WSR 11-01-001
PERMANENT RULES
BUILDING CODE COUNCIL

[Filed December 1, 2010, 12:05 p.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Purpose: To correct an error filed in WSR 10-24-059; certain information provided in WAC 51-54-1000 did not correctly reflect changes adopted by the council. The version below corrects this error.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54-1000.

Statutory Authority for Adoption: Chapter 19.27 RCW.

Adopted under notice filed as WSR 10-16-043 on July 26, 2010, and WSR 10-16-092 on July 30, 2010.

Changes Other than Editing from Proposed to Adopted Version: Deletes a subsection of WAC 51-54-1000 from the permanent rule (subsection 1008.1.2 Door Swing).

A final cost-benefit analysis is available by contacting Tim Nogler, P.O. Box 41011, Olympia, WA 98504-1011, phone (360) 902-7296, fax (360) 586-0493, e-mail tim.nogler @ga.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 15, 2010.

John C. Cochran
Chair

AMENDATORY SECTION (Amending WSR 09-04-027, filed 1/28/09, effective 7/1/10)

WAC 51-54-1000 Chapter 10—Means of egress.

((~~**1008.1.2 Door swing.** Egress doors shall be side-hinged swinging.~~

~~EXCEPTIONS:~~
~~1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.~~
~~2. Group I-3 Occupancies used as a place of detention.~~
~~3. Critical or intensive care patient rooms within suites of health care facilities.~~
~~4. Doors within or serving a single dwelling unit in Groups R-2 and R-3 as applicable in Section 101.2.~~
~~5. In other than Group H Occupancies, revolving doors complying with Section 1008.1.3.1.~~
~~6. In other than Group H Occupancies, horizontal sliding doors complying with Section 1008.1.3.3 are permitted in a means of egress.~~
~~7. Power-operated doors in accordance with Section 1008.1.3.2.~~
~~8. Doors serving a bathroom within an individual sleeping unit in Group R-1.~~
~~9. In other than Group H Occupancies, manually operated horizontal sliding doors are permitted in a means of egress from spaces with an occupant load of 10 or less.~~

~~Doors shall swing in the direction of egress travel where serving an occupant load of 50 or more persons or a Group H Occupancy.~~

~~The opening force for interior side-swinging doors without closers shall not exceed a 5-pound (22 N) force. For other side-swinging, sliding, and folding doors, the door latch shall release when subjected to a 15-pound (67 N) force. The door shall be set in motion when subjected to a 30-pound (133 N) force. The door shall swing to a full-open position when subjected to a 15-pound (67 N) force. Forces shall be applied to the latch side.~~

~~**1008.1.8.3 Locks and latches.** Locks and latches shall be permitted to prevent operation of doors where any of the following exists:~~

~~1. Places of detention or restraint.~~

~~2. In buildings in occupancy Group A having an occupant load of 300 or less, Group B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:~~

~~2.1 The locking device is readily distinguishable as locked.~~

~~2.2 A readily visible durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and~~

~~2.3 The use of the key-operated locking device is revocable by the fire code official for due cause.~~

~~3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no doorknob or surface mounted hardware.~~

~~4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt or security chain, provided such devices are openable from the inside without the use of a key or tool.~~

~~5. Approved, listed locks without delayed egress shall be permitted in nursing homes or portions of nursing homes, and boarding homes licensed by the state of Washington, provided that:~~

~~5.1 The clinical needs of one or more patients require specialized security measures for their safety;~~

~~5.2 The doors unlock upon actuation of the automatic sprinkler systems or automatic fire detection system;~~

~~5.3 The doors unlock upon loss of electrical power controlling the lock or lock mechanism;~~

~~5.4 The lock shall be capable of being deactivated by a signal from a switch located in an approved location; and~~

~~5.5 There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.~~

1009.12 Stairways in individual dwelling units. Stairs or ladders within an individual dwelling unit used for access to areas of 200 square feet (18.6 m²) or less, and not containing the primary bathroom or kitchen, are exempt from the requirements of Section 1009.

1014.2.2 Group I-2. Habitable rooms or suites in Group I-2 Occupancies shall have an exit access door leading directly to a corridor.

EXCEPTION: Rooms with exit doors opening directly to the outside at ground level.

1014.2.2.1 Definition. For the purposes of this section, a suite is defined as a cluster of rooms or spaces sharing common circulation. Partitions within a suite are not required to have smoke or fire-resistance-rated construction unless required by another section of this Code.

1014.2.3 Suites in patient sleeping areas. Patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites if one of the following conditions is met:

1. The intervening room within the suite is not used as an exit access for more than eight patient beds.

2. The arrangement of the suite allows for direct and constant visual supervision by nursing personnel.

1014.2.3.1 Area. Suites of sleeping rooms shall not exceed 5,000 square feet (465 m²).

1014.2.3.2 Exit access. Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m²) shall have at least two exit access doors remotely located from each other.

1014.2.3.3 Travel distance. The travel distance between any point in a suite of sleeping rooms and an exit access door of that suite shall not exceed 100 feet (30,480 mm).

1014.2.4 Suites in areas other than patient sleeping areas. Areas other than patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites.

1014.2.4.1 Area. Suites of rooms, other than patient rooms, shall not exceed 10,000 square feet (929 m²).

1014.2.4.2 Exit access. Any rooms or suite of rooms, other than patient sleeping rooms, of more than 2,500 square feet (232 m²) shall have at least two exit access doors remotely located from each other.

1014.2.4.3 One intervening room. For rooms other than patient sleeping rooms, suites of rooms are permitted to have one intervening room if the travel distance within the suite is not greater than 100 feet (30,480 mm).

1014.2.4.4 Two intervening rooms. For rooms other than patient sleeping rooms located within a suite, exit access travel from within the suite shall be permitted through two intervening rooms where the travel distance to the exit access door is not greater than 50 feet (15,240 mm).

1014.2.5 Travel distance. The travel distance between any point in a Group I-2 Occupancy patient room and an exit access door in that room shall not exceed 50 feet (15,240 mm).

1014.2.6 Separation. Suites in Group I-2 Occupancies shall be separated from other portions of the building by a smoke partition complying with Section 710.

1015.1 Exits or exit access doorways from spaces. Two exits or exit access doorways from any space shall be provided where one of the following conditions exists:

1. The occupant load of the space exceeds one of the values in Table 1015.1.

EXCEPTION: One means of egress is permitted within and from dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

2. The common path of egress travel exceeds one of the limitations of Section 1014.3.

3. Where required by Sections 1015.3, 1015.4, 1015.5, 1015.6 or 1015.6.1.

EXCEPTION: Group I-2 Occupancies shall comply with Section 1014.2.2.

TABLE 1015.1
SPACES WITH ONE MEANS OF EGRESS

OCCUPANCY	MAXIMUM OCCUPANT LOAD
A, B, E[a], F, M, U	49
H-1, H-2, H-3	3
H-4, H-5, I-1, I-3, I-4, R	10
S	29

a. Day care maximum occupant load is 10.

1015.1.1 Three or more exits or exit access doorways. Three exits or exit access doorways shall be provided from any space with an occupant load of 501-1,000. Four exits or exit access doorways shall be provided from any space with an occupant load greater than 1,000.

1019.1 Exits from stories. All spaces within each story shall have access to the minimum number of exits as specified in Table 1019.1 based on the occupant load of the story, except as modified in Section 1019.2. For the purposes of this chapter, occupied roofs shall be provided with exits as required for stories. The required number of exits from any story, including basements, shall be maintained until arrival at grade or the public way.

EXCEPTION: One means of egress is permitted within and from dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

TABLE 1019.1
MINIMUM NUMBER OF EXITS FOR OCCUPANT LOAD

OCCUPANT LOAD (persons per story)	MINIMUM NUMBER OF EXITS (per story)
1-500	2
501-1,000	3
More than 1,000	4

1019.2 Buildings with one exit. Only one exit shall be required in buildings as specified below:

~~1. Buildings meeting the limitations of Table 1019.2, provided the building has not more than one level below the first story above grade plane.~~

~~2. Buildings of Group R-3 Occupancy.~~

~~3. Single-level buildings with occupied spaces at the level of exit discharge provided each space complies with Section 1015.1 as a space with one exit or exit access doorway.~~

~~**TABLE 1019.2**~~
~~**BUILDINGS WITH ONE EXIT**~~

~~OCCUPANCY~~	~~MAXIMUM HEIGHT OF BUILDING ABOVE GRADE PLANE~~	~~MAXIMUM OCCUPANTS (OR DWELLING UNITS) PER FLOOR AND TRAVEL DISTANCE~~
~~A, B[d], E[c], F, M, U~~	~~1 Story~~	~~49 occupants and 75 feet travel distance~~
~~H-2, H-3~~	~~1 Story~~	~~3 occupants and 25 feet travel distance~~
~~H-4, H-5, I, R~~	~~1 Story~~	~~10 occupants and 75 feet travel distance~~
~~S[a]~~	~~1 Story~~	~~29 occupants and 100 feet travel distance~~
~~B[b], F, M, S[a]~~	~~2 Stories~~	~~30 occupants and 75 feet travel distance~~
~~R-2~~	~~2 Stories[c]~~	~~4 dwelling units and 50 feet travel distance~~

~~For SI: 1 foot = 304.8 mm.~~

~~a. For the required number of exits for open parking structures, see Section 1019.1.1.~~

~~b. For the required number of exits for air traffic control towers, see Section 412.1.~~

~~c. Buildings classified as Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and provided with emergency escape and rescue openings in accordance with Section 1026 shall have a maximum height of three stories above grade plane.~~

~~d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 with an occupancy in Group B shall have a maximum travel distance of 100 feet.~~

~~e. Day care maximum occupant load is 10.~~))

SECTION 1005 EGRESS WIDTH

1005.1 Minimum required egress width. The means of egress width shall not be less than required by this section. The total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.3 inches (7.62 mm) per occupant for stairways and by 0.2 inches (5.08 mm) per occupant for other egress components. The width shall not be less than specified elsewhere in this code. Multiple means of egress shall be sized such that the loss of any one means of egress shall not reduce the available capacity to less than 50 percent of the required capacity. The maximum capacity required from any story of a building shall be maintained to the termination of the means of egress.

EXCEPTIONS:
1. Means of egress complying with Section 1028.
2. For other than H and I-2 occupancies, the total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.2 inches (5.1 mm) per occupant for stairways and by 0.15 inches (3.8 mm) per occupant for other egress components in buildings that are provided with sprinkler protection in accordance with 903.3.1.1 or 903.3.1.2 and an emergency voice/alarm communication system in accordance with 907.5.2.2.

SECTION 1007 ACCESSIBLE MEANS OF EGRESS

1007.1 Accessible means of egress required. Accessible means of egress shall comply with this section. Accessible spaces shall be provided with not less than one accessible means of egress. Where more than one means of egress are required by Section 1015.1 or 1021.1 from any accessible space, each accessible portion of the space shall be served by not less than two accessible means of egress.

EXCEPTIONS:
1. Accessible means of egress are not required in alterations to existing buildings.
2. One accessible means of egress is required from an accessible mezzanine level in accordance with Section 1007.3, 1007.4 or 1007.5.
3. In assembly areas with sloped or stepped aisles, one accessible means of egress is permitted where the common path of travel is accessible and meets the requirements in Section 1028.8.
4. In parking garages, accessible means of egress are not required to serve parking areas that do not contain accessible parking spaces.

1007.8 Two-way communication. A two-way communication system shall be provided at the elevator landing on each accessible floor that is one or more stories above or below the story of exit discharge complying with Sections 1007.8.1 and 1007.8.2.

EXCEPTIONS:
1. Two-way communication systems are not required at the elevator landing where two-way communication is provided within the areas of refuge in accordance with Section 1007.6.3.
2. Two-way communication systems are not required on floors provided with exit ramps conforming to provisions of Section 1010.

1007.8.1 System requirements. Two-way communication systems shall provide communication between each required location and the fire command center or a central control point location approved by the fire department. Where the central control point is not constantly attended, a two-way communication system shall have a timed automatic telephone dial-out capability to a monitoring location. The two-way communication system shall include both audible and visible signals. The two-way communication system shall have a battery backup or an approved alternate source of power that is capable of 90 minutes use upon failure of the normal power source.

SECTION 1008 DOORS, GATES AND TURNSTILES

1008.1.9.3 Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.

2. In buildings in occupancy Group A having an occupant load of 300 or less, Groups B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

2.1 The locking device is readily distinguishable as locked;

2.2 A readily visible sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and

2.3 The use of the key-operated locking device is revocable by the building official for due cause.

3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no doorknob or surface-mounted hardware.

4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt, or security chain, provided such devices are openable from the inside without the use of a key or a tool.

5. Fire doors after the minimum elevated temperature has disabled the unlatching mechanism in accordance with listed fire door test procedures.

6. Approved, listed locks without delayed egress shall be permitted in Group R-2 boarding homes licensed by Washington state, provided that:

6.1. The clinical needs of one or more patients require specialized security measures for their safety.

6.2. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

6.3. The doors unlock upon loss of electrical power controlling the lock or lock mechanism.

6.4. The lock shall be capable of being deactivated by a signal from a switch located in an approved location.

6.5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

1008.1.9.6 Special locking arrangements in Group I-2. Approved locks shall be permitted in a Group I-2 Occupancy where the clinical needs of persons receiving care require such locking. Locks shall be permitted in such occupancies where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors unlock in accordance with Items 1 through 6 below.

1. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

2. The doors unlock upon loss of power controlling the lock or lock mechanism.

3. The door locks shall have the capability of being unlocked by a signal from the fire command center, a nursing station or other approved location.

4. The procedures for the operation(s) of the unlocking system shall be described and approved as part of the emergency planning and preparedness required by Chapter 4 of the International Fire Code.

5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

6. Emergency lighting shall be provided at the door.

EXCEPTION: Items 1, 2, 3, and 5 shall not apply to doors to areas where persons which because of clinical needs require restraint or containment as part of the function of a Group I-2 mental hospital provided that all clinical staff shall have the keys, codes or other means necessary to operate the locking devices.

SECTION 1009 STAIRWAYS

1009.15 Stairways in individual dwelling units. Stairs or ladders within an individual dwelling unit used for access to areas of 200 square feet (18.6 m^2) or less, and not containing the primary bathroom or kitchen, are exempt from the requirements of Section 1009.

SECTION 1010 RAMPS

1010.1 Scope. The provisions of this section shall apply to ramps used as a component of a means of egress.

EXCEPTIONS:
1. Other than ramps that are part of the accessible routes providing access in accordance with Sections 1108.2 through 1108.2.4 and 1108.2.6, ramped aisles within assembly rooms or spaces shall conform with the provisions in Section 1028.11.
2. Curb ramps shall comply with ICC A117.1.
3. Vehicle ramps in parking garages for pedestrian exit access shall not be required to comply with Sections 1010.3 through 1010.9 when they are not an accessible route serving accessible parking spaces or other required accessible elements.
4. In a parking garage where one accessible means of egress serving accessible parking spaces or other accessible elements is provided, a second accessible means of egress serving that area may include a vehicle ramp that does not comply with Sections 1010.4 through 1010.8.

SECTION 1014 EXIT ACCESS

1014.2.2 Group I-2. General. Habitable spaces and suites in Group I-2 Occupancies are permitted to comply with this Section 1014.2.2.

1014.2.2.1 Exit access doors. Habitable spaces and suites in Group I-2 Occupancies shall have an exit access door leading directly to a corridor.

EXCEPTION: Rooms with exit doors opening directly to the outside at ground level.

1014.2.2.2 Exit access through suites. Exit access from areas not classified as a Group I-2 Occupancy suite shall not pass through a suite. In a suite required to have more than one exit, one exit access may pass through an adjacent suite if all other requirements of Section 1014.2 are satisfied.

1014.2.2.3 Separation. Suites in Group I-2 Occupancies shall be separated from other portions of the building by a smoke partition complying with Section 711. Partitions within suites are not required to be smoke-resistant or fire-resistance-rated unless required by another section of this Code.

