#### NEW SECTION

#### **WAC 392-122-228 Alternative learning experiences for juvenile students incarcerated in adult jail facilities.**

(1) A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may make use of digital and/or on-line curricula, and may be delivered over the internet or using other electronic means. A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may also include participation by students and parents in the design and implementation of a student's learning experience.

This section provides an alternative method of determining full-time equivalent enrollment and claiming state funding for public school learning experiences that are:

(a) Individual courses of study for juvenile students incarcerated in adult jail facilities. "Adult jail facility" means any jail operated under the authority of chapter 70.48 RCW;

(b) Supervised, monitored, assessed, and evaluated by school staff. As used in this section, "school staff" means certificated instructional staff of the school district according to the provisions of chapter 181-82 WAC, or a contractor pursuant to WAC 392-121-188;

(c) Provided in accordance with a written alternative learning experience plan that is implemented pursuant to the school district board's policy for alternative learning experiences; and

(d) Provided in whole or part, outside the regular classroom setting, including those learning experiences provided digitally via the internet or other electronic means.

This section sets forth the standards, procedures, and requirements for state funded alternative learning experiences for juvenile students incarcerated in adult jail facilities. This section is not intended to prevent or limit alternative education programs provided by a school district with federal or local resources.

An alternative learning experience for a juvenile student incarcerated in adult jail facilities may be counted as a course of study pursuant to WAC 392-121-107 if the following requirements are met:

(2) School district board policies for alternative learning experiences: The board of directors of a school district claiming state funding for alternative learning experiences for juvenile students incarcerated in adult jail facilities shall adopt and annually review written policies for each alternative learning experience program and program provider that:

(a) Require a written plan for each student participating in an alternative learning experience for juvenile students incarcerated in adult jail facilities that meets the minimum criteria pursuant to subsection (4) of this section;

(b) Describe how student performance will be supervised, monitored, assessed, evaluated, and recorded by school staff. Such description shall include methods for periodic grade reporting, if different from existing school district policy;

(c) Require each juvenile student who is incarcerated in an adult jail facility and enrolled in an alternative learning experience to have direct personal contact with school staff at least weekly, until the student completes the course objectives or the requirements of the learning plan. Such direct personal contact must be for a period not less than thirty minutes per week. Direct personal contact shall be for the purposes of instruction, review of assignments, testing, reporting of student progress, or other learning activities. Direct personal contact means a face-to-face meeting with the student;

(d) Require that each student's educational progress be reviewed at least monthly and that the results of each review be communicated to the student;

(e) Designate one or more school district official(s) responsible for approving specific alternative learning experience programs or courses, monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(i) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(ii) A description of how certificated and classified staff are assigned program management and instructional responsibilities that maximize student learning, including the ratio of certificated instructional staff to full-time equivalent students;

(iii) A description of how a written student learning plan pursuant to subsection (4) of this section, is developed, and student performance supervised and evaluated, by certificated staff;

(iv) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(v) Results of any self-evaluations conducted pursuant to subsection (7) of this section;

(f) Satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies (chapter 392-410 WAC); and

(g) For alternative learning experience courses offering credit, or for alternative learning experience programs issuing a high school diploma, satisfy the state board of education's high school graduation requirements (chapter 180-51 WAC).

(3) Alternative learning experience implementation standards:

(a) Alternative learning experiences shall be accessible to all juveniles incarcerated in adult jail facilities, including those with disabilities. Alternative learning experiences for special education students shall be provided in accordance with chapter 392-172A WAC.

(b) It is the responsibility of the school district or school district contractor to ensure that enrolled juvenile students incarcerated in adult jail facilities have all curricula, course content, instructional materials, and other learning resources essential to successfully complete the requirements of the written student learning plan.

(c) Contracting for alternative learning experiences shall be subject to the provisions of WAC 392-121-188 and RCW 28A.150.305.

(d) The school district shall institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

(4) Written student learning plan: Each juvenile student incarcerated in an adult jail facility who is enrolled in an alternative learning experience course of study shall have a written student learning plan designed to meet the student's individual educational needs. The written student learning plan may be developed in partnership with the student, with recognition that school staff has the primary responsibility and accountability for the plan, including supervision and monitoring, and evaluation and assessment of the student's progress. The written student learning plan shall include, but not be limited to, the following elements:

(a) A beginning and ending date for the learning experience;

(b) An estimate of the average number of hours per week that the student will engage in learning activities to meet the requirements of the student learning plan. This estimate may be used in reporting enrollment in compliance with subsection (5) of this section and must be based upon the criteria in subsection (6) of this section;

(c) A description of how weekly contact requirements will be fulfilled;

(d) A description of the specific learning goals and performance objectives of the alternative learning experience. This requirement may be met through the use of course syllabi or other similarly detailed descriptions of learning requirements. The description shall clearly identify the requirements a student must meet to successfully complete the course or program;

(e) Identification of instructional materials essential to successful completion of the learning plan; and

(f) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan.

The written student learning plan shall identify whether the alternative learning experience meets one or more of the state essential academic learning requirements or any other academic goals, objectives, and learning requirements defined by the school district. For a high school alternative learning experience, the plan shall specify whether the experience meets state and district graduation requirements.

(5) Enrollment reporting: Effective the 2009-10 school year, the full-time equivalency of juvenile students incarcerated in adult jail facilities who are enrolled in alternative learning experience programs shall be determined as follows:

(a) Using the definition of full-time equivalent student in WAC 392-122-225(1) and the estimated average weekly hours of learning activity described in the written student learning plan on the first enrollment count date on or after the start date specified in the written student learning plan; and

(b) The enrollment count shall exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with school staff for ten consecutive school days. Any such student shall not be counted as an enrolled student until the student has met with appropriate school staff and resumed participation in his or her alternative learning experience or participated in another course of study as defined in WAC 392-121-107.

(6) Accountability for student performance:

(a) At minimum, juvenile students incarcerated in adult jails who are enrolled in alternative learning experiences shall have their educational performance evaluated according to the following process and schedule:

(i) Each student's educational progress shall be reviewed at least once per month. The progress review shall be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The progress review shall be conducted by school staff and shall include direct personal contact with the student. The results of the review shall be communicated to the student.

(iii) Based on the progress review, school staff shall determine and document whether the student is making satisfactory progress in completing the learning activities and reaching the learning goals and performance objectives defined in the written plan.

(iv) If the student fails to make satisfactory progress for no more than two consecutive evaluation periods or if the student fails to follow the written student learning plan, an intervention plan designed to improve student progress shall be developed and implemented. This intervention plan shall be developed by school staff in conjunction with the student.

(v) If, after no more than three subsequent evaluation periods, the student still is not making satisfactory progress, a plan designed to more appropriately meet the student's educational need shall be developed and implemented by school staff.

(b) The educational progress of juvenile students incarcerated in adult jail facilities who are enrolled in alternative learning experiences shall be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district.

(7) Program evaluation: School districts offering alternative learning experiences to juvenile students incarcerated in adult jail facilities shall engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation shall follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

(8) Annual reporting: Each school district offering alternative learning experiences shall report annually to the super-

intendent of public instruction on the types of programs and course offerings subject to this section, including student headcount and full-time equivalent enrollment claimed for basic education funding. The report shall identify the ratio of certificated instructional staff to full-time equivalent students enrolled in alternative learning experience courses or programs. The report shall separately identify alternative learning experience enrollment of students provided under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(9) Documentation: In accordance with required records retention schedules, a school district claiming state funding for alternative learning experiences shall maintain the following written documentation available for audit:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (2)(g) of this section;

(c) Annual reports to the superintendent of public instruction as required by subsection (8) of this section;

(d) The written student learning plans required by subsection (4) of this section, including documentation of required weekly direct personal contact;

(e) Student progress reviews, evaluations, and assessments required by subsection (6) of this section; and

(f) Student enrollment detail substantiating full-time equivalent enrollment reported to the state, including estimated total hours of participation in educational activities, and any actual documentation of hours of learning for those students failing to make satisfactory progress.

## WSR 10-20-131

### PERMANENT RULES

### DEPARTMENT OF HEALTH

[Filed October 5, 2010, 11:04 a.m., effective November 5, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of these rules is to eliminate technical conflicts between chapters 246-260 and 246-262 WAC, and the federal requirements of the federal Pool and Spa Safety Act. These rules incorporate new antientrapment construction requirements for new pools and spas, and pools and spas remodeled after the effective date of these rules.

Citation of Existing Rules Affected by this Order: Amending WAC 246-262-010, 246-262-060, 246-262-070, 246-260-010, 246-260-031, 246-260-061, and 246-260-081.

Statutory Authority for Adoption: RCW 70.90.120.

Adopted under notice filed as WSR 10-12-056 on May 27, 2010.

Changes Other than Editing from Proposed to Adopted Version: During the proposed rule comment period, the Consumer Product Safety Commission published an updated interpretation to exclude equalizer lines from the antientrapment equipment requirements. The rules are modified to reflect this change in WAC 246-260-031 (8)(d)(iii) and 246-262-060 (8)(b)(iii)(E).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 7, Repealed 0; Federal Rules or Standards: New 0, Amended 7, 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 7, Repealed 0.

Date Adopted: October 5, 2010.

Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 04-18-096, filed 9/1/04, effective 10/31/04)

**WAC 246-260-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abbreviations" (technical):

"CPR" means cardiopulmonary resuscitation;

"DE" means diatomaceous earth;

"F" means Fahrenheit;

"fps" means feet per second;

"gpm" means gallons per minute;

"mg/l" means milligrams per liter. When requirements in this regulation specify limits for liquid volume measurements using mg/l or ppm, either may be used depending on the type of testing equipment available;

"ppm" means parts per million. See notation under mg/l for use;

"TU" means turbidity unit as measured by the nephelometric method.

(2) Acronyms:

(a) "ALTI" means Advanced Lifeguard Training International;

(b) "ANSI" means American National Standards Institute;

(c) "APHA" means American Public Health Association;

(d) "ARC" means American Red Cross;

(e) "ASA" means American Standards Association;

(f) "ASHRAE" means American Society of Heating, Refrigeration and Air Conditioning Engineers;

(g) "ASME" means American Society of Mechanical Engineers;

(h) "ASTM" means American Society for Testing and Materials;

~~((H))~~ (i) "AWWA" means American Waterworks Association;

~~((H))~~ (j) "E&A" means Ellis and Associates;

~~((H))~~ (k) "CPSC" means U.S. Consumer Product Safety Commission;

~~((H))~~ (l) "EPA" means U.S. Environmental Protection Agency;

~~((H))~~ (m) "FINA" means Federation Internationale de Natation Amateur;

~~((H))~~ (n) "IAPMO" means International Association of Plumbing and Mechanical Officials;

~~((H))~~ (o) "NAUI" means National Association of Underwater Instructors;

~~((H))~~ (p) "NSF" means National Sanitation Foundation;

~~((H))~~ (q) "NSPI" means National Spa and Pool Institute;

~~((H))~~ (r) "PADI" means Professional Association of Diving Instructors;

~~((H))~~ (s) "UBC" means Uniform Building Code;

~~((H))~~ (t) "UL" means Underwriters' Laboratories;

~~((H))~~ (u) "WRF" means water recreation facility;

~~((H))~~ (v) "WRPA" means Washington Recreation and Parks Association;

~~((H))~~ (w) "WSDA" means Washington state department of agriculture; and

~~((H))~~ (x) "YMCA" means Young Men's Christian Association.

(3) Definitions:

"Anti-entrapment system" means a device or system designed to prevent entrapment by pool or spa single main drains or single equalizer line outlets, including:

(a) Safety vacuum release system (SVRS) that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387;

(b) Suction limiting vent system with a tamper-resistant atmospheric opening;

(c) Gravity drainage system that utilizes a collector or balancing tank; and

(d) Drain disablement that eliminates the use of suction outlets.

"Approved" means the department or local health officer has stated in writing that the design plans and specifications are in accordance with this chapter.

"Architect" means a registered architect currently licensed under chapter 18.08 RCW in Washington state.

"ASME A112.19.8 standard" means the ASME A112.19.8-2007 Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs standard and the ASME A112.19.8a-2008 Addenda and the ASME A112.19.8b-2009 Addenda.

"Attendant" means a person appointed by the owner or manager meeting the training requirements of this chapter who monitors activities and conditions for the purpose of ensuring bather safety.

"Bathing beach" means a bathing place, together with buildings and appurtenances, on a natural pond, lake, stream, or other body of fresh or salt water that is open to the public for bathing by express permission of the owner, operated for a fee, or openly advertised as a place for bathing by the public.

"Board" means the state board of health.

"Branch line" means suction piping between a junction fitting and a suction outlet.

"Commercial strength ammonia" means ammonia having a strength of twenty-six degrees Baume'.

"Communication system" means any combination of devices permitting the passage of messages between personnel and/or personnel and bathers. Systems can include but are not limited to two-way radios, hard wired intercoms, horns, whistles, hand signals, direct voice, signs, or equivalent.

"Contaminant" means any physical, chemical, or biological substance present in the WRF water which may adversely affect the health or safety of the bather or the quality of the water.

"Cross-connection" means any physical arrangement connecting:

(a) Potable water system directly or indirectly, with anything other than another potable water system; or

(b) WRF pool to any water source capable of contaminating either the WRF pool, its components, or potable water source as a result of backflow.

"Department" means the state department of health.

"Deep water" means water greater than five feet in depth.

"Diving envelope" means the minimum dimensions of an area within the pool necessary to provide entry from a diving board, platform, or pool decking intended for users to dive.

"Engineer" means a registered professional engineer currently licensed under chapter 18.43 RCW.

"Equalizer line outlet" means a suction outlet located on the pool wall below the waterline and connected by pipe to the body of a skimmer to prevent air from being drawn into the pump if the water level drops below the skimmer weir.

"Fall zones" mean the areas under and around play toys where a person playing on them could fall. These areas should be free of obstacles or other equipment so that there's plenty of room. Basic guidelines include the following:

(a) Fall zones should extend a minimum of six feet in all directions from the perimeter of the play toy equipment.

(b) If the height of an adjacent play toy is thirty inches or more, the minimum distance between pieces of play equipment should be at least nine feet.

"General use pool" means any swimming, spa, wading, or spray pool regulated by this chapter not meeting the definition of a "limited use pool."

"Handhold" means a structure not over twelve inches above the water line around the perimeter of the pool wall, affording physical means for the bather to grasp the pool sides.

"Illness or injury report" means the written record of all facts regarding an injury or illness associated with the WRF.

"Innovative design feature" means a design feature, equipment, device, or operative procedure not specifically covered by these rules or chapter 246-262 WAC.

"Junction fitting" means a pipe fitting in the shape of a "T" or a "Y" used to connect suction outlets to a pump or a balancing tank, and provides two branch line connections and one trunk line connection.

"Licensed medical practitioner" includes medical doctor, osteopath, chiropractor, naturopath, and medical therapist currently licensed in Washington state.

"Lifeguard" means a person meeting the training requirements of these rules appointed by the owner or manager to

maintain surveillance over the bathers on the deck or in the pool and to supervise bather safety.

"Lifeguard station" means designated work station of a lifeguard.

"Lifesaving equipment" means emergency equipment and barrier protection.

"Lifesaving Society" means the organization in Canada that establishes training requirements and standards for lifeguard training.

"Limited use pool" means any swimming, spa, wading, or spray pool regulated by this chapter at an apartment, boarding home, condominium, fraternity, home owners association, hotel, mobile home park, motel, recreational vehicle park, sorority or rental housing unit for the use of the persons living or residing at the facility and their resident's invited guests.

When organized programs are provided at the facility (including, but not limited to, formal swimming or diving lessons, swim meets, or exercise classes), for users besides those specified under the limited use category, the pool facility shall be considered to be a general use pool during periods of such activity.

"Local health officer" means the health officer of the city, county, or city-county department or district or a representative authorized by the local health officer.

"Main drain" means a submerged suction outlet for transferring water from a swimming pool, spa pool, or wading pool.

"Outlet drain" means a drain for transferring water from a spray pool.

"Owner" means a person owning and responsible for a WRF or their authorized agent.

"Person" means an individual, firm, partnership, copartnership, corporation, company, association, club, government entity, or organization of any kind.

"Physical plant" refers to pool shell, piping, lighting, ventilation, locker rooms, chemical storage rooms, mechanical rooms, or other structural facility components that are not readily modified. It does not include pumps, filters or disinfection systems.

"Play toy" is a water feature added to a pool for use by bathers that provides activity or action that enhances the overall use of the water environment. Such feature may include, but not be limited to, fixed stationary features, inflatable or floatable equipment, or other equipment with the intent to invite bathers to play on or around the feature.

"Pool" means swimming pool, wading pool, spray pool, or spa pool or the like.

"Private club" means a group or organization requiring membership enrollment.

"Radius of curvature" means the radius arc denoting the curved surface from the point of departure from the springline (vertical sidewall) of the pool to the pool bottom.

"Response time" means time between bather distress and initiation of rescue assistance contact by a lifeguard in facilities providing lifeguards.

"Recreational water contact facility" means an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and

purposefully involves immersion of the body partially or totally in the water, and that includes but is not limited to water slides, wave pools, and water lagoons. These facilities are regulated by chapter 246-262 WAC.

"Secretary" means the secretary of the department of health.

"Serious injury" means any injury:

(a) Requiring emergency service response where a person requires medical treatment as determined by the emergency medical response personnel; or

(b) Resulting in a person seeking medical attention at a medical facility, hospital emergency room or admittance to a hospital.

"Shallow water" means water equal to or less than five feet in depth.

"Shallow water lifeguard" means a person appointed by the owner or manager to supervise bather safety in water depths not exceeding five feet who meets the training requirements of this chapter.

"Spa pool" means a pool designed for relaxation or recreational use where the user is usually sitting, reclining, or at rest and the pool is not drained, cleaned, and refilled for each user. The spa pool may include, but not be limited to, hydro-jet circulation, hot water, cold water, mineral baths, air induction bubbles in any combination.

"Spray pool" means a pool or artificially constructed depression for use by bathers in which water is sprayed, but is not allowed to pond in the bottom of the pool.

"Springline" means the point where the pool wall breaks from vertical and begins its arc in the radius of curvature (for cove construction) to the bottom of the pool.

"Suction outlet" means a fitting, fitting assembly and related components including the sump or bulkhead fitting, cover and hardware, that provides a localized low pressure area for the transfer of water from a water recreation facility. Types of suction outlets include main drains, equalizer line outlets, and submerged outlet drains.

"Swimming pool" means any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, relaxation, or recreational bathing and having a depth of two feet or more at any point and including all associated facilities.

"Swim spa" means a type of spa pool used primarily for stationary swimming.

"Trunk line" means suction piping between a junction fitting and a pump or a balancing tank.

"Turnover time" means the minimum time necessary to circulate the entire volume of the pool facility through the treatment system.

"Wading pool" means any artificial pool of water equal to or less than two feet deep and intended for wading purposes.

"Walking surface" means any surface used as a direct access surface for a pool area and the walking surface's change room facilities where the user is barefoot.

"Water treatment operator" means the appointed person operating the physical and mechanical equipment and performing related water quality monitoring and associated record keeping for proper operation of the physical facility.

"Water recreation facility (WRF)" means any artificial basin or other structure containing water used or intended to be used for recreation, bathing, relaxation or swimming, where body contact with the water occurs or is intended to occur and includes auxiliary buildings and appurtenances. The term includes, but is not limited to:

(a) Conventional swimming pools, wading pools, and spray pools;

(b) Recreational water contact facilities as defined under RCW 70.90.110 and regulated under chapter 246-262 WAC;

(c) Spa pools and tubs using hot water, cold water, mineral water, air induction, or hydrojets; and

(d) Any area designated for swimming in natural waters with artificial boundaries within the waters.

AMENDATORY SECTION (Amending WSR 05-09-004, filed 4/7/05, effective 5/8/05)

**WAC 246-260-031 General design, construction, and equipment for all WRF pool facilities.** (See additional design and construction requirements for swimming pools in WAC 246-260-041, for spa pools in WAC 246-260-051 and 246-260-061, for wading pools in WAC 246-260-071, for spray pools in WAC 246-260-081 and for specialty design conditions in WAC 246-260-091. See chapter 246-262 WAC for specific requirements for water park type features.)

(1) **Location:** Owners shall locate pools to minimize surface drainage and other potential sources of pollution from entering the pool.

(2) **Materials:** Owners shall use only structure and equipment materials that are nontoxic, durable, inert, and easily cleanable.

(3) **Walking surfaces:** Owners shall design and maintain walking surfaces:

(a) Sloping away from the pool or pools;

(b) Sloping a minimum of one-fourth inch per foot to drain;

(c) Having a nonslip finish;

(d) Not having an abrupt change in height of greater than one-half inch, a gap no greater than one-half inch in width, or a crumbling surface presenting a potential tripping hazard;

(e) Equipped with sufficient drains to prevent standing water; and

(f) Of easily cleanable, impervious finishes.

(4) **Barriers for new construction and remodeling:**

(a) Owners shall provide barriers to prevent unauthorized persons from gaining access to pools. Spray pool facilities without standing water are exempt from barrier requirements of this section.

(b) Barriers at limited use pools must be at least sixty inches high.

(c) Barriers at general use pools must be at least seventy-two inches high.

(d) Barriers, including windows, (see figures 031.1 and 031.2) may not:

(i) Allow passage of a four-inch diameter sphere; or

(ii) Have spaces between vertical members greater than a width of one and three-quarter inches if the distance between the tops of horizontal members are spaced less than forty-five inches apart.

(e) Solid barriers may not have indentations or protrusions, other than normal construction tolerances and masonry joints.

(f) Barriers must have self-closing, self-latching gates or doors that provide either:

(i) A mechanism that uses a continuously locked latch, coded lock or other equivalent access control system that always requires a key or code to enter pool area. If the latch is less than sixty inches from the ground, the barrier must have an eighteen-inch radius of solid material around the latch (see figure 031.2) to preclude a child on the outside of the barrier from reaching through the gate or barrier and opening the latch and entering the pool; or

(ii) A latch height of sixty inches or more from the ground.

(g) Restricted area service entrances are exempt from door or gate requirements provided that no public access is available.

(h) Lifeguarded pools are not required to have a self-closing, self-latching gate during the period a pool is in use. Facility gates shall be closed and locked during nonuse periods.

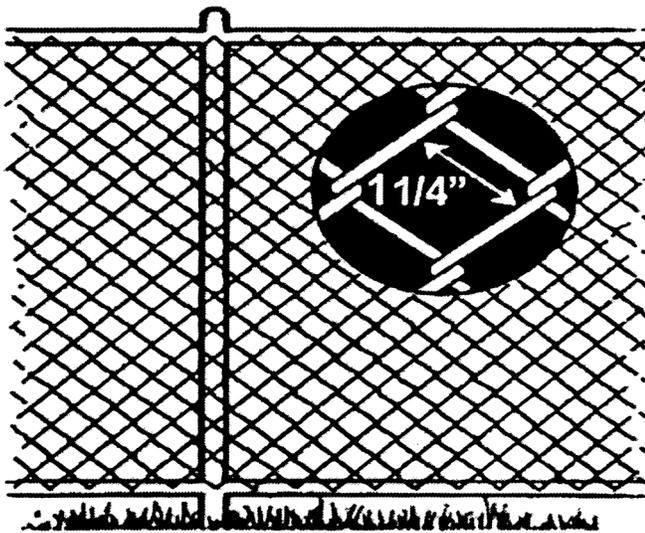
(i) Barrier heights are measured on the side outside the pool enclosure area. Owners shall ensure that surrounding ground levels, structures, or landscaping do not reduce the effective height of the barrier.

**Figure 031.1**

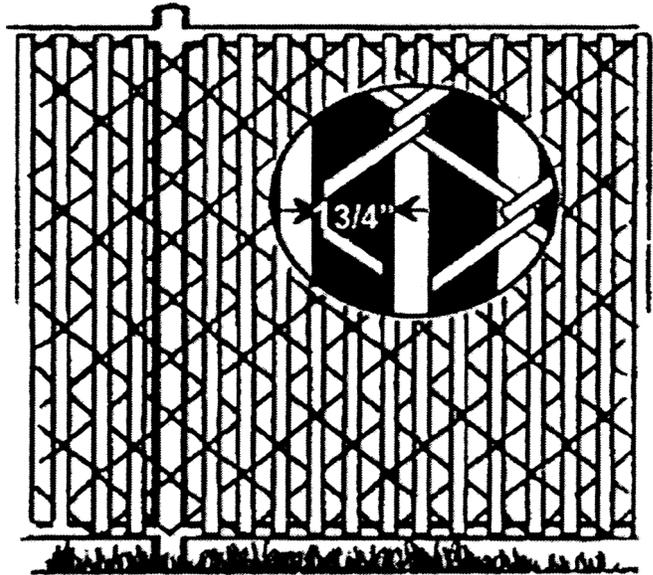
Barrier Construction Detail

**(a). For a Chain Link Fence:**

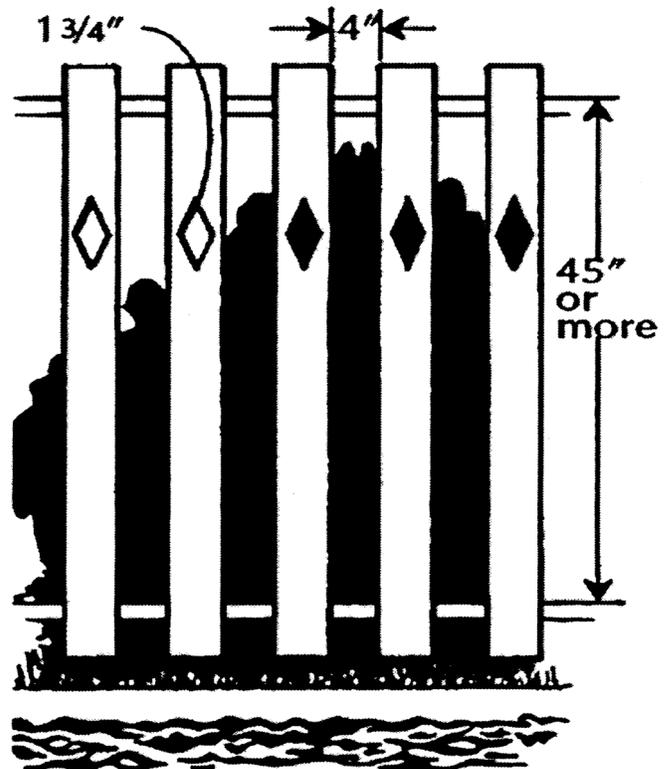
The mesh size shall not exceed 1 1/4 inches square.



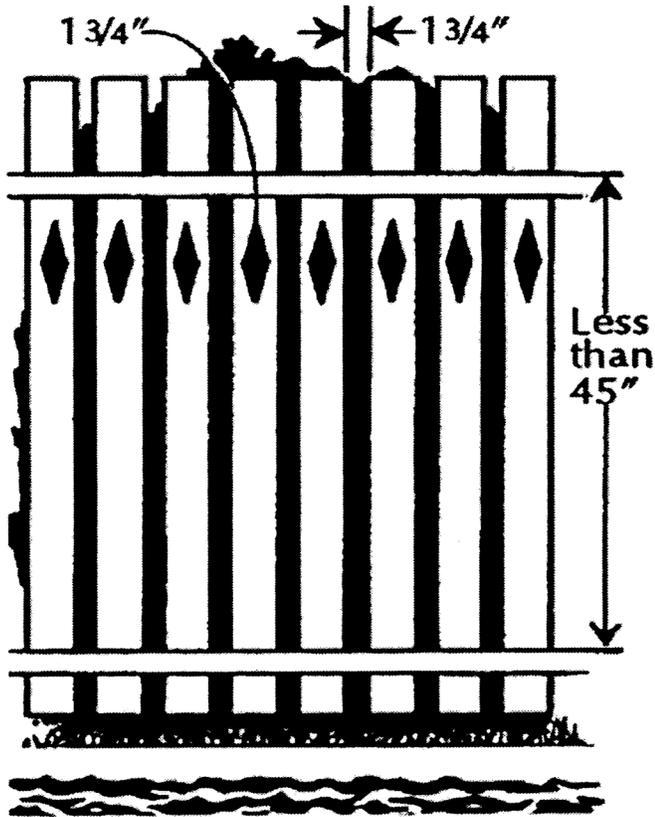
**(b). When chain link exceeds 1 1/4 inches square, provide slats to reduce mesh openings to no more than 1 3/4 inches.**



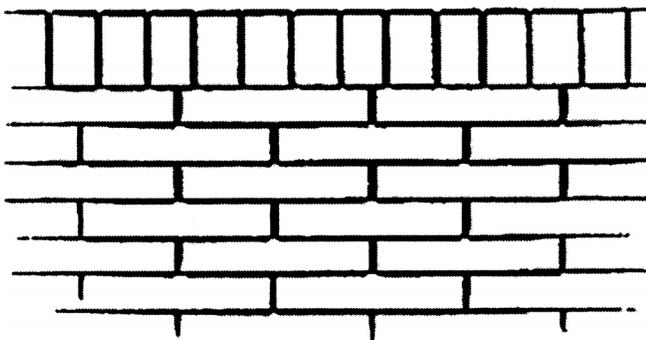
**(c). Vertical Spacing:** If tops of horizontal members are greater than 45 inches apart, vertical spacing shall not exceed 4 inches.



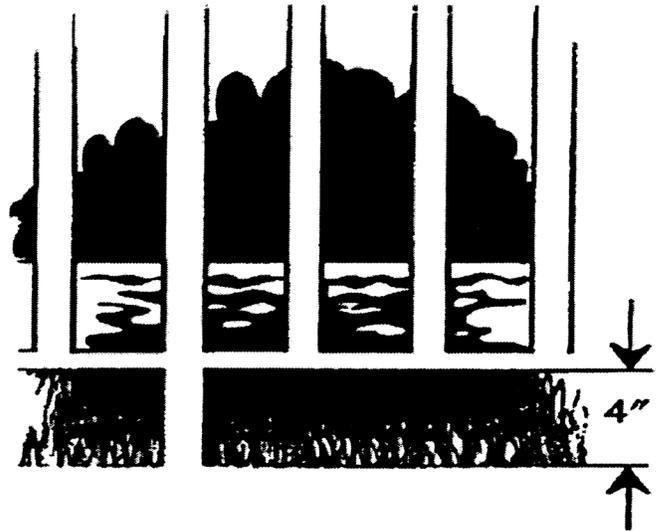
(d). **Vertical Spacing:** If tops of horizontal members are less than 45 inches apart, vertical spacing shall not exceed 1 3/4 inches.



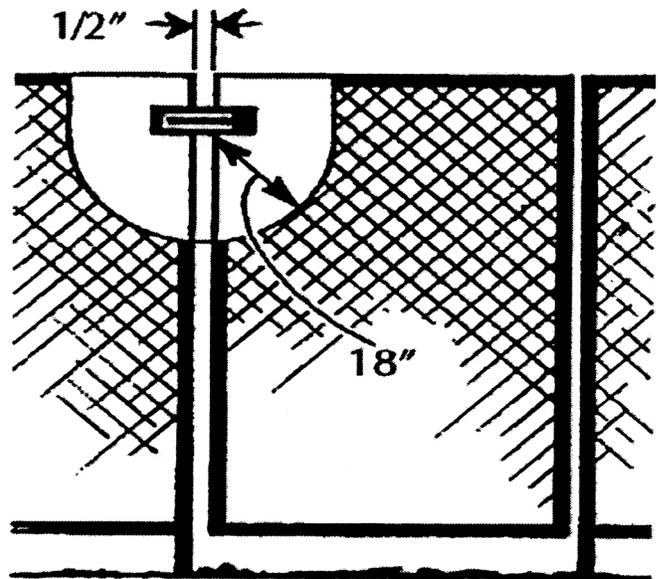
(e). **Solid Barrier:** No indentations or protrusions shall be present, other than normal construction tolerances and masonry joints.



(f). **Maximum Clearance** shall not exceed 4 inches above grade.



**Figure 031.2 Gate and Latch Detail:** When latch height is less than 60 inches from the ground, a continuously locked lock must be provided with an 18 inch radius of protection around the latch.



(5) **Barriers for existing facilities:** Before June 1, 2008, owners shall provide barriers for all pools conforming with subsection (4) of this section. Barrier modifications made prior to the compliance deadlines shall meet the requirements in subsection (4) of this section, at the time the modifications are made.