1014.2.2.4 Suites containing patient sleeping areas. Patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites with one intervening room if one of the following conditions is met:

1. The intervening room within the suite is not used as an exit access for more than eight patient beds.

2. The arrangement of the suite allows for direct and constant visual supervision by nursing personnel.

1014.2.2.4.1 Area. Suites of sleeping rooms shall not exceed 5,000 square feet (465 m^2).

1014.2.2.4.2 Exit access. Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m^2) shall have at least two exit access doors located in accordance with Section 1015.2.

1014.2.2.4.3 Travel distance. The travel distance between any point in a suite of sleeping rooms and an exit access door of that suite shall not exceed 100 feet (30,480 mm). The travel distance between any point in a Group I-2 Occupancy patient sleeping room and an exit access door in that room shall not exceed 50 feet (15,240 mm).

1014.2.2.5 Suites not containing patient sleeping areas. Areas other than patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites that comply with Sections 1014.2.2.5.1 through 1014.2.2.5.4.

1014.2.2.5.1 Area. Suites of rooms, other than patient sleeping rooms, shall not exceed 10,000 square feet (929 m^2).

1014.2.2.5.2 Exit access. Any room or suite of rooms, other than patient sleeping rooms, of more than 2,500 square feet (232 m^2) shall have at least two exit access doors located in accordance with Section 1015.2.

1014.2.2.5.3 One intervening room. For rooms other than patient sleeping rooms, suites of rooms are permitted to have one intervening room if the travel distance within the suite to the exit access door is not greater than 100 feet (30,480 mm).

1014.2.2.5.4 Two intervening rooms. For rooms other than patient sleeping rooms located within a suite, exit access travel from within the suite shall be permitted through two intervening rooms where the travel distance to the exit access door is not greater than 50 feet (15,240 mm).

SECTION 1018 CORRIDORS

1018.5 Air movement in corridors. Corridors shall not serve as supply, return, exhaust, relief or ventilation air ducts.

EXCEPTIONS:

1. Use of a corridor as a source of makeup air for exhaust systems in rooms that open directly onto such corridors, including toilet rooms, bathrooms, dressing rooms, smoking lounges and janitor closets, shall be permitted, provided that each such corridor is directly supplied with outdoor air at a rate greater than the rate of makeup air taken from the corridor.
2. Where located within a dwelling unit, the use of corridors for conveying return air shall not be prohibited.
3. Where located within tenant spaces of one thousand square feet (93 m^2) or less in area, utilization of corridors for conveying return air is permitted.
4. Incidental air movement from pressurized rooms within health care facilities, provided that a corridor is not the primary source of supply or return to the room.
5. Where such air is part of an engineered smoke control system.
6. Air supplied to corridors serving residential occupancies shall not be considered as providing ventilation air to the dwelling units subject to the following:
6.1 The air supplied to the corridor is one hundred percent outside air; and
6.2 The units served by the corridor have conforming ventilation air independent of the air supplied to the corridor; and
6.3 For other than high-rise buildings, the supply fan will automatically shut off upon activation of corridor smoke detectors which shall be spaced at no more than thirty feet (9,144 mm) on center along the corridor; or
6.4 For high-rise buildings, corridor smoke detector activation will close required smoke/fire dampers at the supply inlet to the corridor at the floor receiving the alarm.

1018.6 Corridor continuity. Fire-resistance-rated corridors shall be continuous from the point of entry to an exit, and shall not be interrupted by intervening rooms.

EXCEPTIONS:

1. Foyers, lobbies or reception rooms constructed as required for corridors shall not be construed as intervening rooms.
2. In Group R-2 boarding homes and residential treatment facilities licensed by Washington state, seating areas shall be allowed to be open to the corridor provided:
2.1 The seating area is constructed as required for the corridor;
2.2 The floor is separated into at least two compartments complying with Section 407.4;
2.3 Each individual seating area does not exceed 150 square feet, excluding the corridor width;
2.4 The combined total space of seating areas per compartment does not exceed 300 square feet, excluding the corridor width;
2.5 Combustible furnishings located within the seating area shall be in accordance with the International Fire Code Section 805; and
2.6 Emergency means of egress lighting is provided as required by Section 1006 to illuminate the area.

WSR 11-01-003
PERMANENT RULES
WINE COMMISSION

[Filed December 2, 2010, 7:18 a.m., effective January 2, 2011]

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

Purpose: The rule identifies those authorized to make expenditures for the Washington wine commission on promotional hosting and the objectives for those expenditures.

Statutory Authority for Adoption: RCW 15.04.200, chapters 15.88, 34.05 RCW.

Adopted under notice filed as WSR 10-20-119 on October 5, 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.

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Date Adopted: December 2, 2010.

Robin Pollard
Executive Director

NEW SECTION

WAC 16-575-040 Rules for implementation of promotional hosting by the Washington wine commission. RCW 15.04.200 provides that agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents, or commissioners. "Promotional hosting" means the hosting of individuals or groups of individuals at meetings, meals, events, tours, or other gatherings for the purpose of agricultural development, trade promotion, cultivating trade relations, or in the aid of the marketing, advertising, or sale of Washington state wine or wine grapes.

The rules governing promotional hosting expenditures for the Washington wine commission shall be as follows:

(1) Budget approval. Commission expenditures for agricultural development, trade promotion, and promotional hosting shall be pursuant to specific budget items in the commission's annual budget as approved by the commission and the director.

(2) Officials and agents authorized to make expenditures. The following officials and agents are authorized to make expenditures for agricultural development, trade promotion, and promotional hosting in accordance with the provisions of these rules:

(a) Commissioners;

(b) Executive director;

(c) Commission staff, as authorized in writing by the executive director.

Individual commissioners shall make promotional hosting expenditures, or seek reimbursements for those expenditures, only in those instances where the expenditures have been approved by the commission.

(3) Payment and reimbursement. All payments and reimbursements shall be identified and supported by vouchers to which receipts are attached. Voucher forms will be supplied by the commission, and shall require the following information:

(a) Name and position (if appropriate) of each person hosted, provided that in a group of ten or more persons, then only the name of the group hosted shall be required;

(b) General purpose of the hosting;

(c) Date of hosting;

(d) Location of the hosting;

(e) To whom payment was or will be made;

(f) Signature of person seeking payment or reimbursement.

(4) The chair of the commission, executive director, and commission staff, as authorized in writing by the executive director, are authorized to approve direct payment or reimbursements submitted in accordance with these rules: Provided, That the chair, executive director, and commission staff are not authorized to approve their own vouchers.

(5) The following persons may be hosted when it is reasonably believed such hosting will promote agricultural development, promote trade, cultivate trade relations, or aid in the marketing, advertising, or sale of Washington state wine or wine grapes: Provided, That such hosting shall not violate federal or state conflict of interest laws:

(a) Individuals from private business, associations, commissions, and accompanying staff and interpreter(s);

(b) Members of the media and accompanying staff and interpreter(s);

(c) Foreign government officials and accompanying staff and interpreter(s);

(d) Federal, state, or local officials: Provided, That lodging, meals, and transportation will not be provided when such officials may obtain full reimbursement for these expenses from their government employer;

(e) The general public, at meetings or gatherings open to the general public;

(f) Commissioners and employees of the commission when their attendance at meetings, meals, and gatherings at which the persons described in (a) through (e) of this subsection are being hosted, will promote agricultural development, promote trade, cultivate trade relations, or aid in the marketing, advertising, or sale of Washington state wine or wine grapes;

(g) Spouses, partners, or significant others of the persons listed in (a), (b), (c), (d), and (f) of this subsection when attendance of such spouse, partner, or significant other is customary and expected or will serve to promote agricultural development, promote trade, cultivate trade relations, or aid in the marketing, advertising, or sale of Washington state wine or wine grapes.

WSR 11-01-037
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed December 6, 2010, 1:11 p.m., effective January 6, 2011]

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

Purpose: Update chapter 308-107 WAC, Ignition interlock driver's license (IIDL) rules, to conform to changes made in the 2010 legislative session.

Citation of Existing Rules Affected by this Order: Amending WAC 308-107-010, 308-107-020, 308-107-050, and 308-107-070.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.385.

Adopted under notice filed as WSR 10-21-096 on October 20, 2010.

Changes Other than Editing from Proposed to Adopted Version: The department is withholding the proposed

amendments to WAC 308-107-040 and 308-107-070(2) due to Executive Order 10-06.

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 4, Repealed 0.

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

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

Date Adopted: December 6, 2010.

Walt Fahrer

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-24-059, filed 11/26/08)

WAC 308-107-010 Definitions. As used in this chapter, unless the context requires otherwise, the term:

(1) "Authorized service provider" or "ignition interlock vendor" means a person, company, or contractor to a company meeting all qualifications set out in chapter 204-50 WAC and approved and trained by a manufacturer to service, install, monitor, calibrate, and provide information on manufacturer's devices currently certified for use in Washington state.

(2) "Breath or blood alcohol concentration (BAC)" means the amount of alcohol in a person's blood or breath determined by chemical analysis, which shall be measured by grams of alcohol per:

(a) One hundred milliliters of blood; or

(b) Two hundred ten liters of breath.

(3) "Commission" means the Washington traffic safety commission.

(4) "Device" means an ignition interlock device as defined under RCW 46.04.215 and WAC 204-50-030.

(5) "Department" means the department of licensing.

(6) "Event log report" means a compilation of the data downloaded from a device under the provisions of WAC 204-50-080.

(7) "Functioning device" means a device that is properly installed, maintained, and meets the requirements specified in chapter 204-50 WAC.

(8) "Manufacturer" or "ignition interlock company" means the person, company, or corporation who produces an ignition interlock device, and certifies to the Washington state patrol that an authorized service provider is qualified to service, install, monitor, calibrate, and provide information on devices.

AMENDATORY SECTION (Amending WSR 09-19-086, filed 9/18/09)

WAC 308-107-020 Ignition interlock driver's license—Application—License term. (1) A person applying for an ignition interlock driver's license must meet the requirements of RCW 46.20.380 and 46.20.385, and submit the following:

(a) A nonrefundable application fee of one hundred dollars;

(b) An application on a form provided by the department;

(c) Satisfactory proof of financial responsibility under chapter 46.29 RCW; and

(d) Proof from an installer approved by the department that a functioning ignition interlock device has been installed.

If all the requirements for an ignition interlock driver's license are not met within thirty days after the application has been accepted by the department, the license will be denied.

(2) ((~~In the event of an alcohol-related deferred prosecution, the ignition interlock driver's license requirement shall extend for a two-year term from the date the deferral was granted.~~

~~(3)~~)) Reapplication for the ignition interlock driver's license may be required whenever a new administrative suspension or revocation is imposed.

AMENDATORY SECTION (Amending WSR 08-24-059, filed 11/26/08)

WAC 308-107-050 Ignition interlock device revolving account. (1) As required under RCW 46.20.385 (6)(a), unless determined by the department to be indigent under WAC 308-107-060, a person who is applying for or has been issued an ignition interlock driver's license must pay an additional fee of twenty dollars per month or partial month for which the ignition interlock driver's license is valid to the manufacturer of the device(s) installed in the motor vehicle(s) driven by the person. Payment may be made directly to the manufacturer, or through the authorized service provider, depending upon the manufacturer's business practices.

(2) A manufacturer providing devices to persons who are applying for or have been issued an ignition interlock driver's license, either directly or through an authorized service provider, must enter into an agreement with the department for the collection and transmittal of the twenty dollar monthly fee required under RCW 46.20.385 (6)(a). Any agreement made under this section must include appropriate reporting requirements and accounting practices to permit the department to audit the handling of the fees that must be remitted to the department. The department may terminate an agreement with a manufacturer upon a showing of good cause. Good cause ((~~shall~~)) may include, but not be limited to((~~,~~)):

(a) Violation of the agreement((~~,~~));

(b) Violation of the laws and rules governing the installation of devices((~~, and~~)); or

(c) Violation of this chapter.

An agreement between the department and a manufacturer will be valid for no more than ((~~two~~)) four years, provided that the department may extend an agreement for up to an additional ((~~two~~)) four years at its discretion.

(3) As provided by RCW 46.20.385 (6)(b), the department shall deposit the proceeds of the twenty-dollar fee into the ignition interlock device revolving account.

AMENDATORY SECTION (Amending WSR 08-24-059, filed 11/26/08)

WAC 308-107-070 Ignition interlock driver's license—Hearing. (1) Upon notification by the department that an ignition interlock driver's license has been denied ((~~or cancelled~~)) under RCW 46.20.385 the aggrieved person may request a formal hearing to contest the department's decision. No hearing need be granted where the department is prevented from issuing an ignition interlock driver's license by rule or law. A request for a hearing must be submitted in writing.

(2) Upon notification by the department that a determination has been made under WAC 308-107-060 that a person is not indigent, the person may request a formal hearing to contest the department's determination.

(3) Within ten days of receipt of a request for a hearing, the department shall notify the requester in writing of the time and location of the hearing. The hearing may be held either in the person's county of residence or in any county adjoining the person's county of residence, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means.

(4) The hearing shall be conducted by a hearing officer appointed by the director. The director may delegate the authority to render final decisions to the hearing officer.

(5) For a hearing requested under subsection (1) of this section, the scope of the hearing shall be limited to the following issues:

(a) Whether the person had previously been issued a valid Washington state driver's license, or is in the military, stationed in Washington state, and has a valid home state license;

(b) Whether the suspension or revocation giving rise to the application for an ignition interlock driver's license is one for which an ignition interlock driver's license may be issued under RCW 46.20.385;

(c) ((~~Whether the person has committed an offense of vehicular assault or vehicular homicide within the seven years immediately preceding the conviction or incident for which the ignition interlock driver's license is requested or, if there are multiple suspensions or revocations in effect, within the seven years immediately preceding the latest conviction or incident for which the ignition interlock driver's license is requested;~~

~~(d)~~)) Whether a device was installed and functioning; and

((~~(e)~~)) (d) Whether the person is currently suspended or revoked for any reason for which an ignition interlock driver's license is not available.

(6) The person's official driving record provided to the hearing officer by the department shall be prima facie evidence of the issues contained in subsection (5) of this section unless the person presents clear and convincing evidence to the contrary.

(7) For a hearing requested under subsection (2) of this section, the person shall have the burden of proving by a preponderance of the evidence that the department's determination is in error.

(8) In the event that the person fails to appear for the hearing, no hearing shall be held. The case shall be remanded to the department and the department's previous decision denying ((~~or cancelling~~)) the ignition interlock driver's license, or decision determining that the person is not indigent, shall be affirmed.

WSR 11-01-041
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 10-313—Filed December 6, 2010, 3:32 p.m., effective January 6, 2011]

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

Purpose: Amend WAC 232-28-294 Multiple season big game permits.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-294.

Statutory Authority for Adoption: RCW 77.12.047, 77.32.450, 77.32.370.

Adopted under notice filed as WSR 10-21-097 on October 20, 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 0, Repealed 0.

Date Adopted: December 4, 2010.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 09-53, filed 4/15/09, effective 5/16/09)

WAC 232-28-294 Multiple season big game permits. The commission may, by rule, offer permits for hunters to hunt deer or elk during more than one general season.

An annual drawing will be conducted by the department for multiple season permits.

(1) Multiple season big game hunting permit applications:

(a) To apply for multiple season big game hunting season permits for deer or elk, applicants must purchase a permit application.

(b) No refunds or exchanges for applications will be made for persons applying for multiple season big game hunting season permits after the ((~~drawing~~)) application has been ((~~held~~)) submitted.

(c) An applicant may purchase only one application for a multiple season big game hunting season permit for each species.

(d) Permits will be randomly drawn by computer selection.

(e) Incomplete applications will not be accepted.

(f) The department will establish application and drawing dates.

(2) The bag limit for this permit is one deer or elk.

(3) Multiple season permits:

(a) Hunters who are drawn will be required to purchase their original deer or elk license, corresponding to their permit, and the multiple season big game permit.

(b) Successful applicants will be allowed to purchase their permit ((~~on a first come, first served basis until the quota has been reached. Once the quota is reached, permit sales will be curtailed~~)) at any time prior to September 1st.

(c) The permits are not transferable.

(4) Permit holders are required to follow all rules and restrictions for general season hunters within the game management unit or area hunted.

Number of Permits	Dates	Game Management Units (GMUs)	Legal Animal	Eligible Hunters
Multiple Season Deer Permits				
((~~2000~~)) 4000	Sept. 1 - December 31 within ((~~established~~)) general seasons and regulations ((~~for deer~~)) established by the commission for deer	Statewide in those GMUs with general seasons for archery, muzzleloader, or modern firearm hunters	Any legal deer consistent with the game management unit or area restrictions	Any licensed deer hunter
50	Sept. 1 - December 31 within ((~~established~~)) general seasons and regulations ((~~for deer~~)) established by the commission for deer	Statewide in those GMUs with general seasons for archery, muzzleloader, or modern firearm hunters	Any legal deer consistent with the game management unit or area restrictions	Hunter education instructors((~~,~~)) meeting qualifications and selection criteria established by the department
Multiple Season Elk Permits				
((~~600~~)) 850	Sept. 1 - December 31 within ((~~established~~)) general seasons and regulations ((~~for elk~~)) established by the commission for elk	Statewide in those GMUs with general seasons for archery, muzzleloader, or modern firearm hunters	Any legal elk consistent with the game management unit or area restrictions	Any licensed elk hunter
25	Sept. 1 - December 31 within ((~~established~~)) general seasons and regulations ((~~for elk~~)) established by the commission for elk	Statewide in those GMUs with general seasons for archery, muzzleloader, or modern firearm hunters	Any legal elk consistent with the game management unit or area restrictions	Hunter education instructors((~~,~~)) meeting qualifications and selection criteria established by the department

WSR 11-01-042

PERMANENT RULES

SECRETARY OF STATE

[Filed December 7, 2010, 9:40 a.m., effective January 7, 2011]

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

Purpose: To repeal chapter 434-110 WAC which was combined with chapter 434-112 WAC, in a previous filing. This action also removes conflicting, incorrect, and duplicate rules. This change reduces confusion for businesses that are filing corporate documents.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-110-010, 434-110-030, 434-110-050, 434-110-100, 434-110-120, 434-110-130, and 434-110-140.

Statutory Authority for Adoption: Titles 23B, 24, 25 RCW, chapter 43.07 RCW.

Adopted under notice filed as WSR 10-20-129 on October 5, 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 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 7.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 7; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 7, 2010.

Steve Excell
Assistant Secretary of State

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 434-110-010	Purpose.
WAC 434-110-030	Office hours.
WAC 434-110-050	Mail-in service.
WAC 434-110-100	Registered office address—Requirements.
WAC 434-110-120	Initial and annual reports—Form of content.
WAC 434-110-130	Annual reports—Due date for all nonprofit corporations.
WAC 434-110-140	Inactive profit domestic corporations—Proof.

WSR 11-01-047
PERMANENT RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed December 7, 2010, 9:58 a.m., effective January 7, 2011]

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

Purpose: Chapter 181-78A WAC requires multiple edits as a result of legislation during the 2010 session. Under SB 6696, colleges and universities are no longer the only institutions that may provide teacher preparation programs. These expedited rule changes are technical since the same standards apply to nonhigher education preparation programs and the changes are required by statute. Amends WAC 181-78A-005, 181-78A-007, 181-78A-105, 181-78A-130, 181-78A-136, 181-78A-205, 181-78A-207, 181-78A-209, 181-78A-210, 181-78A-220, 181-78A-272, 181-78A-307, and 181-78A-400. Repeals WAC 181-78A-151 and 181-78A-200.

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

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 10-20-002 on September 22, 2010.

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 13, Repealed 2.

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: December 7, 2010.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-005 Purpose. In order to support the successful implementation of Washington's ongoing public school reform and improvement policies, the professional educator standards board is establishing a performance-based preparation system for educators. The intent of the performance-based preparation system is to ensure that educators can demonstrate a positive impact on student learning as the foundation for preparing students to participate effectively in a diverse and democratic society. This chapter establishes the procedures, standards, and criteria to be used in the development and approval of preparation programs offered by ((~~institutions of higher education~~)) approved preparation programs in Washington state leading to teacher, administrator, and educational staff associates certification. These rules establish a performance-based preparation system for educators that supports the Improvement of Student Achievement Act of 1993 (ESHB 1209) which will enable educators to implement the Washington state student learning goals and essential academic learning requirements.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-78A-007 Minimum state standards. All state standards prescribed in this chapter for the approval of professional preparation programs are minimal standards for state approval. Where allowed ((~~colleges or universities~~))

programs may and are encouraged to develop program standards which exceed the minimums herein prescribed.

AMENDATORY SECTION (Amending WSR 10-08-015, filed 3/29/10, effective 4/29/10)

WAC 181-78A-105 Procedures for initial approval of an educator preparation program. Each ((~~college or university~~)) institution or organization desiring to establish a preparation program shall comply with the following:

(1) Advise the professional educator standards board of its desire to establish a preparation program.

(2) Develop with the assistance of the professional education advisory board a written preproposal plan which addresses all preproposal components adopted and published by the professional educator standards board and submit such plan to the designated official of the professional educator standards board for review and comment.

(3) Submit such plan to the professional educator standards board. The ((~~college or university~~)) institution or organization may be granted approval for full proposal development or denied approval.

(a) If approved, the ((~~college or university~~)) institution or organization shall comply with the following:

(i) Establish the appropriate professional education advisory board pursuant to WAC 181-78A-205;

(ii) Develop with assistance of the professional education advisory board a written plan which includes the following:

(A) Timelines for the implementation of all applicable program approval standards during the first year of the program;

(B) The criteria that the program will use to assess, in multiple ways over time, its candidates' knowledge and skills including evidence related to positive impact on student learning (WAC 181-78A-205(4));

(C) How the professional education advisory board was involved in program development, including a letter of support; and

(D) Letters of support from partnership districts and/or other agencies.

(iii) Present the written plan to the professional educator standards board.

(A) The program may be conditionally approved in a specific location(s) for a period of up to twenty-seven months following the beginning of instruction. The institution or organization shall notify the professional educator standards board when instruction has begun. If not approved, the ((~~college or university~~)) institution or organization may resubmit its revised plan or request a contested hearing via an appeal team appointed by the professional educator standards board.

(B) Prior to the expiration of approval, staff of the professional educator standards board shall conduct a site visit and/or other forms of documentation to determine if the program is in full compliance with the 1997 program approval standards; provided that a college/university with an approved residency principal program which adds an approved program administrator program is not required to have a site visit of the program administrator program until the next regularly scheduled site visit of that institution.

(b) If denied, the ((~~college or university~~)) institution or organization may resubmit its plan based upon the suggestions of the professional educator standards board.

(4) Programs shall be approved for a specific location(s) identified in the written plan presented to the professional educator standards board. Institutions and organizations seeking to expand an existing program to a new location shall submit a request to the professional educator standards board which contains the following:

(a) A description of the location and facilities;

(b) Verification that no complaints have been filed against the program in its current location(s);

(c) A summary of the findings from the most recent site review, including how weaknesses, if any, have been addressed;

(d) A statement that supports need for the program;

(e) Cost to the students;

(f) Mode(s) of the program delivery; and

(g) Letters of support from program partners. The length of time for which the program approval status shall be granted shall coincide with the length of time for which the program in its current location(s) last received approval. The program review cycle for programs at all locations shall be the same.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-78A-130 Approval of preparation program offered by an out-of-state ((~~college or university~~)) institution or organization within the state applicable to certification. No out-of-state ((~~college or university~~)) institution or organization shall offer a program of courses within Washington state for purposes of Washington state certification without meeting all program approval requirements set forth in this chapter and those set forth in the Degree Authorization Act, chapter 28B.85 RCW where applicable.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-136 Responsibilities of deans, directors, or other designated administrators. Each ((~~college or university~~)) institution or organization operating an approved preparation program shall require the dean, director, or other designee of the administrative unit required by WAC 181-78A-261(2) to coordinate the following ((~~college or university~~)) responsibilities:

(1) Formation of professional education advisory boards.

(2) Management of operations and resources for each preparation program.

(3) Filing of affidavits and reports required by this chapter and chapter 181-79A WAC.

(4) Dissemination of information relative to initial and continuing certification procedures and requirements.

(5) The application process for certification.

(6) Establishing and administering a process to counsel and assist applicants in the processing of applications for certificates and endorsements thereon: Provided, That colleges and universities need not provide such assistance to appli-

cants who have completed less than 15 quarter (10 semester) hours of coursework at the respective college or university.

AMENDATORY SECTION (Amending WSR 09-20-110, filed 10/7/09, effective 11/7/09)

WAC 181-78A-205 Required professional education advisory board. ((~~Colleges and universities~~)) Institutions and organizations seeking approval by the professional educator standards board as an approved preparation program, and in order to maintain such approval status, shall establish a professional education advisory board (PEAB) in accordance with the following:

(1) The program areas for which ((~~a college or university~~)) an institution or organization may seek approval and maintain an approved preparation program are:

(a) Teacher.

(b) Administrator.

(c) Educational staff associate (ESA), school counselor.

(d) Educational staff associate, school psychologist.

(e) Educational staff associate, school social worker.

(2) ((~~A college or university~~)) An institution or organization may combine educational staff associate professional education advisory boards as long as one-half or more of the voting members are appointed by the associations representing the ESA roles involved and are divided equally among those roles.

(3) ((~~A college or university~~)) An institution or organization may have separate administrator professional education advisory boards for each administrator role as long as one-half or more of the voting members are appointed by the association representing the administrator role involved: Provided, That each administrator PEAB shall include at least one member appointed by the Association of Washington School Principals (AWSP), one appointed by the Washington Association of School Administrators (WASA), and one appointed by the Washington Federation of Independent Schools (WFIS).

(4) The failure of a designated organization, as specified in WAC 181-78A-209, to make appointments to the designated board, or to make such appointments in a timely manner, shall not cause the preparation program to lose its approval status.

AMENDATORY SECTION (Amending WSR 09-20-110, filed 10/7/09, effective 11/7/09)

WAC 181-78A-207 Qualification to be appointed to ((~~a college or university~~)) an institution or organization professional education advisory board. (1) Professional education advisory boards may authorize the appointment of additional representatives from other school districts or other public and private agencies as long as one-half or more of the members of the professional education advisory board consist of representatives who meet the qualifications of this subsection and who are from the role for which the professional education advisory board has responsibility.

(2) If any professional education advisory board receives a written request from other school districts or other public or private agencies for representation on such professional education advisory board, the current members of such professional education advisory board shall vote on such request at the next regular meeting of such board: Provided, That a ((~~college or university~~)) program may elect to add private school representatives to a professional education advisory board without adding to the representation from the role for which the professional education advisory board has responsibility if the professional education advisory board authorizes such action by a majority vote.

AMENDATORY SECTION (Amending WSR 09-20-110, filed 10/7/09, effective 11/7/09)

WAC 181-78A-209 ((~~College or university~~)) Professional education advisory boards—Membership. The professional education advisory boards shall at a minimum consist of the following:

(1) **TEACHER.**

(a) One-half or more of the voting members shall be classroom teachers. All, but one, will be appointed by the president of the Washington Education Association. The remaining teacher shall be employed in a state-approved private school and appointed by the Washington Federation of Independent Schools.

(b) At least one principal appointed by the president of the Association of Washington School Principals.

(c) At least one school administrator appointed by the Washington Association of School Administrators.

(d) At least one educational staff associate (school counselor, school psychologist, school social worker, school nurse, school occupational therapist, school physical therapist, or school speech language pathologist or audiologist) appointed by the president of the individual's professional association.

(e) At least one ((~~college or university~~)) institution or organization representative who may serve in a voting or nonvoting role.

(f) At ((~~colleges or universities~~)) programs where career and technical education programs are offered, one career and technical education director or career and technical education teacher, with expertise in one of the approved career and technical education programs at the ((~~college or university~~)) institution or organization, appointed by the Washington Association of Vocational Administrators in cooperation with the ((~~college or university~~)) institution or organization.

(2) **ADMINISTRATOR.**

(a) One-half or more of the voting members shall be administrators. One-half of these administrators shall be appointed by the president of the Washington Association of School Administrators. The remaining administrators shall be appointed by the president of the Association of Washington School Principals except one who shall be employed in an approved private school and appointed by the Washington Federation of Independent Schools.

(b) At least one or more classroom teachers appointed by the president of the Washington Education Association.

(c) At least one educational staff associate (school counselor, school psychologist, school social worker, school nurse, school occupational therapist, school physical therapist, or school speech language pathologist or audiologist)

appointed by the president of the individual's professional association.

(d) At least one ((~~college or university~~)) institution or organization representative who may serve in a voting or nonvoting role.

(3) **SCHOOL COUNSELOR.**

(a) At least one-half of the voting members shall be school counselors appointed by the president of the Washington School Counselors Association.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one ((~~college or university~~)) institution or organization representative who may serve in a voting or nonvoting role.

(4) **SCHOOL PSYCHOLOGIST.**

(a) At least one-half of the voting members shall be school psychologists appointed by the president of the Washington State Association of School Psychologists.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one ((~~college or university~~)) institution or organization representative who may serve in a voting or nonvoting role.

(5) **SCHOOL SOCIAL WORKER.**

(a) At least one-half of the voting members shall be school social workers appointed by the president of the Washington Association of School Social Workers.

(b) At least one teacher appointed by the president of the Washington Education Association.

(c) At least one principal appointed by the Association of Washington School Principals.

(d) At least one administrator appointed by the Washington Association of School Administrators.

(e) At least one ((~~college or university~~)) institution or organization representative who may serve in a voting or nonvoting role.

(6) **MEMBERSHIP APPOINTMENTS.** Applicable to all professional association appointments, if the professional association does not respond to the ((~~university's~~)) program's request for an appointment of a representative within sixty days of the receipt of the request, a ((~~university~~)) program may appoint the representative of its choice in the role for which an appointment is being sought. If the ((~~university~~)) program makes an appointment, it must notify the appropriate professional association within one week that the appointment has been made. If an association is unable to appoint a representative due to the geographic restriction of possible candidates, the PEAB will appoint an alternate to represent that association with their consent.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-78A-210 Joint professional education advisory board. Any two or more ((~~colleges~~)) institutions and/or ((~~universities~~)) organizations may agree to have the same professional education advisory board for their respective preparation program at such ((~~college or university~~)) institution or organization.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-220 Program approval standards for approved preparation programs. The program approval standards for approved preparation programs for teachers, administrators, and educational staff associates are as follows:

(1) **Professional education advisory boards:** The ((~~college or university~~)) institution or organization, in compliance with the provisions of WAC 181-78A-250, has established and maintained a professional education advisory board to participate in and cooperate with the ((~~college or university~~)) institution or organization on decisions related to the development, implementation, and revision of each preparation program—i.e., teacher, administrator, school counselor, school psychologist, and school social workers.

(2) **Accountability:** Each ((~~college or university~~)) institution or organization, in compliance with the provision of WAC 181-78A-255, has established a performance-based preparation program.

(3) **Unit governance and resources:** A separate ((~~college,~~)) school, department, or other administrative unit within the ((~~college or university~~)) institution or organization, in compliance with the provision of WAC 181-78A-261, is responsible for providing the resources needed to develop and maintain quality preparation programs.

(4) **Program design:** Each ((~~college or university~~)) institution or organization, in compliance with the provision of WAC 181-78A-264, is responsible for establishing a collaboratively developed approved preparation program that is based on a conceptual framework, current research and best practice that reflects the state's learning goals and essential academic learning requirements.