(6) **Pool surface:** Owners shall ensure pool surfaces are constructed and maintained to:

- (a) Have white or light color finish;

(b) Not cause cutting, pinching, puncturing, entanglement, or abrasion hazard under casual contact; and

(c) Conform to ANSI/NSPI-1 2003 Standards for Public Swimming Pools or ANSI Standard NSPI-@-1999, American National Standard for Public Spas.

(7) **Inlets:** Owners shall provide pool inlets that are:

(a) Submerged;

(b) Located to produce uniform water and chemical circulation throughout the pool; and

(c) Located on the bottom of swimming and wading pools over twenty-five hundred square feet and spa pools greater than ten thousand gallons.

(8) **Outlets:**

(a) Except as provided in (f) and (g) of this subsection, owners shall provide pool outlets with:

(i) Overflow and main drain (~~((grating))~~) systems each designed to carry one hundred percent of the total recirculation filter flow;

(ii) Main drain piping systems designed to carry one hundred percent or more of total recirculation filter flow when a single pump is used or fifty percent or more of total recirculation filter flow when multiple pumps are used; and

(iii) Valving on main drain piping designed to provide required flow.

(b) Owners shall ensure that overflow outlets maintain a minimum of sixty percent of filter recirculation flow at all times.

(c) Overflow outlets must consist of an overflow channel on the perimeter of swimming pools twenty-five hundred square feet or more and spa pools ten thousand gallons or more, to promote uniform circulation and skimming action of the upper water layer with:

(i) A design preventing all matter entering the channel from returning to the pool;

(ii) Dimensions minimizing the hazard for bathers, such as catching arms or feet;

(iii) One one-hundredth of a foot slope per foot or more. However, adequate hydraulic justification from a designer to ensure the overflow system will meet (c)(v) of this subsection may be provided as an alternative;

(iv) Drains sufficiently spaced and sized to collect and remove overflow water to return line and filter, where applicable; and

(v) Size sufficient to carry one hundred percent of the recirculation flow plus the surge flow without flooding the overflow channel.

(d) Overflow outlets must consist of skimmers or overflow channels for pools less than twenty-five hundred square feet, or for spas under 10,000 gallons.

(i) Weirs provided in skimmers must have a normal operation flow rate of three to five gpm per inch of weir;

(ii) Skimmer equipment must be recessed in the pool wall so no part protrudes beyond the plane of the wall into the pool;

(iii) Skimmers must be equipped with a device, such as an equalizer line, to prevent air lock in the recirculation suction line. If equalizer lines are used, they must be protected with (~~((grates listed by IAPMO or UL))~~) a suction outlet that conforms to the ASME A112.19.8 standard;

(iv) Skimmers must be equipped with a removable and cleanable screen designed to trap large solids;

(v) Skimmers shall operate continuously with a minimum displacement rate of fifteen gallons per bather in swimming pools, twenty gallons in spa pools, and seven gallons in wading pools.

(e) Main drains in all pools must:

(i) Be located at swimming and wading pool low points;

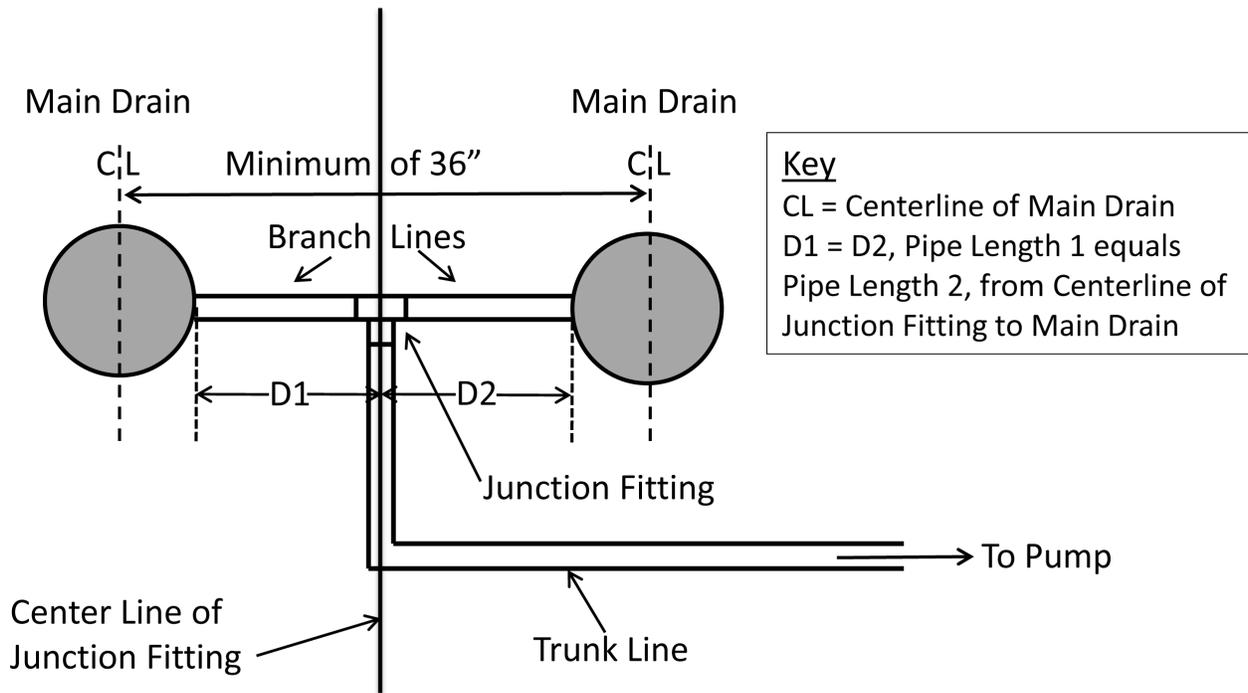
(ii) Have piping designed so velocity in piping assuming one hundred percent of the pump recirculation flow does not exceed six fps up to the main drain outlet box;

(iii) Have covers on main drains with maximum flow of one and one-half feet per second;

(iv) Consist of two or more main drains for any pumped water recirculating system designed;

(A) Piping must be manifolded (~~((to assure the water pumps from both main drains simultaneously so that no single drain could be the sole source of suction))~~) with junction fittings placed in the middle of branch line piping between main drains, so that the length of branch line piping is equal on each side of the junction fitting (see Figure 031.3);

**Figure 031.3**  
Main Drain Branch Line Piping Detail



(B) Main drains must be spaced at least three feet apart ((or as far as practical in small spa pools. If a pool uses more than two main drains with a pump, the design must distribute flow so that no single drain could be the primary source of suction)), measured between the centers of the drain covers;

(C) ((Piping must be designed so velocity in piping assuming one hundred percent of the pump recirculation flow does not exceed six fps up to the main drain outlet box.)) Main drains must conform to the ASME A112.19.8 standard;

(D) Multiple main drains must be designed so that if one main drain becomes blocked, the remaining main drains are rated to at least one hundred percent of the maximum pump flow; see Table 031.4.

~~(iv) Have openings that prevent a sphere greater than one-half inch in diameter passing;~~

~~(v) Have mechanically fastened grates designed to withstand the force of users;~~

~~(vi) Have the total open area of grates sized to prevent a suction or entrapment hazard dangerous to user; and~~

~~(vii) For spa pools, have a design listed by IAPMO or UL to aid in preventing hair entrapment, if the main drains are located on vertical walls of the spas;))~~

(f) Existing water recreation facilities may be modified to operate without main drains, provided that water quality and water clarity standards established in WAC 246-260-111 are met.

(g) New water recreation facilities may be constructed without main drains, provided that water quality and water clarity standards established in WAC 246-260-111 are met.

(9) **Pumps:** Owners shall provide and maintain recirculation pumps with adequate capacity to provide design flows for the entire operating and backwash cycles of the filter.

(10) **Strainers:** Owners shall provide hair and lint strainers for pumps that precede filters.

(11) **Pool appurtenances:**

(a) Owners shall ensure pools have:

(i) Handholds when the pool deck is greater than twelve inches above the water surface;

(ii) Stairs leading into spa pools;

(iii) Step risers on the exterior of the spa pool shall conform with UBC requirements for risers with nonslip tread finishes, when spas are elevated off the pool floor; and

(iv) Stairs, ladders, or stepholes for access at the shallow end of swimming pools.

Table 031.4

Main Drain Flow Rating Requirements

	<b>Number of Main Drains Per Recirculation System</b>			
	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<u>Main drain rated flow capacity must be at least equal to the percent of maximum pump flow indicated, depending on the number of main drains.</u>	100%	50%	33.3%	25%

~~((iii) Have grates on drains with maximum flow of one and one-half feet per second or net outlet area four times or greater than the discharge pipe;~~

(b) Owners shall ensure that stairs, when provided, meet the following construction requirements:

- (i) Nonslip tread finish;
- (ii) Contrasting color stair tread edges;
- (iii) Placement recessed into the side of pools specifically designed for lap or competitive swimming;
- (iv) Handrail having leading edges less than eighteen inches beyond and less than eight inches inside (horizontally) the vertical plane of the bottom riser;
- (v) Each riser tread shall have a minimum unobstructed, tread depth of ten inches and minimum surface area each of two hundred forty inches;
- (vi) Uniform riser heights of seven and one-half inches or less on general use swim pools fifteen hundred square feet or more and spa pools greater than forty feet in perimeter, except the bottom riser may be less than the uniform height; and

(vii) Uniform riser heights of ten inches or less for all other pools, except the bottom riser may be plus or minus two inches of the uniform height.

(c) Ladders or stepholes at swimming pools shall be:

- (i) Spaced at a minimum of one for every seventy-five feet of swimming pool perimeter deeper than four feet;
- (ii) Provided at both sides of the deep end of swim pools over thirty feet in width; and
- (iii) Equipped with handrails.

(12) **Valves:** Owners shall provide valves to allow isolation and maintenance of equipment.

(13) **Balancing tanks:** Owners shall provide balancing tanks for pools designed with overflow channels. Balancing tanks must be of adequate size to prevent air lock in the pump suction line and have sufficient capacity to prevent flooding of the overflow channel.

(14) **Equipment and chemical storage rooms:** Owners shall provide enclosed, locked, lighted, vented rooms for mechanical equipment, with floors sloped to a floor drain and minimum access area three feet wide around equipment. Owners shall provide a separate chemical storage area or room that conforms to manufacturer's requirements for each chemical used in the pool area.

(15) **Make-up water:** Owners shall ensure an adequate supply of make-up water with associated piping, for each pool:

- (a) Sufficient to replace daily pool losses;
- (b) From a supply conforming to chapter 246-290 WAC;
- (c) Without cross connections; and
- (d) If using a pool fill spout, the spout may not project greater than one inch into the space above the water surface and shall be shielded so as not to create a deck hazard.

(16) **Filters:**

- (a) Owners shall equip pools with filtration equipment:
  - (i) Meeting the applicable standards of NSF (for commercial application) or equivalent;
  - (ii) With a rate of flow indicator and gauge(s) for monitoring backpressure on filter;
  - (iii) With a means of discharging filter backwash to waste with a sight glass in a manner not creating a cross connection or a public nuisance;
  - (iv) With a means to release air entering the filter tank for pressure filters.

(b) If cartridge filters are used, owners shall always possess an extra set of cartridges and may not use cartridge filters with bypass valves.

(17) **Disinfection equipment:**

(a) Owners shall provide disinfection equipment:

- (i) Providing a continuous and effective disinfectant residual;
- (ii) Using a disinfectant with an easily monitored residual;
- (iii) Having a design feed rate providing effective disinfection levels for peak demand conditions; and
- (iv) Conforming to NSF standard 50 if disinfection chemical is other than gas chlorine.

(b) If disinfection equipment has adjustable output rate chemical feed of liquid solutions, the equipment shall:

- (i) Feed under positive pressure in the recirculation system;
- (ii) Provide a means for dosage adjustment; and
- (iii) If the disinfection equipment is above pool water surface level, have provisions to prevent disinfectant solution siphoning when equipment is turned off.
- (c) Solid tablets or granules may not be placed in skimmer basket.
- (d) Rooms holding chlorine gas equipment must:
  - (i) Be above ground level;
  - (ii) Be constructed so all openings or partitions with adjoining rooms are sealed;
  - (iii) Be located with consideration of prevailing winds to dissipate leaked chlorine away from the pool facility;
  - (iv) Have door(s) opening only outward to the out-of-doors; and
  - (v) Have a sign on the door exterior reading **DANGER CHLORINE** in large enough letters to be read twenty-five feet away.

(e) Chlorine rooms must have mechanical exhausting ventilation that includes:

- (i) Air inlets located as far as possible from fan intakes to promote good air circulation patterns;
- (ii) A minimum of one air change per minute in the chlorine room when fan is operating;
- (iii) A remote switch outside the room or a door-activated switch to turn on fan before entering;
- (iv) Suction for fan near the floor;
- (v) Exhaust vents located to prevent chlorine contaminated air from being drawn into supply air; and
- (vi) Screened chlorinator vents.

(f) Gas chlorine systems must:

- (i) Be vacuum injection type, with vacuum-actuated cylinder regulators;
- (ii) Provide integral backflow and antisiphon protection at the injector;
- (iii) Have taring (net weight of cylinder gas) scales for determining chlorine weight; and
- (iv) Have a means for automatic shutoff when water flow is interrupted.

(g) A self-contained breathing apparatus designed for use in chlorine atmospheres caused by chlorine leaks must be available in an area accessible to the operator outside the chlorine room. The apparatus must be maintained in accordance with department of labor and industry standards. If

procedures are established for immediate evacuation and the owner has a written agreement with emergency service fire districts or other approved organizations within the area for promptly responding to chlorine leaks, then breathing protection is not required at the pool facility.

- (h) Chlorine gas cylinders must:
  - (i) Be stored only in designated chlorine rooms;
  - (ii) Have an approved valve-stem cylinder wrench on the valve stem to shut the system down in an emergency event;
  - (iii) Be properly secured to prevent tipping;
  - (iv) Be tagged to indicate cylinders are empty or full; and
  - (v) Not exceed one hundred fifty pounds tare weight per cylinder.

(i) Owners shall ensure that chemical disinfectants are not hand-fed into pools actively in use. *Exception*, chemical disinfectants may be hand-fed on an emergency basis if no users are in the pool and the pool is tested to meet water quality standards before reentry.

(j) If ozone is provided as a supplemental disinfection process:

(i) When ozone is produced by corona discharge method, the area where the ozone is produced shall meet the requirements of (e) of this subsection, unless field tests demonstrate no hazardous off-gassing of product;

(ii) When ozone is produced by ultraviolet light, it may be allowed in the mechanical room provided there are no levels of off-gassing exceeding 0.05 ppm;

(iii) Provide an ozone detector and alarm with corona discharge ozone generators;

(iv) Provide sufficient contact chambers to prevent excess levels of ozone from entering the pool water; and

(v) Testing equipment must be provided to monitor levels in the water and the atmosphere immediately above the water and the room where the ozone is produced.

(k) If copper or copper/silver is provided as a supplemental disinfection process:

(i) The output rate and method of controlling process levels into the pool facility must be provided;

(ii) The system shall not have a detrimental effect on maintaining proper turnover rates for the pool; and

(iii) Testing equipment provided to monitor levels of copper and silver in the pool water.

**(18) Chemical feeding equipment for pH control:** Owners shall provide chemical feed equipment for pH control, with a means of automatic shutoff if water flow is interrupted, for:

- (a) Swimming pools fifty thousand gallons or greater;
- (b) Spa pools ten thousand gallons or greater; and
- (c) All pools treated with caustic soda or carbon dioxide.

**(19) Ventilation:** Owners shall provide adequate ventilation (in conformance with ASHRAE standards for pools and decks) to maintain air quality and to prevent moisture buildup in indoor areas. Design considerations must include maintaining negative pressure in the pool and deck area; providing adequate total airflow for acceptable air distribution; and preventing short-circuiting of fresh air return to exhaust.

**(20) Locker room and dressing rooms:**

(a) Owners shall provide general use pool facilities with locker rooms and dressing rooms having:

(i) Separate facilities for each gender constructed to block line of sight into locker rooms;

(ii) Water impervious nonslip floors properly sloped to drains to prevent standing water;

(iii) Easily cleanable walls, lockers, and benches (if provided);

(iv) Junctions between walls and floors coved for ease of cleaning; and

(v) Properly anchored lockers, (if provided), to prevent tipping.

(b) Owners shall provide limited use pool facilities with locker or dressing rooms meeting the requirements of (a) of this subsection if the pool facilities are located more than one-quarter mile from any served living units.

(c) Owners shall provide general use recirculating spray pool facilities with locker or dressing rooms meeting the requirements of (a) of this subsection if the pool facilities are located indoors.

**(21) Restrooms, shower rooms, and plumbing fixtures:**

(a) Owners shall provide general use pool facilities with restroom and shower room facilities having plumbing fixture types and numbers as described in Table ((031-3)) 031.5 of this section (swim and wading pool bathing loads and spa bather capacity are additive for determining total bather load). The pool facility design shall provide users easy access to restroom and shower facilities with minimum nonuser cross traffic.

(b) Owners shall provide general use pool facilities with:

(i) Hose bibs with vacuum breakers around pool decks at a maximum spacing of one hundred fifty feet; accessible to each locker room; and within equipment room at facilities fifteen hundred square feet or more;

(ii) A janitor's sink at indoor facilities with a pool of fifteen hundred square feet or more; and

(iii) An operable drinking fountain conforming to ASA requirements at facilities with a pool fifteen hundred square feet or more.

(c) Owners shall provide limited use pool facilities with:

(i) Restroom and shower room facilities having plumbing fixture types and numbers as described in Table ((031-3)) 031.5 of this section, if bathing load exceeds eighty persons;

(ii) Restroom and shower room facilities having plumbing fixture types and numbers as described in Table ((031-4)) 031.6 of this section, if bathing load is eighty persons or less;

(iii) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet;

(iv) A hose bib accessible to each locker room; and

(v) A hose bib within each equipment room at facilities with a pool of fifteen hundred square feet or more.

**Table ((031-3)) 031.5**

Restroom Minimum Requirements\* for General Use Pools  
(Includes swimming, spa, and wading pools\*\*)

Amount of Fixtures Required for Occupancy Load by Sex		
TYPE OF FIXTURES	MALE	FEMALE
Toilets up to 120	1/60	1/40

Amount of Fixtures Required for Occupancy Load by Sex		
TYPE OF FIXTURES	MALE	FEMALE
From 121-360	1/80	1/60
Over 360 add	1/150	1/100
Urinal up to 120	1/60	N/A
From 121-360	1/80	N/A
From 360 add	1/150	N/A
Showers up to 120	1/40	1/40
From 121-360	1/60	1/60
Over 360 add	1/100	1/100
Sinks up to 200	1/100	1/100
From 201-400	1/200	1/200

Amount of Fixtures Required for Occupancy Load by Sex		
TYPE OF FIXTURES	MALE	FEMALE
Over 400 add	1/400	1/400
Diaper changing station	1	1

\* If sufficient supporting documentation is provided, restroom fixture numbers may be adjusted between the genders based on proposed use of the facility. (E.g., if the designer has experience and justification based on similar type facilities indicating that providing one additional shower for the women and one less for men would provide a sufficient number of fixtures to meet demands, this may be allowed.)

\*\* If a general use spa or wading pool is the only pool at the facility, then a minimum of only one toilet, shower, and sink is required for each gender.

**Table ((031.4)) 031.6**  
 Restroom Minimum Requirements for Limited Use Pools  
 (Includes swimming, spa, and wading pools.)

POOLS WITH:	TOILETS	SHOWERS	SINKS	DRESSING ROOMS	DIAPER CHANGING STATION
Living units*within 100 feet and less than three stories	-	-	-	-	-
Living units > 100 feet but < 500 feet and less than 3 stories	1	1**	1	-	1
Living units within 1/4 mile and/or with three or more stories	1	1	1	-	1
Living units greater than 1/4 mile	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)

\* "Living units" means all the units the facility serves.

\*\* A shower is required only if a spa is present.

(d) Owners shall provide general use recirculating spray pool facilities with:

(i) Separate restroom facilities for each sex containing at least one toilet and handwashing sink;

(ii) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet; and

(iii) Additional plumbing fixtures, if indoors, conforming to the requirements for general use pools described in Table ((031.3)) 031.5 of this section.

(e) Owners shall provide limited use recirculating spray pool facilities with:

(i) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet; and

(ii) A restroom facility containing at least one toilet and one handwashing sink, if living units served are farther than one hundred feet away from the main pool.

(f) Restroom facilities must be located convenient to, and no further than one hundred feet away from, the main pool. They must have flush toilets provided with toilet tissue in dispensers and handwashing sinks including:

(i) Hot and cold or tempered water delivered through a mixing faucet with a maximum temperature of one hundred twenty degrees Fahrenheit;

(ii) Single service soap in a nonglass dispenser;

(iii) Single service towels or electric hand dryer; and

(iv) A minimum running water cycle of at least ten seconds if the faucets have self-closing valves.

(g) Shower facilities must be located convenient to, and no more than one hundred feet away from, the main pool. The facilities must have:

(i) A design allowing a full-body shower in the nude;

(ii) A design providing an enclosure confining water to the shower area;

(iii) Nonslip floor impervious to water with sufficient drains to prevent water from standing within the shower areas;

(iv) Running water delivered at a temperature between ninety degrees and one hundred twenty degrees Fahrenheit;

(v) Single service soap in a nonglass dispenser; and

(vi) Wall surfaces impervious to water up to shower head height.

(h) If owners limit the number of bathers within their facility and post and enforce the maximum bather load, owners may base the number of required plumbing fixtures on the posted maximum bather load.

(i) Owners shall dispose of all wastewater in a manner approved by the local health officer.

(22) **Diaper changing stations:** Owners shall provide a diaper changing station, including a handwashing sink conforming to the requirements in subsection (21)(f) of this section, accessible to all bathers, if children in diapers are allowed in the pool facility and the facility is:

(a) A general use pool facility; or

(b) A limited use pool facility located more than one hundred feet away from living units served.

(23) **Lighting:** Owners shall design and maintain pool facility lighting to a minimum level as described in Table ((031.5)) 031.7. Sufficient overhead and underwater lighting shall be maintained to clearly see the bottom of the pool at all times pool is in use. Owners shall provide protective shielding for all lighting fixtures above walking surfaces and pool areas.

**Table ((031.5)) 031.7\***

Minimum Lighting Level Required at Water Recreation Facilities.

Location	Minimum Lighting Level
Indoor pool surface	30 foot candles
Outdoor pool surface*	10 foot candles
Pool Decks	10 foot candles
Locker rooms and mechanical rooms	20 foot candles

\* Outdoor pool facilities, which are used in daylight hours only (before dusk) are not required to meet this standard.

(24) **Flow-through pools:** Flow-through pools may qualify for exceptions to recirculation if:

(a) Water supply is sufficient to provide the same turn-over period specified for recirculation pools;

(b) The source water supply meets acceptable quality requirements and is subject to a disinfection method as described under WAC 246-260-111(3);

(c) The introduction of fresh treated pool water is accomplished by the same type of inlet and outlet design required for recirculation pools; and

(d) The pool water quality complies with WAC 246-260-111.

**AMENDATORY SECTION** (Amending WSR 05-09-004, filed 4/7/05, effective 5/8/05)

**WAC 246-260-061 Special design and construction provisions for hotels and motels (transient accommodations) serving fewer than fifteen living units and for spas in individual hotel/motel rooms.** (1) Owners are exempt from the requirements for design, construction, and equipment in WAC 246-260-031 and 246-260-051 for spa pools at limited use facilities serving less than fifteen living units, except for requirements listed in this section. Owners shall

also ensure that chemicals are stored in a manner to minimize safety risks.

(2) The requirements in WAC 246-260-031 (1), (2), (3), (4), (5), (6), (8) ~~(a) and~~ (b), (d)(iii)~~((-d))~~ ~~and~~ (v), (e) ~~and~~ (f), (9), (10), (15), (16), (17), and Table ((031.4)) 031.6 apply to prefabricated spa pools at limited use facilities serving less than fifteen living units.

(3) The requirements in WAC 246-260-051 (2)(b), (d), (e), (4), (5)(b), (c), and (e) apply to prefabricated spa pools at limited use facilities serving less than fifteen living units.

(4) Spa pools that are drained, cleaned and refilled between patron use in individual hotel/motel rooms are exempt from these requirements. Spas that are not drained, cleaned and refilled between use shall at least:

(a) Conform with WAC 246-260-031(4) on barriers beyond the room itself, such that the guest room plus any associated lanai or deck may be considered an enclosure unit.

(b) Conform with WAC 246-260-031(17) on disinfection equipment and conform with water quality requirements of WAC 246-260-111 for disinfection and pH.

**AMENDATORY SECTION** (Amending WSR 04-18-096, filed 9/1/04, effective 10/31/04)

**WAC 246-260-081 Spray pool design, construction, and equipment.** For more general design and construction requirements that pertain to all pools, see WAC 246-260-031.

(1) **Walking surface.** A minimum four-foot wide walking surface shall extend around the perimeter of a spray feature sufficient that the spray will not exceed the walkway area in normal conditions including light wind conditions.

(2) **Pool structure.** Owners shall ensure each spray pool has:

(a) Pool surfaces with nonslip finishes impervious to water;

(b) Uniform pool floor slopes not exceeding one foot of a slope for every twelve feet of horizontal floor length;

(c) A source of water for the spray feature from an approved potable water supply;

(d) Water drained to waste disposed in a manner approved by local authorities or the department after use in the spray pool, unless it is recirculated with approved treatment as described in WAC 246-260-031; and

(e) The entire volume of water circulated through an approved treatment system every thirty minutes or less if water is recirculated.

(3) **Inlets ~~(and outlets)~~.** Owners shall ensure spray nozzles at each spray pool are designed and maintained to not inflict physical damage to bathers. Design and construction shall include evaluation of forces of the spray nozzle including velocity, pressure and total force in proximity to bathers' eyes and other body orifices.

**(4) Outlets.**

(a) Owners shall ensure outlet drains ~~((and recirculation drains))~~ are designed and maintained to provide sufficient capacity to prohibit water accumulation in each spray pool.

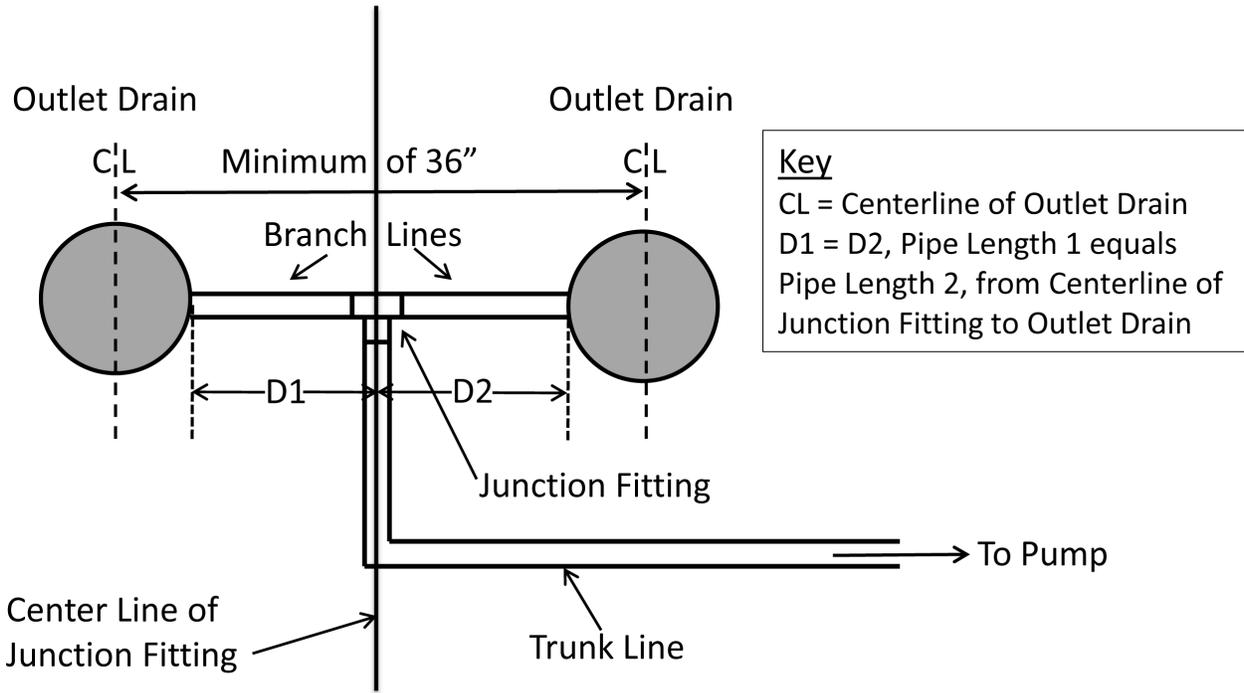
(b) ~~((Outlet drains in))~~ Piping must be designed so velocity in piping assuming one hundred percent of the pump recirculation flow does not exceed six fps between the pump and the outlet drain.

(c) Each spray pool must have two or more outlet drains that:

- (i) ~~((Be))~~ Are located at the low point of the pool;
- (ii) ~~((Have two or more main drains;))~~ Are located at least three feet apart, measured between the centers of the drain covers; and

~~((ii))~~ ~~((Have openings that prevent the passage of a sphere over one-half inch in diameter;))~~ Are manifolded with junction fittings placed in the middle of branch line piping between outlet drains, so that the length of branch line piping is equal on each side of the junction fitting, see Figure 081.1:

**Figure 081.1**  
Outlet Drain Branch Line Piping Detail



(iv) ~~((Have drain grates that withstand forces of users; and~~

~~((v)))~~ Have drain ~~((grates))~~ covers removable only with specific tools.

(d) Multiple outlet drains must be designed so that if one outlet drain becomes blocked, the remaining outlet drains are rated to at least one hundred percent of the maximum pump flow; see Table 081.1.

~~((e))~~ Outlet drains to each spray pool recirculating pump, must have: (e) Outlet drains that are accessible to pool users and submerged must:

- (i) ~~((A total open grate area sized to prevent a suction hazard dangerous to users;))~~ Conform to the ASME A112.19.8 standard; and
- (ii) Have a maximum flow of one and one-half feet per second ~~((; or net grate area of outlet four times or more the discharge pipe area; and~~
- ~~((iii))~~ Manifolding a minimum of three feet apart where drains are piped directly to a pump) through the cover.

(f) Outlet drains that are accessible to pool users and not submerged must have:

- (i) Openings that prevent the passage of a sphere over one-half inch in diameter; and
- (ii) Drain covers that withstand forces of users.

~~((4))~~ (5) **Emergency equipment.** No later than June 1, 2008, owners of existing pools with single main drains shall install emergency equipment to shut off all pumps hooked to the recirculation lines for the pools. This emergency equipment must be placed within twenty feet of the pool and marked with an emergency shutoff sign. The shutoff switch must include an audible alarm which can be heard by those in the area, or the switch must have an alarm that goes to a point

Table 081.1

Outlet Drain Flow Rating Requirements

	<b>Number of Outlet Drains per Recirculation System</b>			
	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
Outlet drain rated flow capacity must be at least equal to the percent of maximum pump flow indicated, depending on the number of outlet drains.	100%	50%	33.3%	25%

where staff is always present during the periods the pool is open.

(a) Pools that include dual main drains meeting the requirements of this section, or other acceptable methods of providing equivalent protection to the emergency shutoff switch, are exempt from this requirement.

(b) The owner shall check the shutoff switch at least twice annually to determine it is properly operating.

(c) The department will develop a guidance document to aid owners and designers in potential options to the emergency shutoff switch and audible alarm.

AMENDATORY SECTION (Amending Order 226B, filed 12/23/91, effective 1/23/92)

**WAC 246-262-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced first aid" means a course of instruction recognized by the American Red Cross, department of labor and industries, the U.S. Bureau of Mines, or fire services training program.

(2) "ANSI" means American National Standard Institute.

(3) "Anti-entrapment system" means a device or system designed to prevent entrapment by pool or spa single main drains or single equalizer line outlets, including:

(a) Safety vacuum release system (SVRS) that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387;

(b) Suction limiting vent system with a tamper-resistant atmospheric opening;

(c) Gravity drainage system that utilizes a collector or balancing tank; and

(d) Drain disablement that eliminates the use of suction outlets.

(4) "Approved" means the department or local health officer has stated in writing that the design plans and specifications are in accordance with chapter 246-262 WAC.