(5) **Knowledge and skills:** Each ((~~college or university~~)) institution or organization, in compliance with the provision of WAC 181-78A-270, has established policies requiring all candidates for certification to know and demonstrate the content, pedagogical, and professional knowledge and skills required for the particular certificate and areas of endorsement, which reflect the state's learning goals and essential academic learning requirements, and are necessary to help all students learn.

AMENDATORY SECTION (Amending WSR 07-04-002, filed 1/24/07, effective 2/24/07)

WAC 181-78A-272 Approval of residency certificate preparation programs for principals/program administrators, school psychologists, school counselors and school social workers. ((~~(1) Colleges/universities offering~~

~~residency certificate programs for principals/program administrators shall have these programs approved by the professional educator standards board by August 31, 2004. Colleges/universities offering residency certificate programs for school psychologists, school counselors, and school social workers shall have these programs approved by the professional educator standards board by August 31, 2005.~~

~~(2)~~)) Principal alternative route pilot program. ((~~Colleges and universities~~)) Institutions and organizations with approved residency certificate programs will be invited to participate.

(((~~a~~))) (1) The program shall be comprised of the following:

(((~~i~~))) (a) Two summer academies plus a year long mentored internship;

(((~~ii~~))) (b) Assignment of the intern to a full-time second level administrative position for one school year while enrolled in the alternative route program;

(((~~iii~~))) (c) A comprehensive assessment of the intern's performance by school officials and program faculty and a recommendation that the person be issued a residency principal certificate upon successful completion of the program.

(((~~b~~))) (2) The pilot will be implemented for one academic year beginning June 2007.

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-78A-307 Course work/internship waiver. The ((~~college or university~~)) institution or organization may waive required course work and/or waive or reduce in length the required internship for any candidate, based on an individual review if the ((~~college or university~~)) institution or organization determines that previous course work, work experiences, or alternative learning experiences have or will provide the candidate knowledge and skills to be otherwise gained from the required course work or internship.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-78A-400 Internship standards—State-funded administrator interns. (1) Principal, superintendent, and program administrator interns participating in the state-funded administrator internship program shall meet the following standards:

(a) Enrollment in a principal, superintendent or program administrator preparation program approved by the professional educator standards board, pursuant to WAC 181-78A-105.

(b) Completion of all administrator field experience, knowledge and skill certification requirements, pursuant to chapters 181-78A and 181-79A WAC.

(c) Completion of up to forty-five internship days for school employees selected for a principal, superintendent or program administrator certification internship when K-12 students and/or staff are present; provided the internship shall meet the following criteria:

(i) The intern, mentor administrator and college/university intern supervisor shall cooperatively plan the internship, provided that the school district is encouraged to include teachers and other individuals in the internship planning process.

(ii) Superintendent interns shall demonstrate competency in the standards identified as needing development by the mentor administrator, college/university supervisor, and the intern, pursuant to WAC 181-78A-270(3). Principal and program administrator interns admitted to programs before September 1, 2004, shall demonstrate competency in the performance domains identified as needing development by the mentor administrator, college/university, and the intern, pursuant to either WAC 181-78A-270 (2)(a) or (b) pursuant to WAC 181-78A-100. Principal and program administrator interns admitted to programs on or after September 1, 2004, shall demonstrate competency in the standards identified as needing development by the mentor administrator, college/university supervisor, and the intern, pursuant to WAC 181-78A-270 (2)(b).

(iii) The activities to be undertaken to implement the internship shall be outlined in writing.

(d) The intern, ((~~college/university~~)) institution/organization supervisor and mentor administrator shall determine whether the intern days and the selected performance domains or competencies were demonstrated.

(2) Participating ((~~colleges/universities,~~)) institution/organization and school districts may establish additional internship standards and shall report such standards to the professional educator standards board.

(3) Each ((~~college/university~~)) institution/organization shall submit a summary report of the internships to the professional educator standards board.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 181-78A-151	Preparation of superintendents.
WAC 181-78A-200	Basic skills.

WSR 11-01-057
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 7, 2010, 3:46 p.m., effective January 7, 2011]

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

Purpose: This rule change will eliminate the need for special elections whenever a vacancy occurs from any cause whatsoever, among members elected by public school boards of directors and private school elected members on the state board of education. This will allow an individual appointed by the remaining state board of education public school board members and private school advisory committee to fill the unexpired term and then the appointed person could decide to run or not once the term expires.

Citation of Existing Rules Affected by this Order: Amending WAC 392-109-120.

Statutory Authority for Adoption: Chapter 28A.305 RCW.

Adopted under notice filed as WSR 10-19-047 on October 27 [September 13], 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 27, 2010.

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-120 Vacancies and ((~~special elections~~)) appointments. (1) Whenever a vacancy among members elected by public school boards of directors occurs on the state board of education, from any cause whatsoever, it shall be the duty of the remaining members representing public school boards of directors to fill such vacancy by appointment, subject to full board approval. The appointment shall be consistent with the appropriate regional position being vacated((~~, and~~)). The person so appointed shall continue in office until ((~~his or her successor has been specially elected~~)) the term expires. The appointed person has the option to step down or run for reelection consistent with RCW 28A.305.021 at the time the term expires.

(2) Whenever a vacancy of the approved private school elected member occurs on the state board of education, from any cause whatsoever, it shall be the duty of the private school advisory committee to fill such vacancy ((~~consistent with qualifications in RCW 28A.305.102 and~~)) by appointment consistent with RCW 28A.305.011. The person so appointed shall continue in office until ((~~his or her successor has been specially elected.~~

~~(3) When a vacancy occurs, the superintendent of public instruction shall include such a position in the call of election the following year; a special election to be held in the same manner as other elections provided for in this chapter, at which election a successor shall be elected to hold office for the unexpired term of the member whose position was vacated.~~

~~(4) Special elections provided for in RCW 28A.305.102 shall be conducted in accordance with this chapter~~)) the term expires. The appointed person has the option to step down or run for election consistent with RCW 28A.305.021 at the time the term expires.

WSR 11-01-069
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed December 10, 2010, 9:51 a.m., effective January 10, 2011]

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

Purpose: Pursuant to L&I rule (WAC 296-23-317), to be eligible to perform independent medical examinations (IMEs), providers must hold board certification. This rule applies to all medical, osteopathic, and podiatric physicians, as well as dentists.

General dentists are licensed, but not board certified. There is not a board offering certification for general dentistry. The rule is being changed to allow licensed dentists to remain on the approved examiner list.

Reasons supporting proposal: This rule responds to stakeholder concerns that general dentists be allowed to perform IMEs to expedite the resolution of workers' compensation claims.

Citation of Existing Rules Affected by this Order: Amending WAC 296-23-317 and 296-23-337.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.112, 51.32.114, 51.32.055, 51.36.060, 51.36.070.

Adopted under notice filed as WSR 10-18-079 on August 31, 2010.

Changes Other than Editing from Proposed to Adopted Version: The rule changes are proposed to clarify the procedure and correct the scope of the current rules. Therefore, the department is exempt from conducting a small business economic impact statement under RCW 19.85.025 referencing RCW 34.05.310 (4)(d) respectively.

[Contact] Anita L. Austin, P.O. Box 44322, Olympia, WA 98504-4322, phone (360) 902-6825, fax (360) 902-4292, e-mail Sund235@LNI.wa.gov.

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: December 10, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 09-24-085, filed 11/30/09, effective 3/1/10)

WAC 296-23-317 What qualifications must a provider meet to become an approved independent medical examination (IME) provider and be assigned an IME provider number? ((~~In order~~)) To ensure that independent medical examinations are of the highest quality and propriety, examiners((~~,~~)) and firms((~~,~~)) (partnerships, corporations, or other legal entities) that derive income from independent medical exams must apply and meet the following requirements for department approval:

(1) ((~~For all~~)) Examiners ((~~applicants~~)) must:

(a) Have a current, unrestricted, and active professional license to practice in this state or in any other jurisdiction where the applicant would conduct an examination.

(i) Unrestricted is defined as not currently having a temporary or permanent probation, suspension, revocation or any other limitation of any kind placed on a professional license or privilege to practice by any court, board, or administrative agency in any jurisdiction.

(ii) If any restriction once existed against the applicant's license, the department must automatically deny the application if the applicant's record has not been clear for at least five years. If after five years the record has been cleared, then the department exclusively reserves the right to grant or deny the application based on the nature of the prior restriction.

(iii) Exception to the five-year limit may be granted for any restriction or offense deemed by the department to be of a minor or clerical nature.

(iv) If an applicant has any pending action on their privilege to practice by any court, board, or administrative agency, or by any health care institution such as a hospital in any jurisdiction, the department exclusively reserves the right to grant or deny the application based upon the nature of the action.

(b) Have no final action by the department to suspend or revoke a previously assigned provider number as a treating provider or independent medical ((~~provider~~)) examiner.

(i) If the applicant has any criminal history, history of a violation of statutes or rules by any administrative agency, court or board in any jurisdiction, the department must automatically deny the application if such history exists within five years of the application. If such history exists but is older than five years, then the department exclusively reserves the right to grant or deny the application based upon the nature of the history.

(ii) Exception to the five-year limit may be granted for any restriction or offense deemed by the department to be of a minor or clerical nature.

(c) ((~~If an applicant has any~~)) Have no pending action in any jurisdiction((~~,~~)). The department will not process the application until the matter has been resolved.

(d) ((~~Applicants must~~)) Attest that all information submitted on the application is true and accurate and must sign under penalty of perjury.

(e) ((~~Other requirements:~~

(~~i) Providers must~~)) Comply with all federal ((~~and~~)), state, and local laws, regulations, and other requirements with regard to business operations, including specific requirements for the provision of medical services.

(((~~ii) Providers must~~)) (f) Adhere to the independent medical examination standards of conduct, and all other laws, rules, and policies. These include but are not limited to the following:

- Provider application agreement;
- *Medical Aid Rules and Fee Schedules* (MARFS);
- Payment policies;
- *Medical Examiners' Handbook*.

(((~~iii) Providers must~~)) (g) Review and sign the IME report and attest to its accuracy.

(((~~iv) Providers must achieve a passing score on the *Medical Examiners' Handbook* test prior to initial application and every three years thereafter.~~

(~~v) Providers must meet one of the following two criteria:~~

(~~A) Providers must document a minimum of three hundred eighty-four hours of patient related services (excluding independent medical examinations) per calendar year; or~~

(~~B) Providers may complete a minimum of twelve continuing medical education (CME) units of department-approved education and training per year or a total of thirty-six CMEs in three years. This training would focus on improving the provider's skills in completing IMEs or staying current in the provider's specialty. Topics include but are not limited to:~~

- ~~Report writing;~~
- ~~Providing testimony;~~
- ~~Standards of practice;~~
- ~~Medical ethics;~~
- ~~Patient care;~~
- ~~Impairment rating.~~

(~~vi) Providers must~~)) (h) Conduct examinations in a facility designed as a professional office suitable for medical, dental, podiatric, chiropractic or psychiatric examinations where the primary use of the site is for medical services. The site must not be residential, commercial, educational or retail in nature. The site must be clean, sanitary and provide adequate access, climate control, light, space, and equipment. The site must provide for the comfort and safety of the worker and for the privacy necessary to conduct examinations and discuss medical issues. Providers must have a private disrobing area and adequate provision of examination gowns.

(((~~vii) Providers must~~)) (i) Have telephone answering capability during regular business hours, Monday through Friday, in order to facilitate scheduling of independent examinations and means for workers to contact the provider regarding their scheduled examination. If the office is open on Saturday, telephone access must be available.

(((~~viii) Providers will~~)) (j) Agree that either they or the department may inactivate their IME provider number or numbers. If an IME provider number has been inactivated and the ((~~provider~~)) examiner wishes to resume performing IMEs, they must reapply and meet current requirements.

(((~~ix) Providers must~~)) (k) Agree to keep the department informed and updated with any new information regarding changes or actions that may affect their status as an IME examiner.

(((~~x) In order to maintain an active IME provider number, providers must~~)) (l) Reapply every three years in order to

maintain an active IME provider number. ((~~For the current IME providers to be in compliance with the new rule, they must reapply in the first year. Each provider will be notified by mail sixty days prior to their application due date.~~))

(i) In the first year of the new rule, effective March 1, 2010, all examiners must reapply.

(ii) Examiners will be notified by mail sixty days prior to their renewal application due date.

(m) Achieve a passing score on the *Medical Examiners' Handbook* test prior to initial application and every three years thereafter.

(2) ((~~Additional examiner~~)) Requirements for specific examiner specialties:

(a) Medical physician and surgeon (MD) or osteopathic physician and surgeon (DO) applicants must: Hold a current board certification in their specialty; or have completed a residency and ((~~be~~)) become board certified within five years of ((~~obtaining board certification~~)) completing the residency.

(i) Residency must be in a program approved by the American College of Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA) or equivalent approving body.

(ii) Fellowships will not be accepted in lieu of accredited residency training though they may be used to determine examination specialty qualifications.

(b) Podiatric physician (DPM) applicants must: Have a current board certification in their specialty or have completed a residency and become board certified within five years of completing the residency.

(i) Complete a residency program approved by the American Podiatric Medical Association (APMA).

(ii) Fellowships will not be accepted in lieu of accredited residency training though they may be used to determine examination specialty qualifications.

(c) Chiropractic physician (DC) applicants must be a chiropractic consultant for the department for at least two years and attend the department's chiropractic IME seminar in the twenty-four months before initial application.

(((~~(c) Podiatric physician (DPM) applicants must: Have a current board certification in his or her specialty; or have completed a residency and be within five years of obtaining board certification.~~

~~(i) Complete a residency program approved by the American Podiatric Medical Association (APMA).~~

~~(ii) Fellowships will not be accepted in lieu of accredited residency training though they may be used to determine examination specialty qualifications.~~))

(d) Dentist (doctor of dental science/doctor of dental medicine) (DDS/DMD) applicants must have at least two years of clinical experience after licensure, and:

(i) Hold current certification in their specialty; or

(ii) Have ((~~two~~)) one year((~~s~~)) of ((~~postdoctoral clinical experience, and complete at least one year of~~)) postdoctoral training in a program approved by the American Dental Association Commission on Dental Accreditation (CODA); or

(iii) Be a general dentist.

(3) All examiners must meet one of the following two criteria:

(a) Document a minimum of three hundred eighty-four hours of patient related services (excluding independent medical examinations) per calendar year; or

(b) Complete a minimum of twelve continuing medical education (CME) units of department-approved education and training per year or a total of thirty-six CMEs in three years. This training would focus on improving the provider's skills in completing IMEs or staying current in the provider's specialty. Topics include, but are not limited to:

- Report writing;
- Providing testimony;
- Standards of practice;
- Medical ethics;
- Patient care;
- Impairment rating.

Only ((~~providers~~)) examiners in the following practice specialties who meet all other requirements may perform IMEs:

	Doctors licensed to practice:				
Examiner is:	**Medicine & surgery**	**Osteopathic medicine & surgery**	**Podiatric medicine & surgery**	**Chiropractic**	**Dentistry**
In Washington	Yes	Yes	Yes	Yes	Yes
Outside Washington	Yes	Yes	Yes	No	Yes

(((~~(3) All other provider applicants~~)) (4) IME firms (partnerships, corporations or other legal entities) that derive income from independent medical examinations must:

(a) Have a medical director. The medical director must be a licensed medical physician and surgeon (MD) or an osteopathic physician and surgeon (DO), be responsible to provide oversight on the quality of independent medical examinations, impairment ratings and reports, and be available to resolve any issue that department staff may bring to the medical director's attention.

(b) Have no previous business or audit action by the department to suspend or revoke an assigned provider number.

(c) Have no previous action taken by any federal or state agency for any business previously owned or operated.

(d) Facilitate scheduling of providers both for the examination and for any required follow up, including amendments to the report, subsequent reports, or for any testimony required. If the provider fails to participate in scheduling or otherwise causes an undue expense to the department, whether intentionally or not, the department may fine the provider up to five hundred dollars per violation.

(e) Attest that all information submitted on the application is true and accurate and must sign under penalty of perjury.

(f) Comply with all federal ((~~and~~)), state, and local laws, regulations, and other requirements with regard to business

operations including specific requirements for any business operations for the provision of medical services.

(((~~(b) Attest that all information submitted on the application is true and accurate and must sign under penalty of perjury.~~

~~(c) Have no previous action taken by any federal or state agency for any business previously owned or operated.~~

~~(d) Have no previous business or audit action by the department to suspend or revoke an assigned provider number.~~

~~(e) In order to be assigned an IME provider number, an IME firm, partnership, corporation or other legal entity, have a medical director. The medical director must be a licensed provider, be responsible to provide oversight on the quality of independent medical examinations, impairment ratings and reports, and be available to resolve any issue that department staff may bring to the medical director's attention.~~

~~(f) Conduct~~)) (g) Adhere to the independent medical examination standards of conduct, and all other laws, rules, and policies. These include, but are not limited to, the following:

• Provider application agreement;

• *Medical Aid Rules and Fee Schedules* (MARFS);

• Payment policies;

• *Medical Examiners' Handbook*.

(h) Ensure that examinations are conducted in a facility designed as a professional office suitable for medical, dental, podiatric, chiropractic or psychiatric examinations where the primary use of the site is for medical services. The site must not be residential, commercial, educational or retail in nature. The site must be clean, sanitary and provide adequate access, climate control, light, space, and equipment. The site must provide for the comfort and safety of the worker and for the privacy necessary to conduct examinations and discuss medical issues. Providers must have a private disrobing area and adequate provision of examination gowns.

(((~~(g)~~)) (i) Have telephone answering capability during regular business hours, Monday through Friday, in order to schedule independent medical examinations and communicate with workers about scheduled examinations. If ((~~the office~~)) an exam site is open on Saturday, telephone access must be available.

(((~~(h) Facilitate scheduling of providers both for the examination and for any required follow-up, including amendments to the report, subsequent reports, or for any testimony required. If the provider fails to participate in scheduling or otherwise causes an undue expense to the department, whether intentionally or not, the department may fine the provider up to five hundred dollars per violation.~~

~~(i) Agree to keep the department informed and updated with any new information such as exam site or administrative office locations, phone numbers or contact information.~~))

(j) Agree that either the ((~~provider~~)) firm or the department may inactivate their IME provider number or numbers. If an IME provider number has been inactivated and the ((~~provider~~)) firm wishes to resume ((~~performing IMEs~~)) related services, they must reapply and meet current requirements.

(k) ((~~In order to maintain an active IME provider number, the provider must~~)) Agree to keep the department informed and updated with any new information such as exam site or administrative office locations, phone numbers or contact information.

(l) Reapply every three years in order to maintain an active IME provider number.

(i) In the first year of the new rule, effective March 1, 2010, all IME firms must reapply.

(ii) Firms will be notified by mail sixty days prior to their renewal application due date.

(m) Have a representative from their quality assurance (QA) staff achieve a passing score on the *Medical Examiners' Handbook* test prior to initial application and every three years thereafter.

AMENDATORY SECTION (Amending WSR 09-24-085, filed 11/30/09, effective 3/1/10)

WAC 296-23-337 For what reasons shall the department's medical director or designee suspend or terminate approval of an independent medical examination (IME) examiner or firm? ((~~In order~~)) To ensure high quality independent medical examinations (IMEs), the department's medical director or designee ((~~shall~~)) may, in the situations described below, terminate, suspend, or inactivate approval of examiners((~~,~~)) or firms((~~,~~)) (partnerships, corporations, or other legal entities ((~~in the situations described below. When an IME examiner or other entity is terminated or suspended, they may not perform IMEs for the department~~))) that derive income from IMEs. IME providers must have an active provider account number to perform IMEs or provide IME related services.

FOR EXAMINERS:

(1) **AUTOMATIC TERMINATION ((~~OF EXAMINERS~~)).** The department's medical director or designee ((~~shall~~)) may terminate approval of examiners in situations including, but not limited to, the following:

(a) Their license has been revoked in any jurisdiction.

(b) A final order or stipulation to informal disposition has been issued against the examiner by a state authority in any jurisdiction((~~,~~)) including, but not limited to, the Washington state department of health, when such charges involve conduct or behavior as defined in chapter 18.130 RCW, Uniform Disciplinary Act. These include, but are not limited to:

(i) Sexually inappropriate conduct, behavior or language.

(ii) Behavior that puts ((~~patients'~~)) a patient's safety or well-being at risk.

(c) The examiner has committed perjury or falsified documents provided to the department or insurer.

(d) The examiner has a criminal felony history in any jurisdiction.

(e) The examiner has failed to reapply every three years.

(2) **AUTOMATIC SUSPENSION ((~~FOR REVIEW~~)).** The department's medical director or designee ((~~shall~~)) may suspend approval of examiners in situations including, but not limited to, the following listed below. The department will initiate ((~~the~~)) a review within ninety days of notification. The results of the review will determine if further action is necessary, which may include termination of approval status.

(a) The examiner has failed to meet ((~~all qualifications~~)) or maintain the requirements for approval as an IME ((~~provider~~)) examiner.

(b) The examiner's license has been restricted in any jurisdiction. Exceptions may be granted for any restriction or offense deemed by the department to be of a minor or clerical nature.

(c) The examiner has lost hospital privileges for cause.

(d) A statement of charges has been filed against the examiner by a state authority in any jurisdiction, including, but not limited to the Washington state department of health, when such charges involve conduct or behavior as defined in chapter 18.130 RCW, Uniform Disciplinary Act. These include, but are not limited to:

(i) Sexually inappropriate conduct, behavior or language.

(ii) Behavior that puts ((~~patients'~~)) a patient's safety or well-being at risk.

(e) The examiner has any pending or history of criminal charges or violation of statutes or rules by any administrative agency, court or board in any jurisdiction.

(3) **OTHER EXAMINER ACTIONS.** In addition to automatic terminations and suspensions described in subsections (1) and (2) of this section, the department's medical director or designee may consider any of the following factors in determining a change in status for examiners. These status changes include temporarily unavailable, suspension or termination of the approval to conduct IMEs.

These factors include, but are not limited to:

(a) Substandard quality of reports, failure to comply with current department policy on report contents, or inability to effectively convey and substantiate medical opinions and conclusions concerning workers.

(b) Unavailable or unwilling to testify on behalf of the department, worker, or employer.

(c) Failure to cooperate with attorneys representing a party in industrial insurance litigation at the board of industrial insurance appeals (board) by not cooperating in a timely manner to schedule preparatory activities and/or testimony during business hours and within the dates ordered by the board to complete testimony.

(d) Inability to support examination and report findings in any legal proceeding as evidenced by board decisions finding the testimony less credible.

(e) Failure to stay current in the area of specialty and in the areas of impairment rating, performance of IMEs, industrial injury and occupational disease/illness, industrial insurance statutes, regulations and policies.

(f) Substantiated complaints or pattern of complaints about the provider.

(g) Other disciplinary proceedings or actions not listed in subsections (1) and (2) of this section.

(h) Other proceedings in any court dealing with the provider's professional conduct, quality of care or criminal actions not listed in subsections (1) and (2) of this section.

(i) Untimely reports.

(j) Unavailable or unwilling to communicate with the department in a timely manner.

(k) Misrepresentation of information provided to the department.

(l) Failure to inform the department of changes or actions that may affect the approval status as an IME examiner.

(m) Failure to comply with the department's orders, statutes, rules, or policies.

(n) Failure to accept the department fee schedule rate for independent medical examinations, testimony, or other IME related services.

(o) Any pending action in any jurisdiction.

FOR FIRMS:

(4) **AUTOMATIC TERMINATION ((~~OF NONEXAMINER IME PROVIDERS~~)).** The department's medical director or designee ((~~shall~~)) may terminate approval of firms((~~, partnerships, corporations, or other legal entities that derive income from independent medical examinations in situations when they fail to meet all requirements for approval as an IME provider, including failing~~)) when they fail to reapply every three years.

(((~~(4)~~))) (5) **AUTOMATIC SUSPENSION ((~~OF NONEXAMINER IME PROVIDERS~~)).** The department's medical director or designee ((~~shall~~)) may suspend approval of firms((~~, partnerships, corporations, or other legal entities that derive income from independent medical examinations~~)) in situations including, but not limited to, those listed below. The department will review the matter to determine if further action is necessary, which may include termination of approval status.

(a) The ((~~provider has failed to~~)) firm no longer meets ((~~all qualifications~~)) requirements for approval as an IME provider.

(b) The ((~~provider~~)) firm's representative has committed perjury or falsified documents provided to the department or insurer.

(c) ((~~The provider's~~)) A firm representative's behavior has placed ((~~patients'~~)) a patient's safety or well-being at risk.

(((~~(5) NONAUTOMATIC TERMINATIONS AND SUSPENSIONS.~~))) (6) **OTHER FIRM ACTIONS.** In addition to automatic terminations and suspensions described in subsections ((~~(1) through~~)) (4) and (5) of this section, the department's medical director or designee ((~~shall~~)) may consider any of the following factors in determining a change in status for ((~~all providers~~)) firms. These status changes include temporarily unavailable, suspension or termination of the approval to ((~~conduct~~)) provide IME((~~s~~)) related services.

These factors include, but are not limited to:

(a) Substantiated complaints or pattern of complaints about the ((~~provider~~)) firm.

(b) Other disciplinary proceedings or actions not listed in subsections ((~~(1) through~~)) (4) and (5) of this section.

(c) Other proceedings in any court dealing with the provider's professional conduct, quality of care or criminal actions not listed in subsections ((~~(1) through~~)) (4) and (5) of this section.

(d) ((~~Substandard quality of reports, failure to comply with current department policy on report contents, or inability to effectively convey and substantiate medical opinions and conclusions concerning workers.~~

~~(e)~~)) Untimely reports.

(((~~(f)~~))) (e) Unavailable or unwilling to ((~~responsibly~~)) communicate with the department in a timely manner.

(((~~(g) Unavailable or unwilling to testify on behalf of the department, worker, or employer.~~

~~(h) Failure to cooperate with all attorneys representing a party in industrial insurance litigation at the board of industrial insurance appeals (board) by not cooperating in a timely manner to schedule preparatory activities and/or testimony during business hours and within the dates ordered by the board to complete testimony.~~

~~(i) Inability to support examination and report findings in any legal proceeding as evidenced by board decisions finding the testimony less credible.~~

~~(j) Failure to stay current in the area of specialty and in the areas of impairment rating, performance of IMEs, industrial injury and occupational disease/illness, industrial insurance statutes, regulations and policies.~~

~~(k) Failure to maintain the criteria to be an IME provider.~~

~~(l)~~)) (f) Misrepresentation of information provided to the department.

(((~~(m)~~)) (g) Failure to inform the department of changes affecting the ((~~provider's~~)) firm's status as an IME provider.

(((~~(n)~~)) (h) Failure to comply with the department's orders, statutes, rules, or policies.

(((~~(o)~~)) (i) Failure to accept the department fee schedule rate for independent medical examinations and services.

(((~~(p)~~)) (j) Any pending action in any jurisdiction.

WSR 11-01-090
PERMANENT RULES
DEPARTMENT OF EARLY LEARNING

[Filed December 14, 2010, 1:59 p.m., effective January 14, 2011]

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

Purpose: Amending WAC 170-290-0031 Notification of changes and 170-290-0032 Failure to report changes. The department of early learning (DEL) is making the following revisions to the types of changes that a family receiving working connections child care (WCCC) subsidies must report to the department of social and health services (DSHS):

- A family receiving WCCC must report when their countable income increases, but only if the increase may put the family income over the limit to remain eligible for WCCC. Previously families had to report any income change;
- A WCCC family may report when their income goes down, but they are not required to report a decrease. Reporting a decrease may reduce the family's monthly out-of-pocket child care copayment.

DEL is not adopting the proposed new subsection (6) to WAC 170-290-0031. See Changes other than editing below.

The amended rule continues implementation of E2SHB 3141 that directs DEL to "establish and implement policies in the working connections child care program to promote stability and quality of care for children from low income households …" DEL adopted other rules implementing HB [E2SHB] 3141 in July 2010 - see WSR 10-15-063.

The final rule qualifies for adoption under section 3.e in office of financial management guidance for the governor's Executive Order 10-06, permitting development or adoption of rules "beneficial to or requested or supported by regulated entities, local governments or small businesses that (the rule) effects." The final rule reduces reporting requirements for families who receive WCCC subsidies, and is expected to be directly beneficial to WCCC families and indirectly beneficial to child care providers, both of which are "regulated entities" under this chapter. The rule change was requested by stakeholders, and public input on the proposed rule was supportive.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0031 and 170-290-0032.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Other Authority: E2SHB 3141 (chapter 273, Laws of 2010 regular session).

Adopted under notice filed as WSR 10-19-119 on September 21, 2010.

Changes Other than Editing from Proposed to Adopted Version: Proposed subsection (6) in WAC 170-290-0031 is deleted. This subsection would have required families who receive WCCC subsidies and have a child enrolled in head start, early head start or early childhood education and assistance program (ECEAP) to report to DSHS when their child is no longer enrolled in one of the preschool programs. Reporting was intended to help DEL and DSHS complete a study required by HB [E2SHB] 3141 regarding child care stability. However, DEL decided that similar information could be gathered by a survey, and the reporting requirement was not needed.

Proposed changes to subsection (1) in WAC 170-290-0032 are deleted. By deleting the reporting requirement in proposed subsection (6) of WAC 170-290-0031, the proposed change to WAC 170-290-0032(1) was no longer needed. The net effect is that the current subsection (1) of WAC 170-290-0032 remains unchanged.

Editing change, updating WAC 170-290-0032(2). The edition date of DEL publication 22-877 is changed from "2009" to "2010." This publication tells child care providers how to bill the state for child care and related services paid under the DEL working connections and seasonal child care programs, and the DSHS children's administration child care program.

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 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: December 14, 2010.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0031 Notification of changes. When a consumer applies for or receives WCCC benefits, he or she must:

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

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

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

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

(b) The consumer's ((~~household~~)) countable income, including any TANF grant or child support increases or decreases, only if the change would cause the consumer's countable income to exceed the maximum eligibility limit as provided in WAC 170-290-0005 (2)(d). A consumer may notify DSHS's WCCC staff at any time of a decrease in the consumer's household income, which may lower the consumer's copayment under WAC 170-290-0085;

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0032 Failure to report changes. A consumer's failure to report changes as required in WAC 170-290-0031 within the stated time frames may cause:

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

(2) A WCCC payment error. If an overpayment occurs, the consumer may receive an overpayment for what the provider is allowed to bill, including billing for absent days (see publication *Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers*, DEL 22-877, revised ((~~2009~~)) 2010).

WSR 11-01-092
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed December 15, 2010, 8:36 a.m., effective January 15, 2011]

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

Purpose: In response to the request of the affected industry, this rule-making order amends chapter 16-462 WAC Grape planting stock—Registration and certification, by: (1) Changing the isolation distance for registered and certified plantings; (2) requiring nematode testing prior to planting new registered blocks; (3) clarifying the number of generations allowed from foundation stock; and (4) updating the definition of tissue culture.

Citation of Existing Rules Affected by this Order: Amending WAC 16-462-015, 16-462-020, 16-462-021, 16-462-022, and 16-462-025.

Statutory Authority for Adoption: Chapters 15.14 and 34.05 RCW.

Adopted under notice filed as WSR 10-22-117 on November 3, 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 5, 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 5, Repealed 0.

Date Adopted: December 15, 2010.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-015 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

((~~"Aseptic shoot tip propagation" means aseptically removing a vegetative shoot tip from growth arising from a dormant cutting from a foundation plant or from green growth (i.e., softwood) from a foundation plant during the growing season and aseptically transferring this shoot tip to a suitable vessel containing an appropriate culture medium.~~))

"Certified grape planting stock" means vines, rooted cuttings, cuttings or grafted plants taken or propagated directly

from foundation vines((,)) or registered vines ((~~or certified~~)) in compliance with the provisions of this chapter.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of the department of agriculture or the director's designee.