~~((4))~~ (5) "ARC" means American Red Cross.

~~((5))~~ (6) "Architect" means a registered architect currently licensed under chapter 18.08 RCW in Washington state.

(7) "ASME" means the American Society of Mechanical Engineers;

(8) "ASME A112.19.8 standard" means the ASME A112.19.8-2007 Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs standard and the ASME A112.19.8a-2008 Addenda and the ASME A112.19.8b-2009 Addenda.

~~((6))~~ (9) "ASTM" means American Society for Testing Material.

~~((7))~~ (10) "Attendant" means a person trained to operate an attraction and control the users in a safe orderly manner.

~~((8))~~ (11) "Attraction or ride" means any of the specific types of recreational facilities involving partial or total

immersion or intentional contact with the water designated for public recreational use.

~~((9))~~ (12) "Biomechanics" means the study of the human body as a system operating under the laws of Newtonian mechanics and the biological laws of life.

~~((10))~~ (13) "Board" means the state board of health.

~~((11))~~ (14) "Boogie or mini-surf board" means any semirigid device used in a wave pool for flotation or as a riding device.

(15) "Branch line" means suction piping between a junction fitting and a suction outlet.

~~((12))~~ (16) "Centerline" means the path defined by geometric midpoints of a component or structure, generally used in consideration of the slide path in flume rides.

~~((13))~~ (17) "CNCA" means Council for National Cooperation in Aquatics.

(18) "Communication system" means any combination of devices permitting the passage of or exchange of messages between park operating personnel and between operating personnel and users. Systems can include, but are not limited to, two-way radios, hardwired intercoms, horns, whistles, hand signals, direct voice, signs, or equivalent.

~~((14))~~ (19) "Contaminant" means any physical, chemical or biological substance present in the RWCF water which may adversely affect the health or safety of the user and/or the quality of the water.

~~((15))~~ "CNCA" means Council for National Cooperation in Aquatics.

~~((16))~~ (20) "Cross-connection" means any physical arrangement connecting:

(a) A potable water system directly or indirectly, with anything other than another potable water system; or

(b) A RWCF to any potable or nonpotable water source capable of contaminating either the RWCF or potable water source as a result of backflow.

~~((17))~~ (21) "Department" means the department of health.

~~((18))~~ (22) "Discharge section" means the component or components making up the exit of the water slide, water tube, inner tube ride, speed slide, ramp slide, drop slide or drop tube, or kiddie flume. These components are the elements controlling the final direction and speed of the user.

~~((19))~~ (23) "Diving envelope" means the minimum dimensions of an area within the pool necessary to provide entry from a diving board, platform, or attraction segment where users enter above pool water level.

~~((20))~~ (24) "Drop slide or drop tube ride" means a sloped trough, chute, or tube exiting the user above the pool operating water level.

~~((21))~~ (25) "Engineer" means a registered professional engineer currently licensed under chapter 18.43 RCW in Washington state.

~~((22))~~ (26) "Entry access points" means the areas where users enter an attraction.

~~((23))~~ (27) "Entry rate" means the frequency at which users are permitted access to the attraction.

~~((24))~~ (28) "Equalizer line outlet" means a suction outlet located on the pool wall below the waterline and connected by pipe to the body of a skimmer to prevent air from

being drawn into the pump if the water level drops below the skimmer weir.

((29)) (29) "Ergonomics" means a multidisciplinary activity dealing with the interactions between humans and their environment plus the traditional environmental elements atmosphere, heat, light, and sound, as well as objects with which the user comes in contact.

((25)) (30) "FINA" means Federation Internationale de Natation Amaueur.

((26)) (31) "Flume or tube entry" means the area at which users enter a water slide, water tube, inner tube ride, speed slide, drop slide, drop tube, or kiddie flume.

((27)) (32) "fps" means feet per second.

((28)) (33) "gpm" means gallons per minute.

((29)) (34) "IAAPA" means International Association of Amusement Parks and Attractions.

((30)) (35) "Injury or illness report" means the written record of all facts regarding an injury or illness associated with the RWCF.

((31)) (36) "Inner tube ride" means an attraction where users ride inner tube-like devices through a series of chutes, channels, flumes, and pools.

((32)) (37) "Innovative recreational water contact facility" means any type of RWCF currently unregulated.

((33)) (38) "Intermediate pool" means any pool between the entry and exit pools in attraction using a series of pools.

((34)) (39) "Junction fitting" means a pipe fitting in the shape of a "T" or a "Y" used to connect suction outlets to a pump or a balancing tank, and provides two branch line connections and one trunk line connection.

(40) "Kiddie flume or tube attraction" means a flume, chute, or tube designated for and restricted to use by small children.

((35)) (41) "Lifeguard" means an individual currently certified by red cross in advance lifesaving or lifeguard training, or YMCA senior lifesaver, or equivalent certification through the royal Canadian lifeguard services.

((36)) (42) "Lifeguard station" means the designated work station of the lifeguard.

((37)) (43) "Local health officer" means the health office of the city, county, or city-county department or district or a representative authorized by the local health officer.

((38)) (44) "Main drain" means a submerged suction outlet for transferring water from a recreational water contact facility.

(45) "mg/l" means milligrams per liter.

((39)) (46) "Multiactivity pool" means a pool with more than one type of attraction (i.e., an adult activity pool with a series of tubes, chutes, cable rides, etc., intended for use by individuals with specific swimming abilities).

((40)) (47) "NSF" means National Sanitation Foundation.

((41)) (48) "NSPI" means National Spa and Pool Institute.

((42)) (49) "Operating levels" means water levels maintained within attractions during use for proper operation of facility and for controlling safety and sanitation.

((43)) (50) "Operations" means all aspects of a RWCF, which must be controlled to make the facility safe, healthy, and usable for the purpose intended.

((44)) (51) "Owner" means a person owning and responsible for a RWCF or authorized agent.

((45)) (52) "Person" means an individual, firm, partnership, co-partnership, corporation, company, association, club, government entity, or organization of any kind.

((46)) (53) "Ponding" means a condition where water fails to drain from walking surfaces.

((47)) (54) "ppm" means parts per million.

((48)) (55) "Primary zone of visual coverage" means the area assigned to a lifeguard or attendant for primary visual surveillance of user activity.

((49)) (56) "Radius of curvature" means the radius arc which denotes the curved surface from the point of departure from the vertical sidewall (springline) of the pool to the pool bottom.

((50)) (57) "Ramp slide" means a slide allowing one or more users to slide in unison down a straight incline to a run-out or a receiving pool.

((51)) (58) "Recirculation filter water" means water which is recirculated by the RWCF for treatment purposes, i.e., filtration and disinfection.

((52)) (59) "Response time" means elapsed time between bather distress and initiation of rescue assistance by a lifeguard (or attendant where applicable).

((53)) (60) "RWCF" means recreational water contact facility which is an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water and includes, but is not limited to, water slides, wave pools, and water lagoons.

((54)) (61) "Secretary" means the secretary of the department of health.

((55)) (62) "Serious injury" means any injury requiring admission to a hospital.

((56)) (63) "Speed slide or speed tube" means a sloped trough, flume, tube, or roller track having long straight and/or steep drops where users sustain speeds of twenty miles per hour or more.

((57)) (64) "Springline" means the point from which the pool wall breaks from vertical and begins its arc in the radius of curvature (for coved construction) to the bottom of the pool.

((58)) (65) "Suction outlet" means a fitting; fitting assembly and related components, including the sump or bulkhead fitting, cover, and hardware that provides a localized low pressure area for the transfer of water from a recreational water contact facility. Types of suction outlets include main drains and equalizer line outlets.

(66) "Surfboard" means a rigid device used in a wave pool for riding.

((59)) (67) "Tail coverage" means providing insurance coverage for a given period of time for discovery of claims made after the policy term for "claims made" type of insurance.

~~((60))~~ (68) "Total turnover" means the time it takes for the pool attraction water volume to be recirculated as a sum of the flows from treatment turnover and attraction recirculation systems turnover.

~~((61))~~ (69) "Treatment turnover" means the minimum time necessary to circulate the entire attraction water volume through the recirculation filter system.

~~((62))~~ (70) "Trunk line" means suction piping between a junction fitting and a pump or a balancing tank.

(71) "T.U." means turbidity unit as measured by the nephelometric method.

~~((63))~~ (72) "Wading activity pool" means a pool or area less than twenty-four inches in total water depth with activities intended for younger children.

~~((64))~~ (73) "Walking surface" means any direct access surface to the attractions or change rooms where the user will be in bare feet. Areas set aside for picnicking, sunbathing, and lounging are excluded.

~~((65))~~ (74) "Water slide or water tube" means a sloped trough-like flume or tube structure of varying slope and direction using water as a lubricant and/or method of regulating the rider speed.

~~((66))~~ (75) "Water treatment operator" means the person appointed to operate the mechanical equipment and perform related water quality monitoring for proper operation of the physical facility.

~~((67))~~ (76) "Wave pool" means a recreational pool producing waves which usually begin at the deep end and proceed toward and dissipate at the shallow end.

~~((68))~~ (77) "WWA" means World Waterpark Association.

AMENDATORY SECTION (Amending Order 226B, filed 12/23/91, effective 1/23/92)

**WAC 246-262-060 General design, construction, and equipment.** (1) Owners shall locate RWCFs to:

(a) Minimize pollution by dust, smoke, soot, and other undesirable substances;

(b) Eliminate pollution from surrounding surface drainage; and

(c) Ensure pools within the RWCF are more than fifteen feet from any structure, object, or land formation (i.e., pump-house, tree, etc.), which would provide a user with the opportunity to jump from such a structure into the pool. This does not include any barriers provided to prevent unauthorized access to pool or segments of attractions which enter pool.

(2) Owners shall use only materials in the structure and equipment which are nontoxic, durable, inert, impervious to water, and easily cleaned.

(3) Owners shall design and maintain walking surfaces which are:

(a) Sloped a minimum one-fourth inch per foot;

(b) Of a nonslip finish;

(c) Equipped with sufficient drains to prevent standing water;

(d) Free of resilient coverings, e.g., carpeting; and

(e) At least four feet in width.

(4) Owners shall provide adequate barrier protection to prevent unauthorized access including:

(a) In outdoor facilities, a barrier six feet or more in height with:

(i) Openings, holes, or gaps not to exceed four inches except openings protected by gates or doors; and

(ii) Lockable gates and entrances either regulated during periods of use or provided with a self-closing, self-latching mechanism a minimum of forty-two inches from the ground.

(b) In indoor facilities, suitable barriers to prevent access by unauthorized individuals or pool access by unattended small children.

(5) Owners shall ensure that pools:

(a) Comply with all provisions of chapter 246-260 WAC where pool facilities are a separate attraction;

(b) Have surfaces with:

(i) Materials complying with subsection (2) of this section;

(ii) Watertight and nonabrasive construction;

(iii) Nonslip finish where users are walking; and

(iv) White or light color finish not obscuring the view of objects or surfaces.

(c) Are dimensionally designed to provide for the safety of the user and circulation of the water including, but not limited to:

(i) Absence of protrusions, extensions, means of entanglement, or other obstruction which can cause entrapment or injury;

(ii) Construction tolerances conforming with current ANSI public pool standards;

(iii) Uniform pool floor slopes as follows:

(A) Not exceeding one foot of drop in seven feet of run for pools serving as landing or exiting pools, where total water depth is less than forty-eight inches; and

(B) Providing a maximum slope of one foot of drop in twelve feet of run up to a depth of five and one-half feet in pools where users enter and participate in extended activities.

(iv) Vertical walls for a minimum distance noted in Table 4 of this section, which may be curved (not to exceed allowable radius) to join the floor.

(A) Vertical means walls not greater than eleven degrees from plumb.

(B) Coving or portion of the side wall of a diving area in the pool shall conform as described in subsection (5)(c)(vi) of this section.

(C) In new construction or alterations to existing construction, ledges are prohibited.

(D) Requirements in subsection (5)(c) of this section do not apply to spas.

(v) A maximum intrusion beyond the vertical (as defined in subsection (5)(c)(iv)(A) of this section) with any configuration not to exceed a transitional radius from wall to floor where floor slopes join walls and which:

(A) Has its center of radius no less than the minimum vertical depth specified in Table 4 of this section below the water level;

(B) Has arc of radius tangent to the wall; and

(C) Has a maximum radius of coving (or any intrusion into the pool wall/floor interface) determined by subtracting the vertical wall depth from the total pool depth.

TABLE 4  
MAXIMUM RADIUS COVING OR POOL INTRUSION  
DIMENSIONS BETWEEN POOL FLOOR AND WALL\*

Pool Depth	2'0"	2'6"	3'0"	3'6"	4'0"	4'6"	5'0"	>5'0"
Minimum Slide Wall								
Vertical Depth	1'6"	1'10"	2'2"	2'6"	2'10"	3'2"	3'6"	>3'6"
Maximum Radius of Curvature	6"	8"	10"	12"	1'2"	1'4"	1'6"	**Maximum radius equals pool depth minus the vertical wall depth

Note:

\* For pool depths which fall between the depths listed, values can be interpolated.

\*\* Radius of coving cannot intrude into pool within diving envelope or deep water entry area for attractions entering above pool water level.

(vi) Provision of diving envelopes in pools or areas of pools designated for diving activities to include:

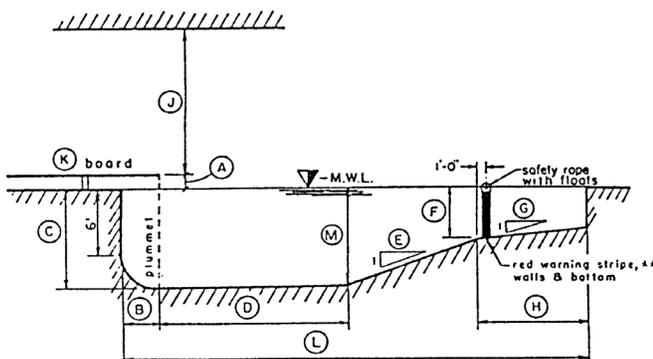
(A) A diving envelope of no less than the CNCA standard configuration\* noted in Figure 1 of this section in areas where user would enter from deck level, diving board, or platform at a height of less than one-half meter (twenty inches).

Note:

\* This requirement is based on a standard described in CNCA publication "Swimming Pools: a Guide to their Planning, Design, and Operation" 1987. Fourth edition. Human Kinetics Publisher, Inc., Champaign, Illinois. Figure 8.1

FIGURE 1:

Minimum dimensions for pools with provision for diving from deck level or providing boards or platforms at a height less than one-half meter.



	Dimensions are in Metres	SPRINGBOARD				PLATFORM									
		1 Metre		3 Metres		1 Metres		3 Metres		5 Metres		7.5 Metres		10 Metres	
DIMENSIONS FOR	LENGTH	4.80		4.80		4.50		5.00		6.00		6.00		6.00	
DIVING FACILITIES	WIDTH	0.50		0.50		0.60		1.50		1.50		1.50		2.00	
Revised to 1st Jan 1987	HEIGHT	1.00		3.00		0.60-1.00		2.60-3.00		5.00		7.50		10.00	
		HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT

Dimension	Minimum	Preferred or Maximum
A Height of board above water		20 in.
B Board overhang	2 ft 6in.	3 ft
C Depth of water at plummet	9 ft	10 ft*
D Distance from plummet to start of upslope	16 ft	18 ft*
E Inclination of upslope of bottom		1:3
F Depth of water at breakpoint	4 ft 6 in.	
G Slope of bottom in shallow portion of pool	1:12	1:15*
H Length of shallow section of pool	8 ft	14 ft*
I Distance to any overhead structure	13 ft	15 ft*
K Board length		12 ft
L Length of pool	40 ft	50 ft*
M Dimension not less than C minus	6 in.	

Note:

\* Values with asterisks are not to be considered as maximums.

\*\* Warning stripe at break point may be of any contrasting color.

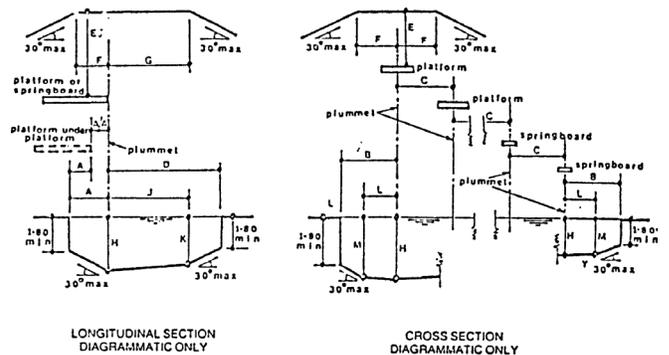
(B) A diving envelope of no less than the FINA standard configuration\*\* noted in Figure 2 of this section in areas where user would enter from diving board or platform at a height of one-half meter (twenty inches) or greater.

Note:

\*\* This requirement is based on a standard described in FINA publication "FINA Handbook - 1986-1988." Constitution and rules governing swimming, diving, water polo, and synchronized swimming, 1986-1988. Edited by E. Allen Harvey, Vancouver, Canada VGN 3R6, Section D, pp. 114-115.

FIGURE 2:

Minimum dimensions for pools with boards or platforms at a height of one-half meter or more.



	Dimensions are in Metres	SPRINGBOARD				PLATFORM									
		1 Metre		3 Metres		1 Metres		3 Metres		5 Metres		7.5 Metres		10 Metres	
A From plummet BACK TO POOL WALL	DESIGNATION	A-1		A-3		A-1P1		A-3P1		A-5		A-7.5		A-10	
	MINIMUM	1.80		1.80		0.75		1.25		1.25		1.50		1.50	
A/A From plummet BACK TO PLATFORM Plummet directly below	DESIGNATION									AA5/1		AA7.5/3/1		AA10/5/3/1	
	MINIMUM									1.50		1.50		1.50	
B From plummet to POOL WALL AT SIDE	DESIGNATION	B-1		B-3		B-1p1		B-3p1		B-5		B-7.5		B-10	
	MINIMUM	2.50		3.50		2.30		2.90		4.25		4.50		5.25	
C From plummet to ADJACENT PLUMMET	DESIGNATION	C-1/1		C-3/3/1		C-1/1p1		C-3/1P1/3p1		C-5/3/1		C-7.5/5/3/1		C-10/7.5/5/3.	
	MINIMUM	2.40		2.60		1.65		2.10		2.50		2.50		2.75	
D From plummet to POOL WALL AHEAD	DESIGNATION	D-1		D-3		D-1p1		D-3p1		D-5		D-7.5		D-10	
	MINIMUM	9.00		10.25		8.00		9.50		10.25		11.00		13.50	
E On plummet, from BOARD TO CEILING	DESIGNATION		E-1		E-3		E-1p1		E-3p1		E-5		E-7.5		E-10
	MINIMUM		5.00		5.00		3.50		3.50		3.50		3.50		5.00
F CLEAR OVERHEAD behind and each side of plummet	DESIGNATION	F-1	E-1	F-3	E-3	F-1p1	E-1p1	F-3p1	E-3p1	F-5	E-5	F-7.5	E-7.5	F-10	E-10
	MINIMUM	2.50	5.00	2.50	5.00	2.75	3.50	2.75	3.50	2.75	3.50	2.75	3.50	2.75	5.00
G CLEAR OVERHEAD ahead of plummet	DESIGNATION	C-1	E-1	C-3	E-3	G-1p1	E-1p1	G-3p1	E-3p1	G-5	E-5	G-7.5	E-7.5	G-10	E-10
	MINIMUM	5.00	5.00	5.00	5.00	5.00	3.50	5.00	3.50	5.00	3.50	5.00	3.50	6.00	5.00
H DEPTH OF WATER at plummet	DESIGNATION		H-1		H-3		H-1p1		H-3p1		H-5		H-7.5		H-10
	MINIMUM		3.50		3.80		3.30		3.60		3.80		4.50		5.00
J DISTANCE AND DEPTH K ahead of plummet	DESIGNATION	J-1	K-1	J-3	K-3	J-1p1	K-1p1	J-3p1	K-3p1	J-5	K-5	J-7.5	K-7.5	J-10	K-10
	MINIMUM	5.00	3.40	6.00	3.70	5.00	3.20	6.00	3.50	6.00	3.70	8.00	4.40	11.00	4.75
L DISTANCE AND DEPTH M each side of plummet	DESIGNATION	L-1	M-1	L-3	M-3	L-1p1	M-1p1	L-3p1	M-3p1	L-5	M-5	L-7.5	M-7.5	L-10	M-10
	MINIMUM	1.50	3.40	2.00	3.70	1.40	3.20	1.80	3.50	4.25	3.70	4.50	4.40	5.25	4.75
N MAXIMUM SLOPE TO REDUCE DIMENSIONS beyond full require- ments	POOL DEPTH	30 degrees		NOTE Dimensions C (plummet to adjacent plummet) apply for Platform with widths as detailed. For wider Platforms increase C by half the additional width(s)											
	CEILING HT	30 degrees													

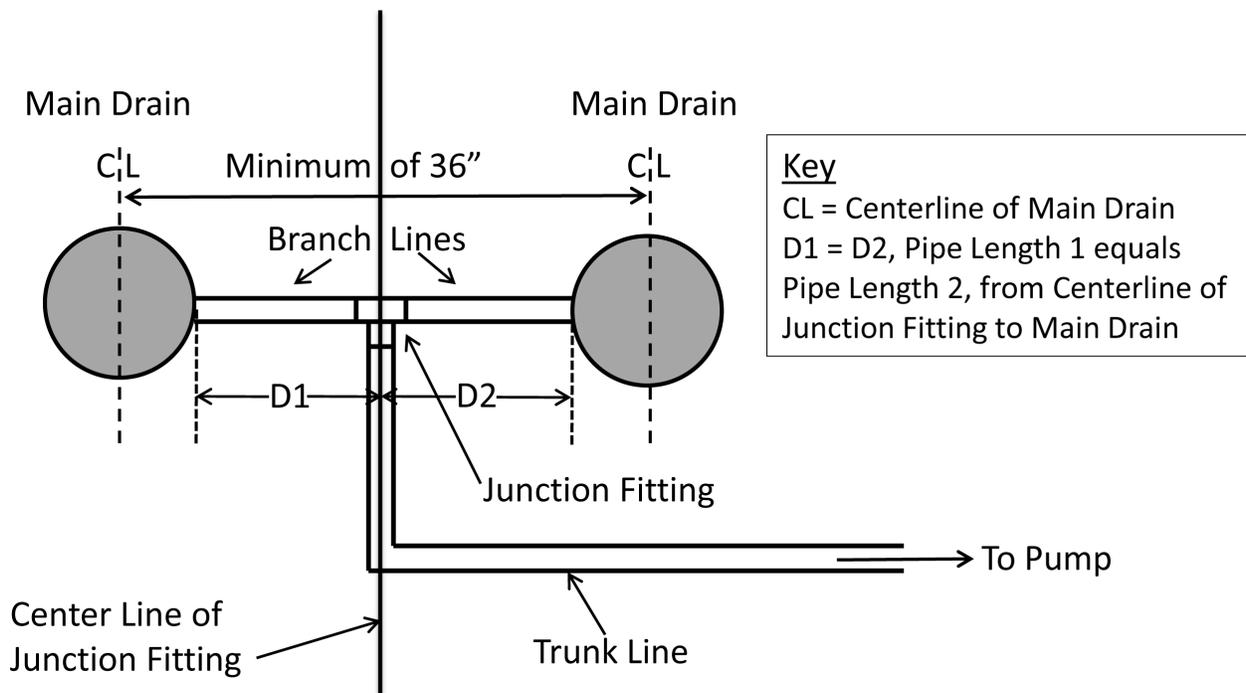
- (d) Have adequate handholds around the perimeter in pools designed for extended swimming and bathing activity and excluding wave pools; and
- (e) Stairs, ladders, or stepholes with:
  - (i) Stairs, when provided, meeting the following construction requirements:
    - (A) Treads of a nonslip finish;
    - (B) Stair tread edges colored to contrast with the color of the pool and clearly visible to the users;
    - (C) Recessed in pool areas used for lap swimming or provided with wave action; and
    - (D) Equipped with handrails extending over the edge of the deck.
  - (ii) Ladders or stepholes which:
    - (A) Furnish exit from pools greater than four feet in depth except in landing pools bringing the user toward a shallow area after entering the water;
    - (B) Are spaced a minimum of one for every fifty feet of pool perimeter greater than four feet deep;
    - (C) Are provided at both sides of the deep end in pools over thirty feet in width; and
    - (D) Are equipped with a handrail at the top of both sides extending over the coping or edge of the deck.
  - (iii) User access at the shallow end of pool.
- (6) Owners shall ensure treatment turnover at rates no less than designated as follows:
  - (a) In receiving pools for water slides, water tubes, inner tube rides, speed slides or tubes, drop slides or tubes, and kid-

- die flume slides, treatment turnover time can be based on any of the following:
  - (i) Total attraction volume in one-hour period;
  - (ii) Treatment turnover equals design peak usage (maximum users per hour) expressed in gpm;
  - (iii) A rate of one hour for 20,000 gallons per two or less attraction segments. Treatment turnover times may increase proportionately for larger pool volumes per two or less attraction segments;
  - (iv) Alternative methods where provisions to reduce contaminants are justified to the satisfaction of the department or local health officer; and
  - (v) Treatment turnover times not to exceed six hours.
- (b) For wave pools, a minimum treatment turnover time of two hours; and
- (c) For activity pools, a minimum treatment turnover time of four hours.
- (7) Owners shall provide pool inlets which are:
  - (a) Submerged and located to produce uniform circulation of water and chemicals throughout the pool; and
  - (b) Located on the bottoms of pools greater than two thousand five hundred square feet, unless otherwise justified by the engineer to the satisfaction of the department or local health officer.
- (8) Except as provided in (d) and (e) of this subsection owners shall provide pool outlets with:
  - (a) Overflow and main drain systems with each designed to carry one hundred percent of total recirculation filter flow;
  - (b) Overflow outlets that have:

- (i) Design to maintain a minimum of sixty percent of filter recirculation flow at all times;
- (ii) An overflow channel on the pool perimeter to promote uniform circulation and skimming action of the upper water layer for pools greater than twenty-five hundred square feet, with:
  - (A) Design preventing matter entering channel from returning to the pool;
  - (B) Dimensions minimizing the hazard for bathers, such as catching arms or feet in an overflow channel;
  - (C) 0.01 foot slope per foot or more;
  - (D) Drains sufficiently spaced and sized to collect and remove overflow water to return line to filter where applicable;
  - (E) Size sufficient to carry one hundred percent of the recirculation flow plus the surge flow equivalent to one-fifth of the balancing tank expressed in gallons per minute.
- (iii) Skimmers, when used on pools up to twenty-five hundred square feet, if:
  - (A) Demonstrated to operate properly under design conditions;
  - (B) Turbulence is not expected to interfere with operation;
  - (C) Maximum flow rate through skimmers does not exceed four gpm per inch of weir;
  - (D) Devices are recessed in the wall of the pool so that no part protrudes beyond the plane of the wall into the pool;

- (E) The skimmer is equipped with a device to prevent air lock in the recirculation suction line (i.e., an equalizer line). If equalizer lines are used they must be protected with suction outlets that conform to the ASME A112.19.8 standard; and
- (F) The skimmer is equipped with a removable and cleanable screen designed to trap large solids.
- (iv) Sidewall channels, when used on pools up to twenty-five hundred square feet, which accept the total recirculation volume of the pool through the upper side of the pool if:
  - (A) Overall flow through the channel exceeds four times the treatment recirculation rate;
  - (B) Design of channel prevents entrapment of the user;
  - (C) Openings of any screens have less than one-half inch slots;
  - (D) Channel openings do not allow access beyond the pool, except with the use of specific tools requiring their opening;
  - (E) Open area of ~~((grates))~~ screens prevent a suction or entrapment hazard which could be dangerous to the user; and
  - (F) The channel provides an action pulling water from the top of the pool to remove floatable debris and oils.
- (c) Main drains in all pools ~~((with))~~ must:
  - (i) ~~((Location))~~ Be located at the low points of the pool;
  - (ii) Have piping that is manifolded with junction fittings placed in the middle of branch line piping between main drains, so that the length of branch line piping is equal on each side of the junction fitting; see Figure 3

FIGURE 3:  
Main Drain Branch Line Piping Detail.



(iii) Have a minimum of two main drains spaced ((not further than twenty feet apart nor closer than six)) at least three feet ((or spaced as far as possible from each other in pools less than six feet linear floor distance)) apart, measured between the centers of the drain covers;

~~((iii) Total open area of grates preventing a suction or entrapment hazard which could be dangerous to user;~~

~~(iv) Flat grate drains having:~~

~~(A) Maximum flow of 1.5 feet per second; or~~

~~(B) Net area of outlet being at least four times the area of the discharge pipe.~~

~~(v) Maximum flow of four feet per second in anti-vortex drains;~~

~~(vi) Openings not allowing a sphere over one-half inch in diameter to pass;~~

~~(vii) Grate design to withstand forces of users;~~

~~(viii) Grates removable only with specific tools; and~~

~~(ix)) (iv) Conform to the ASME A112.19.8 standard;~~

(v) Have covers with a maximum flow of 1.5 feet per second;

(vi) Be designed so that if one main drain becomes blocked, the remaining main drains are rated to at least one hundred percent of the maximum pump flow; see Table 5

(vii) Have means to control flow from recirculation pump or balancing tank.

TABLE 5

MAIN DRAIN FLOW RATING REQUIREMENTS

	<b>Number of Main Drains Per Recirculation System</b>			
	<b><u>2</u></b>	<b><u>3</u></b>	<b><u>4</u></b>	<b><u>5</u></b>
<u>Main drain rated flow capacity must be at least equal to the percent of maximum pump flow indicated, depending on the number of main drains.</u>	100%	50%	33.3%	25%

(d) Existing recreational water contact facilities may be modified to operate without main drains, provided that water quality and water clarity standards established in WAC 246-262-050 are met;

(e) New recreational water contact facilities may be constructed without main drains, provided that water quality and water clarity standards established in WAC 246-262-050 are met.

(9) Owners shall maintain recirculation flow which:

(a) Does not exceed six feet per second in suction or valved discharge side of pump; and

(b) Does not exceed ten feet per second in open discharge pipes on the pressure side of the pump or filter discharge. This limit does not apply to the return inlet and the last two feet of pipe leading to the inlet.

(10) Owners shall provide a surge chamber or surge area in RWCFs with an entry pool to:

(a) Accommodate at least two minutes of the total turn-over; and

(b) Maintain proper water levels for treatment and operation of the attraction.

(11) Owners having RWCFs with overflow channels requiring balancing tanks shall:

(a) Maintain volume equivalent to fifteen times maximum bathing load expressed in gallons; and

(b) Increase capacity as necessary to provide volume for make-up water and to prevent air lock in the pump suction line.

(12) Owners shall have and maintain recirculation pumps with adequate capacity to:

(a) Provide design flows and pressure for recirculation of the RWCF water over the entire operating pressure of the filter;

(b) Allow proper capacity for backwashing of filters when specified; and

(c) Have self-priming capability when installed above the pool water level.

(13) Where pumps precede the filter, owners shall install hair and lint strainers, which shall:

(a) Be located upstream of recirculation pumps;

(b) Be of corrosion-resistant material sufficiently strong to prevent collapse when clogged;

(c) Have an operable cover; and

(d) Provide valving to isolate the strainer when located below pool water level.

(14) Owners shall provide valves at appropriate locations to allow isolation and maintenance of equipment.

(15) Owners shall provide equipment rooms which:

(a) Enclose pumps, disinfection equipment, filters, and other electrical and mechanical equipment and associated chemicals;

(b) Provide adequate working space and access to perform routine operations;

(c) Provide lighting and ventilation of the equipment room; and

(d) Are not accessible to the public.

(16) Owners shall ensure the source of make-up water and associated piping in the RWCF:

(a) Provides sufficient quantity to replace daily losses from the pool;

(b) Comes from a supply conforming with chapter 246-290 WAC; and

(c) Prevents cross-connections using a minimum air gap of two pipe diameters or approved backflow prevention devices between the make-up water source and the RWCF attraction water or waste water.

(17) Owners shall equip RWCFs with filtration equipment which:

(a) Meets the applicable standards of NSF or equivalent;

(b) Uses acceptable types and filter rates described in Table ((5)) 6 of this section:

TABLE ((5)) 6  
FILTER TYPES AND ACCEPTABLE RATES

Type of Filter	Range of Acceptable Filter Rate Expressed in gpm/sq. ft.	
	Minimum	Maximum*
Sand		
Rapid & pressure	—	3

TABLE ((5)) 6  
 FILTER TYPES AND ACCEPTABLE RATES  
 Range of Acceptable Filter Rate  
 Expressed in gpm/sq. ft.