"Foundation block" means a planting of grapevines established, operated and maintained by Washington State University, or other ((~~equivalent~~)) sources approved in writing by the director, that are indexed and found free from viruses designated in this chapter and that are not off-type.

"Index" means ((~~determining whether a~~)) testing for virus infection ((~~is present by means of inoculation~~)) by making a graft with tissue from the plant ((~~to be~~)) being tested to an indicator plant, or by any other testing method approved by the department.

"Indicator plant" means any herbaceous or woody plant used to index or determine virus infection.

"Mother vine" means a grapevine used as a source for propagation material.

"Off-type" means appearing under visual examination to be different from the variety listed on the application for registration and certification, or exhibiting symptoms of a genetic or nontransmissible disorder.

"Registered block" means a planting of registered grapevines maintained by a nursery and used as a source of propagation material for certified grapevines.

"Registered vine" means any vine propagated from a foundation block approved by the director, identified to a single vine source, and registered with the Washington state department of agriculture, in compliance with provisions of this chapter.

"Tissue culture" means aseptically removing a vegetative shoot tip from growth arising from a dormant cutting from a foundation plant or from green growth (i.e., softwood) from a foundation plant during the growing season and aseptically transferring this shoot tip to a suitable vessel containing an appropriate culture medium.

"Virus-like" means a graft-transmissible disorder with symptoms resembling a characterized virus disease, including, but not limited to, disorders caused by viroids and phytoplasmas.

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-020 Requirements for participation in the grape planting stock program. (1) The applicant shall be responsible, subject to the approval of the department, for the selection of the location and the proper maintenance of registered blocks and planting stock.

(2) The applicant must maintain records identifying the foundation source of registered vines and certified planting stock. The applicant must make these records available to the department upon request.

(3) The applicant shall take suitable precautions in cultivation, irrigation, movement and use of equipment, and in other farming practices, to guard against spread of soil-borne pests to planting stock entered in this program. The applicant shall keep all registered blocks and certified planting stock clean cultivated except for approved cover crops.

(4) Following notification by the department the applicant shall remove and destroy immediately any registered vine or certified planting stock found to be off-type or affected by a virus or virus-like disease or a quarantine pest.

(~~(5) Registered blocks and certified planting stock must be located at least one hundred feet from any land on which noncertified or nonregistered grapevines have been grown within the past ten years. This does not apply to registered and certified stock grown in a fully enclosed greenhouse, screenhouse or laboratory provided the facility does not contain noncertified grapevines.~~))

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-021 Requirements for registered blocks. (1) All registered grapevines must be identified by the number assigned to the single vine source in the foundation block from which they were taken.

(2) With the exception of practices allowed in subsections (3), (4), and (5) of this section, registered plants must be propagated directly from cuttings taken from a foundation block.

(3) Plants propagated from a foundation block by ((~~aseptic shoot tip propagation~~)) tissue culture and grown entirely under laboratory or greenhouse conditions may serve as a source of softwood cuttings or shoot tip culture used to establish a registered block or registered grapevines.

(4) Registered grapevines may be propagated from other registered grapevines within the same registered block for the purpose of increasing the size of the registered block or for replacement grapevines, if the mother vine was propagated directly from a foundation vine.

(5) ((~~The department may permit~~)) Participating nurseries must obtain a permit from the department to propagate registered grapevines from other registered grapevines for the purpose of establishing or increasing other registered blocks within the nursery ((~~under~~)). All of the following conditions must be complied with:

(a) The mother vines were propagated directly from ((~~a~~)) foundation vines;

(b) Propagation ((~~is~~)) occurs under ((~~environmentally~~)) controlled conditions adequate to prevent the introduction of pests; and

(c) The mother vine is no more than two years old, or ((~~has been tested and found~~)) the department has determined the mother vine is free of regulated viruses ((~~within the past two years~~)).

(6) Prior to planting registered vines, the growing area and its contiguous borders of not less than ten feet must be tested for the presence of the nematodes Xiphenema and Longidorus, which can be virus vectors. If either nematode is detected, the growing area must be fumigated in accordance with rates and practices recommended by Washington State University. This treatment must be carried out under the supervision of the department.

(7) Registered blocks must be located at least one hundred feet from noncertified or nonregistered grapevines. This

does not apply to registered stock grown in a fully enclosed greenhouse, screenhouse or laboratory, providing the facility does not contain noncertified grapevines.

AMENDATORY SECTION (Amending WSR 02-11-100, filed 5/20/02, effective 6/20/02)

WAC 16-462-022 Requirements for certified planting stock. (1) Certified planting stock, including all components of budded or grafted plants, must be propagated from cuttings taken from registered or foundation grapevines.

(2) Cuttings from registered blocks must be sorted and kept separate by variety and selection number or clone.

(3) Treatment to control nematodes and other soil-borne pests may be required at any time by the department.

(4) All certified planting stock other than greenhouse grown plants must comply with the grades and standards for Washington certified grape planting stock as listed in WAC 16-462-055.

(5) Certified stock must be separated from noncertified grapevines by one of the following distances. This requirement does not apply to certified stock grown in a fully enclosed greenhouse, screenhouse or laboratory, providing the facility does not contain noncertified grapevines.

(a) Ten feet for any land treated to control nematodes; or

(b) Twenty feet for land not specifically treated to control nematodes.

(6) Certification is based solely on compliance with the requirements prescribed in WAC 16-462-050 and other requirements of this chapter.

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-025 Foundation, registered, and certified grape planting stock—Inspections. (1) Inspections and indexing of registered grapevines and certified planting stock will be performed by the department at times determined to be suitable for the detection of virus and virus-like disease symptoms. Washington State University will inspect and index the foundation block.

(2) The department will index registered grapevines by methods ((~~listed in Appendix 1 of the North American Plant Protection Organization (NAPPO) Grapevine Standard~~)) consistent with those utilized by the Washington State University grapevine foundation program.

(3) The department will conduct at least two inspections of registered grapevines during each growing season.

(4) The department will inspect certified planting stock at least three times per year, twice during the growing season and once during or after harvest.

(5) The department will refuse or withdraw registration or certification for any planting stock that is infested or infected with any regulated pest.

WSR 11-01-117
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Osteopathic Medicine and Surgery)

[Filed December 17, 2010, 4:43 p.m., effective January 17, 2011]

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

Purpose: WAC 246-853-650 establishes consistent standards for osteopathic physicians who administer sedation in an office-based surgery setting. The adopted rule will reduce the risk of substand [substandard] care, inappropriate administration of anesthesia, and other serious complications in the office-based surgery setting.

Statutory Authority for Adoption: RCW 18.57.005.

Other Authority: RCW 18.130.050.

Adopted under notice filed as WSR 10-16-155 on August 4, 2010 [and WSR 10-17-124 on August 18, 2010].

A final cost-benefit analysis is available by contacting Erin Obenland, Board of Osteopathic Medicine and Surgery, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4945, fax (360) 236-2901, e-mail erin.obenland@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 17, 2010.

Blake T. Maresh
Executive Director

NEW SECTION

WAC 246-853-650 Safe and effective analgesia and anesthesia administration in office-based settings. (1) Purpose. The purpose of this rule is to promote and establish consistent standards, continuing competency, and to promote patient safety. The board of osteopathic medicine and surgery establishes the following rule for physicians licensed under chapter 18.57 RCW who perform surgical procedures and use anesthesia, analgesia or sedation in office-based settings.

(2) Definitions. The following terms used in this subsection apply throughout this rule unless the text clearly indicates otherwise:

(a) "Board" means the board of osteopathic medicine and surgery.

(b) "Deep sedation" or "analgesia" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated

or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

(c) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway. Sedation that unintentionally progresses to the point at which the patent is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

(d) "Local infiltration" means the process of infusing a local anesthetic agent into the skin and other tissues to allow painless wound irrigation, exploration and repair, and other procedures, including procedures such as retrobulbar or periorbital ocular blocks only when performed by a board eligible or board certified ophthalmologist. It does not include procedures in which local anesthesia is injected into areas of the body other than skin or muscle where significant cardiovascular or respiratory complications may result.

(e) "Major conduction anesthesia" means the administration of a drug or combination of drugs to interrupt nerve impulses without loss of consciousness, such as epidural, caudal, or spinal anesthesia, lumbar or brachial plexus blocks, and intravenous regional anesthesia. Major conduction anesthesia does not include isolated blockade of small peripheral nerves, such as digital nerves.

(f) "Minimal sedation" or "analgesia" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected. Minimal sedation is limited to oral or intramuscular medications, or both.

(g) "Moderate sedation" or "analgesia" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained.

(h) "Office-based surgery" means any surgery or invasive medical procedure requiring analgesia or sedation, including, but not limited to, local infiltration for tumescent liposuction performed in a location other than a hospital, or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(i) "Physician" means an osteopathic physician licensed under chapter 18.57 RCW.

(3) Exemptions. This rule does not apply to physicians when:

(a) Performing surgery and medical procedures that require only minimal sedation (anxiolysis), or infiltration of local anesthetic around peripheral nerves. Infiltration around peripheral nerves does not include infiltration of local anesthetic agents in an amount that exceeds the manufacturer's published recommendations.

(b) Performing surgery in a hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(c) Performing surgery using general anesthesia. Facilities in which physicians perform procedures in which general anesthesia is a planned event are regulated by rules related to hospitals or hospital-associated surgical centers licensed under chapter 70.41 RCW, or ambulatory surgical facilities licensed under chapter 70.230 RCW.

(d) Performing oral and maxillofacial surgery, and the physician:

(i) Is licensed both as a physician under chapter 18.57 RCW and as a dentist under chapter 18.32 RCW;

(ii) Complies with dental quality assurance commission regulations;

(iii) Holds a valid:

(A) Moderate sedation permit; or

(B) Moderate sedation with parenteral agents permit; or

(C) General anesthesia and deep sedation permit; and

(iv) Practices within the scope of his or her specialty.

(4) Application of rule. This rule applies to physicians practicing independently or in a group setting who perform office-based surgery employing one or more of the following levels of sedation or anesthesia:

(a) Moderate sedation or analgesia; or

(b) Deep sedation or analgesia; or

(c) Major conduction anesthesia.

(5) Accreditation or certification. Within three hundred sixty-five calendar days of the effective date of this rule, a physician who performs a procedure under this rule must ensure that the procedure is performed in a facility that is appropriately equipped and maintained to ensure patient safety through accreditation or certification and in good standing from one of the following:

(a) The Joint Commission (JC);

(b) The Accreditation Association for Ambulatory Health Care (AAAHC);

(c) The American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF);

(d) The Centers for Medicare and Medicaid Services (CMS); or

(e) Planned Parenthood Federation of America or the National Abortion Federation, for facilities limited to office-based surgery for abortion or abortion-related services.

(6) Competency. When an anesthesiologist or certified registered nurse anesthetist is not present, the physician performing office-based surgery and using a form of sedation defined in subsection (4) of this section must be competent and qualified both to perform the operative procedure and to oversee the administration of intravenous sedation and analgesia.

(7) Qualifications for administration of sedation and analgesia may include:

(a) Completion of a continuing medical education course in conscious sedation; or

(b) Relevant training in a residency training program; or

(c) Having privileges for conscious sedation granted by a hospital medical staff.

(8) Resuscitative preparedness. At least one licensed health care practitioner currently certified in advanced resuscitative techniques appropriate for the patient age group (e.g.,

advanced cardiac life support (ACLS), pediatric advanced life support (PALS) or advanced pediatric life support (APLS)) must be present or immediately available with age-size appropriate resuscitative equipment throughout the procedure and until the patient has met the criteria for discharge from the facility.

(9) Sedation, assessment and management.

(a) Sedation is a continuum. Depending on the patient's response to drugs, the drugs administered, and the dose and timing of drug administration, it is possible that a deeper level of sedation will be produced than initially intended.

(b) If an anesthesiologist or certified registered nurse anesthetist is not present, a physician intending to produce a given level of sedation should be able to "rescue" patients who enter a deeper level of sedation than intended.

(c) If a patient enters into a deeper level of sedation than planned, the physician must return the patient to the lighter level of sedation as quickly as possible, while closely monitoring the patient to ensure the airway is patent, the patient is breathing, and that oxygenation, the heart rate, and blood pressure are within acceptable values. A physician who returns a patient to a lighter level of sedation in accordance with this subsection (c) does not violate subsection (10) of this section.

(10) Separation of surgical and monitoring functions.

(a) The physician performing the surgical procedure must not administer the intravenous sedation, or monitor the patient.

(b) The licensed health care practitioner, designated by the physician to administer intravenous medications and monitor the patient who is under moderate sedation, may assist the operating physician with minor, interruptible tasks of short duration once the patient's level of sedation and vital signs have been stabilized, provided that adequate monitoring of the patient's condition is maintained. The licensed health care practitioner who administers intravenous medications and monitors a patient under deep sedation or analgesia must not perform or assist in the surgical procedure.

(11) Emergency care and transfer protocols. A physician performing office-based surgery must ensure that in the event of a complication or emergency:

(a) All office personnel are familiar with a written and documented plan to timely and safely transfer patients to an appropriate hospital.

(b) The plan must include arrangements for emergency medical services and appropriate escort of the patient to the hospital.

(12) Medical record. The physician performing office-based surgery must maintain a legible, complete, comprehensive and accurate medical record for each patient.

(a) The medical record must include:

(i) Identity of the patient;

(ii) History and physical, diagnosis and plan;

(iii) Appropriate lab, X ray or other diagnostic reports;

(iv) Appropriate preanesthesia evaluation;

(v) Narrative description of procedure;

(vi) Pathology reports, if relevant;

(vii) Documentation of which, if any, tissues and other specimens have been submitted for histopathologic diagnosis;

(viii) Provision for continuity of postoperative care; and

(ix) Documentation of the outcome and the follow-up plan.

(b) When moderate or deep sedation or major conduction anesthesia is used, the patient medical record must include a separate anesthesia record that documents:

(i) Type of sedation or anesthesia used;

(ii) Drugs (name and dose) and time of administration;

(iii) Documentation at regular intervals of information obtained from intraoperative and postoperative monitoring;

(iv) Fluids administered during the procedure;

(v) Patient weight;

(vi) Level of consciousness;

(vii) Estimated blood loss;

(viii) Duration of procedure; and

(ix) Any complication or unusual events related to the procedure or sedation/anesthesia.

WSR 11-01-118
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed December 20, 2010, 8:02 a.m., effective January 20, 2011]

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

Purpose: Rule making is required to comply with E2SHB 2617 of the 61st legislature 2010 special session which eliminated the special license plate review board.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-550 Vehicle special collegiate plates and 308-96A-560 Special license plates—Criteria for creation or continued issuance.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 10-20-140 on October 5, 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 2, 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: December 20, 2010.

Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-08-079, filed 4/6/04, effective 5/7/04)

WAC 308-96A-550 Vehicle special collegiate license plates. (1) **What are the criteria for establishing collegiate**

license plates? Application for license plate series from an institution of higher education under RCW 46.16.324 may be submitted to the ((~~special license plate review board~~)) department through the process established in RCW 46.16.735 and 46.16.745. In addition the following criteria must be satisfied:

(a) The plates will consist of numbers, letters, colors and a symbol or artwork approved by the department ((~~and/or the special license plate review board~~)).

(b) The numbers and letters combination may not exceed seven positions.

(c) The plate series will not conflict with existing license plates.

(d) The plate design must provide at least four positions to accommodate serial numbering.

(e) The plate must not carry connotations which are offensive to good taste or decency, which may be misleading((~~,~~)) or vulgar in nature, a racial, ethnic, lifestyle or gender slur, related to illegal activities or substances, blasphemous, contrary to the department's mission to promote highway safety, or a duplication of other license plates provided in chapter 46.16 RCW.

(f) The plate must be designed so that it is legible and clearly identifiable by law enforcement personnel as an official Washington state issued license plate. A collegiate license plate design may not be issued in combination with any other license plate configuration including special, personalized or exempt license plate(s). A collegiate license plate design may be issued in combination with a personalized plate as described in RCW 46.16.601.

(2) **How is the design for a collegiate plate determined?** The institution of higher education must provide a design, including color and dimension specifications of the logo requested on the special collegiate license plate series, with their application. Design services may be purchased through the department. The design must be legible and clearly identifiable as a Washington state plate to be approved by the department, Washington state patrol, ((~~the special license plate review board~~)) and((~~/or~~)) the legislature.

(3) **Who may apply for the special collegiate license plate?** Upon receipt of all applicable fees, the special collegiate license plate will be issued to a registered owner of the vehicle.

(4) **When ownership of a vehicle issued collegiate license plates is sold, traded, or otherwise transferred, what happens to the plates?** The owner may relinquish the plates to the new vehicle owner or remove the plates from the vehicle for transfer to a replacement vehicle. If the plates are removed from the vehicle, a transfer fee to another vehicle shall be charged as provided in RCW 46.16.316(1).

(5) **Will any new fees be charged when the collegiate license plates are sold, traded, or otherwise transferred?** If the registration expiration date for the new vehicle exceeds the old vehicle registration expiration date, an abated fee for the collegiate plate will be charged at the rate of one-twelfth of the annual collegiate plate fee for each exceeding month and partial month. If the new registration expiration date is sooner than the old expiration date, a refund will not be made for the remaining registration period.

(6) **Will I be able to retain my current collegiate license plate number/letter combination if my plate is lost, defaced, or destroyed?** Yes. Upon the loss, defacement, or destruction of one or both collegiate license plates, the owner will make application for new collegiate plates or other license plates and pay the fees described in RCW 46.16.270 and 46.16.233 as applicable. See note following subsection (9) of this section.

(7) **Will I ever have to replace my collegiate license plate?** Yes, the collegiate license plates are subject to the seven-year vehicle license plate replacement schedule.

(8) **How does the department define "current license plate registration"?** For the purposes of this section, a current license plate registration is defined as: A registration that has not expired or a registration where it is less than one year past the expiration date.

(9) **When I am required to replace my collegiate license plate, will I receive the same license plate number/letter combination?** Yes. In addition to the license plate replacement fee, you may pay an additional plate retention fee to retain the same number/letter combination as shown on the current vehicle computer record as long as the plate meets a current approved license plate configuration and background.

((~~Note: If the license plate(s) has been reported as stolen or if the department record indicates the plate has been stolen, the same number/letter combination will not be issued.~~))

AMENDATORY SECTION (Amending WSR 08-22-067, filed 11/4/08, effective 12/5/08)

WAC 308-96A-560 Special license plates—Criteria for creation or continued issuance. (1) **What is a special license plate series?** For the purpose of this rule a special license plate series is one license plate design with a range of numbers and letter combinations to be determined by the department.

(2) **What is required for an organization to apply to create a new plate through the ((~~special license plate review board~~)) department?** The organization must submit a completed application packet, signature sheet and supporting documentation as required by law. Signature sheets must reflect that they are collected within three years of submission.

If an organization started collecting signature sheets before the moratorium was put into place that ends on July 1, 2009, they are exempt from the three-year time frame. However, organizations collecting signatures during the moratorium must submit their completed application packet and signature sheets ((~~at the next board meeting~~)) to the department within ninety days after the moratorium is lifted. If an organization does not submit the signature sheets ((~~at the board meeting following~~)) to the department within ninety days after the moratorium, the signature sheets are no longer valid.

(3) **What criteria are used to discontinue issuing special license plates?** A special license plate series may be canceled if:

(a) The department determines that fewer than five hundred special license plates are purchased annually and fewer than one thousand five hundred special license plates are purchased in any continuous three-year period. (Except those

license plates issued under RCW 46.16.301, 46.16.305, and 46.16.324); or

(b) If the sponsoring organization does not submit an annual financial statement required by RCW 46.16.765 and certified by an accountant; or

(c) The legislature concurs with a recommendation from the ((~~special license plate review board~~)) department to discontinue a plate series created after January 1, 2003; or

(d) The state legislature changes the law allowing that plate series.

(4) **What information must be contained in the annual financial report?** The annual financial report must include all expenditures related to programs, fund-raising, marketing, and administrative expenses related to their special license plate(s). The report must include:

(a) The stated purpose of the organization receiving the special plate revenue;

(b) A message from the chair or director of the organization;

(c) Program highlights with a detailed list of how the funds were expended for those programs;

(d) List of special events the organization held to market their special plate for the current reporting year;

(e) A summary of financial information:

(i) Previous revenue received during current reporting year;

(ii) Total revenue received during current reporting year;

(iii) Summary of administrative expenses.

If an organization is disbursing funds through a grant program or to another nonprofit organization supporting Washington citizens, a list including the program and the organizations must be submitted which includes their name and amount received.

(5) **What steps are taken by the department if the annual financial report is not submitted as required or the special plate revenue is expended for purposes other than allowed by law?** The department will follow the guidelines as established in the organization's contractual agreement with the department:

(a) Send a written notice of the violations to the organization;

(b) The organization is given thirty days to correct the violation;

(c) If the violation is not corrected, the department may immediately terminate the contract.

(6) **Can an organization have more than one special plate series?** No. Organizations cannot have more than one special license plate series except those issued before January 1, 2006. Those organizations that already have multiple special plate series may not have more.

An updated design of the current special license plates does not constitute more than one special plate series. The newest design supersedes the prior design. The assigned number and letter combination cannot be changed when a new plate design is created.

WSR 11-01-119
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed December 20, 2010, 8:17 a.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Such action is required by SB 6450.

Purpose: Amends WAC 308-14-010 by defining a "continuing education unit" as sixty minutes of education in a program approved by the department. Units will be recognized in not less that 1/2 hour (.5) increments of time.

Amends WAC 308-14-100 by adding continuing education units upon license renewal:

1. Adds, effective July 1, 2011, documentation of five continuing education units completed in the past year for reinstatement.

2. Adds annual certification of five continuing education units at time of renewal. Excess credits shall not be carried over.

3. Identifies activities eligible for continuing education units.

4. Adds courses or activities approved by national or state recognized associations for continuing education units.

5. Adds approved courses offered at an accredited college or university with a documented grade of C or better for continuing education units.

6. Identifies activities not acceptable for continuing education units.

7. Adds the requirement for the individual to maintain documentation of continuing education units for at least three years.

Citation of Existing Rules Affected by this Order: Amending WAC 308-14-010 Definitions and 308-14-100 License renewal penalties.

Statutory Authority for Adoption: Chapter 18.145 RCW, RCW 43.24.023.

Other Authority: SB 6450.

Adopted under notice filed as WSR 10-22-101 on November 2, 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 2, 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 0, Repealed 0.

Date Adopted: December 20, 2010.

Walt Fahrer
Rule[s] Coordinator

AMENDATORY SECTION (Amending WSR 04-17-072, filed 8/13/04, effective 9/13/04)

WAC 308-14-010 Definitions. "Character" is a letter, numeral, punctuation mark, control character, blank, or other such symbol.

"Continuing education unit" is defined as sixty minutes of education in a program approved by the department. Units will be recognized in not less than thirty minute increments of time.

"Standard line" is a line that can be determined by looking at a full line of text and counting from the first letter, including punctuation and spaces, to the last letter of that line. The standard line does not include a "Q" or "A," or the numbers on the left side of the page.

AMENDATORY SECTION (Amending WSR 90-10-009, filed 4/20/90, effective 5/21/90)

WAC 308-14-100 License renewal—Continuing education—Penalties. (1) Certification must be renewed on or before the expiration date shown on the certificate. The expiration date is the certificate holder's ((~~birthdate~~)) birth date. Effective July 1, 2011, each certified court reporter shall verify they have completed a minimum of five continuing education units annually at renewal in a manner defined by the director. Excess continuing education units from the previous reporting year shall not be carried over. Failure to renew the certificate by the expiration date will result in a penalty fee in an amount determined by the director. Certification may be reinstated for up to three years by payment of all renewal fees and a penalty fee for the period for which the certification had lapsed and documentation of five continuing education units completed in the past year.

(2) Continuing education units shall have direct relevance to the professional development of the certified court reporter. The program must be led by an instructor, be interactive, and involve assessment or evaluation. Approved programs include, but are not limited to, the following:

(a) Language skills:

(i) English or a foreign language;

(ii) American Sign Language;

(iii) Grammar;

(iv) Punctuation;

(v) Proofreading;

(vi) Spelling;

(vii) Vocabulary;

(viii) Linguistics, including regional dialects or colloquialisms;

(ix) Etymology;

(x) Word usage.

(b) Academics:

(i) Medical terminology and abbreviations related to any medical or medically related discipline (e.g., anatomy, psychiatry, psychology, dentistry, chiropractic, podiatry);

(ii) Pharmacology;

(iii) Surgical procedures and instruments, with emphasis on terminology and concepts encountered in litigation;

(iv) Pathology and forensic pathology, including DNA and other terminology encountered in litigation;

(v) Legal terminology and etymology;

(vi) Legal research techniques;

(vii) Presentations on various legal specialty areas (e.g., torts, family law, environmental law, admiralty, corporate law, patent law);

(viii) History of legal systems;

(ix) Technical subjects, with emphasis on terminology and concepts encountered during litigation (e.g., construction, accident reconstruction, insurance, statistics, product testing and liability, various engineering fields).

(c) Case law, federal and state statutes, and regulations:

(i) Federal and state rules of civil and criminal procedure and rules of evidence;

(ii) Codes of federal and/or state regulations;

(iii) Presentations on legal proceedings (depositions, trials, federal and state appellate procedure, administrative proceedings, bankruptcy proceedings, workers' compensation proceedings);

(iv) Any changes to (a), (b), and (c) of this subsection as they affect the certified court reporter.

(d) Technology and business practices:

(i) Computer skills;

(ii) Voice recognition technology;

(iii) Videotaping, video conferencing;

(iv) Reporting skills and practices (e.g., readbacks, marking exhibits, administering oaths);

(v) Transcript production, formats, indexing, document management;

(vi) Technological developments related to court reporting, real-time reporting, CART, or captioning;

(vii) Office practices, office management, marketing, accounting, personnel practices, public relations;

(viii) Financial management, retirement planning, estate planning;

(ix) Partnerships, corporations, taxation, insurance.

(e) Professionalism and ethics:

(i) Standards of court reporting practice applicable to individual states or governmental entities;

(ii) Professional comportment and demeanor as it relates to judges, attorneys, fellow reporters, witnesses, litigants and court and law office personnel.

(f) CPR/first-aid classes.

(g) In-house courses offered by court reporting firms.

(h) Vendor sponsored training, with the exception of sales presentations.

(i) Community based programs.

(j) Meetings that include educational or professional development presentations that otherwise meet Washington state criteria for award of continuing education units;

(k) Documented pro bono services on an hour-for-hour basis including, but not limited to:

(i) Presence at a court hearing or deposition;

(ii) Transcription;

(iii) Editing;

(iv) Proofreading.

(l) Documented teaching, research or writing for a planned, directly supervised continuing education experience that fulfills continuing education criteria where no payment is received. Continuing education units will be awarded only once for each separate item.

(3) Any course or activity previously approved by any nationally or state recognized association for court reporting professions shall be approved for continuing education units.

(4) Courses offered with a documented grade of C or better at an accredited college or university will be awarded continuing education units at the following rates:

(a) Semester course: 6 continuing education units.

(b) Trimester course: 5 continuing education units.

(c) Quarter course: 4 continuing education units.

(5) Activities that are not acceptable for continuing education units include, but are not limited to, the following:

(a) Attendance at professional or association business meetings or similar meetings convened for the purpose of election of officers, policymaking, or orientation;

(b) Leadership activities in national, state, or community associations and board or committee service;

(c) Attendance at entertainment, recreational, or cultural presentations;

(d) Recreation, aerobics, massage, or physical therapy courses or practice or teaching of same;

(e) Classes in the performing arts, studio arts, or crafts or teaching of same;

(f) Tours of museums or historical sites;

(g) Social events at meetings, conventions, and exhibits;

(h) Visiting vendor exhibits or attending vendor sales demonstrations;

(i) Jury duty;

(j) Any event for which the attendee receives payment for attendance;

(k) Any event which is part of the attendee's regular employment or is attended for the purpose of gaining employment;

(l) On-the-job training or other work experience, life experience, previous work experience.

(6) Individuals shall maintain documentation of continuing education units for at least three years and provide them to the department on request.

(7) An individual who fails to renew their certification by the expiration date forfeits all rights to represent themselves as a "shorthand reporter," "court reporter," "certified shorthand reporter," or "certified court reporter" until the certificate has been reinstated.

((~~(3)~~)) (8) An individual who has allowed the certification to expire for three years or more is required to file a new complete application and fee and must pass the state-approved examination. Upon passage of the exam a certificate will be issued.

WSR 11-01-121
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed December 20, 2010, 10:20 a.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: These rules become permanent effective January 1, 2011, which is less than thirty-one days after filing. RCW 34.05.380 (3)(a) states that a rule may become effective on a subsequent earlier date if the action is required by state or federal constitution, a statue [statute] or court order. DSHS is required by RCW 74.04.770 to establish standards of need for cash programs on [an] annual basis.

Purpose: The department is amending WAC 388-478-0015, need standards for cash assistance, in order to revise basic need standards for cash assistance based on the 2010 forecast. RCW 74.04.770 requires the department of social and health services to annually establish consolidated standards of need.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090.

Adopted under notice filed as WSR 10-22-119 on November 3, 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 Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 17, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-04-111, filed 2/3/10, effective 3/6/10)

WAC 388-478-0015 Need standards for cash assistance. The need standards for cash assistance units are:

(1) For assistance units with obligation to pay shelter costs:

Assistance Unit Size	Need Standard
1	$((~~1,159~~)) 1,128
2	((~~1,467~~)) 1,428
3	((~~1,811~~)) 1,763
4	((~~2,137~~)) 2,080
5	((~~2,462~~)) 2,397
6	((~~2,788~~)) 2,715
7	((~~3,223~~)) 3,138
8	((~~3,567~~)) 3,472
9	((~~3,911~~)) 3,807
10 or more	((~~4,255~~)) 4,142

(2) For assistance units with shelter provided at no cost:

Assistance Unit Size	Need Standard
1	$((~~603~~)) 583
2	((~~762~~)) 737
3	((~~941~~)) 910
4	((~~1,111~~)) 1,074
5	((~~1,280~~)) 1,238
6	((~~1,450~~)) 1,402
7	((~~1,676~~)) 1,621
8	((~~1,854~~)) 1,794
9	((~~2,033~~)) 1,967
10 or more	((~~2,212~~)) 2,139

WSR 11-01-124
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed December 20, 2010, 10:42 a.m., effective February 1, 2011]

Effective Date of Rule: February 1, 2011.

Purpose: Currently, notification is required on the first day that the explosive materials are stored. Notification to the local fire safety authority is not required until the explosives are moved. This rule making makes notification an annual event. Prior to this change, explosives could be left in one location for years and only one notification to local fire safety authorities was required. Language was added to chapter 296-52 WAC that requires those who store explosives to notify their local fire authority every year.

WAC 296-52-69040 Notification of fire safety authority.

- Added the requirement to notify your local fire safety authority "In writing when an explosive storage license is renewed."

Citation of Existing Rules Affected by this Order: Amending WAC 296-52-69040 Notification of fire safety authority.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 10-18-080 on August 31, 2010.

A final cost-benefit analysis is available by contacting Devin Proctor, P.O. Box 44620, Tumwater, WA 98504, phone (360) 902-5541, fax (360) 902-5619, e-mail prof235@lni.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: December 20, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 02-03-125, filed 1/23/02, effective 3/1/02)

WAC 296-52-69040 Notification of fire safety authority. Any person who stores explosive material must notify the local fire safety authority, who has jurisdiction over the area where the explosive material is stored.