Type of Filter	Minimum	Maximum*	
Pressure high rate	10	18	
Vacuum high rate	10	18	
DE	Continuous feed	Manual feed	
Vacuum	0.8	1.0	2.0
Pressure	1.0	1.35	2.0
Cartridge**			
Applied in temperature ranges:			
<95°F.	—		0.375
>95°F.	—		0.188

## Note:

\* Filters sized at maximum application rate shall use flow control valves.

\*\* Cartridge filters shall have a nominal micron rating of twenty microns or less.

(c) Has pressure or vacuum gauges for measuring loss of head (pressure) through the filter with minimum of one gauge preceding and one gauge following the filter;

(d) Has a flow indicator to measure treatment turnover; and

(e) Has means of discharging filter backwash to waste with:

(i) Discharge in a manner not creating a public nuisance;

(ii) Disposal in accordance with applicable local law or regulation;

(iii) Minimum air gap of two pipe diameters to prevent cross-connection from waste discharge and recirculation system piping;

(iv) Discharge receptor and piping of sufficient size to accept backwash water and prevent flooding; and

(v) Provisions to monitor filter effluent during backwash.

(18) Owners shall provide disinfection equipment which:

(a) Provides a continuous and effective residual of disinfectant in the water;

(b) Uses a disinfectant with a residual that is easily monitored;

(c) Conforms with NSF standards when liquid or solid feed materials are used;

(d) Has a design feed rate which will provide effective disinfection levels when RWCFs are in use;

(e) Meets the following conditions if chlorine gas is used:

(i) Chlorine rooms shall:

(A) Be above ground level;

(B) Be constructed so all openings or partitions with adjoining rooms are sealed;

(C) Be located with consideration of prevailing winds to dissipate leaked chlorine away from the RWCF;

(D) Have door opening outward only and to the out-of-doors.

(ii) Mechanical exhaust ventilation of the chlorine room including:

(A) Air inlet located as far as possible from fan intake to promote good air circulation patterns;

(B) Minimum of one air change per minute in the chlorine room when fan is operating;

(C) A remote switch outside the room or a door-activated switch to turn on fan prior to entering;

(D) Suction for fan near the floor; and

(E) Exhaust for fan and chlorinator vent located to prevent contaminating air intakes or prevent undue hazard for the users of the RWCF.

(iii) Gas chlorine systems which:

(A) Are vacuum injection type, with vacuum actuated cylinder regulators; and

(B) Provide adequate-sized backflow and anti-siphon protection at the ejector.

(iv) Breathing protection available in an accessible area for the operator outside of the chlorine room including:

(A) Instructions about limitations with chlorine concentrations and concentrations of oxygen if chlorine-type canister masks are used; and

(B) Self-contained breathing apparatus designed for use in a chlorine atmosphere as preferred equipment for working with chlorine leaks.

(v) Means for automatic shutoff when the recirculation filter pump is off or flow to the pool is interrupted;

(vi) Chlorine gas cylinders shall:

(A) Be stored only in chlorine rooms; and

(B) Not exceed one hundred fifty pounds tare weight per cylinder; except, wave pools, where one-ton cylinders may be used. Only a single, one-ton cylinder shall be stored on the premise at any time.

(19) Owners applying chemicals other than disinfectant shall provide chemical feed equipment with:

(a) Adequate size and design to allow routine cleaning and maintenance;

(b) Materials resistant to action of the chemicals to be used; and

(c) Means for automatic shut off when the recirculation filter pump is off or flow to the pool is interrupted.

(20) Owners shall have testing equipment to provide means for measuring disinfectant residuals, pH, alkalinity, and any other chemicals used routinely in the RWCF water. In pools where compressed chlorine gas is used, means to detect leaks shall be provided, i.e., use of proper strength ammonia vapor.

(21) Owners shall provide easily accessible change room facilities at all RWCFs with:

(a) Dressing rooms, showers, toilets, urinals, and sinks;

(b) Change room design including:

(i) Separate facilities for both sexes;

(ii) Floors of a nonslip finish with suitable drains;

(iii) Junctions between walls and floors coved for ease of cleaning;

- (iv) Adequate ventilation to prevent build-up of moisture in the facility; and
- (v) Provisions to minimize cross traffic with nonusers.
- (c) Plumbing fixtures as described in Table ((6)) 7 of this section.

TABLE ((6)) 7  
 MINIMUM PLUMBING FIXTURE REQUIREMENTS  
 BASED ON MAXIMUM PEAK PERIOD OCCUPANCY

Type of Fixture	Occupancy/Sex	Number of Fixtures Required Per Occupancy Load	
		Male	Female
1. Toilets	First 600	1/200	1/100
	Portion exceeding 600	1/450	1/300
2. Urinals	First 600	1/200	-
	Portion exceeding 600	1/450	-
3. Showers	First 300	1/100	1/100
	Portion exceeding 300	1/200	1/200
4. Sinks	First 400	1/200	1/200
	Next 350	1/350	1/350
	Portion exceeding 750	1/500	1/500
5. Hose bibs		1 accessible to change rooms	
6. Janitor sink		1 within the RWCF	

- (d) Showers:
  - (i) Delivering water at a temperature range between ninety and one hundred ten degrees Fahrenheit; and
  - (ii) Providing liquid or powdered soap in nonglass dispensers.
- (e) Flush toilets and toilet tissue in dispensers;
- (f) Sinks providing:
  - (i) Tempered or hot and cold running water,
  - (ii) Liquid or powdered soap in nonglass dispensers, and
  - (iii) Disposable towels or electric hand dryers.
- (g) Sewage disposed of in a manner approved by the department or local health officer; and
- (h) Hose bibs with vacuum breakers provided at convenient locations.
- (22) Owners shall design and maintain lighting at RWCF attractions or change rooms to:
  - (a) Illuminate indoor attractions, outdoor attractions used after dusk, or change rooms with a minimum lighting intensity maintained thirty inches above any walking surface, pool deck, or pool area of:
    - (i) Thirty foot-candles at indoor facilities;
    - (ii) Fifteen foot-candles at outdoor facilities; or
    - (iii) Twenty foot-candles in change rooms.
  - (b) Allow lifeguards or attendants to clearly see every part of pool waters and walking surfaces; and
  - (c) Meet any additional lighting requirements deemed necessary by the department or local health officer.
- (23) Owners shall provide first-aid facilities in every RWCF including:

- (a) A twenty-four package first-aid kit per WAC 296-24-065;
- (b) Two or more blankets reserved for emergency use;
- (c) A telephone with a prominently displayed list of emergency medical service response numbers;
- (d) A backboard meeting the specifications of the ARC; and
- (e) Sufficient and suitable area to accommodate persons requiring treatment and necessary first-aid equipment.
- (24) Owners shall provide signs at RWCF entrances and change rooms. Any combination of words, pictures, or symbols may be used to convey the following conditions:
  - (a) Prohibition of use by persons with communicable diseases;
  - (b) Prohibition of use by persons under the influence of alcohol or drugs;
  - (c) Requirement for a cleansing shower before entering the attractions;
  - (d) Warning that persons refusing to obey the attendants are subject to removal from the premises; and
  - (e) Prohibition of food and drink in pool, change room, or on walking surfaces.
- (25) If owners allow or make provision for food service:
  - (a) Food and beverage sale and consumption areas shall be separate from pool, change room, and walking surfaces;
  - (b) Trash containers shall be provided; and
  - (c) No glass containers shall be allowed in the RWCF.
- (26) Owners shall prevent users or spectators access to mechanical, electrical, or chemical equipment facilities.
- (27) Owners shall provide an operable drinking fountain of the angle jet type design meeting the requirements of the American Standards Association.

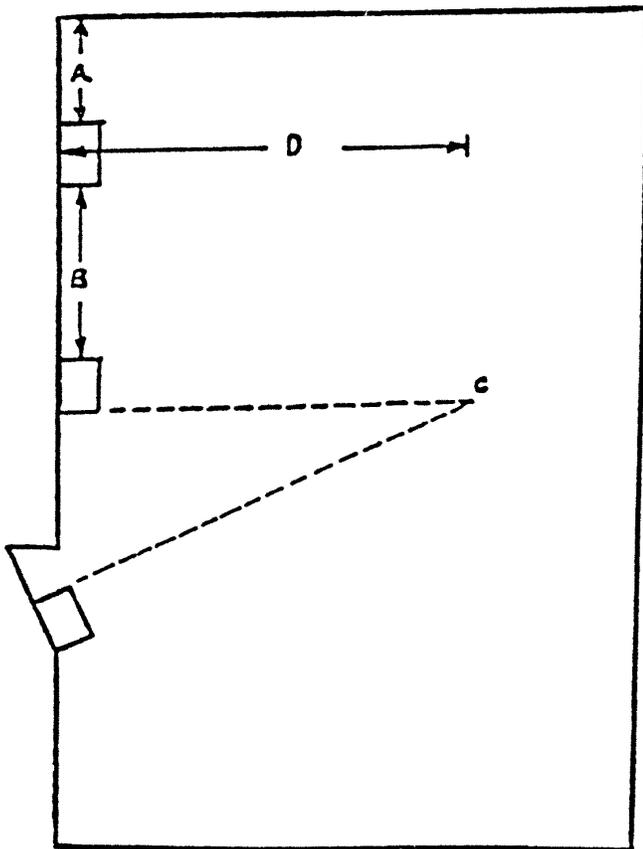
AMENDATORY SECTION (Amending Order 226B, filed 12/23/91, effective 1/23/92)

- WAC 246-262-070 Specific design, construction, and equipment.** (1) Owners shall provide specific design, construction, and equipment for the various types of RWCF attractions.
- (2) Owners and manufacturers shall ensure adherence to recognized design and construction standards including, but not limited to:
    - (a) ASTM F-24 Standards on Amusement Rides and Devices;
    - (b) "Suggested Health and Safety Guidelines for Recreational Water Slide Flumes" U.S. Department of Health and Human Services, Centers for Disease Control, Atlanta, Georgia, 30333;
    - (c) "World Waterpark Association Considerations for Operating Safety" published by the World Waterpark Association, 7474 Village Drive, Prairie Village, Kansas, 66208; and
    - (d) Department recognized or approved guidelines, criteria, or standards.
  - (3) Owners shall ensure design and construction for water slides or tubes, inner-tube rides, kiddie flumes, or ramp slides meet the following minimum standards:
    - (a) Flume or tube entry access points shall have:
      - (i) Means to control unauthorized entrance;

- (ii) Handrails or slip-resistant surfaces provided to assist users; and
- (iii) Attendant stations which provide:
  - (A) User entry spacing control;
  - (B) Attendant line of sight to the attraction; and
  - (C) Attendant access to a communication system.
- (b) Receiving pools shall have:
  - (i) Clearances and minimum distances as noted in Figure 3 of this section for tube or flume entrances into pools.

FIGURE ((3)) 4  
MINIMUM CLEARANCES FOR FLUME OR TUBE ENTRY TO RECEIVING POOLS

MINIMUM VALUE	DISTANCE	DESCRIPTION
A	5 feet	Minimum distance from edge of flume to side of pool.
B	6 feet	Minimum distance between sides of parallel flumes.
C	20 feet	Minimum distance between two flumes or tubes that are not parallel shall be so constructed so that the intersecting lines of each closest side does not intersect for a distance of at least twenty feet from the end of each flume.
D	20 feet	Minimum distance where flume terminates to opposite side of pool.



- (ii) Flume or tube sliding surface ending below the pool operating water level when users ride unaided or on mats;
- (iii) Flume or tube perpendicular for a minimum of ten feet to the wall of entry;
- (iv) Handrails, when steps are provided for exiting; and
- (v) Attendant and/or lifeguard stations with:
  - (A) Unobstructed access to users; and
  - (B) Ready access to communication system for contacting control station attendant and first-aid personnel.
- (4) Owners shall design and construct barriers to prevent unauthorized entry or exit from any intermediate pool.
- (5) Owners shall ensure design and construction of speed slides meet the following minimum standards:
  - (a) Entry points conforming with subsection (3)(a) of this section;
  - (b) Roller- or sled-type slides designed to prevent accidental flipping of the sleds or coasters when entering the water;
  - (c) Provision of sufficient transition zones for deceleration preventing unsafe user impact; and
  - (d) Maintenance of critical water operation levels providing proper braking action of the user.
- (6) Owners shall ensure design and construction of wave pools meet the following minimum standards:
  - (a) Walls of wave pools shall be vertical with minimum six inch radius of curvature between wall and pool bottom;
  - (b) Pool bottom sloped:
    - (i) Not exceeding one foot of drop in twelve feet of run where pool depths range from zero to three and one-half feet; or
    - (ii) Not exceeding one foot of drop in nine feet of run where depths range from three and one-half feet to six and one-half feet.
  - (c) Recessed ladders or step holes with vertical grab bars at depths above three and one-half feet:
    - (i) For emergency exit only;
    - (ii) Spaced at intervals of fifty feet or less where pool water depths are greater than three and one-half feet. Pool water depths are measured without wave action.
  - (d) Deck width of at least ten feet along the shallow end;
  - (e) A fence or restrictive barrier a minimum of forty-two inches in height and at least two feet out from the pool/deck interface at the side walls of wave pools, with emergency exit openings.
  - (f) Lifeguard station locations appropriate to prevailing conditions;
  - (g) A push-button system to shut off the wave-making equipment with:
    - (i) Shut offs installed on sidewall decks and spaced at intervals no greater than one hundred feet, readily accessible to the lifeguards; and
    - (ii) Shock hazard protection.
  - (h) A communication system for use by authorized personnel which is clearly audible to all portions of the pool;
    - (i) A communication system for interaction between authorized personnel; and
    - (j) Maximum bathing load (users) not to exceed a value equal to  $S/12 + D/68$  where:
      - (i) "S" equals surface area in square feet where depth is less than three and one-half feet;

- (ii) "D" equals surface area in square feet where pool depth is three and one-half feet deep or greater; and
- (iii) Pool depths are measured without wave action.
- (7) If inner tubes, boogie boards, or surf boards are used, the owner shall ensure the design and operation of the wave pool provides for such activity, including:
  - (a) The establishment of rules for use;
  - (b) Operating and emergency procedures; and
  - (c) Crowd control.
- (8) Owners shall ensure design and construction of any wading activity pool meets the following minimum standards. Wading activity pool areas are:
  - (a) Built with maximum water depth of two feet;
  - (b) Constructed with pool walls so that distance from deck to water level is six inches or less for at least seventy-five percent of the pool perimeter;
  - (c) Equipped with floors uniformly sloped to drain with a maximum slope of one foot of drop in twelve feet of run;
  - (d) Separated by at least a four foot high barrier when distance to any water area greater than four feet in depth is less than ten feet; and
  - (e) Protected from water areas greater than two feet by providing:
    - (i) A float line separating the two areas;
    - (ii) A six inch contrasting color line on pool bottom and side walls at float line; and
    - (iii) A transition zone with a maximum floor slope not exceeding one foot of drop in twelve feet of run.
- (9) Owners shall ensure design and construction of drop slides or drop tubes meet the following minimum standards:
  - (a) Entry in accordance with subsection (3)(a) of this section;
  - (b) Receiving pool envelope:
    - (i) Conforming to CNCA standards noted in WAC 246-262-060 (5)(c)(vi)(A) if the point of exit is less than one-half meter (or twenty inches);
    - (ii) Conforming to FINA standards noted in WAC 246-262-060 (5)(c)(vi)(B) if the point of exit is one-half meter (or twenty inches) or greater.
    - (iii) Increasing in size to ensure user safety if warranted by angle of entry or speed of the user.
  - (c) Sufficient distance between slides or tubes to prevent collisions of users. Parallel exits are recommended.
  - (d) Direct line of sight and direct communication between entry access point and receiving pool.
- (10) Owners shall provide signs for specific RWCF attractions. Words, pictures, or symbols may be used to convey the following as appropriate:
  - (a) Prohibition of running, standing, kneeling, tumbling, horseplay, or stopping in the flumes or tubes;
  - (b) Failure to follow directions of attendant or failure to obey posted rules may result in removal from the RWCF;
  - (c) Prohibition of diving from flume;
  - (d) Prohibition of multiple user chains if applicable to ride;
  - (e) Requirement to leave the landing area promptly after exiting;
  - (f) Recommended minimum or maximum age or height for using this attraction; and
  - (g) Prohibition of head first sliding if applicable to ride.

- (h) Additional information on wave pools including:
  - (i) Warning that wave pools can be very tiring;
  - (ii) Warning for small children and poor swimmers to use personal flotation devices in designated areas;
  - (iii) Requirement for adult supervision for children;
  - (iv) Prohibition of diving, jumping, or entering from sides of pool; and
  - (v) Prohibition of using surf boards during periods of general public use.
- (11) If the proposed attraction design is not addressed by or exceeds limitations of standards and guidelines specified by this section, owners shall submit:
  - (a) Justification to the department or local health officer prepared by an engineer; and
  - (b) Information on the construction, maintenance, and operation of the proposed attraction.

**WSR 10-20-132**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed October 5, 2010, 11:06 a.m., effective November 5, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The proposal will modify WAC 296-15-225 Self-insurance second injury fund assessment. The current rule indicates that the department will experience rate fifty percent of the second injury fund assessment charged against individual self-insured employers. The modification will require the department to experience rate one hundred percent of the second injury fund assessment. The change will affect the final assessment rate for each self-insurer, but it will not affect how their experience factor is calculated, or the overall amount collected from all self-insured employers for the second injury fund.

Citation of Existing Rules Affected by this Order:  
Amending WAC 296-15-225.

Statutory Authority for Adoption: RCW 51.44.040.

Adopted under notice filed as WSR 10-16-132 on August 4, 2010.

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 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 0, Repealed 0.

Date Adopted: October 5, 2010.

Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 09-13-018, filed 6/5/09, effective 7/6/09)

**WAC 296-15-225 Self-insurance second injury fund assessment.** (1) The second injury fund assessment is based on anticipated second injury fund costs. The fund is used to relieve employers' costs related to pensions that result from the combined effects of the industrial injury and another prior injury, preferred worker claims, and job modifications. ~~((Fifty percent of all self-insurers' second injury fund assessment rate is based on the self-insurers' estimated expenditures from the second injury fund. The other fifty percent is))~~ The second injury fund assessment is experience rated based on ((each self-insured employer's) a self-insurer's actual ((expenditures from the fund)) usage of the second injury fund in the previous three fiscal years. See RCW 51.44.040 for more information about experience rating. The department may estimate claims cost data when actual data from an employer has yet to be provided.

The department determines a self-insurer's second injury fund assessment rate annually for each fiscal year. The ~~((second injury fund))~~ assessment is paid by active and inactive self-insurers quarterly at the same time a self-insurer submits its quarterly report.

(2) Self-insurers' relief from and contributions to the second injury fund will be recorded in an account separate from the state fund account. The self-insurers' second injury fund must maintain a two hundred thousand dollar minimum balance.

(3) ~~((The second injury fund assessment rate is determined annually for each fiscal year.))~~ The department uses the following process to determine the second injury fund assessment.

Definitions:

"A" = Individual self-insurer's total second injury fund costs (usage) for the previous three fiscal years.

"B" = All self-insurer's total second injury costs (usage) for the previous three fiscal years.

"C" = Individual self-insurer's claim costs for the previous three fiscal years.

"D" = Total self-insured claim costs for the previous three fiscal years.

"E" = Individual self-insurer's experience factor.

"F" = Individual self-insurer's claim costs for the previous fiscal year.

- (i)  $1/2 \times$  [the appropriate base or adjusted rate]
- (ii) [The result of (e)(i) of this subsection]  $\times$  [the self-insurer's experience rate]
- (iii) The result of (e)(i) of this subsection] + [The result of subsection (e)(ii) of this subsection] = the final combined second injury fund assessment rate.

(4)) (c) The department determines an **experience factor** for each self-insurer.

(i) The department calculates the self-insurer's **second injury fund usage share** by dividing the self-insurer's total second injury fund costs (usage) for the previous three fiscal

"G" = Total self-insured claim costs for the previous fiscal year.

(a) ~~((Each self-insurer uses one of two rates for the fifty percent of the second injury fund assessment rate that is based on total estimated expenditures.~~

~~((i) The base second injury fund assessment rate is based on fifty percent of))~~ The department calculates the **preliminary base rate** necessary to ensure collection of adequate funds. The preliminary base rate is the estimated usage of the second injury costs for the coming fiscal year divided by the total estimated claims costs. ((This)) The preliminary base rate is ((used by any self-insured employer)) assessed to self-insurers certified after the fiscal year used for calculation.

~~((ii))~~ (b) The department calculates the **preliminary adjusted ((second injury fund assessment)) rate** ~~((includes the base rate with adjustments)), by adjusting the preliminary base rate for over or under collections from prior periods. This rate is ((used by any self-insured employer)) assessed to any self-insurer certified during or prior to the fiscal year used for calculation((- This rate is also used by)), and to any self-insurer who has voluntarily surrendered its self-insurance certificate.~~

~~((b) The second fifty percent of the second injury fund assessment is experience rated for each self-insurer based on each self-insurer's actual use of the second injury fund in the previous three fiscal years.~~

**Note:** The department may estimate claims cost data when actual data from an employer has yet to be provided.

~~Each self-insurer's experience rating will be calculated using the following steps:~~

$$\begin{aligned}
 & \text{(i) } \frac{\text{A self-insurer's total second injury fund expenditures for the previous three fiscal years}}{\text{Total second injury fund expenditures for all self-insurers in the previous three fiscal years}} \\
 & \text{(ii) } \frac{\text{A self-insurer's self-insured claims costs for the previous three fiscal years}}{\text{Total self-insured claims costs for all self-insurers in the previous three fiscal years}} \\
 & \text{(iii) } \frac{[\text{The result of (b)(i) of this subsection}] + [\text{The result of (b)(ii) of this subsection}]}{2} \\
 & \text{(iv) } \frac{\text{The result of (b)(iii) of this subsection}}{\text{The result of (b)(ii) of this subsection}} = \text{the self-insurer's experience rate}
 \end{aligned}$$

~~((c) Each self-insurer's final combined second injury fund assessment rate is calculated using the following formula:~~

years by the total second injury fund costs (usage) for all self-insurers in the previous three fiscal years.

Second injury fund usage share = A/B

(ii) The department calculates the self-insurer's **claims cost usage share** by dividing a self-insurer's claim costs over

the previous three fiscal years by the total claim costs for all self-insurers in the previous three fiscal years.

Claims cost usage share = C/D

(iii) The department calculates the self-insurer's **experience factor** by adding the second injury fund usage share to the claim cost usage share and dividing by 2, then dividing this total by the claims cost usage share.

Self-insurer's experience factor (E) = [(A/B) + (C/D)]/2 / (C/D)

(d) The department calculates the **weighted average factor** to determine what adjustments to the preliminary base and adjusted rates may be necessary because of prior over or under collection for the fund. The weighted average factor is the sum for all self-insurer's of each self-insurer's **experience factor** multiplied by their self-insured claim cost for the previous fiscal year, divided by the total self-insured claim costs for the previous fiscal year.

Weighted average factor = [(E x F) sum all self-insurers] / G

(e) The department determines the **final base rate** and the **final adjusted rate** for the fiscal year by dividing the preliminary base rate and the preliminary adjusted rate ((a) and (b) of this subsection) by the weighted average factor.

(f) The department determines the second injury fund assessment rate for each self-insurer by multiplying the self-insurer's experience factor by either the final base rate or the final adjusted rate.

(g) The total (~~second injury fund~~) assessment due each quarter is calculated by multiplying the self-insurer's (~~final combined~~) second injury fund assessment rate by the self-insurer's total claims costs during that quarter.

**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.

### WSR 10-20-138

#### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Medical Quality Assurance Commission)

[Filed October 5, 2010, 11:49 a.m., effective November 5, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The medical quality assurance commission (commission) is repealing WAC 246-919-615 (physicians) and 246-918-010 (physician assistants) as these rules are not necessary because the commission has statutory authority to delegate to a panel.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-919-615 and 246-918-010.

Statutory Authority for Adoption: RCW 18.130.050(1), 18.71.017.

Adopted under notice filed as WSR 10-12-019 on May 21, 2010.

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 2.

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 2.

Date Adopted: October 5, 2010.

Maryella E. Jansen  
Executive Director

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-918-010      Delegation of authority to initiate investigations.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-919-615      Delegation of authority to initiate investigations.

### WSR 10-20-147

#### PERMANENT RULES

#### HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Order 10-02—Filed October 6, 2010, 8:03 a.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: The main purpose of this rule making is to amend rules in Title 182 WAC and adopt new rules to:

1. Align with and implement federal laws, including the national health care reform mandate for children up to age twenty-six.

2. Align with state laws, including HB 2490 on respectful language.

3. Implement public employees benefits board (PEBB) policy.

4. Clarify language regarding employer-level appeals.

5. Make technical corrections and improve the clarity of PEBB rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-16-034 and 182-16-037; and amending chapters 182-08, 182-12, and 182-16 WAC.

Statutory Authority for Adoption: RCW 41.05.160.

Adopted under notice filed as WSR 10-18-107 on September 1, 2010.

Changes Other than Editing from Proposed to Adopted Version: WAC 182-12-260 (3)(b)(ii) is amended to replace the existing child age limit of age twenty with the new limiting age for children of age twenty-six consistent with other amendments necessary to implement the national health care reform mandate for children up to age twenty-six.

WAC 182-12-262 (4)(e) is amended to replace inaccurate references to WAC 182-12-250(3) and 182-12-260(3) with the sixty day timeline for submitting a form to certify a child age twenty-six or older as a child with disabilities.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 5, 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 1, Amended 18, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 2.

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 6, 2010.

Jason Siems  
Rules Coordinator

**AMENDATORY SECTION** (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-08-015 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Administrator" means the administrator of the health care authority (HCA) or designee.

"Agency" means the health care authority.

"Benefits eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay

for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-230.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission; as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and includes the higher education personnel board and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Open enrollment" means a time period when: Subscribers may apply to transfer their enrollment from one health plan to another; a dependent may be enrolled; a dependent may be removed from coverage; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or

change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the administrator, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The administrator has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB program within the HCA.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees of the state (as defined in WAC 182-12-114), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other comprehensive group coverage or is on

approved educational leave (see WAC 182-12-128 and 182-12-136).

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-08-180 Premium payments and refunds.** PEBB premiums for retiree, COBRA or PEBB continuation coverage begin to accrue the first of the month ~~((of))~~ in which PEBB insurance coverage is effective.

Premium is due for the entire month of insurance coverage and will not be prorated during the month of death or loss of eligibility of the enrollee except ~~((when eligible))~~ for life insurance premiums when the individual is eligible for life conversion.

PEBB premiums for employees, retirees, COBRA, or PEBB continuation coverage will be refunded using the following method:

(1) When any PEBB subscriber submits an enrollment change affecting eligibility, such as for example: Death, divorce, or when no longer an eligible dependent as defined at WAC 182-12-260 no more than three months of accounting adjustments and any excess premium paid will be refunded to any individual or employing agency except as indicated in WAC 182-12-148(4).

(2) Notwithstanding subsection (1) of this section, the PEBB assistant administrator or the PEBB appeals committee may approve a refund which does not exceed twelve months of premium if both of the following occur:

(a) The PEBB subscriber or a dependent or beneficiary of a subscriber submits a written appeal to the PEBB appeals committee; and

(b) Proof is provided that extraordinary circumstances beyond the control of the subscriber, dependent or beneficiary made it virtually impossible to submit the necessary information to accomplish an enrollment change within sixty days after the event that created a change of premium.

(3) Errors resulting in an underpayment to HCA must be reimbursed by the employing agency or subscriber to the HCA. Upon request of an employing agency, subscriber, or beneficiary, as appropriate, the HCA will develop a repayment plan designed not to create undue hardship on the employing agency or subscriber.

(4) HCA errors will be adjusted by returning the excess premium paid, if any, to the employing agency, subscriber, or beneficiary, as appropriate.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-08-196 What happens if my health plan becomes unavailable?** Employees, retirees and survivors, and enrollees in PEBB continuation coverage for whom the chosen health plan becomes unavailable due to a change in contracting service area or the retiree's entitlement to medicare must select a new health plan within sixty days after notification by the PEBB program.

(1) Employees who fail to select a new medical or dental plan within the prescribed time period will be enrolled in a successor plan if one is available or will be enrolled in the Uniform Medical Plan, the Uniform Dental Plan, or a plan

selected by the administrator, along with the employee's existing dependent enrollment.

(2) Retirees and survivors eligible under WAC 182-12-250 or 182-12-265 who fail to select a new health plan within the prescribed time period will be enrolled in a successor plan if one is available or will be enrolled in the Uniform Medical Plan, and the Uniform Dental Plan, or a plan selected by the administrator.

Any subscriber assigned to a health plan as described in this rule may not change health plans until the next open enrollment except as allowed in WAC 182-08-198.

(3) Enrollees in PEBB continuation coverage under WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, or 182-12-270(2) must select a new health plan no later than sixty days after notification by the PEBB program. If enrollees fail to select a new health plan within sixty days of the notification, health plan coverage will end as of the last day of the month in which the plan is ~~((no longer))~~ available.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-08-197 When must newly eligible employees select PEBB benefits and complete enrollment forms?**

(1) Employees who are newly eligible for PEBB benefits must complete the appropriate forms indicating enrollment and their health plan choice, or their decision to waive medical under WAC 182-12-128. Employees must return the forms to their employing agency no later than thirty-one days after they become eligible for PEBB benefits under WAC 182-12-114. Newly eligible employees who do not return an enrollment form to their employing agency indicating their medical and dental choice within thirty-one days will be enrolled in a health plan as follows:

(a) Medical enrollment will be Uniform Medical Plan; ~~((and))~~

(b) Dental enrollment (if the employer group participates in PEBB dental) will be Uniform Dental Plan; and

(c) Dependents will not be enrolled.

(2) Employees who are newly eligible may enroll in optional insurance coverage (except for employees of employer groups that do not participate in life insurance or long-term disability insurance).

(a) To enroll in the amounts of optional life insurance available without health underwriting, employees must return a completed life insurance enrollment form to their employing agency no later than sixty days after becoming eligible for PEBB benefits.

(b) To enroll in optional long-term disability insurance without health underwriting, employees must return a completed long-term disability enrollment form to their employing agency no later than thirty-one days after becoming eligible for PEBB benefits.

(c) To enroll in long-term care insurance with limited health underwriting, employees must return a completed long-term care enrollment form to the contracted vendor no later than thirty-one days after becoming eligible for PEBB benefits.

(d) Employees may apply for optional life, long-term disability, and long-term care insurance at any time by providing evidence of insurability and receiving approval from the contracted vendor.

(3) Employees who are eligible to participate in the state's salary reduction plan (see WAC 182-12-116) will be automatically enrolled in the premium payment plan upon enrollment in medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, new employees must complete the appropriate form and return it to their employing agency no later than thirty-one days after they become eligible for PEBB benefits.

(4) Employees who are eligible to participate in the state's salary reduction plan may enroll in the state's medical ~~((FSA or DCAP))~~ flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both. To enroll in these optional PEBB benefits, employees must return the appropriate enrollment forms to their employing agency or PEBB designee no later than thirty-one days after becoming eligible for PEBB benefits.

(5) The employer contribution toward insurance coverage ends according to WAC 182-12-131. Employees who become newly eligible for the employer contribution enroll as described in subsections (1) and (2) of this section, with the following exceptions in which insurance coverage elections stay the same:

(a) When an employee transfers from one employing agency to another employing agency without a break in state service. This includes movement of employees between any entities described in WAC 182-12-111 and participating in PEBB benefits.

(b) When employees have a break in state service that does not interrupt their employer contribution toward PEBB insurance coverage.

(c) When employees continue insurance coverage by self-paying the full premium under WAC 182-12-133(1) or 182-12-142 and become newly eligible for the employer contribution before the end of the maximum number of months allowed for continuing PEBB health plan enrollment under those rules. Employees who are eligible to continue optional life or optional long-term disability under continuation coverage but discontinue that insurance coverage are subject to the insurance underwriting requirements if they apply for the insurance when they return to work or become eligible again for the employer contribution.

(6) When an employee's employment ends, participation in the state's salary reduction plan ends. If the employee is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is less than thirty days.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-08-198 When may a subscriber change health plans?** Subscribers may change health plans at the following times:

(1) **During annual open enrollment:** Subscribers may change health plans during the annual open enrollment. The subscriber must submit the appropriate enrollment forms to change health plan no later than the end of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** Subscribers may change health plans outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to the event that creates the special open enrollment for either the subscriber or the subscriber's dependents or both. To make a health plan change, the subscriber must submit the appropriate enrollment forms (and a completed disenrollment form, if required) no later than sixty days after the event occurs. Employees submit the enrollment forms to their employing agency. All other subscribers, including retirees, COBRA, and other self-pay subscribers, submit the enrollment forms to the PEBB program. Insurance coverage in the new health plan will begin the first day of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of the month, insurance coverage will begin on that date. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, insurance coverage will begin the month in which the event occurs. The following events create a special open enrollment:

(a) ~~((Subscriber acquires a new eligible dependent))~~ Subscriber's dependent becomes eligible under PEBB rules:

(i) Through marriage ~~((Washington))~~ Washington's secretary of state;

(ii) Through birth, adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) Through legal custody or legal guardianship; or

(iv) When a child becomes eligible as an extended dependent;

~~((Subscriber's dependent child becomes eligible by fulfilling PEBB dependent eligibility criteria;~~

~~((Subscriber loses an eligible dependent or a))~~ Subscriber's dependent no longer meets PEBB eligibility criteria;

~~((because:~~

(i) Subscriber has a change in marital status or Washington state registered domestic partnership status, including legal separation documented by a court order;

(ii) A child dependent turns age twenty-six;

(iii) A child dependent ceases to be eligible as an extended dependent or as a dependent with disabilities; or

(iv) A dependent dies;

~~((Subscriber or a dependent loses (comprehensive)) coverage under a group health (coverage)) plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);~~

~~((Subscriber or a dependent has a change in employment status that affects the subscriber's or a dependent's eligibility (level of benefits, or cost of) for group~~

health coverage or the employer contribution toward insurance coverage;

~~((Subscriber or a dependent has a change in residence that affects health plan availability (benefits, or cost of insurance coverage)). If the subscriber moves and the subscriber's current health plan is not available in the new location but the subscriber does not select a new health plan, the PEBB program may enroll the subscriber in the Uniform Medical Plan or Uniform Dental Plan;~~

~~((Subscriber receives a court order or medical support order requiring the subscriber, the subscriber's spouse, or the subscriber's Washington state registered domestic partner to provide insurance coverage for an eligible dependent (a former spouse or former registered domestic partner is not an eligible dependent);~~

~~((Subscriber or a dependent becomes eligible for a medical assistance program under the department of social and health services, including medicaid or the children's health insurance program (CHIP), or the subscriber or a dependent loses eligibility (such)) a medical assistance program;~~

~~((A dependent dies;~~

~~((Seasonal employees whose off-season occurs during the annual open enrollment. They may select a new health plan upon their return to work;~~

~~((Subscriber or an eligible dependent becomes entitled to medicare, enrolls in or disenrolls from a medicare Part D plan;~~

~~((Subscriber experiences a disruption that could function as a reduction in benefits for the subscriber or the subscriber's dependent(s) due to a specific condition or ongoing course of treatment. A subscriber may not change their health plan if the subscriber's or an enrolled dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program criteria used will include, but is not limited to, the following in determining if a continuity of care issue exists:~~

~~((i) Active cancer treatment; or~~

~~((ii) Recent transplant (within the last twelve months); or~~

~~((iii) Scheduled surgery within the next sixty days; or~~

~~((iv) Major surgery within the previous sixty days; or~~

~~((v) Third trimester of pregnancy; or~~

~~((vi) Language barrier.~~

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-08-199 When may an employee enroll in or change ~~((their))~~ his or her election under the premium payment plan, medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP)? An eligible employee may enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:**

(1) When they are newly eligible under WAC 182-12-114, as described in WAC 182-08-197.

(2) **During annual open enrollment:** An eligible employee may enroll in or change their election under the state's premium payment plan, medical FSA or DCAP during the annual open enrollment. Employees must submit, in paper or on-line, the appropriate enrollment form to reenroll no later than the ~~((end))~~ last day of the annual open enrollment. The enrollment or new election will ~~((begin))~~ be effective January 1st of the following year.

(3) **During a special open enrollment:** Employees may enroll or change their election under the state's premium payment plan, medical FSA or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to the event that creates the special open enrollment. To make a change or enroll, the employee must submit the appropriate forms as instructed on the forms no later than sixty days after the event occurs. Enrollment will ~~((begin))~~ be effective the first day of the month following approval by the administrator.

For purposes of this section, an eligible dependent includes ~~((the employee's opposite sex spouse and))~~ any ~~((other))~~ person who qualifies as ~~((the employee's))~~ a dependent of the employee for tax purposes under IRC Section 152 ~~((of the IRC))~~ without regard to the income limitations of that section. It does not include a Washington state registered domestic partner unless the domestic partner otherwise qualifies as a dependent for tax purposes under IRC Section 152 ~~((of the IRC))~~.

The following ~~((changes are))~~ events ~~((that))~~ create a special open enrollment for purposes of an eligible employee making a change:

(a) ~~((Employee acquires a new eligible dependent;~~  
~~((b))~~ Employee's dependent ~~((child))~~ becomes eligible ~~((by fulfilling))~~ under PEBB ~~((dependent eligibility criteria))~~ rules:

(i) Through marriage;

(ii) Through birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) Through legal custody or legal guardianship; or

(iv) When a child becomes eligible as an extended eligible dependent;

~~((e))~~ Employee loses an eligible dependent or a) (b) Employee's dependent no longer meets PEBB eligibility criteria(;

~~((d))~~ because:

(i) Employee has a change in marital status, including legal separation documented by a court order;

(ii) An eligible dependent child turns age twenty-six;

(iii) An eligible dependent ceases to be eligible as an extended dependent or as a dependent with disabilities; or

(iv) An eligible dependent dies;

~~((e))~~ (c) Employee or an eligible dependent loses coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(d) Employee or ((a)) an eligible dependent has a change in employment status that affects the employee's or a depen-

dent's eligibility((, level of benefits, or cost of)) for group health coverage or the employer contribution toward insurance coverage ((under a plan provided by the employee's employer or the dependent's employer));

~~((f))~~ Employee's or a dependent's residence changes that affects health plan availability, level of benefits, or cost of insurance coverage;

~~((g))~~ (e) Employee receives a court order or medical support order requiring the employee or the employee's spouse to provide insurance coverage for an eligible dependent;

~~((h))~~ (f) Employee or an eligible dependent becomes eligible for a medical assistance program under the department of social and health services, including medicaid or the children's health insurance program (CHIP), or the subscriber or dependent loses eligibility in such a medical assistance program;

~~((i))~~ (g) Seasonal employees whose off-season occurs during the annual open enrollment may enroll in the plan upon their return to work;

~~((j))~~ (h) Employee or an eligible dependent gains or loses eligibility for medicare ((or medicaid));

~~((k))~~ The employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1);

~~((l))~~ (i) In addition to (a) through ((k)) (h) of this section, the following are events that create a special open enrollment for purposes of an eligible employee making a change in his or her DCAP:

(i) Employees who change dependent care providers may make a change in their DCAP to reflect the cost of the new provider;

(ii) The employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1); or

(iii) If an employee's dependent care provider imposes a change in the cost of dependent care, the employee may make a change in the DCAP to reflect the new cost if the dependent care provider is not a relative as defined in Section 152 (a)(1) through (8), incorporating the rules of Section 152 (b)(1) and (2) of the IRC.

**AMENDATORY SECTION** (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-109 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Administrator" means the administrator of the HCA or designee.

"Agency" means the health care authority.

"Benefits eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114(2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contract as described in WAC 182-08-230.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and includes the higher education personnel board and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Open enrollment" means a time period when: Subscribers may apply to transfer their enrollment from one health plan to another; a dependent may be enrolled; a dependent may be removed from coverage; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the administrator, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The administrator has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB program within HCA.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees of the state (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other comprehensive group coverage or is on approved educational leave (see WAC 182-12-128 and 182-12-136).

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-111 Eligible entities and individuals.**

The following entities and individuals shall be eligible for PEBB insurance coverage subject to the terms and conditions set forth below:

(1) State agencies. State agencies, as defined in WAC 182-12-109, are required to participate in all PEBB benefits. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(a) Employees of technical colleges previously enrolled in a benefits trust may end PEBB benefits by January 1, 1996, or the expiration of the current collective bargaining agreements, whichever is later. Employees electing to end PEBB benefits have a one-time reenrollment option after a five year wait. Employees of a bargaining unit may end PEBB benefit participation only as an entire bargaining unit. All administrative or managerial employees may end PEBB participation only as an entire unit.

(b) Community and technical colleges with employees enrolled in a benefits trust shall remit to the HCA a retiree remittance as specified in the omnibus appropriations act, for each full-time employee equivalent. The remittance may be prorated for employees receiving a prorated portion of benefits.

(2) Employer groups: Employer groups may participate in PEBB insurance coverages at the option of each employer group provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit with the following exceptions:

- Bargaining units may elect to participate separately from the whole group; and
- Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The employer group must submit to the HCA an application when it first applies, the contents of which will be specified by HCA. The application for employer groups, with the exception of school districts and educational service districts, is subject to review and approval by the HCA, and the

decision to approve or deny the application shall be provided to the applying employer group by the HCA.

(d) Each employer group purchasing PEBB insurance coverage must sign a contract with the HCA. The employer group must abide by the eligibility, enrollment, and payment terms specified in the contract. Any subsequent changes to the contract must be submitted for approval in advance of the change.

(e) The employer group must maintain its PEBB insurance coverage participation at least one full year, and may end participation only at the end of a plan year.

(f) The employer group must give the HCA written notice of its intent to end PEBB insurance coverage participation at least sixty days before the effective date of termination. With the exception of retired and disabled employees of school districts or educational service districts, if the employer group ends PEBB insurance coverage, retired and disabled employees who began participating after September 15, 1991, are not eligible for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

(g) Employees eligible for PEBB participation include only those employees whose services are substantially all in the performance of essential governmental functions but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions. Employer groups shall determine eligibility in order to ensure PEBB's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended.

(3) School districts and educational service districts: In addition to subsection (2) of this section, the following applies to school districts and educational service districts:

(a) The HCA will collect an amount equal to the composite rate charged to state agencies plus an amount equal to the employee premium by health plan and family size as would be charged to state employees for each participating school district or educational service district.

~~(b) ((Each participating school district or educational service district must agree to collect an employee premium by health plan and family size that is not less than that paid by state employees.~~

~~(c))~~ The HCA may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505.-030.

(4) Blind vendors means a "licensee" as defined in RCW 74.18.200: Vendors actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind may voluntarily participate in PEBB insurance coverage.

(a) Vendors that do not enroll when first eligible may enroll only during the annual open enrollment period offered by the HCA or the first day of the month following loss of other insurance coverage.

(b) Department of services for the blind will notify eligible vendors of their eligibility in advance of the date that they are eligible to apply for enrollment in PEBB insurance coverage.

(c) The eligibility requirements for dependents of blind vendors shall be the same as the requirements for dependents of the state employees and retirees in WAC 182-12-260.

(5) Eligible nonemployees:

(a) Dislocated forest products workers enrolled in the employment and career orientation program pursuant to chapter 50.70 RCW shall be eligible for PEBB health plans while enrolled in that program.

(b) School board members or students eligible to participate under RCW 28A.400.350 may participate in PEBB insurance coverage as long as they remain eligible under that section.

(6) Individuals that are not eligible include:

(a) Adult family home providers as defined in RCW 70.128.010;

(b) Unpaid volunteers;

(c) Patients of state hospitals;

(d) Inmates;

(e) Employees of the Washington state convention and trade center as provided in RCW 41.05.110;

(f) Students of institutions of higher education as determined by their institutions; and

(g) Any others not expressly defined as employees under RCW 41.05.011.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-114 How do employees establish eligibility for PEBB benefits?** Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in subsections (1) through (5) of this section shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

Hours that are excluded in determining eligibility include standby hours and any temporary increases in work hours, of six months or less, caused by training or emergencies that have not been or are not anticipated to be part of the employee's regular work schedule or pattern. Employing agencies must request the PEBB program's approval to include temporary training or emergency hours in determining eligibility.

For how the employer contribution toward insurance coverage is maintained after eligibility is established under this section, see WAC 182-12-131.

(1) Employees are eligible for PEBB benefits as follows, except as provided in subsections (2) through (5) of this section:

(a) **Eligibility.** An employee is eligible if he or she works an average of at least eighty hours per month and works for at least eight hours in each month for more than six consecutive months.

(b) **Determining eligibility.**

(i) **Upon employment:** An employee is eligible from the date of employment if the employing agency anticipates the employee will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern:** If an employing agency revises an employee's anticipated work

hours such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(ii) **Based on work pattern:** An employee who is determined to be ineligible, but later meets the eligibility criteria in (a) of this subsection, becomes eligible the first of the month following the six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward insurance coverage. Employees must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situation in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position to hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward insurance coverage under WAC 182-12-131(1).

(d) **When PEBB benefits begin.** (~~PEBB benefits~~) Medical and dental insurance coverage and basic life and basic long-term disability insurance coverage begin on the first day of the month following the date an employee becomes eligible. If the employee becomes eligible on the first working day of a month, these PEBB benefits begin on that date.

(2) **Seasonal employees,** as defined in WAC 182-12-109, are eligible as follows:

(a) **Eligibility.** A seasonal employee is eligible if he or she works an average of at least eighty hours per month and works for at least eight hours in each month of the season. A season is any recurring, cyclical period of work at a specific time of year that lasts three to eleven months.

(b) **Determining eligibility.**

(i) **Upon employment:** A seasonal employee is eligible from the date of employment if the employing agency anticipates that he or she will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern.** If an employing agency revises an employee's anticipated work hours such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern.** An employee who is determined to be ineligible for benefits, but later works an average of at least eighty hours per month and works for at least eight hours in each month and works for more than six consecutive months, becomes eligible the first of the month following a six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward insurance coverage. Employees must notify their employing agency if

they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position or job to hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward insurance coverage under WAC 182-12-131(1).

(d) **When PEBB benefits begin.** ~~((PEBB benefits))~~ Medical and dental insurance coverage and basic life and basic long-term disability insurance coverage begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, these PEBB benefits begin on that date.

(3) **Faculty** are eligible as follows:

(a) **Determining eligibility.** "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees is governed by RCW 28B.50.489.

(i) **Upon employment:** Faculty who the employing agency anticipates will work half-time or more for the entire instructional year, or equivalent nine-month period, are eligible from the date of employment.

(ii) **For faculty hired on quarter/semester to quarter/semester basis:** Faculty who the employing agency anticipates will not work for the entire instructional year, or equivalent nine-month period, are eligible at the beginning of the second consecutive quarter or semester of employment in which he or she is anticipated to work, or has actually worked, half-time or more. Spring and fall ~~((may be))~~ are considered consecutive quarters/semesters when first establishing eligibility for faculty that work less than half-time during the summer quarter/semester.

(iii) **Upon revision of anticipated work pattern:** Faculty who receive additional workload after the beginning of the anticipated work period (quarter, semester, or instructional year), such that their workload meets the eligibility criteria of (a)(i) or (ii) of this subsection become eligible when the revision is made.

(b) **Stacking.** Faculty may establish eligibility and maintain the employer contribution toward insurance coverage by working as faculty for more than one institution of higher education. Faculty workloads may only be stacked with other faculty workloads to establish eligibility under this section or maintain eligibility under WAC 182-12-131(3). When a faculty works for more than one institution of higher education, the faculty must notify his or her employing agencies that he or she works at more than one institution and may be eligible through stacking.

(c) **When PEBB benefits begin.**

(i) ~~((PEBB benefits))~~ Medical and dental insurance coverage and basic life and basic long-term disability insurance coverage begin on the first day of the month following the day the faculty becomes eligible. If the faculty becomes eligi-

ble on the first working day of a month, these PEBB benefits begin on that date.

(ii) For faculty hired on a quarter/semester to quarter/semester basis under (a)(ii) of this subsection, ~~((PEBB benefits))~~ medical and dental insurance coverage and basic life and basic long-term disability insurance coverage begin the first day of the month following the beginning of the second consecutive quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, these PEBB benefits begin at the beginning of the second consecutive quarter/semester.

(4) **Elected and full-time appointed officials of the legislative and executive branches of state government** are eligible as follows:

(a) **Eligibility.** A legislator is eligible for PEBB benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible on the date their terms begin or the date they take the oath of office, whichever occurs first.

(b) **When PEBB benefits begin.** ~~((PEBB benefits))~~ Medical and dental insurance coverage and basic life and basic long-term disability insurance coverage for an eligible employee begin on the first day of the month following the day he or she becomes eligible. If the employee becomes eligible on the first working day of a month, these PEBB benefits begin on that date.

(5) **Justices and judges** are eligible as follows:

(a) **Eligibility.** A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for PEBB benefits on the date they take the oath of office.

(b) **When PEBB benefits begin.** ~~((PEBB benefits))~~ Medical and dental insurance coverage and basic life and basic long-term disability insurance coverage for an eligible employee begin on the first day of the month following the day he or she becomes eligible. If the employee becomes eligible on the first working day of a month, these PEBB benefits begin on that date.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-123 Dual enrollment is prohibited.** PEBB health plan coverage is limited to a single enrollment per individual.

(1) Effective January 1, 2002, individuals who have more than one source of eligibility for enrollment in PEBB health plan coverage (called "dual eligibility") are limited to one enrollment.

(2) An eligible employee may waive medical and enroll as a dependent on the coverage of his or her eligible spouse, eligible Washington state registered domestic partner, or eligible parent as stated in WAC 182-12-128.

(3) Children eligible for medical and dental under two subscribers may be enrolled as a dependent under the health plan of only one subscriber.

(4) An employee who is eligible for the employer contribution to PEBB benefits due to employment in more than one PEBB-participating employing agency may enroll only under

one employing agency. The employee must choose to enroll in PEBB benefits under only one employing agency.

**Exception:** Faculty who seek to establish or maintain eligibility under WAC 182-12-114(3) with two or more state institutions of higher education will be enrolled under the employing agency responsible to pay the employer contribution according to WAC 182-08-200(2).

**AMENDATORY SECTION** (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-128 May an employee waive health plan enrollment?** Employees must enroll in dental, life and long-term disability insurance (unless the employing agency does not participate in these PEBB insurance coverages). However, employees may waive PEBB medical if they have other comprehensive group medical coverage.

(1) Employees may waive enrollment in PEBB medical by submitting the appropriate enrollment form to their employing agency during the following times:

(a) **When the employee becomes eligible:** Employees may waive medical when they become eligible for PEBB benefits. Employees must indicate they are waiving medical on the appropriate enrollment form they submit to their employing agency no later than thirty-one days after the date they become eligible (see WAC 182-08-197). Medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) **During the annual open enrollment:** Employees may waive medical during the annual open enrollment if they submit the appropriate enrollment form to their employing agency before the end of the annual open enrollment. Medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** Employees may waive medical during a special open enrollment as described in subsection (4) of this section.

(2) If an employee waives medical, the employee's eligible dependents may not be enrolled in medical (~~(, with the exception of adult dependents who may enroll in a health plan if the employee has waived medical coverage)~~).

(3) Once medical is waived, enrollment is only allowed during the following times:

(a) During the annual open enrollment;

(b) During a special open enrollment created by an event that allows for enrollment outside of the annual open enrollment as described in subsection (4) of this section. In addition to the appropriate forms, the PEBB program may require the employee to provide evidence of eligibility and evidence of the event that creates a special open enrollment.

(4) **Special open enrollment:** Employees may waive enrollment in medical or enroll in medical if one of these special open enrollment events occur. The change in enrollment must correspond to the event that creates the special open enrollment. The following (~~(changes are)~~) events (~~(that)~~) create a special open enrollment:

(a) (~~(Employee acquires a new eligible dependent)~~) Employee's dependent becomes eligible under PEBB rules:

(i) Through marriage(;) or registering a domestic partnership with Washington state(;):

(ii) Through birth, adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption(;):

(iii) Through legal custody or legal guardianship; or

(iv) When a child becomes eligible as an extended dependent:

~~(b) (Employee's dependent child becomes eligible by fulfilling PEBB dependent eligibility criteria;~~

~~(e) Employee loses an eligible dependent or a) Employee's dependent no longer meets PEBB eligibility criteria(;) because:~~

~~((f)) (i) Employee has a change in marital status or Washington state registered domestic partnership status, including legal separation documented by a court order;~~

(ii) A child dependent turns age twenty-six;

(iii) A child dependent ceases to be eligible as an extended dependent or as a dependent with disabilities; or

(iv) A dependent dies;

~~((g)) (c) Employee or a dependent loses ((comprehensive)) coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);~~

~~((h)) (d) Employee or a dependent has a change in employment status that affects the employee's or a dependent's eligibility((, level of benefits, or cost of)) for group health coverage or the employer contribution toward insurance coverage;~~

~~((i)) (e) Employee or a dependent has a change in ((place of)) residence that affects ((the employee's or a dependent's eligibility, level of benefits, or cost of insurance coverage)) health plan availability;~~

~~((j)) (f) Employee receives a court order or medical support ((enforcement)) order requiring the employee, spouse, or ((qualified)) Washington state registered domestic partner to ((enroll)) provide insurance coverage for an eligible dependent (a former spouse or former registered domestic partner is not an eligible dependent);~~

~~((k)) (g) Employee or dependent becomes eligible for a medical assistance program under the department of social and health services, including medicaid or the children's health insurance program (CHIP), or the employee or dependent loses eligibility in a medical assistance program.~~

To waive or enroll during a special open enrollment, the employee must submit the appropriate forms to their employing agency no later than sixty days after the event that creates the special open enrollment.

Enrollment in insurance coverage will begin the first of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of a month, enrollment will begin on that date. If the special open enrollment is due to the birth or adoption of a child, insurance coverage will begin the first of the month in which the event occurs.

**AMENDATORY SECTION** (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-131 How do eligible employees maintain the employer contribution toward insurance coverage?** The employer contribution toward insurance coverage

begins on the day that PEBB benefits begin under WAC 182-12-114. This section describes under what circumstances an employee maintains eligibility for the employer contribution toward PEBB benefits.

(1) **Maintaining the employer contribution.** Except as described in subsections (2), (3) and (4) of this section, an employee who has established eligibility for benefits under WAC 182-12-114 is eligible for the employer contribution each month in which he or she is in pay status eight or more hours per month.

(2) **Maintaining the employer contribution - benefits-eligible seasonal employees.**

(a) A benefits-eligible seasonal employee (eligible under WAC 182-12-114(2)) who works a season of less than nine months is eligible for the employer contribution in any month of his or her season in which he or she is in pay status eight or more hours during that month. The employer contribution toward PEBB benefits for seasonal employees returning after their off season begins on the first day of the first month of the season in which they are in pay status eight hours or more.

(b) A benefits-eligible seasonal employee (eligible under WAC 182-12-114(2)) who works a season of nine months or more is eligible for the employer contribution:

(i) In any month of his or her season in which he or she is in pay status eight or more hours during that month; and

(ii) Through the off season following each season worked.

(3) **Maintaining the employer contribution - eligible faculty.**

(a) Benefits-eligible faculty anticipated to work the entire instructional year or equivalent nine-month period (eligible under WAC 182-12-114 (3)(a)(i)) are eligible for the employer contribution each month of the instructional year, except as described in subsection (7) of this section.

(b) Benefits-eligible faculty who are hired on a quarter/semester to quarter/semester basis (eligible under WAC 182-12-114 (3)(a)(ii)) are eligible for the employer contribution each quarter or semester in which the employee works half-time or more.

(c) Summer or off-quarter/semester coverage: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who work an average of half-time or more throughout the entire instructional year or equivalent nine-month period and work each quarter/semester of the instructional year or equivalent nine-month period are eligible for the employer contribution toward summer or off-quarter/semester insurance coverage.

**Exception:**

Eligibility for the employer contribution toward summer or off-quarter/semester insurance coverage ends on the end date specified in an employing agency's termination notice or an employee's resignation letter, whichever is earlier, if the employing agency has no anticipation that the employee will be returning as faculty at any institution of higher education where the employee has employment.

(d) Two-year averaging: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who worked an average of half-time or more in each of the two preceding academic years are potentially eligible to receive uninterrupted employer contribution to PEBB benefits. "Academic year" means summer, fall, winter, and spring quarters or summer,

fall, and spring semesters and begins with summer quarter/semester. In order to be eligible for the employer contribution through two-year averaging, the faculty must provide written notification of his or her potential eligibility to his or her employing agency or agencies within the deadlines established by the employing agency or agencies. Faculty continue to receive uninterrupted employer contribution for each academic year in which they:

(i) Are employed on a quarter/semester to quarter/semester basis and work at least two quarters or two semesters; and

(ii) Have an average workload of half-time or more for three quarters or two semesters.

Eligibility for the employer contribution under two-year averaging ceases immediately if the eligibility criteria is not met or if the eligibility criteria becomes impossible to meet.

(e) Faculty with gaps of eligibility for the employer contribution: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who lose eligibility for the employer contribution will regain it if they return to a faculty position where it is anticipated that they will work half-time or more for the quarter/semester no later than the twelfth month after the month in which they lost eligibility for the employer contribution. The employer contribution begins on the first day of the month in which the quarter/semester begins.

(4) **Maintaining the employer contribution - employees on leave and under the special circumstances listed below.**

(a) Employees who are on approved leave under the federal Family and Medical Leave Act (FMLA) continue to receive the employer contribution as long as they are approved under the act.

(b) Unless otherwise indicated in this section, employees in the following circumstances receive the employer contribution only for the months they are in pay status eight hours or more:

(i) Employees on authorized leave without pay;

(ii) Employees on approved educational leave;

(iii) Employees receiving time-loss benefits under workers' compensation;

(iv) Employees called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or

(v) Employees applying for disability retirement.

(5) **Maintaining the employer contribution - employees who move from an eligible to an otherwise ineligible position due to a layoff** maintain the employer contribution toward insurance coverage under the criteria in WAC 182-12-129.

(6) **Employees who are in pay status less than eight hours in a month.** Unless otherwise indicated in this rule, when there is a month in which an employee is not in pay status for at least eight hours, the employee:

(a) Loses eligibility for the employer contribution for that month; and

(b) Must reestablish eligibility for PEBB benefits under WAC 182-12-114 in order to be eligible for the employer contribution again.

(7) **The employer contribution to PEBB insurance coverage ends** in any one of these circumstances for all employees:

(a) When the employee fails to maintain eligibility for the employer contribution as indicated in the criteria in subsection (1) through (6) of this section.

(b) When the employment relationship is terminated. As long as the employing agency has no anticipation that the employee will be rehired, the employment relationship is terminated:

(i) On the date specified in an employee's letter of resignation; or

(ii) On the date specified in any contract or hire letter or on the effective date of an employer-initiated termination notice.

(c) When the employee moves to a position that is not anticipated to be eligible for benefits under WAC 182-12-114, not including changes in position due to a layoff.

The employer contribution toward PEBB medical, dental and life insurance for an employee, spouse, Washington state registered domestic partner, or child ceases at 12:00 midnight, the last day of the month in which the employee is eligible for the employer contribution under this rule.

**(8) Options for continuation coverage by self-paying.**

During temporary or permanent loss of the employer contribution toward insurance coverage, employees have options for providing continuation coverage for themselves and their dependents by self-paying the full premium set by the HCA. These options are available according to WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-133 What options for continuation coverage are available to employees on certain types of leave or whose work ends due to a layoff?** Employees who have established eligibility for PEBB benefits under WAC 182-12-114 have options for providing continuation coverage for themselves and their dependents by self-paying the full premium set by the HCA during temporary or permanent loss of the employer contribution toward insurance coverage.

(1) When an employee is no longer eligible for the employer contribution toward PEBB benefits due to an event described in (a) through (f) of this subsection, insurance coverage may be continued by self-paying the full premium set by the HCA, with no contribution from the employer. Employees may self-pay for a maximum of twenty-nine months. The employee must pay the premium amounts (~~associated with~~) for insurance coverage as premiums become due. If premiums are more than sixty days delinquent, insurance coverage will end as of the last day of the month for which a full premium was paid. Employees may continue any combination of medical, dental and life insurance; however, only employees on approved educational leave or called in to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA) may continue long-term disability insurance. Employees in the following circumstances qualify to continue coverage under this subsection:

(a) The employee is on authorized leave without pay;

(b) The employee is on approved educational leave;

(c) The employee is receiving time-loss benefits under workers' compensation;

(d) The employee is called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA);

(e) The employee's employment ends due to a layoff as defined in WAC 182-12-109; or

(f) The employee is applying for disability retirement.

(2) The number of months that an employee self-pays the premium while eligible under subsection (1) of this section will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). An employee who is no longer eligible for continuation coverage as described in subsection (1) of this section but who has not used the maximum number of months allowed under COBRA may continue medical and dental for the remaining difference in months by self-paying the premium under COBRA as described in WAC 182-12-146.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-141 If ~~(f)~~ an employee reverts from an eligible position to another position, what happens to ~~(my)~~ his or her insurance coverage?** (1) If (~~you have reverted~~) an employee reverts for reasons other than a layoff and (~~are~~) is not eligible for the employer contribution toward insurance coverage under this chapter, (~~you~~) he or she may continue PEBB insurance coverage by self-paying the full premium set by the HCA for up to eighteen months under the same terms as an employee who is granted leave without pay under WAC 182-12-133(1).

(2) If (~~you are~~) an employee is reverted due to a layoff(~~e~~

~~a) You~~), the employee may be eligible for the employer contribution toward insurance coverage under the criteria of WAC 182-12-129(~~e or~~

~~b) You~~), If determined not to be eligible under WAC 182-12-129, the employee may continue PEBB insurance coverage by self-paying the full premium set by the HCA under WAC 182-12-133.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-142 What options for continuation coverage are available to faculty and seasonal employees who are between periods of eligibility?** (1) **Faculty** may continue any combination of medical, dental and life insurance coverage by self-paying the full premium set by the HCA, with no contribution from the employer, for a maximum of twelve months between periods of eligibility. The employee must pay the premium amounts associated with insurance coverage as premiums become due. If premiums are more than sixty days delinquent, insurance coverage will end as of the last day of the month for which a full premium was paid.

(2) **Benefits-eligible seasonal employees** may continue any combination of medical, dental, and life insurance coverage by self-paying the full premium set by the HCA, with no

contribution from the employer, ~~((during their off-season(s)))~~ for a maximum of twelve months between periods of eligibility. The employee must pay the premium amounts associated with insurance coverage as premiums become due. If premiums are more than sixty days delinquent, insurance coverage will end as of the last day of the month for which a full premium was paid.

(3) **COBRA.** An employee who is no longer eligible for continuation coverage as described in subsections (1) and (2) of this section, but who has not used the maximum number of months allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), may continue medical and dental for the remaining difference in months by self-paying the full premium set by the HCA under COBRA as described in WAC 182-12-146. The number of months that a faculty or seasonal employee self-pays premiums under the criteria in subsection (1) or (2) of this section will count toward the total months of continuation coverage allowed under COBRA.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-171 When are retiring employees eligible to enroll in retiree insurance? (1) Procedural requirements.** Retiring employees must meet these procedural requirements, as well as have substantive eligibility under subsection (2) or (3) of this section.

(a) The employee must submit the appropriate forms to enroll or defer insurance coverage within sixty days after the employee's employer paid or COBRA coverage ends. The effective date of health plan enrollment will be the first day of the month following the loss of other coverage.

**Exception:** The effective dates of health plan enrollment for retirees who defer enrollment in a PEBB health plan at or after retirement are identified in WAC 182-12-200 and 182-12-205.

Employees who do not enroll in a PEBB health plan at retirement are only eligible to enroll at a later date if they have deferred enrollment as identified in WAC 182-12-200 or 182-12-205 and maintained comprehensive employer sponsored medical as defined in WAC 182-12-109.

(b) The employee and enrolled dependents who are entitled to medicare must enroll and maintain enrollment in both medicare parts A and B if the employee retired after July 1, 1991. If the employee or an enrolled dependent becomes entitled to medicare after enrollment in PEBB retiree insurance, he or she must enroll and maintain enrollment in medicare.

(2) **Eligibility requirements.** Eligible employees (as defined in WAC ~~((182-12-115))~~ 182-12-114 and 182-12-131) who end public employment after becoming vested in a Washington state-sponsored retirement plan (as defined in subsection (4) of this section) are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. To be eligible to continue PEBB insurance coverage as a retiree, the employee must be eligible to retire under a Washington state-sponsored retirement plan when the employee's employer paid or COBRA coverage ends.

Employees who do not meet their Washington state-sponsored retirement plan's age requirements when their employer paid or COBRA coverage ends, but who meet the age requirement within sixty days of coverage ending, may request that their eligibility be reviewed by the PEBB appeals committee to determine eligibility (see WAC 182-16-032). Employees must meet other retiree insurance election procedural requirements.

- Employees must immediately begin to receive a monthly retirement plan payment, with exceptions described below.

- Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if this is required by department of retirement systems because their monthly retirement plan payment is below the minimum payment that can be paid.

- Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011 (13)), are eligible if they meet their retirement plan's age requirement and length of service when PEBB employee insurance coverage ends. They do not have to receive a retirement plan payment.

- Employees who are members of a Washington higher education retirement plan are eligible if they immediately begin to receive a monthly retirement plan payment, or meet their plan's age requirement, or are at least age fifty-five with ten years of state service.

- Employees who are permanently and totally disabled are eligible if they start receiving or defer a monthly disability retirement plan payment.

- Employees not retiring under a Washington state-sponsored retirement plan must meet the same age and years of service had the person been employed as a member of either public employees retirement system Plan 1 or Plan 2 for the same period of employment.

- Employees who retire from a local government or tribal government that participates in PEBB insurance coverage for their employees are eligible to continue PEBB insurance coverage as retirees if the employees meet the procedural and eligibility requirements under this section.

(a) **Local government employees.** If the local government ends participation in PEBB insurance coverage, employees who enrolled after September 15, 1991, are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(b) **Tribal government employees.** If a tribal government ends participation in PEBB insurance coverage, its employees are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(c) **Washington state K-12 school district and educational service district employees for districts that do not participate in PEBB benefits.** Employees of Washington state K-12 school districts and educational service districts who separate from employment after becoming vested in a Washington state-sponsored retirement system are eligible to enroll in PEBB health plans when retired or permanently and totally disabled.

Except for employees who are members of a retirement Plan 3, employees who separate on or after October 1, 1993, must immediately begin to receive a monthly retirement plan payment from a Washington state-sponsored retirement system. Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if department of retirement systems requires this because their monthly retirement plan payment is below the minimum payment that can be paid or they enrolled before 1995.

Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(13)), are eligible if they meet their retirement plan's age requirement and length of service when employer paid or COBRA coverage ends.

Employees who separate from employment due to total and permanent disability who are eligible for a deferred retirement allowance under a Washington state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled before 1995 or within sixty days following retirement.

Employees who retired as of September 30, 1993, and began receiving a retirement allowance from a state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled in a PEBB health plan not later than the HCA's annual open enrollment period for the year beginning January 1, 1995.

(3) **Elected and full-time appointed officials of the legislative and executive branches.** Employees who are elected and full-time appointed state officials (as defined under WAC 182-12-114(4)) who voluntarily or involuntarily leave public office are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. They do not have to receive a retirement plan payment from a state-sponsored retirement system.

(4) **Washington state-sponsored retirement systems include:**

- Higher education retirement plans;
- Law enforcement officers' and firefighters' retirement system;
- Public employees' retirement system;
- Public safety employees' retirement system;
- School employees' retirement system;
- State judges/judicial retirement system;
- Teacher's retirement system; and
- State patrol retirement system.

The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered a Washington state-sponsored retirement system for Washington State University Extension employees covered under the PEBB insurance coverage at the time of retirement or disability.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-205 May a retiree defer enrollment in a PEBB health plan at or after retirement?** Except as stated in subsection (1)(c) of this section (~~and for adult dependents as defined in WAC 182-12-260 (3)(d)~~), if retirees defer enrollment in a PEBB health plan, they also defer enrollment

for all eligible dependents. Retirees may not defer their retiree term life insurance, even if they have other life insurance.

(1) Retirees may defer enrollment in a PEBB health plan at or after retirement if continuously enrolled in other comprehensive employer sponsored medical as identified below:

(a) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in comprehensive employer-sponsored medical as an employee or the dependent of an employee.

(b) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in medical as a retiree or the dependent of a retiree enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer enrollment if they are enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in this chapter. The retiree's dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a medicaid program.

(2) To defer health plan enrollment, the retiree must submit the appropriate forms to the PEBB program requesting to defer. The PEBB program must receive the form before health plan enrollment is deferred or no later than sixty days after the date the retiree becomes eligible to apply for PEBB retiree insurance coverage.

(3) Retirees who defer may enroll in a PEBB health plan as follows:

(a) Retirees who defer while enrolled in comprehensive employer-sponsored medical may enroll in a PEBB health plan by submitting the appropriate forms and evidence of continuous enrollment in comprehensive employer-sponsored medical to the PEBB program:

(i) During annual open enrollment. (PEBB health plan will begin January 1st after the annual open enrollment.); or

(ii) No later than sixty days after their comprehensive employer-sponsored medical ends. (PEBB health plan will begin the first day of the month after the comprehensive employer-sponsored medical ends.)

(b) Retirees who defer enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submitting the appropriate forms and evidence of continuous enrollment in a federal retiree medical plan to the PEBB program:

(i) During annual open enrollment. (PEBB health plan will begin January 1st after the annual open enrollment.); or

(ii) No later than sixty days after the federal retiree medical ends. (Enrollment in the PEBB health plan will begin the first day of the month after the federal retiree medical ends.)

(c) Retirees who defer enrollment while enrolled in medicare Parts A and B and medicaid may enroll in a PEBB health plan by submitting the appropriate forms and evidence of continuous enrollment in creditable coverage to the PEBB program:

(i) During annual open enrollment. (Enrollment in the PEBB health plan will begin January 1st after the annual open enrollment.); or

(ii) No later than sixty days after their medicaid coverage ends (Enrollment in the PEBB health plan will begin the first day of the month after the medicaid coverage ends.); or

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree was also determined eligible under 42 USC § 1395w-114 and subsequently enrolled in a medicare Part D plan. (Enrollment in the PEBB health plan will begin January 1st following the end of the calendar year when the medicaid coverage ends.)

(d) Retirees who defer enrollment may enroll in a PEBB health plan if the retiree receives formal notice that the department of social and health services has determined it is more cost-effective to enroll the retiree or the retiree's eligible dependent(s) in PEBB medical than a medical assistance program.

**AMENDATORY SECTION** (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-250 Insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty.** Surviving spouses, Washington state registered domestic partners, and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll in health plans administered by the PEBB program within HCA.

(1) This section applies to the surviving spouse, the surviving Washington state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, Washington state registered domestic partner, and dependent children" means:

- (a) A lawful spouse;
- (b) An ex-spouse as defined in RCW 41.26.162;
- (c) A Washington state registered domestic partner as defined in RCW 26.60.020; and

(d) Children. The term "children" includes ~~((unmarried))~~ children of the emergency service worker ~~((who are under the))~~ up to age ~~((of twenty-five))~~ twenty-six. Children with disabilities as defined in RCW 41.26.030(7) are eligible at any age. "Children" is defined as:

- (i) Biological children (including the emergency service worker's posthumous children);
- (ii) Stepchildren or children of a Washington state registered domestic partner; and
- (iii) Legally adopted children.

(4) Surviving spouses, Washington state registered domestic partners, and children who are entitled to medicare must enroll in both parts A and B of medicare.

(5) The survivor (or agent acting on their behalf) must submit the appropriate forms (to either enroll or defer enrollment in a PEBB health plan) to PEBB program no later than one hundred eighty days after the latter of:

- (a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer firefighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;

(c) The last day the surviving spouse, Washington state registered domestic partner, or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving spouse, Washington state registered domestic partner, or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in a PEBB health plan may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose appropriate forms are received by the PEBB program no later than September 1, 2006;

(b) The first of the month that is not earlier than sixty days before the date that the PEBB program receives the appropriate forms (for example, if the PEBB program receives the appropriate forms on August 29, the survivor may request health plan enrollment to begin on July 1); or

(c) The first of the month after the date that the PEBB program receives the appropriate forms.

For surviving spouses, Washington state registered domestic partners, and children who enroll, monthly health plan premiums must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b). ~~((For children age twenty through age twenty-four who enroll and are not students under the age of twenty-four attending high school or registered at an accredited secondary school, college, university, vocational school, or school of nursing: The adult dependent premium must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).))~~

(7) Survivors must choose one of the following two options to maintain eligibility for PEBB insurance coverage:

- (a) Enroll in a PEBB health plan:
  - (i) Enroll in medical; or
  - (ii) Enroll in medical and dental.
- (iii) Survivors enrolling in dental must stay enrolled in dental for at least two years before dental can be dropped.
- (iv) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in a PEBB health plan if enrolled in comprehensive employer sponsored medical.

(ii) Survivors may enroll in a PEBB health plan when they lose comprehensive employer sponsored medical. Survivors will need to provide evidence that they were continuously enrolled in comprehensive employer sponsored medical when applying for a PEBB health plan, and apply within sixty days after the date their other coverage ended.

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during annual open enrollment. In addition to annual open enrollment, sur-

vivors may change health plans as described in WAC 182-08-198.

(9) Survivors may not add new dependents acquired through birth, ~~adoption, establishment of an extended dependent~~, marriage, or establishment of a qualified domestic partnership.

(10) Survivors will lose their right to enroll in a PEBB health plan if they:

(a) Do not apply to enroll or defer PEBB health plan enrollment within the timelines stated in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in comprehensive employer sponsored medical through an employer during the deferral period, as provided in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-260 Who are eligible dependents?** To be enrolled in a health plan, a dependent must be eligible under this section and the subscriber must comply with enrollment procedures outlined in WAC 182-12-262.

The PEBB program verifies the eligibility of all dependents (~~periodically~~) and reserves the right to request documents from subscribers that provide evidence of a dependent's eligibility. The PEBB program will remove a subscriber's enrolled dependents from health plan enrollment if the PEBB program is unable to verify a dependent's eligibility within a specified time.

The subscriber or dependent must notify the PEBB program, in writing, no later than sixty days after the date he or she is no longer eligible under this section. See WAC 182-12-262 for the consequences of not removing an ineligible dependent from coverage.

The following are eligible as dependents under the PEBB eligibility rules:

(1) Lawful spouse. Former spouses are not eligible dependents upon finalization of a divorce or annulment, even if a court order requires the subscriber to provide health insurance for the former spouse.

(2) Effective January 1, 2010, Washington state registered domestic partners, as defined in RCW 26.60.020(1). Former Washington state registered domestic partners are not eligible dependents upon dissolution or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former partner.

(3) Children. Children are defined as the subscriber's biological children, stepchildren, legally adopted children, children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child, children of the subscriber's Washington state registered domestic partner, or children specified in a court order or divorce decree. In addition, children include extended dependents in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or subscriber's Washington state registered domestic partner. The legal responsibility is demonstrated by a valid court order and the child's official residence with the custodian or guardian. "Children" does not include foster children for whom support payments are made

to the subscriber through the state department of social and health services foster care program.

Eligible children include:

(a) ~~((Unmarried)) Children ((through)) up to age ((nineteen))~~ twenty-six.

(b) ~~((Married children through age nineteen who qualify as dependents of the subscriber under the Internal Revenue Code.~~

(c) ~~Students: Unmarried children age twenty through age twenty-three who are attending high school or are registered students at an accredited secondary school, college, university, vocational school, or school of nursing. A married child is eligible as a student if the child is a dependent of the subscriber under the Internal Revenue Code.~~

(i) ~~A child is eligible as a student or can maintain eligibility as a student when not registered for courses through the summer or off quarter/semester as long as the child meets all other eligibility requirements and is in any one of the following circumstances:~~

~~• The child attended the three consecutive quarters or two consecutive semesters before the off quarter/semester.~~

~~• The child recently graduated. Graduation is defined as the successful completion of studies to earn a degree or certificate, not the date of the graduation ceremony. The child is eligible for the three month period following graduation.~~

(ii) ~~For student dependents who are not eligible for the summer or off quarter/semester according to (c)(i) of this subsection, student eligibility begins the first day of the month of the quarter or semester for which the child is registered, and eligibility ends the last day of the month in which the student is registered or in which the quarter or semester ends, whichever is first.~~

~~**(Exception:** If a student becomes seriously ill or injured and requires a medically necessary leave of absence from attending school, his or her coverage may continue if qualified under and in accordance with the federal Michelle's Law (Public Law 110-381).~~

(d) ~~Adult dependents: Unmarried children age twenty through age twenty-four.~~

~~Subscriber must pay the adult dependent premium for adult dependents whom the subscriber has enrolled.~~

~~Adult dependents must enroll in the same health plan as the subscriber.~~

~~**(Exception:** The adult dependent may enroll in a different health plan than the subscriber if the dependent does not reside within the subscriber's plan service area or the subscriber has waived or deferred medical.~~

(e) ~~Effective January 1, 2011, children of any age with disabilities, ((developmental disabilities,)) mental illness, or ((mental retardation)) intellectual or other developmental disabilities who are incapable of self-support, provided such condition occurs before age ((twenty or during the time the dependent was eligible as a student under (c) of this subsection)) twenty-six.~~

(i) ~~The subscriber must provide evidence ((that such)) of the disability and evidence that the condition occurred ((as stated below)) before age twenty-six:~~

~~((i) For a child enrolled in PEBB insurance coverage, the subscriber must provide evidence of the disability within sixty days of the child's attainment of age twenty.~~

(ii) For a child enrolled in PEBB insurance coverage as a student under (c) of this subsection, the subscriber must provide evidence of the disability within sixty days after the student is no longer eligible under (c) of this subsection.

(iii) For a child, age twenty or older, who is a new dependent or for a child, age twenty or older, who is a dependent of a newly eligible subscriber, the child may be enrolled as a dependent child with disabilities if the subscriber provides evidence that the condition occurred before the child reached age twenty or evidence that when the condition occurred the child would have satisfied PEBB eligibility for student coverage under (c) of this subsection had the subscriber been eligible for PEBB benefits at the time.)

(ii) The subscriber must notify the PEBB program, in writing, no later than sixty days after the date that a child age ~~((twenty))~~ twenty-six or older no longer qualifies under this subsection.

For example, children who become self-supporting are not eligible under this rule as of the last day of the month in which they become capable of self-support. ~~((The child may be eligible to continue enrollment as an adult dependent, as per (d) of this subsection, or in a PEBB health plan under provisions of WAC 182-12-270.))~~

(iii) Children age ~~((twenty))~~ twenty-six and older who become capable of self-support do not regain eligibility under ~~((e))~~ (b) of this subsection if they later become incapable of self-support.

(iv) The PEBB program will certify the eligibility of children with disabilities periodically.

(4) Parents.

(a) Parents covered under PEBB medical before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous enrollment in PEBB medical;

(ii) The parent qualifies under the Internal Revenue Code as a dependent of the subscriber;

(iii) The subscriber continues enrollment in PEBB insurance coverage; and

(iv) The parent is not covered by any other group medical plan.

(b) Parents eligible under this subsection may be enrolled with a different health plan than that selected by the subscriber. Parents may not add additional dependents to their insurance coverage.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) Enrolling dependents in health plan coverage.** Subscribers may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in PEBB insurance coverage. If enrolled, the dependent's effective date will be the same as the subscriber's effective date. Except as provided in WAC 182-12-205 (1)(c), a dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll his or her dependent.

~~((Exceptions:~~

~~• Adult dependents may enroll in a health plan if the employee has waived medical coverage or the retiree has deferred enrollment in PEBB retiree insurance in accordance with PEBB rule;~~

~~OR~~

~~• Eligible dependents of a retiree may enroll in a health plan if the retiree deferred PEBB retiree insurance coverage due to the retiree's enrollment in medicare and creditable medicaid under WAC 182-12-205 (1)(e).)~~

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year.

(c) **During special open enrollment.** Subscribers may enroll dependents when the dependent becomes eligible or during another special open enrollment as described in subsections (3) and (4) of this section.

**(2) Removing dependents from a subscriber's health plan coverage.**

(a) **Subscribers are required to remove dependents** within sixty days of the date the dependent no longer meets the eligibility criteria in WAC 182-12-250 or 182-12-260. The PEBB program will remove a subscriber's enrolled dependent the last day of the month in which the dependent ceases to meet the eligibility criteria. Consequences for not submitting notice within sixty days of any dependent ceasing to be eligible may include, but are not limited to:

(i) The dependent may lose eligibility to continue health plan coverage under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums ~~((that included))~~ for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

**(b) Employees have the opportunity to remove dependents:**

(i) During the annual open enrollment. The dependent will be removed the last day of December; or

(ii) During a special open enrollment as described in subsections (3) and (4) of this section. The dependent will be removed the last day of the month ~~((following the date corresponding to))~~ in which the event that creates the special open enrollment occurs.

(c) **Retirees, survivors, and enrollees with PEBB continuation coverage under WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148 may remove dependents** from their coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. Unless otherwise approved by the PEBB program, the dependent will be removed from the subscriber's coverage prospectively.

(3) **Special open enrollment.** Subscribers may enroll or remove their dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must correspond to the event that creates the special open enrollment for either the subscriber or the subscriber's dependents or both.

- Health plan coverage will begin the first of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of a month, health plan coverage will begin on that date.

- Dependents will be removed from the subscriber's health plan coverage the last day of the month following the event.

- If the special open enrollment is due to the birth or adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin or end the month in which the event occurs. The following changes are events that create a special open enrollment for medical and dental:

(a) ~~((Subscriber acquires an eligible))~~ Subscriber's dependent becomes eligible under PEBB rules:

(i) Through marriage(;) or registering a domestic partnership with Washington's secretary of state(;):

(ii) Through birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption(;):

(iii) Through legal custody or legal guardianship; or

(iv) When a child becomes eligible as an extended dependent;

~~((A dependent becomes eligible by fulfilling PEBB dependent eligibility criteria under WAC 182-12-250 or 182-12-260;~~

~~(e) Subscriber loses an eligible dependent or a) Subscriber's dependent no longer meets PEBB eligibility criteria(;) because:~~

~~((d)) (i) Subscriber has a change in marital status or Washington state registered domestic partnership status, including legal separation documented by a court order;~~

~~(ii) A child dependent turns age twenty-six;~~

~~(iii) A child dependent ceases to be eligible as an extended dependent or as a dependent with disabilities; or~~

~~(iv) A dependent dies;~~

~~((e)) (c) Subscriber or a dependent loses ((comprehensive)) coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);~~

~~((f)) (d) Subscriber or a dependent has a change in employment status that affects the subscriber's or a dependent's eligibility(, level of benefits, or cost of) for group health coverage or the employer contribution toward insurance coverage;~~

~~((g)) (e) Subscriber or a dependent has a change in ((place of)) residence that affects ((the subscriber's or a dependent's eligibility, level of benefits, or cost of insurance coverage)) health plan availability;~~

~~((h)) (f) Subscriber receives a court order or medical support ((enforcement)) order requiring the subscriber, ((the)) the subscriber's spouse, or the subscriber's Washington state registered domestic partner to provide insurance coverage for an eligible dependent. (A former spouse or former registered domestic partner is not an eligible dependent.); or~~

~~((i)) (g) Subscriber or a dependent becomes eligible for a medical assistance program under the department of social and health services, including medicaid or the children's health insurance program (CHIP), or the subscriber or depen-~~

dent loses eligibility in ((such)) a medical assistance program(~~(-or~~

~~(j) Subscriber or dependent dies)).~~

(4) **Enrollment requirements. Subscribers must submit the appropriate forms within the time frames described in this subsection.** Employees submit the appropriate forms to their employing agency. All other subscribers submit the appropriate forms to the PEBB program. In addition to the appropriate forms indicating dependent enrollment, the PEBB program may require the subscriber to provide documentation or evidence of eligibility or evidence of the event that created the special open enrollment.

(a) If a subscriber wants to enroll their eligible dependent(s) when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the appropriate forms that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the annual open enrollment, the subscriber must submit the appropriate forms no later than the ~~((end))~~ last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the subscriber must submit the appropriate enrollment forms no later than sixty days after the dependent becomes eligible except as provided in (d) of this subsection.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption, the subscriber should notify the PEBB program by submitting an enrollment form as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the subscriber **must** submit the appropriate enrollment form no later than twelve months after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(e) If the subscriber wants to enroll a child age ~~((twenty))~~ twenty-six or older as a child with disabilities, the subscriber must submit the appropriate ~~((enrollment))~~ form(s) ~~((required to certify the dependent's eligibility))~~ no later than sixty days after the last day of the month in which the child reaches age twenty-six or within the relevant time frame described in WAC ((182-12-250(3) or 182-12-260(3))) 182-12-262 (4)(a), (b), and (f).

(f) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, the subscriber must submit the appropriate forms no later than sixty days after the event that creates the special open enrollment.

(g) If the subscriber wants to remove a dependent from enrollment during an open enrollment, the subscriber must submit the appropriate forms. Unless otherwise approved by the PEBB program, enrollment will be removed prospectively.

#### NEW SECTION

**WAC 182-16-025 Where do members appeal decisions regarding eligibility, enrollment, premium payments, or the administration of benefits?**

**Note:** Eligibility decisions address whether a subscriber or a subscriber's dependent is entitled to insurance coverage, as described in PEBB rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies including, but not limited to, the submission of proper documentation and meeting enrollment deadlines.

(1) Any employee of a state agency or his or her dependent aggrieved by a decision made by the employing state agency with regard to public employee benefits eligibility or enrollment may appeal that decision to the employing state agency by the process outlined in WAC 182-16-030.

(2) Any employee of an employer group or his or her dependent who is aggrieved by a decision made by an employer group with regard to PEBB eligibility or enrollment may appeal that decision to the employer group through the process established by the employer group.

**Exception:** Appeals by an employee of an employer group or his or her dependent based on eligibility or enrollment decisions regarding life insurance or long-term disability insurance must be made to the PEBB appeals committee by the process described in WAC 182-16-032.

(3) Any employee, self-pay enrollee, retiree, or dependent aggrieved by a decision made by the PEBB program with regard to public employee benefits eligibility, enrollment, or premium payments may appeal that decision to the PEBB appeals committee by the process described in WAC 182-16-032.

(4) Any PEBB enrollee aggrieved by a decision regarding the administration of a PEBB medical plan, self-insured dental plan, insured dental plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance may appeal that decision by following the appeal provisions of those plans, with the exception of eligibility, enrollment, and premium payment determinations.

(5) Any PEBB enrollee aggrieved by a decision regarding the medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) offered under the state's salary reduction plan may appeal that decision by the process described in WAC 182-16-036.

**AMENDATORY SECTION** (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-16-030 How can an employee or an employee's dependent appeal a decision made by a state agency about eligibility or enrollment in benefits?** ~~((Any employee or employee's dependent aggrieved by a decision made by a state agency with regard to public employee benefits eligibility or enrollment may appeal that decision to the state agency. Any dependent aggrieved by a decision made by the PEBB program may appeal the decision by submitting an appeal to the PEBB appeals committee in the same manner as a self-pay enrollee as described in WAC 182-16-032.~~

~~Any employer group employee or employee's dependent aggrieved by a decision with regard to PEBB eligibility, enrollment or premium payment may appeal that decision to the employer group. Appeals to employer groups are not subject to this rule.~~

~~**Note:** Eligibility decisions address whether an employee or an employee's dependent is entitled to insurance coverage, as described in PEBB rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies, including but not limited to the submission of proper documentation and meeting enrollment deadlines.~~

~~The state agency may only reverse eligibility or enrollment decisions based on circumstances that arose due to delays caused by the state agency or error(s) made by the state agency.))~~

~~(1) ((Any employee or employee's dependent aggrieved by)) An eligibility or enrollment decision made by ((a)) an employing state agency may ~~((appeal the decision))~~ be appealed by submitting a written request for review to the employing state agency. The employing state agency must receive the request for review within thirty days of the date of the initial denial notice. The contents of the request for review are to be provided in accordance with WAC 182-16-040.~~

~~(a) Upon receiving the request for review, the employing state agency shall make a complete review of the initial denial by one or more staff who did not take part in the initial denial. As part of the review, the employing state agency may hold a formal meeting or hearing, but is not required to do so.~~

~~(b) The employing state agency shall render a written decision within thirty days of receiving the request for review. The written decision shall be sent to the appellant.~~

~~(c) A copy of the employing state agency's written decision shall be sent to the employing state agency's administrator or designee and to the PEBB appeals manager. The employing state agency's written decision shall become the employing state agency's final decision effective fifteen days after the date it is rendered.~~

~~(d) The employing state agency may reverse eligibility or enrollment decisions based only on circumstances that arose due to delays caused by the employing state agency or error(s) made by the employing state agency.~~

~~(2) Any employee or employee's dependent who disagrees with the employing state agency's decision in response to a request for review, as described in subsection (1) of this section, may appeal that decision by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the employing state agency's written decision on the request for review.~~

~~((As well, any employee or employee's dependent may appeal a decision about premium payments by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal within thirty days of the date of the denial notice.)) The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.~~

~~(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.~~

~~(b) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.~~

~~(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.~~

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

**WAC 182-16-032 How can ((a)) an employee, retiree, self-pay enrollee, or dependent appeal a decision made by the PEBB program regarding eligibility, enrollment, or premium payments? ((Any)) An eligibility, enrollment, or premium payment decision made by the PEBB program may be appealed by submitting a notice of appeal to the PEBB appeals committee. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.**

(1) The notice of appeal from an employee or employee's dependent must be received by the PEBB appeals manager within thirty days of the date of the denial notice by the PEBB program.

(2) The notice of appeal from a retiree, self-pay enrollee, or dependent ((aggrieved by a decision made by the PEBB program with regard to public employee benefit eligibility, enrollment, or premium payments may appeal the decision to the PEBB appeals committee.

**Note:** Eligibility decisions address whether a retiree, self-pay enrollee or their dependent is entitled to insurance coverage, as described in PEBB rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies, including, but not limited to the submission of proper documentation, enrollment deadlines, and premium-related issues.)

of a retiree or self-pay enrollee must be received by the PEBB appeals manager ((must receive the notice of appeal)) within sixty days of the date of the denial notice by the PEBB program. ((The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

~~((4))~~ (3) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

~~((2))~~ (4) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

~~((3))~~ (5) Any appellant who disagrees with the decisions of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending Order 08-03, filed 10/1/08, effective 1/1/09)

**WAC 182-16-050 How can an enrollee or entity ~~((get))~~ request a hearing if aggrieved by a decision made by the PEBB appeals committee?** (1) Any party aggrieved by a decision of the PEBB appeals committee, may request an administrative hearing.

(2) The request must be made in writing to the PEBB appeals manager. The PEBB appeals manager must receive the request for an administrative hearing within thirty days of the date of the written decision by the PEBB appeals committee.

(3) The agency shall set the time and place of the hearing and give not less than twenty days notice to all parties.

(4) The administrator, or his or her designee, shall preside at all hearings resulting from the filings of appeals under this chapter.

(5) All hearings must be conducted in compliance with these rules, chapter 34.05 RCW and chapter 10-08 WAC as applicable.

(6) Within ninety days after the hearing record is closed, the administrator or his or her designee shall render a decision which shall be the final decision of the agency. A copy of that decision shall be mailed to all parties.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-16-034	How can a PEBB enrollee appeal a decision regarding the administration of a PEBB medical plan, insured dental plan, life insurance, long-term care insurance, long-term disability insurance, or property or casualty insurance?
WAC 182-16-037	How can an enrollee appeal a decision by the agency's self-insured dental plan?

#### **WSR 10-20-149**

#### **PERMANENT RULES**

#### **DEPARTMENT OF AGRICULTURE**

[Filed October 6, 2010, 8:40 a.m., effective November 6, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule-making order modifies the prohibited contaminants list for the quality timothy seed program to include all species in the caryophyllaceae family. There have been weed species identified that are closely related to species already listed as prohibited contaminants. The timothy hay industry has requested these other species be added to the list for the quality timothy seed program which directly supports the original purpose of the program, which is to make available the highest quality seed lots for the production of timothy hay.

Citation of Existing Rules Affected by this Order: Amending WAC 16-302-775.

Statutory Authority for Adoption: Chapter 15.49 RCW.  
Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 10-17-027 on August 9, 2010.

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.

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 6, 2010.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

Dan Newhouse  
Director

**AMENDATORY SECTION** (Amending WSR 08-23-055, filed 11/14/08, effective 12/15/08)

**WAC 16-302-755 Standards for quality timothy seed.** (1) Seed standards for quality timothy grass seed are as follows:

	Minimum Purity	Minimum Viability by Germination or TZ Test	Maximum Other Crop*	Maximum Weed**
Timothy seed	97%	85%	0.2%	.02%
Purity component percentages are based on 1 gram sample size as prescribed by the AOSA rules.				

*	Must be free of ryegrass, orchardgrass, <i>Agrostis</i> sp., <i>Poa</i> sp., brome, reed canarygrass, tall fescue, and meadow foxtail.
Must be free of the above listed contaminants based upon a 50 gram examination.	

24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040.

Adopted under notice filed as WSR 10-18-005 on August 18, 2010.

**	Must be free of alfilaria (redstem filaree), <i>bromus</i> sp., Chickweed <u>including all other species in the Caryophyllaceae family</u> , Henbit, <i>Poa</i> sp., wild carrot, and prohibited noxious weeds listed in WAC 16-301-045 and restricted noxious weeds listed in WAC 16-301-050.
Must be free of the above listed contaminants based upon a 50 gram examination.	

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 4, 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 6, Amended 10, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 6, Amended 14, 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 6, 2010.

Steve Excell  
Assistant Secretary of State

**WSR 10-20-150**  
**PERMANENT RULES**  
**SECRETARY OF STATE**

[Filed October 6, 2010, 8:44 a.m., effective November 6, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To combine rules from chapter 434-110 WAC into chapter 434-112 WAC, updating services, procedures, and fees as established in new state law during legislative session 2010 and to remove conflicting or duplicative rules.

Citation of Existing Rules Affected by this Order: Amending WAC 434-112-010, 434-112-020, 434-112-025, 434-112-030, 434-112-040, 434-112-045, 434-112-050, 434-112-065, 434-112-070, 434-112-075, 434-112-080, 434-112-085, 434-112-090, and 434-112-100.

Statutory Authority for Adoption: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220,

**Chapter 434-112 WAC**

**CORPORATIONS ((DIVISION)) AND CHARITIES**  
**DIVISION PROGRAM SERVICES, PROCEDURES**  
**AND FEES**

**NEW SECTION**

**WAC 434-112-005 Purpose.** These rules establish procedures and fee schedules for filings, for expedited services, and for access to public records in the corporations and charities division of the office of the secretary of state. These rules are adopted pursuant to Titles 23, 23B, 24, and 25 RCW and chapters 11.110, 19.09, 19.34, 19.77, 19.166, 26.60, 43.07, and 46.64 RCW.

AMENDATORY SECTION (Amending WSR 07-20-065, filed 9/28/07, effective 10/29/07)

**WAC 434-112-010 Services provided by the corporations ~~((division))~~ and charities ~~((program))~~ division.** (1) The ~~((corporations))~~ division includes the corporations program and the charities program.

(2) The corporations program provides the following services:

(a) Business filings under chapters 18.100, 23.78, 23.86, 23.90 RCW, and Titles 23B and 25 RCW;

(b) Nonprofit organization filings under Title 24 RCW;

(c) Trademark registration under chapter 19.77 RCW;

(d) Certification authority licensing under chapter 19.34 RCW, the Electronic Authentication Act;

(e) Registration of international student exchange programs under chapter 19.166 RCW;

(f) Registration under the Immigration Assistant Practices Act, chapter 19.154 RCW;

(g) Apostilles under RCW 42.44.180;

(h) Agent for service of process on motorists under RCW 46.64.040;

(i) Agent for service of process on defendants in actions for recovery of damages for motor vehicle theft, as authorized by RCW 9A.56.078;

(j) Agent for service of process for those entities and under those circumstances listed in (a), (b), and (c) of this subsection;

(k) Registration of state registered domestic partnerships under chapter 26.60 RCW and RCW 43.07.400.

(3) The charities program provides the following services:

(a) Registrations under the Charitable Solicitations Act, chapter 19.09 RCW including:

(i) Charitable organizations;

(ii) Commercial fund-raisers; and

(iii) Fund-raising contracts;

(b) Registration of charitable trusts under chapter 11.110 RCW;

(c) Publication of the trust directory; and

(d) Agent for service of process for those entities and under those circumstances listed in (a) and (b) of this subsection.

AMENDATORY SECTION (Amending WSR 09-06-036, filed 2/24/09, effective 3/27/09)

**WAC 434-112-020 ~~((Corporations division address, telephone number and))~~ Office hours.** Office hours are from 8:00 a.m. to 5:00 p.m. daily, Monday through Friday, excluding legal holidays. Walk-in, counter services and emergency counter services are available for an expedited fee under WAC 434-112-080.

AMENDATORY SECTION (Amending WSR 09-06-036, filed 2/24/09, effective 3/27/09)

**WAC 434-112-025 Documents delivered after normal working hours.** (1) Documents, including substitute service of process on the secretary of state, delivered after the normal working hours of 8:00 a.m. to 5:00 p.m., will be

~~((deemed to be))~~ treated as though received on the next working day.

(2) Filings submitted on-line or by fax will be ~~((deemed to be))~~ treated as though received as of the date and time the ~~((corporations division))~~ division's computer system or fax machine records the complete submission and credit card approval for the transaction.

(3) The secretary assumes no responsibility for any form of delivery other than that:

(a) Received personally by an employee of the office of the secretary of state; or

(b) Received by the ~~((corporations division))~~ division's computer system or fax machine as a result of an ~~((on-line))~~ electronic filing.

#### NEW SECTION

**WAC 434-112-028 Mail-in service—Corporate name reservation.** (1) All mailed-in documents are processed and filed in order of date of receipt unless expedited, incomplete, or incorrect. A specific filing date may be reserved up to thirty days in advance. The necessary documents, in appropriate form, with complete and correct information and fees, must be in the office by the specified date.

(2) Requests for name searches coupled with a name reservation are completed in order of date received. A name reservation may be made by completing the form provided by the division or in a letter clearly containing all the following information:

(a) The corporate name desired, with two alternate names;

(b) The name, address, and telephone number of the applicant;

(c) The signature of the applicant; and

(d) The application date.

An application on behalf of a client should also include the client's name and complete address.

AMENDATORY SECTION (Amending WSR 09-06-036, filed 2/24/09, effective 3/27/09)

**WAC 434-112-030 Certificates for ~~((business))~~ filings.** Certificates issued by the secretary of state or the secretary's designee in furtherance of duties under Titles 18, 19, 23, 23B, 24 ~~((and)),~~ 25 ~~((RCW shall)),~~ 26, and chapter 42.44 RCW will:

(1) ~~((Bear))~~ Contain a rendition of the Washington state seal;

(2) ~~((Bear))~~ Contain a mechanical or electronic reproduction of the secretary's signature; and

(3) Be regarded as the secretary of state's official certification of the matters itemized in the certificate.

AMENDATORY SECTION (Amending WSR 09-06-036, filed 2/24/09, effective 3/27/09)

**WAC 434-112-040 Document standards for filings~~((—Cover sheet requirement and document quality))~~.**

(1) ~~((A completed contact information cover sheet shall be submitted with each filing with the corporations division or the charities program if:~~

~~(a) The filing party is not the registered agent and would like the completed filing returned to them directly;~~

~~(b) The filing party would like expedited service under WAC 434-112-080; or~~

~~(c) The filing party would like correspondence related to a charities program filing sent to an individual at an address other than the mailing address of record.~~

~~(2) The cover sheet will include contact telephone and address information related to the filing, and provide an opportunity to advise the corporations division whether the request is for expedited service and designate the address to which the corporations division is to return the completed request.~~

~~(3)) All corporations related filings ((received without a contact information cover sheet will be)) are returned to the registered agent for the entity when processing is complete unless the filing indicates otherwise.~~

~~((4)) (2) Correspondence pertaining to a charities program filing ((received without a contact information cover sheet will be)) is sent to the entity's mailing address of record when processing is complete unless the filing indicates otherwise.~~

~~((5)) (3) The corporations ((division including the)) and charities programs may reject and return documents ((and copies)) that are not legible or not ((capable of being)) able to be recorded as an image with adequate resolution and clarity, or are not complete.~~

~~((a) Paper and ink must be of weight and color capable of producing a legible image regardless of the system used by the corporations division for creating the image.~~

~~(b)) Documents completed in pencil will not be accepted for filing.~~

~~((e) All text must be written or printed in eight point type or larger.)~~

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-112-045 ((Requests for information or fees)) Rejection of documents.** (1) The corporations ((division)) and ((the)) charities programs may ((pend action on)) reject documents ((submitted for filing that are unacceptable for filing by reason of incomplete information or insufficient fees, pending provision of the required information and fees)) under WAC 434-112-040.

(2) Additional information or payment may be requested by telephone, fax, e-mail or letter.

(3) The corporations ((division)) and ((the)) charities programs may ((pend action)) hold documents for up to thirty days to await additional information or funds needed to complete the filing. This time may extend to forty-five days if the filing party is making good faith efforts to complete the filing.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-112-050 Duplicate originals not required—Filing procedure.** (1) Persons submitting business filings under chapters 18.100, 19.77 or Titles 23, 23B,

24 and 25 RCW ((shall)) must submit one original copy of the document ((submitted)) for filing.

(2) Subsection (1) of this section does not apply to:

(a) Filings completed ((on-line)) electronically;

(b) Summons and complaints; and

(c) Specimens provided in support of a trademark filing.

(3) The corporations ((division)) and charities programs will retain a digital image of the record submitted for filing, and on completion of the filing will return to the filer a copy of the digital image ((bearing)) with a ((filing)) "Filed" endorsement.

(4) The corporations ((division)) and charities programs may return the completed filing via e-mail or other electronic means if the filer indicates that an electronic response is acceptable.

~~((5) The corporations division may reject and return documents and copies that are not legible or not capable of being recorded as a digital image with adequate resolution and clarity.)~~

#### NEW SECTION

**WAC 434-112-055 Registered office address—Requirements.** (1) A post office box address may be used in addition to a registered Washington geographic office address.

(2) The registered agent is required to notify the office of the secretary of state and the corporation of any changes in either the street address or the post office box address as soon as possible.

#### NEW SECTION

**WAC 434-112-060 Initial and annual reports—Form of content.** (1) Any corporation filing under Title 23B RCW, shall file its initial annual report electronically, or on the form provided by the secretary of state, or shall clearly provide the information arranged in the following manner:

(a) Section 1. Corporate name, registered agent name and physical office address currently on file with the corporations program, the unified business identification number, state of incorporation, and original date filed in Washington;

(b) Section 2. If there has been a change in registered agent or registered office address since the articles were filed, include the effective date of the change and the new name or address with the agent's signature agreeing to accept the appointment;

(c) Section 3. Address of principal place of business in Washington or, if a foreign corporation, the principal office address as stated in original incorporation in foreign jurisdiction; for both domestic and foreign corporations, the corporation telephone number, e-mail address, and a brief statement of nature of business;

(d) Section 4. A list of names and addresses of all corporate officers and directors; and

(e) Section 5. Signature and title of either the chair or president of the board of directors or an officer listed within the report.

(2) All profit and nonprofit corporations shall file their annual reports electronically, or on the form prescribed by the

secretary of state, or clearly and concisely sectioned in the following manner:

(a) Section 1. Corporate name and registered agent and office address currently on file with the corporations program, the unified business identification number, state of incorporation and original date filed in Washington;

(b) Section 2. If there has been a change in registered agent or registered office address include the effective date and the new agent's signature signifying acceptance of the appointment or the new address;

(c) Section 3. Statement of purpose, or, if a foreign profit or nonprofit corporation, a statement of activities conducted and an address of principal office;

(d) Section 4. A list of names and addresses of all corporate officers and directors; and

(e) Section 5. The signature of either the chair or president of the board of directors or an officer listed within the report.

All annual reports must be accompanied by the statutory fee under WAC 434-112-085.

Any entity formed under Titles 23, 23B, and 25 RCW must disclose any transfer in the controlling interest of the entity and any interest in real property on the annual report, under RCW 43.07.390.

#### NEW SECTION

**WAC 434-112-062 Annual reports—Due date for all nonprofit corporations.** Each nonprofit corporation shall file its annual report by the last day of the month of its original registration as a corporation. The division shall notify each nonprofit corporation of its annual renewal date in advance of the due date. Failure to receive an annual report notice is insufficient reason for failing to file the statutorily required annual report.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-112-065 On-line filing—Consent of registered agent.** (1) When completing and submitting an on-line filing for any entity required by Washington law to appoint a registered agent the filing party shall affirm under oath that they have obtained and have in their possession the signed, written consent of the person appointed as registered agent.

(2) When the person submitting the filing is the person appointed as registered agent, they are not required to obtain separate written consent.

(3) Submitting a false affirmation is punishable as a gross misdemeanor under RCW 43.07.210.

(4) The corporation or other entity required to maintain a registered agent must:

(a) Retain the original of the registered agent's signed consent;

(b) Make the original of the registered agent's signed consent available for inspection on request; and

(c) Submit the original to the corporations ~~((division))~~ program or the office of the attorney general within ten business days upon demand.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

**WAC 434-112-070 On-line filing—Application for certificate of authority—Certificate of good standing.** (1) When a foreign corporation or foreign limited liability company submits an on-line application for certificate of authority under RCW 23B.15.030, 24.03.325, or an on-line registration under RCW 25.15.315, the filing party may meet the statutory requirement for submitting a certificate of good standing or a certificate of existence by submitting a digital image of a certificate of good standing ~~((or))~~, certificate of existence, or document of similar import meeting the requirements of the statute.

(2) The image must be in a format specified as acceptable on the on-line filing web site.

(3) The certificate of good standing must meet the requirements of chapters 23B.15, 24.03, or 25.15 RCW for certificates of authority submitted in support of an application for certificate of authority.

(4) The corporation or limited liability company must:

(a) Retain the original certificate of good standing;

(b) Make the original certificate of good standing available for inspection on request; and

(c) Submit the original to the corporations ~~((division))~~ program or the office of the attorney general within ten business days upon demand.

AMENDATORY SECTION (Amending WSR 09-06-036, filed 2/24/09, effective 3/27/09)

**WAC 434-112-075 On-line services.** (1) The corporations and charities division ~~((web site is located at www.sec.state.wa.gov/))~~ offers on-line services. The division's web site provides a variety of services for charities and corporations including on-line lookup, on-line filing and downloadable forms. ~~((Please see the web site for the most up to date list of services available.~~

~~(2) The following business entities may pay their annual license fees and submit their annual reports on line, provided they meet the requirements of this subsection:~~

~~(a) Domestic or foreign profit corporations organized under Title 23B RCW, including professional service corporations under chapter 18.100 RCW; and Massachusetts trusts under chapter 23.90 RCW.~~

~~(b) Foreign and domestic limited liability companies registered or formed under chapter 25.15 RCW, including limited liability companies formed under RCW 25.15.045 to provide professional services.~~

~~(3)) (2) Entities filing annual reports on-line must have twenty-five or fewer board members, officers, shareholders, members or managers to report.~~

~~((4)) (3) On-line filings ((for foreign and domestic corporations, foreign and domestic limited liability companies, and registrations under the charities programs)):~~

~~(a) Will be processed as expedited filings ((under WAC 434-112-080));~~

~~(b) Will be subject to ((the)) an expedited processing fee ((set forth in WAC 434-112-080)) of twenty dollars, with the exception of annual renewals or statements of change for registered agent information processed on-line; and~~

(c) Be treated as received when the ~~((corporations division))~~ division's system records receipt of the completed transaction including payment authorization.

~~((5))~~ (4) When submitting an on-line filing, the person completing the filing shall sign the application by: Typing their full name in the space provided on the web form; stating their capacity with the entity addressed in the filing; and following the directions for signing the web form.

(5) On-line processing fees are nonrefundable.

AMENDATORY SECTION (Amending WSR 09-06-036, filed 2/24/09, effective 3/27/09)

**WAC 434-112-080 In-person or expedited service—Special fees.** ~~((1) The corporations division counter is open for corporations and charities program services to in-person requests from 8:00 a.m. to 5:00 p.m. each business day.~~

(a) ~~Staff provides expedited, same-day processing of documents or requests submitted in person prior to 4:30 p.m. on that day. The corporations division is unable to guarantee same day processing of any filing or request submitted after 4:30 p.m. on that day.~~

(b) ~~Expedited requests submitted by fax, mail or on-line will be completed within two working days of submission, or as soon thereafter as possible.~~

(2) ~~Expedited services under this section are available for the following transactions:~~

(a) ~~Business filing transactions:~~

(i) ~~Charter document review and filing;~~

(ii) ~~Name reservation review and filing;~~

(iii) ~~Document certification;~~

(iv) ~~Document copying or status certificates;~~

(v) ~~Status change filings;~~

(vi) ~~Reinstatements; and~~

(vii) ~~Trademark filings.~~

(b) ~~Charities program filings:~~

(i) ~~Document review and filing including initial registration and renewals of charities, commercial fund-raisers and charitable trusts;~~

(ii) ~~Document copying and status verification letters;~~

(iii) ~~Status change filings.~~

(c) ~~Apostille requests submitted at the corporations division counter.~~

(3) ~~The fee for expedited service is twenty dollars for single or multiple transactions within each new or existing corporation program file, or charities program file. In addition, the filing fee for each transaction will apply.~~

(4) ~~Except for on-line filings, the filing party shall indicate that expedited processing is requested by:~~

(a) ~~Submitting a completed contact information cover sheet as described by WAC 434-112-040 indicating that the document is submitted for expedited filing; or~~

(b) ~~Placing the word "expedite" conspicuously on either the face of the document to be filed, or on any cover letter submitted with the document.~~

(5) ~~All documents submitted for filing on-line and corporations documents submitted via facsimile transmission are treated as expedited processing requests. Registrations with the charities program may not be submitted by facsimile. Documents transmitted via facsimile will receive expedited~~

~~processing within two working days of submission, or as soon thereafter as possible when the documents are received between 8:00 a.m. and 5:00 p.m. Pacific time each business day. The fee for facsimile filings is twenty dollars for single or multiple transactions within each new or existing corporation or trademark file. In addition, the filing fee for each transaction will apply.~~

(6) ~~There is no expedited fee for the following transactions, unless they are submitted via facsimile transmission or on-line:~~

(a) ~~Registered agent or address change;~~

(b) ~~Initial reports;~~

(c) ~~License renewal and required annual report;~~

(d) ~~Amended annual reports;~~

(e) ~~In-person inspection or review of corporation files or other public documents located in the corporations division office;~~

(f) ~~Documents left at the counter for processing with mail-in documents received the same day; or~~

(g) ~~A search for nonactive corporations less than twenty years old or trademark files less than six years old.~~

(7) ~~If staff cannot complete the expedited service request before the end of the same day, or the second consecutive business day for facsimile filings, the transaction will be completed as soon as possible.~~

(8) ~~Emergency services needed outside regular business hours requiring employee overtime are one hundred fifty dollars per hour plus regulatory or statutory fees due for the form of the filing. When the division receives an emergency request, staff notifies the customer of the service fee and any other reasonable conditions set by the director. The customer must agree to pay the fees or have received a fee waiver before emergency services are provided.~~

(9) ~~Service may be limited under extraordinary circumstances:~~

(a) ~~Over the counter service hours may be shortened under extraordinary circumstances.~~

(b) ~~Separate over the counter service requests by one person may be limited to those relating to three corporations per day.~~

(c) ~~Documents submitted by courier services or document handling companies may receive twenty-four hour service or as soon thereafter as possible.~~

(d) ~~A customer may make alternate arrangements with the director prior to bringing or sending in documents, if a sudden, unexpected situation occurs during the business day.~~

(10) ~~A person submitting a filing or request may submit a written request asking the secretary to waive emergency or penalty fees:~~

(a) ~~The request must include the special circumstances justifying the fee waiver.~~

(b) ~~Under special circumstances the secretary may waive emergency or penalty fees.~~

(11) ~~Fees for expedited or in-person processing will not be refunded.)~~ (1) In-person service is available at the division's counter which is open for all program service requests from 8:00 am to 5:00 p.m. each business day. The fee for in-person expedited service is fifty dollars plus any transaction fee.

(a) The division is unable to guarantee same day processing of any filing or request submitted in-person after 4:30 p.m. on that day.

(b) There is no in-person expedited service fee for documents dropped off in-person for processing with nonexpedited documents received that day.

(c) There is no in-person expedited service fee for photocopies requested in-person.

(2) Expedited service requests, including on-line services, will be completed within two working days of submission or as soon thereafter as possible, depending on volume received. Expedited service is available on:

(a) All paper documents submitted to our office by fax or mail for filing relating to any division program;

(b) Document copying from microfilmed records; and

(c) Certification and status certificates.

(3) The fee for expedited service is fifty dollars for single or multiple transactions on paper within each new or existing division program file. In addition, the filing fee for each transaction will apply. If an on-line filing is subsequently filed in person, an additional paper expedite fee is required.

(4) The filing party may indicate that expedited processing is requested by placing the word "expedite" in bold letters on either the envelope, the face of the document to be filed, or on any cover letter submitted with the document.

(5) Documents submitted via fax will receive expedited processing if accompanied by the expedite service fee. Otherwise, they will be processed with nonexpedited documents received the same day.

(6) Services may be limited under extraordinary circumstances.

(a) Over-the-counter service hours may be shortened under extraordinary circumstances.

(b) Separate over-the-counter requests by one person may be limited to those relating to three entities per transaction.

(7) Emergency services outside regular business hours requiring employee overtime are one hundred fifty dollars per hour plus transaction fees due on any filing. When the division receives a request for emergency services, staff will notify the customer of the service fee and any other reasonable conditions set by the director. The customer must agree to pay the fees or have received a fee waiver before emergency services are provided.

(8) A customer may make alternate arrangements with the director prior to bringing or sending in documents, if a sudden, unexpected situation occurs during the business day.

(9) A customer may submit a written request asking the secretary to waive emergency or penalty fees, which must include the special circumstances justifying the fee waiver. The secretary will make the determination to waive fees or not.

(10) In-person expedited service fees are not refundable.

**AMENDATORY SECTION** (Amending WSR 09-06-036, filed 2/24/09, effective 3/27/09)

**WAC 434-112-085 Fees and penalties.** ~~((1) For Washington registered profit domestic and foreign corporations, including profit cooperative associations, employee~~

~~cooperative associations, limited liability companies, limited partnerships, Massachusetts trusts and limited liability partnerships, fees and penalties are as follows:~~

~~(a) Articles of incorporation, certificates of formation, certificate of limited partnership and other original filings, one hundred eighty dollars;~~

~~(b) Articles of amendment, restatement, correction, or revocation of dissolution, thirty dollars; articles of amendment for limited partnerships are twenty-five dollars;~~

~~(c) License renewal with required annual report filed after due date and before administrative dissolution, penalty fee of twenty-five dollars, plus the statutory fee of fifty dollars and the department of licensing handling fee of nine dollars; limited partnership and limited liability partnership annual report statutory fee is fifty dollars;~~

~~(d) Reinstatement, one hundred dollars plus all delinquent license or annual fees and a twenty-five percent penalty computed on the total amount;~~

~~(e) Articles of merger or exchange, twenty dollars for each listed company;~~

~~(f) Resignation of registered agent, twenty dollars;~~

~~(g) Resignation of officer or director, an initial report or amended annual report, and the appointment or change of registered agent or change of registered address, ten dollars;~~

~~(h) Registration, reservation, or transfer of name, thirty dollars;~~

~~(i) Articles of dissolution, certificate of withdrawal, dissolution by judicial decree, or revocation of certificate of authority by either failure to renew or judicial decree, no fee;~~

~~(j) Agent's consent to act as agent, agent's resignation if appointed without consent, or annual report when filed concurrently with annual license fee, no fee; and~~

~~(k) Other statement or report filed, ten dollars.~~

~~(2) For Washington registered domestic and foreign non-profit corporations, nonprofit miscellaneous and mutual corporations, building corporations, and other associations and corporations under Title 24 RCW, fees and penalties are as follows:~~

~~(a) Articles of incorporation and other original filings, thirty dollars;~~

~~(b) Articles of amendment, restatement, twenty dollars;~~

~~(c) Articles of dissolution or certificate of withdrawal, no fee;~~

~~(d) Revocation of dissolution, twenty dollars;~~

~~(e) Reinstatement following administrative dissolution, thirty dollars plus all delinquent annual fees and a five-dollar penalty;~~

~~(f) Articles of merger or exchange, twenty dollars for each listed corporation;~~

~~(g) Resignation of officer or director, an initial report or amended annual report, the appointment or change of registered agent, or change of registered address, ten dollars;~~

~~(h) Resignation of registered agent, twenty dollars;~~

~~(i) Registration, reservation, or transfer of reservation of name, twenty dollars;~~

~~(j) Certificate of election adopting provisions of chapter 24.03 RCW as described in RCW 24.03.017, thirty dollars; and~~

~~(k) Other statement or report filed, ten dollars.~~

~~(3) For registering trademarks for use within the state, the fees are as follows:~~

~~(a) For a five-year registration or renewal, fifty dollars for each class in which the trademark is registered;~~

~~(b) For recording the assignment of a trademark and its registration or application for registration, ten dollars;~~

~~(c) For a new certificate with the name of the new assignee, five dollars;~~

~~(d) For reservation of a trademark for one hundred eighty days, thirty dollars for each class in which the trademark is reserved;~~

~~(e) For amendment of a trademark to add new classes of goods or services, fifty dollars for each class added by the amendment;~~

~~(f) Cancellation of trademark, no fee; and~~

~~(g) Other statement or report filed, ten dollars.~~

~~(4) For registration of a declaration of state registered domestic partnership, or registration of a notice of termination of state registered domestic partnership, fifty dollars each.~~

~~(5) Fees paid under WAC 434-112-085 are not refundable. Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.-) (1) For Washington registered profit domestic and foreign corporations, including employee cooperative associations, limited liability companies, limited partnerships, Massachusetts trusts, and limited liability partnerships, fees and penalties are:~~

- (a) Articles of incorporation      one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)
- (b) Certificates of formation      one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)
- (c) Applications for registration      one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)
- (d) Certificates of authority      one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)
- (e) Certificate of limited partnership      one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)

- (f) Other original filings      one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)
- (g) Articles of amendment      thirty dollars
- (h) Articles of restatement      thirty dollars
- (i) Articles of correction      thirty dollars
- (j) Revocation of dissolution or withdrawal      thirty dollars
- (k) Delinquent license renewal      ninety-four dollars, including twenty-five dollars penalty, sixty dollars statutory fee, and nine dollars department of licensing handling fee, when applicable
- (l) Limited partnership annual report      sixty dollars
- (m) Limited liability partnership annual report      sixty dollars
- (n) Limited liability limited partnership annual report      sixty dollars
- (o) Cooperative association annual report      ten dollars
- (p) Reinstatement from administrative dissolution      one hundred dollars plus all delinquent license or annual fees and a twenty-five percent penalty computed on the total amount
- (q) Requalification from administrative revocation      one hundred eighty dollars plus all delinquent fees
- (r) Articles of merger or exchange      twenty dollars for each listed company
- (s) Resignation of registered agent      twenty dollars
- (t) Resignation of officer or director      ten dollars
- (u) Initial report filed with formation      no fee
- (v) Amended annual report or initial report filed after formation      ten dollars
- (w) Change of registered agent      no fee
- (x) Change of registered office address      no fee
- (y) Registration, reservation, or transfer of name      thirty dollars
- (z) Articles of dissolution or certificate of dissolution      no fee

<u>(aa) Certificate of withdrawal</u>	<u>no fee</u>
<u>(bb) Certificate of cancellation</u>	<u>no fee</u>
<u>(cc) Agent's consent to act as agent</u>	<u>no fee</u>
<u>(dd) Agent's resignation if appointed without consent</u>	<u>no fee</u>
<u>(ee) Other statement or report</u>	<u>ten dollars</u>

(2) For Washington registered domestic and foreign non-profit corporations, cooperative associations, nonprofit miscellaneous and mutual corporations, building corporations, and other associations and corporations under Title 24 RCW, fees and penalties are:

<u>(a) Articles of incorporation</u>	<u>thirty dollars</u>
<u>(b) Certificates of authority</u>	<u>thirty dollars</u>
<u>(c) Other original filings</u>	<u>thirty dollars</u>
<u>(d) Articles of amendment</u>	<u>twenty dollars</u>
<u>(e) Restatement</u>	<u>twenty dollars</u>
<u>(f) Annual report</u>	<u>ten dollars</u>
<u>(g) Articles of dissolution, certificate of withdrawal</u>	<u>no fee</u>
<u>(h) Reinstatement from administrative dissolution</u>	<u>thirty dollars plus all delinquent annual fees and five dollar penalty</u>
<u>(i) Articles of merger or exchange</u>	<u>twenty dollars for each listed corporation</u>
<u>(j) Resignation of officer or director</u>	<u>ten dollars</u>
<u>(k) Amended annual report</u>	<u>ten dollars</u>
<u>(l) Change of registered agent</u>	<u>no fee</u>
<u>(m) Change of registered office address</u>	<u>no fee</u>
<u>(n) Resignation of registered agent</u>	<u>twenty dollars</u>
<u>(o) Registration, reservation, or transfer of reservation of name</u>	<u>twenty dollars</u>
<u>(p) Certificate of election adopting provisions of chapter 24.03 RCW</u>	<u>thirty dollars</u>
<u>(q) Other statement or report filed</u>	<u>ten dollars</u>

(3) For registering trademarks for use within the state, the fees are as follows:

<u>(a) Five year registration</u>	<u>fifty-five dollars (includes five dollars heritage center fee) for each class registered</u>
<u>(b) Five year renewal</u>	<u>fifty dollars for each class registered</u>

<u>(c) Recording assignment</u>	<u>ten dollars (includes registration)</u>
<u>(d) New certificate with name of assignee</u>	<u>five dollars</u>
<u>(e) Reservation of trademark</u>	<u>thirty dollars for each class reserved, for one hundred eighty days</u>
<u>(f) Amendment of trademark</u>	<u>fifty dollars for each class</u>
<u>(g) Cancellation of trademark</u>	<u>no fee</u>
<u>(h) Other statement or report filed</u>	<u>ten dollars</u>

(4) For filings related to state registered domestic partnership, the fees are:

<u>(a) Registration</u>	<u>fifty dollars</u>
<u>(b) Name change</u>	<u>no fee</u>
<u>(c) Address change</u>	<u>no fee</u>
<u>(d) Notice of termination by reason of death</u>	<u>no fee</u>

(5) Fees paid under WAC 434-112-085 are not refundable. Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.

AMENDATORY SECTION (Amending WSR 09-06-036, filed 2/24/09, effective 3/27/09)

**WAC 434-112-090 Miscellaneous fees.** (1) Copy fees for corporate documents are:

- Each annual report, five dollars;
- Initial articles of incorporation, initial certificate of formation, other initial organizing document, ten dollars;
- Articles of incorporation, certificate of formation, other organizing documents including all subsequent amendments and restatements, twenty dollars;
- Copy of any filing related to a state registered domestic partnership, five dollars;

(e) Surcharge for files exceeding one hundred pages of copy, thirteen dollars for each fifty-page increment (~~((number of pages determined by weight of copies;)))~~).

(2) For certificates of existence fees are as follows:

- With complete historical data, under ~~((embossed))~~ state seal, thirty dollars;
- Without complete historical data, under state seal, twenty dollars;
- Duplicate certificate under state seal, twenty dollars.

(3) For additional certificates of registration ~~((or termination))~~ of a state registered domestic partnership, five dollars. For an additional or replacement state registered domestic partnership wallet card, ten dollars.

(4) For verifying the signature of a notary or public official, for an apostille or certification authenticating a sworn document, the fee is fifteen dollars.

(5) For each certified copy of any document the fee is ~~((twenty))~~ ten dollars plus the document copy fee.

(6) For any service of process the fee is fifty dollars.

(7) Dishonored checks. If a person, corporation, or other submitting entity has attempted to pay any fee due to the secretary of state by means of a check, and the check is dishonored by the financial institution when presented, the secretary of state will impose a twenty-five-dollar penalty, payable to the secretary of state.

In the event a valid replacement check and dishonor charge is not received in the office of the secretary of state within the time prescribed by its accounting division, the transaction covered by the dishonored check will be canceled and all other late filing fees and penalties will be instituted.

#### NEW SECTION

**WAC 434-112-095 Inactive profit domestic corporations—Proof.** (1) Any corporation wishing to claim inactive status as described in RCW 23B.01.530 shall file a statement with the corporations program by the annual license renewal date. The statement shall include a declaration that the corporation has not received any revenue and has not been doing business during the preceding licensed year.

(2) A corporation claiming this statutory exemption to the full annual license fee shall file an annual report concurrently with the statement described in subsection (1) of this section and with the annual reduced license fee of ten dollars. Failure to file the reason for exemption statement, annual report, and fee shall result in administrative dissolution.

AMENDATORY SECTION (Amending WSR 09-06-036, filed 2/24/09, effective 3/27/09)

**WAC 434-112-100 State registered domestic partnerships.** (1) State registered domestic partnerships will be registered by the corporations program, in the corporations and charities division of the office of the secretary of state.

(2) Declarations of state registered domestic partnerships (~~(, and notices of termination of state registered domestic partnerships)~~) may be submitted to the ~~((corporations))~~ division by mail, or in person. ~~((See WAC 434-112-020 for the corporations division hours of service.))~~

(3) The document standards in WAC 434-112-040 ~~((5))~~ apply to declarations of state registered domestic partnerships ~~((and to notices of termination of state registered domestic partnerships))~~.

(4) At the time of registration of a declaration of state registered domestic partnership ~~((or of filing of a notice of termination of state registered domestic partnership))~~ the corporations ~~((division))~~ program will provide to each state registered domestic partner:

(a) One original certificate of registration ~~((or termination))~~. Further certificates or additional certificates requested after registration are available subject to the fees set forth in WAC 434-112-090.

(b) ~~((One))~~ Two wallet sized card documenting registration of the state registered domestic partnership.

(5) Registrations of state registered domestic partnerships are public records and all documents related to the registration are subject to public disclosure.

(6) Notice of termination of domestic partnership by reason of death may be submitted to the corporations program

by e-mail, regular mail or in person and must include a copy of the death certificate. There is no fee.

### WSR 10-20-152 PERMANENT RULES OLYMPIC COLLEGE

[Filed October 6, 2010, 9:02 a.m., effective November 6, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Eliminate the requirement for the vice-president of student services to approve distribution of printed materials by persons not members of the college community.

Citation of Existing Rules Affected by this Order: Amending WAC 132C-120-040.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 10-18-035 on August 25, 2010.

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 0, Repealed 0.

Date Adopted: October 6, 2010.

Thomas Oliver  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

**WAC 132C-120-040 Distribution of printed material on campus.** Publications, handbills, leaflets, statements, and similar materials except those which are commercial, obscene, or unlawful in character may be distributed without review or approval by any enrolled student or recognized group of students enrolled at Olympic College. It is to be understood that such materials do not necessarily represent the views of the college or the board of trustees. Such materials may be distributed from authorized public areas in the student center and at any outdoor area on campus consistent with the maintenance of college property, with the free flow of traffic and persons, and not in a manner which in itself limits the orderly operation of college affairs.

~~((Distribution of any printed materials by persons not members of the college community shall be prohibited unless approved in advance by the vice president of student services or designee.))~~

**WSR 10-20-172**  
**PERMANENT RULES**  
**PUBLIC EMPLOYMENT**  
**RELATIONS COMMISSION**

[Filed October 6, 2010, 11:33 a.m., effective November 6, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To streamline agency practices and procedures, including updating rules to reflect administrative changes in agency functions; to adopt rules governing agency records requests; and to correct drafting errors in recently amended rules.

Specifically, the amendments to WAC 391-25-030 and 391-25-440 are needed to clarify the agency's "self-determination election" process. The amendments to WAC 391-25-150 and 391-25-450 are needed to clarify the limitations on when a labor organization may withdraw a representation petition or disclaim an existing bargaining unit. The amendment to WAC 391-25-531 is needed to clarify that the rule only applies to employees who exercise collective bargaining rights under chapter 41.56 RCW. The amendment to WAC 391-55-110 is needed to clarify that documents supporting applications for membership on the agency's dispute resolution panel must be signed and dated within the last two years. The amendment to WAC 391-45-310 is needed to correct a previous drafting error. The amendment to WAC 391-55-200 is needed to clarify that the interest arbitration rules are applicable to certain employees. The amendments to WAC 391-08-800, as well as new sections WAC 391-08-830 through 391-08-880, are needed to govern public records requests. Certain amendments and new rules are needed to implement recently passed legislation. The amendments to WAC 391-08-001, 391-25-002, 391-35-002, 391-45-002, 391-55-002, and 391-65-002, as well as new sections WAC 391-25-229, 391-25-299, and 391-25-399 are needed to implement chapter 49.39 RCW, providing collective bargaining rights to symphony musicians. The amendment to WAC 391-25-051 is needed to implement RCW 41.56.510 (providing collective bargaining rights to language access providers). New section WAC 391-55-0715, 391-55-072, 391-55-201, 391-55-202, and 391-55-302 are needed to implement RCW 28A.657.050 and 41.56.500 (educational reform).

Citation of Existing Rules Affected by this Order: Amending WAC 391-08-001, 391-08-800, 391-25-002, 391-25-030, 391-25-051, 391-25-150, 391-25-450, 391-25-531, 391-35-002, 391-45-002, 391-45-310, 391-55-002, 391-55-110, 391-55-200, and 391-65-002.

Statutory Authority for Adoption: For WAC 391-08-001 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 49.39.060; for WAC 391-08-800, 391-08-830, 391-08-840, 391-08-850, 391-08-870 and 391-08-880 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 42.56.040, 49.39.060; for WAC 391-25-002, 391-25-030, 391-25-150, 391-25-440 and 391-25-450, is RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 49.39.060; for WAC 391-25-051 and 391-25-531 is RCW 41.56.060, 41.56.090, 41.58.050; for WAC 391-25-229, 391-25-299 and 391-25-399 is RCW 41.58.050, 49.39.060; for WAC 391-35-002 is RCW 28B.52.080, 41.06.340, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 49.39.060; for WAC 391-

45-002 and 391-45-310 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.120, 49.39.060; for WAC 391-55-002 and 391-55-110 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.090, 49.39.060; for WAC 391-55-0715, 391-55-072, 391-55-201, 391-55-202 and 391-55-302 is RCW 28A.657.050, 41.56.090, 41.58.050, 41.59.110; for WAC 391-55-200 is RCW 41.56.090, 41.58.050, 74.39A.270; and for WAC 391-65-002 is RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.130, 49.39.060.

Adopted under notice filed as WSR 10-14-117 on July 7, 2010.

Changes Other than Editing from Proposed to Adopted Version: Changes between rule as originally proposed in WSR 10-14-117 and as adopted by the public employment relations commission on September 14, 2010.

WAC 391-08-001, 391-25-002, 391-25-051, 391-35-002, 391-45-002, 391-55-002, 391-55-0715, 391-55-072, 391-55-200, 391-55-201, 391-55-202, 391-55-302 and 391-65-002, changed the session law reference to the appropriate statutory reference.

WAC 391-25-150, added the phrase "and the mailing of the ballots." This change codifies existing agency practice of issuing notices of election at the same time mail ballots are mailed to eligible voters, and will reduce confusion as to when a petition may not be withdrawn.

WAC 391-25-229, changed the phrase "symphony orchestra employees" to "symphony musicians" to reflect the title of chapter 49.39 RCW.

WAC 391-25-299, changed the session law reference to the appropriate statutory reference and altered the language for better readability. These changes do not alter the original intent of the amendments as originally proposed.

WAC 391-25-399, changed the session law reference to the appropriate statutory reference and altered the language for better readability. These changes do not alter the original intent of the amendments as originally proposed.

WAC 391-25-450, added the phrase "and the mailing of the ballots." This change codifies existing agency practice of issuing notices of election at the same time mail ballots are mailed to eligible voters, and will reduce confusion as to when a petition may not be withdrawn. Reduced the prohibited period for filing a subsequent representation petitions from one year to six months.

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 8, Amended 7, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 6, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 7, 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 14, Amended 16, Repealed 0.

Date Adopted: October 6, 2010.

Dario de la Rosa  
Appeal Administrator

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

**WAC 391-08-001 Application and scope of chapter 391-08 WAC.** Chapter 391-08 WAC has been added to the Washington Administrative Code by the public employment relations commission pursuant to the authority of section 12, chapter 288, Laws of 1975 1st ex. sess. (RCW 41.59.110); sections 7, 14 and 20, chapter 296, Laws of 1975 1st ex. sess. (RCW 41.58.050, 28B.52.080 and 41.56.090, respectively); and section 232, chapter 354, Laws of 2002 (RCW 41.06.-340); ~~((and))~~ section 15, chapter 356, Laws of 2002 (RCW 41.76.060); and section 7, chapter 6, Laws of 2010 (RCW 49.39.060), to promulgate comprehensive and uniform rules for practice and procedure before the agency. This chapter sets forth general rules applicable to all types of proceedings before the agency, and should be read in conjunction with the provisions of:

(1) Chapter 10-08 WAC, which contains the model rules of procedure promulgated by the chief administrative law judge to regulate adjudicative proceedings under chapters 391-25, 391-35, 391-45 and 391-95 WAC, except:

(a) WAC 10-08-035, which is replaced by detailed requirements in WAC 391-25-070, 391-25-090, 391-35-050, 391-45-050, and 391-95-110;

(b) WAC 10-08-050, which relates to office of administrative hearings procedures inapplicable to proceedings before the public employment relations commission;

(c) WAC 10-08-083, which is replaced by detailed requirements in WAC 391-08-010;

(d) WAC 10-08-110, which is replaced by detailed requirements in WAC 391-08-120;

(e) WAC 10-08-120, which is replaced by detailed requirements in WAC 391-08-040, 391-08-300 and 391-08-310;

(f) WAC 10-08-140, which is limited by WAC 391-08-040, 391-08-300 and 391-08-310;

(g) WAC 10-08-150, which is limited by WAC 391-08-315;

(h) WAC 10-08-211, which is replaced by WAC 391-08-640 and detailed requirements in WAC 391-25-390, 391-25-391, 391-25-590, 391-25-630, 391-25-650, 391-25-660, 391-25-670, 391-35-210, 391-35-250, 391-45-350, 391-45-390, 391-95-270, and 391-95-290;

(i) WAC 10-08-230, which is replaced by detailed requirements in WAC 391-25-150, 391-25-220, 391-25-230, 391-25-250, 391-25-270, 391-35-070, 391-35-080, 391-45-070, 391-45-090, 391-45-260, and 391-95-170; and

(j) WAC 10-08-250, 10-08-251, and 10-08-252 which are replaced by detailed requirements in WAC 391-08-520.

(2) Chapter 391-25 WAC, which regulates representation proceedings.

(3) Chapter 391-35 WAC, which regulates unit clarification proceedings and contains some well-established unit determination standards in a subchapter of rules beginning at WAC 391-35-300.

(4) Chapter 391-45 WAC, which regulates unfair labor practice proceedings.

(5) Chapter 391-55 WAC, which regulates the resolution of impasses in collective bargaining.

(6) Chapter 391-65 WAC, which regulates grievance arbitration and grievance mediation proceedings.

(7) Chapter 391-95 WAC, which regulates union security nonassociation proceedings.

In the event of a conflict between a general rule in this chapter and a special rule in another chapter applicable to a particular proceeding, the special rule shall govern.

AMENDATORY SECTION (Amending WSR 98-14-112, filed 7/1/98, effective 8/1/98)

**WAC 391-08-800 Agency records—Public ~~((access))~~ records officer—Contact information.** ~~((The agency shall maintain for public inspection:))~~

~~((An index to all proceedings processed by the agency:))~~ Any person wishing to request access to public records of the agency, or seeking assistance in making such a request should contact the public records officer of the agency:

David I. Gedrose

Public Records Officer, Public Employment Relations Commission

P.O. Box 40919

360-570-7322

David.Gedrose@perc.wa.gov

Information is also available at the agency's web site at [www.perc.wa.gov](http://www.perc.wa.gov).

~~((A docket for each proceeding processed by the agency, showing the actions taken and the final resolution of each such proceeding;~~

~~((A schedule of hearing dates assigned in particular cases; and~~

~~((The files for all proceedings, including all documents filed with the agency in the particular case, except materials held in confidence as provided in WAC 391-08-810.))~~ The public records officer will oversee compliance with the act but another staff member may process the request. Therefore, these rules refer to the public records officer "or designee." The public records officer or designee will provide the "fullest assistance" to requestors, ensure that public records are protected from damage or disorganization, and prevent fulfilling public records requests from causing excessive interference with essential functions of the agency.

#### NEW SECTION

**WAC 391-08-830 Agency records—Availability—Organization—Requests.** (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the Olympia office of the agency.

(2) Organization of records. The agency will maintain its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage

and disorganization. A requestor shall not take agency records from its offices without the permission of the public records officer or his or her designee. A variety of records is available on the agency web site at [www.perc.wa.gov](http://www.perc.wa.gov). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(3) Making a request for public records:

(a) Any person wishing to inspect or copy public records of the agency should make the request by letter, fax, or e-mail addressed to the public records officer and including the following information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any e-mail address;

(iv) Identification of the public records adequate for the public records officer or designee to locate the records; and

(v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or make a deposit. Pursuant to WAC 391-08-860 standard photocopies will be provided at fifteen cents per page.

(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

#### NEW SECTION

**WAC 391-08-840 Processing of public records requests.** (1) Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying;

(b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available;

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(2) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(3) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the agency

believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(4) Inspection of records.

(a) Consistent with other demands, the agency shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the agency's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the agency may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(5) Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(6) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that manner. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(7) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the agency has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(8) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the agency has closed the request.

(9) Later discovered documents. If, after the agency has informed the requestor that it has provided all available records, the agency becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

NEW SECTION

**WAC 391-08-850 Processing of public records—Electronic records.** (1) The process for requesting electronic public records is the same as for requesting paper public records.

(2) When a requestor requests electronic records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

(3) Customized access to data bases. With the consent of the requestor, the agency may provide customized access under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. The agency may charge a fee consistent with RCW 43.105.-280 for such customized access.

NEW SECTION**WAC 391-08-860 Exemptions to public records.**NEW SECTION**WAC 391-08-870 Costs for providing public records.**

(1) There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page and color copies for twenty-five cents per page.

(2) Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The agency will not charge sales tax when it makes copies of public records.

(3) The cost of electronic copies of records shall be one dollar for information on a CD-ROM. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies.

(4) The agency may also charge actual costs of mailing, including the cost of the shipping container.

(5) Payment may be made by cash, check, or money order to the "Public Employment Relations Commission."

NEW SECTION**WAC 391-08-880 Review of denial of public records.**

(1) Any person who objects to the initial denial or partial denial of a records request may petition in writing to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) The public records officer shall promptly provide the petition and any other relevant information to the executive director who will immediately consider the petition and

either affirm or reverse the denial within two business days following the agency's receipt of the petition, or within such other time as agency and the requestor mutually agree to.

(3) If the agency denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter under the procedure set forth under WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests at the conclusion of two business days after the initial denial of such request regardless of any internal administrative appeal.

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

**WAC 391-25-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

**WAC 391-25-030 Petition—Time for filing.** (1) A "contract bar" exists while a valid collective bargaining agreement is in effect, so that a petition involving any or all of the employees covered by the agreement will be timely only if it is filed during the "window" period not more than

ninety nor less than sixty days prior to the stated expiration date of the collective bargaining agreement.

(a) To constitute a valid collective bargaining agreement for purposes of this subsection:

(i) The agreement must cover a bargaining unit that is appropriate under the terms of the applicable statute;

(ii) The agreement must be in writing, and signed by the parties' representatives;

(iii) The agreement must contain a fixed expiration date not less than ninety days after it was signed; and

(iv) The agreement will only operate as a bar for the first three years after its effective date.

(b) An agreement to extend or replace a collective bargaining agreement shall not bar a petition filed in the "window" period of the previous agreement.

(c) A "protected" period is in effect during the sixty days following a "window" period in which no petition is filed, and a successor agreement negotiated by the employer and incumbent exclusive bargaining representative during that period will bar a petition under this chapter. If the filing and withdrawal or dismissal of a petition under this chapter intrudes upon the protected period, the employer and incumbent exclusive bargaining representative shall be given a sixty-day protected period commencing on the date the withdrawal or dismissal is final.

(d) A certification of issues for interest arbitration issued under WAC 391-55-200 serves as a valid agreement under subsection (1)(a) of this rule.

(2) A "certification bar" exists where a certification has been issued by the agency, so that a petition involving the same bargaining unit or any subdivision of that bargaining unit will only be timely if it is filed:

(a) More than twelve months following the date of the certification of an exclusive bargaining representative; or

(b) More than twelve months following the date of the latest election or cross-check in which the employees failed to select an exclusive bargaining representative.

(3) Where neither a "contract bar" nor a "certification bar" is in effect under this section, a petition may be filed at any time.

(4) Neither a certification bar nor a contract bar in an underlying existing bargaining unit will preclude petitions filed under WAC 391-25-440 from being processed at any time subject to the limitations stated in that rule.

**AMENDATORY SECTION** (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

**WAC 391-25-051 Special provision—Individual providers of home care under RCW 74.39A.270 and 74.39A.300—Family child care providers under RCW 41.56.208—Adult family home providers under RCW 41.56.029—Language access providers under RCW 41.56.510.**

(1) This rule consolidates special rules applicable to:

(a) Individual providers under RCW 74.39A.270 and 74.39A.300, which extend the coverage of chapter 41.56 RCW to "individual providers" defined as a person, including a personal aide, who has contracted with the department of social and health services to provide personal care or respite care services to functionally disabled persons under the med-

icaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.

(b) Family child care providers under RCW 41.56.028, which extends coverage of chapter 41.56 RCW to "child care providers" defined as persons who:

(i) Provide regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours;

(ii) Receive child care subsidies; and

(iii) Are either licensed by the state under RCW 74.15.030 or are exempt from licensing under chapter 74.15 RCW.

(c) Adult family home providers under RCW 41.56.029, which extends coverage of chapter 41.56 RCW to "adult family home providers" who are persons defined as a provider as defined in RCW 70.128.010 who receives payments from the medicaid and state-funded long-term care programs.

(d) Language access providers under RCW 41.56.510, which extends coverage of chapter 41.56 RCW to "language access providers" who are persons defined as any independent contractor who provides spoken language interpreter services for department of social and health services appointments or medicaid enrollee appointments, or provided these services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or the department of social and health services.

(2) The showing of interest requirement in WAC 391-25-110 is modified for the bargaining unit affected by RCW 74.39A.270 and 74.39A.300, to require a ten percent showing of interest for either a petitioner or an intervenor.

(3) The posting of notice requirement in WAC 391-25-140 is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, ~~((and))~~ 41.56.029, and 41.56.510.

(4) A party wishing to participate as an intervenor in representation proceedings governed by this rule must file a motion to intervene no later than ten days following receipt of the petition for investigation of a question concerning representation.

(5) The description of bargaining unit requirement of WAC 391-25-190 is limited to a single, statewide unit of:

(a) Individual providers under RCW 74.39A.270 and 74.39A.300; or

(b) Family child care providers under RCW 41.56.028; or

(c) Adult family home providers under RCW 41.56.029; or

(d) Language access providers under RCW 41.56.510.

(6) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single, statewide unit of:

(a) Individual providers under RCW 74.39A.270 and 74.39A.300; or

(b) Family child care providers under RCW 41.56.028; or

(c) Adult family home providers under RCW 41.56.029;  
or

(d) Language access providers under RCW 41.56.510.

(7) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, ~~((and))~~ 41.56.029, and 41.56.510.

(8) The posting requirement in WAC 391-25-220(2), relating to investigation statements, is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, ~~((and))~~ 41.56.029, and 41.56.510.

(9) The posting requirement in WAC 391-25-230(2), relating to election agreements, is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, ~~((and))~~ 41.56.029, and 41.56.510.

(10) The cross-check procedures in WAC 391-25-250, 391-25-391, and 391-25-410 are inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, ~~((and))~~ 41.56.029, and 41.56.510.

(11) The unit determination election procedures in WAC 391-25-420 are inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, ~~((and))~~ 41.56.029, and 41.56.510.

(12) The requirements of WAC 391-25-430, relating to posting of election notices on the employer's premises, is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, ~~((and))~~ 41.56.029, and 41.56.510.

(13) Any representation election for the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, ~~((and))~~ 41.56.029, and 41.56.510 shall be conducted by mail ballot under WAC 391-25-470, with the following modifications:

(a) Together with the procedures for casting ballots, the notice supplied to providers may describe the collective bargaining rights established by RCW 74.39A.270, 74.39A.300, 41.56.028, ~~((and))~~ 41.56.029, and 41.56.510 and agreements reached by a petitioning union and the employer concerning the election process;

(b) The notice and ballot materials supplied to providers shall be set forth in English and any other language the agency deems reasonably necessary to conduct a fair election;

(c) The ballot materials supplied to providers shall include a card return-addressed to the commission, by which providers eligible voters can individually request notice and ballot materials in languages other than those received. Upon receipt of such a request card, the agency shall promptly supply notice and ballot materials to the eligible voter in the requested language.

(d) At least twenty-one days shall be provided between the date on which ballot materials are mailed to providers and the deadline for return of cast ballots to the commission.

(e) The executive director shall have discretion to vary tally arrangements and procedures from those customarily used, because of the large size of the bargaining unit involved.

(f) The reference in WAC 391-25-140 through 391-25-470 shall be interpreted in light of subsection (3) of this section.

(14) The procedure for on-site elections in WAC 391-25-490 is inapplicable to the bargaining unit affected by RCW 74.39A.270, 74.39A.300, 41.56.028, ~~((and))~~ 41.56.029, and 41.56.510.

AMENDATORY SECTION (Amending WSR 90-06-072, filed 3/7/90, effective 4/7/90)

**WAC 391-25-150 Amendment and withdrawal.** ~~((Any))~~ A petition may be amended or withdrawn by the petitioner at any time prior to the issuance of a notice of election and the mailing of the ballots, or under such conditions as the executive director or the commission may impose.

NEW SECTION

**WAC 391-25-229 Special provision—Symphony musicians.** In addition to the information required by WAC 391-25-220, an employer of symphony musicians who are seeking to be represented for the purposes of collective bargaining must, upon request, provide the executive director with financial information that establishes the agency's jurisdiction over the employer.

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

**WAC 391-25-299 Special provision—Private sector and other employees.** Except for symphony musicians who exercise collective bargaining rights under chapter 49.39 RCW, the commission lacks authority to proceed in representation disputes under chapter 49.08 RCW absent the agreement of all parties. WAC 391-25-290 through 391-25-390 shall not be applicable to proceedings under chapter 49.08 RCW, except for hearings and issues submitted by stipulation of all parties to the proceeding.

NEW SECTION

**WAC 391-25-399 Special provision—Symphony musicians.** WAC 391-25-391 and the practices and precedents applicable under chapter 41.56 RCW shall also be applicable to symphony musicians who exercise collective bargaining rights under chapter 49.39 RCW.

AMENDATORY SECTION (Amending WSR 08-17-119, filed 8/20/08, effective 9/20/08)

**WAC 391-25-440 Election for inclusion of unrepresented employees.** (1) Where only one employee organization seeks to add an employee or group of previously unrepresented employees to an appropriate bargaining unit, which it already represents, under this chapter and the relevant statute, the organization may petition for a self-determination election to ascertain the employees' desire to be included in its existing bargaining unit.

(2) In order to invoke the self-determination election procedures under this section, the petitioning organization shall:

(a) Demonstrate that it has the support of at least thirty percent or more of the unrepresented employees to be included in the appropriate existing unit;

(b) Affirmatively state on the petition filed under WAC 391-25-070 that it requests a self-determination election to add the petitioned-for employees into an existing appropriate bargaining unit;

(c) Provide an accurate description of the existing bargaining unit that the petitioning organization seeks to merge the unrepresented employees into; and

(d) Demonstrate that the resulting bargaining unit is appropriate under the appropriate statute.

(i) If the propriety of the proposed resulting unit is disputed, the executive director or his or her designee shall make a determination following a hearing.

(ii) If the propriety of the proposed resulting unit is stipulated, the executive director or his or her designee shall determine whether the proposed unit is, on its face, an appropriate unit under the applicable statute.

(3) Any notice to employees required to be posted under WAC 391-25-140 shall affirmatively indicate that the petitioning organization seeks to merge the petitioned-for employees into an existing bargaining unit of employees represented by that organization through a self-determination election.

(4) If the resulting bargaining unit is determined to be appropriate, the agency shall conduct a self-determination election under this chapter for the petitioned-for employees to ascertain whether they desire to become part of the existing unit.

(a) Only the petitioned-for employees are eligible to vote in a self-determination election.

(b) Cross-check procedures under WAC 391-25-391 and 391-25-396 are applicable to this section.

(c) In such an election, if a majority of the eligible employees voting in the election vote for inclusion, they are deemed to have indicated their desire both to become part of the existing unit and to be represented by the petitioner. If a majority of voters vote against inclusion in the existing unit, they are considered as indicating a desire to remain unrepresented.

(5)(a) Should another organization seek to intervene in a proceeding filed under this section, it must demonstrate both:

(i) That it has support from at least thirty percent of the employees subject to the original petition; and

(ii) That if the same group of employees were added to an appropriate unit that it already represents under this chapter and the appropriate statute, the resulting unit would be an appropriate unit.

(b) If either (a)(i) or (ii) of this subsection are not established, the request for intervention will be denied, and the petition processed in accordance with this section.

(c) In the event the requirement of both (a)(i) and (ii) of this subsection are met, the election shall be for representation by the petitioner as part of the larger unit proposed by the petitioner, or representation by the intervener as part of the larger unit proposed by the intervener, or no representation.

(6) In the event a petition for representation of the same employees sought to be added to a larger unit by the petitioner under this section is filed pursuant to WAC 391-25-

010 or 391-25-012, along with the requisite thirty percent showing of interest, and the petitioned-for unit is appropriate under the applicable statute, then the self-determination election petition filed under this section shall be dismissed. If either of those requirements is not met, the petition filed pursuant to WAC 391-25-010 or 391-25-012 will be dismissed and the original self-determination election petition processed in accordance with this section.

(7) The existence of a valid collective bargaining agreement does not preclude the processing of a petition filed under this rule.

(8) Petitions filed under this rule do not raise a question concerning representation for the existing appropriate bargaining unit.

(a) The issuance of a certification for the existing appropriate bargaining within the previous twelve months will not bar the filing and processing of a petition under this rule.

(b) The alteration of the composition of the existing appropriate bargaining unit as a result of an amended certification issued under this rule does not affect the certification bar of the existing unit; nor does it create a new certification bar as described in WAC 391-25-030(2).

AMENDATORY SECTION (Amending WSR 01-14-009, filed 6/22/01, effective 8/1/01)

**WAC 391-25-450 Disclaimers.** Prior to the issuance of a notice of election and the mailing of the ballots, an organization may disclaim a bargaining unit and have its name removed from the ballot by written notice filed and served as required by WAC 391-08-120. ((If a disclaimer is filed after the issuance of a notice of election.)) The organization filing ((the)) a disclaimer shall not seek to be certified in the bargaining unit, or subdivision thereof, for a period of at least ((one year)) six months.

AMENDATORY SECTION (Amending WSR 90-06-072, filed 3/7/90, effective 4/7/90)

**WAC 391-25-531 Special provision—Public employees.** Where there are three or more choices on the ballot, representation elections for employees covered by chapter 41.56 RCW shall be decided by a majority of those eligible to vote in the election.

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

**WAC 391-35-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule, numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sec-

tions numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

**WAC 391-45-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to RCW 41.06.340 and/or chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (Private sector and other employees) are set forth in WAC sections num-

bered nine digits greater than the general rule on that subject matter.

AMENDATORY SECTION (Amending WSR 08-04-058, filed 1/31/08, effective 4/1/08)

**WAC 391-45-310 Examiner decisions.** (1)(a) A party seeking review by the commission of an interlocutory decision of the executive director, his or her designee, or a hearing examiner must file a motion for discretionary review with the commission and a copy with the executive director, his or her designee, or a hearing examiner, within seven days after the decision is issued.

(b) Discretionary review of an interlocutory decision issued by the executive director, his or her designee, or a hearing examiner will be accepted by the commission only:

(i) If the executive director, his or her designee, or a hearing examiner has committed an obvious error which would render further proceedings useless; or

(ii) If the executive director, his or her designee, or a hearing examiner has committed probable error and the decision of the interlocutory decision of the hearing examiner substantially alters the status quo or substantially limits the freedom of a party to act; or

(iii) If the executive director, his or her designee, or a hearing examiner has so far departed from the accepted and usual course of administrative proceedings as to call for the exercise of ~~((registry))~~ revisory jurisdiction by the commission.

(c) The commission will not accept motions for discretionary review of:

(i) The scope of proceedings issued in a preliminary ruling by the executive director or his or her designee or a hearing examiner under WAC 391-45-110; or

(ii) Application of the six-month statute of limitations;

(iii) Any evidentiary ruling by a hearing examiner during the course of an administrative hearing.

(d) A motion for discretionary review under this rule, and any response, should not exceed fifteen pages double-spaced, excluding appendices.

(e) Denial of discretionary review of a decision does not affect the right of a party to obtain later review of the executive director's, his or her designee's, or hearing examiner's decision or the issues pertaining to that decision.

(2) After the close of the hearing and the filing of all briefs, the examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under WAC 391-45-350, a decision issued under this section shall be the final order of the agency, with the same force and effect as if issued by the commission.

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

**WAC 391-55-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that spe-

cial provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sections numbered one digit greater than the general rule on that subject matter.

Special provisions relating to bargaining units eligible for interest arbitration are set forth beginning with WAC 391-55-200.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter. Special provisions relating to fact finding are set forth beginning with WAC 391-55-300.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.

#### NEW SECTION

**WAC 391-55-0715 Special provision—Public employees.** In cases involving mediation conducted under RCW 28A.657.050, the mediator shall ensure that:

(1) Representatives from all bargaining units affected by the state board of education required action plan are provided an opportunity to participate in a single mediation with the employer; and

(2) The scope of the mediation is limited to those terms and conditions of employment that are impacted by the state board of education required action plan.

#### NEW SECTION

**WAC 391-55-072 Special provision—Educational employees.** In cases involving mediation conducted under RCW 28A.657.050, the mediator shall ensure that:

(1) Representatives from all bargaining units affected by the action plan are provided an opportunity to participate in a single mediation with the employer; and

(2) The scope of the mediation is limited to those terms and conditions of employment that are impacted by the state board of education required action plan.

AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

**WAC 391-55-110 Dispute resolution panel—Membership.** The commission shall establish and maintain a panel of individuals qualified to serve in an impartial capacity in the resolution of labor disputes.

(1) Applicants for membership on the dispute resolution panel shall demonstrate minimum background and experience equal to the minimum qualifications for the working level positions on the professional staff of the commission:

(a) A master's degree in labor relations, personnel management or industrial relations or closely allied field, or a law degree; and

(b) At least three years of experience in collective bargaining with major work assignments in negotiations, contract administration or related work as a union or management representative, mediator, arbitrator or educator in the above areas; and

(c) Additional qualifying experience shall substitute, year for year, for education.

(2) Applicants for membership on the dispute resolution panel shall furnish letters of recommendation supporting their acceptability as an impartial from:

(a) At least one management representative; and

(b) At least one union representative; and

(c) At least one impartial arbitrator, mediator or labor relations administrative agency official.

(d) All letters of recommendation submitted under subsections (a) through (c) of this section shall be signed and dated within two years of the date of the application for membership. Additionally, any letter of recommendation submitted in support of an applicant should be on official letterhead or contain recent contact information for the author of the letter of recommendation.

(3) Applicants who desire to be referred for interest arbitration proceedings shall demonstrate their experience as an impartial in at least five grievance arbitration, fact finding or interest arbitration cases, by submitting copies of arbitration awards which can be provided, upon request, to parties selecting an interest arbitrator.

(4) Applicants for membership on the dispute resolution panel shall submit, in the form specified by the executive director, information on their background, qualifications, professional certifications and affiliations. All information submitted shall be subject to administrative verification.

(5) Applications of persons appearing to be qualified for membership on the panel shall be forwarded to the commission for consideration and action. The commission shall review each application submitted to it, together with the supporting letters of recommendation, and shall notify the applicant of the determination made.

(6) Whenever it appears to the commission that an applicant or member of the dispute resolution panel has failed or refused to comply with applicable statutes, rules and ethical standards, the application shall be rejected or the member shall be removed from the dispute resolution panel. A member shall also be removed from the panel if he or she has:

(a) Ceased accepting appointments as an impartial in the resolution of labor disputes; or

(b) Failed to keep the agency informed of their current address and telephone number.

(7) Persons referred from the dispute resolution panel shall be impartial. No active member of the dispute resolution panel may serve in any capacity as an advocate or representative for either labor or management in labor relations matters. Any member of the panel who intends to engage in advocacy work shall notify the executive director and shall be placed on inactive status while their advocacy work continues.

(8) Upon appointment to the dispute resolution panel by the commission, the panel member may be placed under contract pursuant to chapter 39.29 RCW. Only persons listed on the panel shall be compensated by the agency under a personal service contract.

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

**WAC 391-55-200 Interest arbitration—Certification of issues.** (1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(7), 41.56.475, 41.56.492, 41.56.496, 41.56.510, or 74.39A.270 (2)(c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion that his or her further efforts will not result in an agreement, the following procedure shall be implemented:

(a) The mediator shall notify the parties of his or her intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and serve on the other party a written list (including article and section references to parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (2)(b), or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration shall be initiated, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

NEW SECTION

**WAC 391-55-201 Special provision—Certification of issues—Public employees.** (1) If a dispute involving negotiations conducted under RCW 28A.657.050 and WAC 391-55-0715 have not been settled by May 15th of the year in which mediation occurred, the executive director shall certify any disputed issues for a decision by the superior court in the county where the school district is located.

(2) The executive director shall review the lists of issues submitted by the parties, including any list of issues submitted under WAC 391-55-072.

(a) The executive director shall exclude from certification any issues that have not been mediated.

(b) The executive director shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" to the superior court.

NEW SECTION

**WAC 391-55-202 Special provision—Certification of issues—Educational employees.** (1) If a dispute involving negotiations conducted under RCW 28A.657.050 and WAC 391-55-072 have not been settled by May 15th of the year in which mediation occurred, the executive director shall certify any disputed issues for a decision by the superior court in the county where the school district is located.

(2) The executive director shall review the lists of issues submitted by the parties, including any list of issues submitted under WAC 391-55-0715.

(a) The executive director shall exclude from certification any issues that have not been mediated.

(b) The executive director shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" to the superior court.

NEW SECTION

**WAC 391-55-302 Special provision—Educational employees.** WAC 391-55-310 through 391-55-355 are not applicable to negotiations between educational employees and employers conducted under RCW 28A.657.050.

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

**WAC 391-65-002 Sequence and numbering of rules—Special provisions.** This chapter of the Washington Administrative Code is designed to regulate proceedings under a number of different chapters of the Revised Code of Washington. General rules are set forth in sections with numbers divisible by ten. Where a deviation from the general rule is required for conformity with a particular statute, that special provision is set forth in a separate rule numbered as follows:

(1) Special provisions relating to chapter 41.56 RCW (Public Employees' Collective Bargaining Act) and to chapter 53.18 RCW (port employees) are set forth in WAC sec-

tions numbered one digit greater than the general rule on that subject matter.

(2) Special provisions relating to chapter 41.59 RCW (Educational Employment Relations Act) are set forth in WAC sections numbered two digits greater than the general rule on that subject matter.

(3) Special provisions relating to chapter 28B.52 RCW (Collective Bargaining—Academic Personnel in Community Colleges) are set forth in WAC sections numbered three digits greater than the general rule on that subject matter.

(4) Special provisions relating to chapter 41.80 RCW (Personnel System Reform Act) are set forth in WAC sections numbered six digits greater than the general rule on that subject matter.

(5) Special provisions relating to chapter 41.76 RCW (faculty at public four-year institutions of higher education) are set forth in WAC sections numbered seven digits greater than the general rule on that subject matter.

(6) Special provisions relating to chapter 49.39 RCW (symphony musicians) and chapter 49.08 RCW (private sector and other employees) are set forth in WAC sections numbered nine digits greater than the general rule on that subject matter.