(1) The local fire safety authority must be notified:

• Orally, on the first day explosive materials are stored

• In writing, within forty-eight hours, from the time the explosive material was stored

• In writing when an explosive storage license is renewed.

(2) The notification must include the following for each site where explosive material is stored:

• Type of explosives

• Magazine capacity

• Location.

WSR 11-01-126
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 09-05—Filed December 20, 2010, 12:41 p.m., effective January 20, 2011]

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

Purpose: Chapter 173-152 WAC was originally adopted in 1998 in response to the Washington state supreme court decision in *Hillis v. Department of Ecology*, 131 Wn.2d 373, 932 P.2d 139 (1997). In that decision the supreme court agreed that the organization and management of the department of ecology's workload was reasonable but it needed to be implemented through rule making under the Administrative Procedure Act, chapter 34.05 RCW.

This rule amendment brings the existing rule into compliance with several statutory changes enacted over the past ten years, yet maintains the agency's compliance with the Washington state supreme court decision. Here are the purposes of this rule making.

1. As new water rights become more difficult to acquire and water right changes are more common, ecology seeks new ways to provide water to those who need it. This rule amendment took a closer look at the supreme court decision and the newly enacted statutes, most specifically chapter 90.90 RCW. Ecology found a need to amend the organiza-

tion and management of processing applications for the Columbia Basin water supply.

The rule amendment clarifies the differences of ecology's organization and management of workload when processing applications under chapter 90.90 RCW and those applications processed using chapters 90.03, 90.44, and 90.54 RCW.

2. Ecology also recognized a "road block" in its quest to locate new water supplies. The new water supplies are meant to provide water for the backlog of requests for new water and alleviate interruptible water rights. Potential applications for storage projects funded through chapter 90.90 RCW may be resolved with the new water supply. However, the application(s) that could provide that new supply is stuck in line behind the applications that need that storage. The amendments to RCW 90.03.370 from 2000 to 2003 allow expedition of specific reservoir permits. With the subsequent passage of chapter 90.90 RCW in 2006, ecology believes it is critical to the implementation of the statutes to prioritize the Columbia Basin supply storage permits.

3. Another reason for the rule amendment relates to a change in statute in 2001. The legislature amended RCW 90.03.380 addressing what we commonly call the "two-lines" processing and prioritizing. This amendment separated applications for new water and transfers into two separate lines. Chapter 173-152 WAC was originally adopted with all applications competing in one line. As a result of the legislative amendments, applications for transfer and for new applications no longer compete against each other for processing. Under the new statutory language there are varied criteria ecology may use to decide how to prioritize an application.

4. The passage of the municipal water law in 2003, changed how we define a municipal supplier. Ecology found it necessary to clarify prioritizing failing public water systems based on the new definition of municipal water supplier. We worked closely with the department of health to bring about a more updated rule that works with the new definition.

Statutory Authority for Adoption: RCW 43.21A.064(9), 43.27A.090(11).

Other Authority: Chapters 90.03, 90.44, 90.54, and 90.82 RCW.

Adopted under notice filed as WSR 10-14-113 on July 7, 2010.

Changes Other than Editing from Proposed to Adopted Version:

- Clarified definitions for "mitigation" and "water budget neutral."
- Removed subsection under proposed WAC 173-152-050 (3)(g) and amended water budget neutral definition to cover it.
- Clarified prioritization related to trust water.
- Moved proposed WAC 173-152-050 (1)(e) to WAC 173-152-050 (2)(a).
- Added language to ensure that applications processed under chapter 90.90 RCW would be eligible for priority processing.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 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 1, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 6, Repealed 0.

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

Date Adopted: December 20, 2010.

Ted Sturdevant
Director

AMENDATORY SECTION (Amending Order 97-14, filed 2/27/98, effective 3/30/98)

WAC 173-152-010 Purpose. This rule establishes the framework under which the department can:

(1) Provide for the organization of its work((,));

(2) Prioritize basins to be assessed((,));

(3) Conduct basin assessments((,));

(4) Prioritize investigations of water right applications by geographic areas((,)); and

(5) Establish criteria for priority processing of applications for:

(a) New water rights; and

((~~applications for~~)) (b) Change or transfer of existing water rights.

AMENDATORY SECTION (Amending Order 97-14, filed 2/27/98, effective 3/30/98)

WAC 173-152-020 Definitions. For the purposes of this chapter the following definitions apply:

(1) ((~~"Department" means the department of ecology.~~

~~(2) "Public water system" means a water supply system as defined in RCW 70.119A.020.~~)) "Acquisition" means, for the purposes of WAC 173-152-035, buying or leasing water rights using the Columbia River account.

(2) "Application" means an application for a new water right, a change or transfer to an existing water right, or both made under chapters 90.03 and 90.44 RCW.

(3) "Applications to change or transfer" means applications made under RCW 90.03.380 or 90.44.100.

(4) "Columbia River account" means, for the purposes of the WAC 173-152-035, a fund that is created, funded, and spent as provided in chapter 90.90 RCW.

(5) "Columbia River basin" means, for the purposes of WAC 173-152-035, water resource inventory area (WRIA) 29, located in southwest Washington, and WRIAs 30 through 62 located in central or eastern Washington where water sources flow into the Columbia River upstream of Bonneville Dam. A map of the Columbia River basin by WRIA is shown on map A.

(6) "Columbia River mainstem" means, for the purposes of WAC 173-152-035, all water in the Columbia River within

the ordinary high water mark of the main channel of the Columbia River between the border of the United States and Canada and the Bonneville Dam, and all groundwater within one mile of the high water mark. Water is within the mainstem if it is within a straight line drawn across the mouth of each tributary to delineate the mainstem channel. The mainstem channel does not include any of the backwater areas on tributaries nor does it include tributary surface water rights within one mile of the Columbia River.

(7) "Competing applications" means all existing applications for a water right from the same water source, whether for a new water right or for a change or transfer of an existing water right.

(((~~(5) "Same~~)) (8) "Department" means the department of ecology.

(9) "Lower Snake River mainstem" means, for the purposes of WAC 173-152-035, all water in the Lower Snake River within the ordinary high water mark of the main channel of the Lower Snake River from the head of Ice Harbor pool to the confluence of the Snake and Columbia rivers, and all groundwater within one mile of the high water mark. Water is within the mainstem if it is within a straight line drawn across the mouth of each tributary to delineate the mainstem channel. The mainstem channel does not include any of the backwater areas on tributaries nor does it include tributary surface water rights within one mile of the Lower Snake River.

(10) "Mitigation" means measures that in perpetuity offset impacts on a water source to eliminate detriment to the public interest or impairment.

(11) "New application" means any application for a permit made under chapters 90.03 and 90.44 RCW.

(12) "Nonconsumptive" means water use where there is no diminishment of the amount or quality of the water source.

(13) "Pool" means, for the purposes of WAC 173-152-035, a reach of the Columbia or Lower Snake River mainstems inundated and under the downstream hydraulic control of dams operated by:

(a) U.S. Army Corps of Engineers.

(b) U.S. Bureau of Reclamation.

(c) Any mid-Columbia public utility district.

(14) "Public water system" means a water supply system as defined in RCW 70.119A.020.

(15) "Sources of supply developed under chapter 90.90 RCW" means, for the purposes of WAC 173-152-035, new storage, modification of existing storage, conservation, pump exchanges, acquisition or any other projects designed to provide access to new water supplies.

(16) "Transfer" means a transfer, change, amendment, or other alteration of a part or all of a water right authorized under chapters 90.03, 90.38, 90.42, and 90.44 RCW.

(17) "Voluntary regional agreement" or "VRA" means, for the purposes of WAC 173-152-035, an agreement entered into by the department with another entity for the purposes of providing new water for out-of-stream use, streamlining the application process, and protecting instream flow.

(18) "Water budget neutral project" means a project where diversions or withdrawals of waters of the state are proposed in exchange for at least an equivalent amount of water from other water rights, the trust water program, a water bank, relinquishment of other water rights, or other mitigation projects that result in no diminishment of the source.

(19) "Water source" ((~~or "source of water"~~)) means an aquifer, aquifer system, or surface water body, including a stream, stream system, lake, or reservoir and any spring water or underground water that is part of or tributary to the surface water body or aquifer((~~,~~)) that the department determines to be an independent water body for the purposes of water right administration.

AMENDATORY SECTION (Amending Order 97-14, filed 2/27/98, effective 3/30/98)

WAC 173-152-030 Organization and management of work load except under chapter 90.90 RCW. The department will organize and manage its daily water rights workload as established in subsections (1) through (5) of this section, except for applications processed under WAC 173-152-035.

(1) The department may establish regions and maintain regional offices or field offices for the purposes of maximizing the efficiency of its work. Regional offices and their geographic jurisdictions as of the effective date of this rule are as follows:

(a) Northwest regional office serving Island, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom counties((~~,~~)).

(b) Southwest regional office serving Clallam, Clark, Cowlitz, Grays Harbor, Jefferson, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum counties((~~,~~)).

(c) Central regional office serving Benton, Chelan, Douglas, Kittitas, Klickitat, Okanogan, and Yakima counties((~~, and~~)).

(d) Eastern regional office serving Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, and Whitman counties.

(2) The department will make decisions on ((~~new water right~~)) applications ((~~and applications for change or transfer of an existing water right~~)) within a region or within a regional or field office's geographic area in the order the applications ((~~was~~)) were received except as allowed under RCW 90.03.380 (5)(c), and except as provided for in subsection (3) of this section and WAC 173-152-050.

(3) The department may, based on the criteria identified in subsection (((~~4~~))) (5) of this section, conduct ((~~an~~)) investigations and make decisions on one or more ((~~water right~~)) applications for the use of water from the same water source. ((~~Within~~)) A regional office((~~,~~)) may investigate more than one water source ((~~may be investigated~~)) at a time.

(4) When ((~~numerous~~)) the department investigates multiple applications for water from the same water source ((~~are being investigated, the~~)), it will make decisions ((~~will be made~~)) in the order in which the applications were received, except as allowed under RCW 90.03.380 (5)(c) or provided for under WAC 173-152-050. The department will consider each application ((~~will be considered~~)) individually under the requirements of chapters 90.03, 90.38, 90.42, and 90.44 RCW, as applicable.

(((~~(4)~~))) (5) Criteria for selecting a water source include, but are not limited to:

(a) The number and age of pending applications, and the quantities of water requested((~~;~~)).

(b) The ability to efficiently investigate applications because of the availability of data related to water supply and future needs, ((~~streamflow~~)) stream flow needs for instream values, and hydrogeology of the basin((~~;~~)).

(c) The ability of the department to support implementation of local land use plans or implementation of water resource plans((~~;~~)).

(d) The projected population and economic growth in the area((~~; and/or~~)).

(e) The completion of an initial basin assessment as provided for in WAC 173-152-040(5).

NEW SECTION

WAC 173-152-035 Organization and management of workload under chapter 90.90 RCW. The department will organize and manage the daily workload as established in subsections (1) through (6) of this section for applications processed under chapter 90.90 RCW.

(1) The department implements chapter 90.90 RCW in counties or portions of counties in the central, eastern, and southwest regional offices, as shown in the map by counties on map B.

(2) The department processes the following types of applications under chapter 90.90 RCW:

(a) New applications proposing to divert surface water from the Columbia River between the border of the United States and Canada and the Bonneville Dam.

(b) New applications proposing to divert surface water from the Lower Snake River downstream of Lower Monumental Dam.

(c) New applications associated with a voluntary regional agreement proposing to divert or withdraw water from the Columbia River mainstem or Lower Snake River mainstem.

(d) New applications proposing to divert surface water within the Columbia River basin for storage or net water savings funded in whole or in part by the Columbia River account.

(e) New applications proposing to withdraw groundwater within the Columbia River basin for storage or net water savings funded in whole or in part by the Columbia River account where the proposed well(s) and use(s) can be mitigated using the same source as that of the withdrawal.

(f) Applications for water rights and trust water within the Columbia River basin associated with a project funded by the Columbia River account.

(3) Criteria for selecting a water source for processing new applications from water supplies developed in whole or in part by the department include, but are not limited to:

(a) The priorities outlined in RCW 90.90.020(3).

(b) The funding agreements and environmental reviews used to develop a project.

(c) The number and age of pending applications, and the quantities of water requested.

(d) Existence of distressed or endangered fish stocks.

(e) The location of the source to be developed.

(f) Whether the place of use must stay within the WRIA as limited under RCW 90.90.010 (2)(a).

(4) The department may, based on the criteria identified in subsection (3) of this section, conduct investigations and make decisions on one or more applications for the use of water from the same water source. The department may investigate more than one water source at the same time.

(5) When numerous applications for water from the same water source are investigated, the department may make decisions on one or more water right applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in subsection (4) of this section and WAC 173-152-050.

(6) For purposes of chapter 90.90 RCW, if the water source developed is:

(a) On the Columbia River between Bonneville Dam and Canada, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new surface water applications within the same pool and downstream of the developed source of supply.

(ii) All new groundwater applications where the proposed well(s) can be mitigated using the same source as that of the withdrawal.

(iii) Applications for change or transfer or trust water applications associated with development of the source if funded by the Columbia River account.

(b) On the Snake River downstream of Lower Monumental Dam, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new surface water applications within the same pool and downstream of the developed source of supply.

(ii) All new groundwater applications where the proposed well(s) can be mitigated by the developed source of supply.

(iii) Applications for change or transfer or trust water applications associated with development of the source if funded by the Columbia River account.

(c) On the Columbia River mainstem or Lower Snake River mainstem under a voluntary regional agreement, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new surface water applications within the same pool and downstream of the developed source of supply.

(ii) All new groundwater applications within one mile of the high water mark where the proposed well(s) can be mitigated using the same source as that of the withdrawal.

(iii) Applications for change or transfer to trust water applications associated with development of the source if funded by the Columbia River account.

(d) On a tributary in the Columbia River basin for a source of supply developed using Columbia River account funds, the department will collectively process the following applications in the order in which the applications are

received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new downstream tributary surface water applications.

(ii) All new surface water applications on the Columbia River within the same pool and downstream of the developed source of supply.

(iii) All new groundwater applications within the Columbia River basin where the proposed well(s) can be mitigated using the same source as that of the withdrawal.

(iv) Applications for change or transfer or trust water applications associated with development of the source if funded by the Columbia River account.

(e) Upstream of Lower Monumental Dam or on a tributary to the Lower Snake River for a source of supply developed using Columbia River account funds, the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new downstream tributary surface water applications.

(ii) All new surface water applications on the Lower Snake and Columbia rivers within the same pool and downstream of the developed source of supply.

(iii) All new groundwater applications within the Lower Snake and Columbia river basins where the proposed well(s) can be mitigated using the same source as that of the withdrawal.

(iv) Applications for change or transfer or trust water applications associated with development of the source if funded by the Columbia River account.

(f) In the Columbia River basin using funds from the Columbia River account through acquisition or transfer of water rights in accordance with RCW 90.90.010 (2)(a), the department will collectively process the following applications in the order in which the applications are received, except as allowed under RCW 90.03.380 (5)(c), and except as provided for in WAC 173-152-050:

(i) All new downstream tributary surface water applications within the same WRIA.

(ii) All new surface water applications on the Lower Snake or Columbia rivers within the same WRIA.

(iii) All new groundwater applications where the proposed well(s) can be mitigated using the same source as that of the withdrawal within the same WRIA.

(7) The department will consider each application individually under the requirements of chapters 90.03, 90.38, 90.42, and 90.44 RCW.

(8) Before expediting an application for new storage pursuant to WAC 173-152-050(3), the department shall provide written notification to:

(a) County legislative authorities.

(b) Watershed planning groups with jurisdiction in the location of the reservoir.

(c) The department of fish and wildlife.

(d) Affected tribal governments and federal agencies.

(9) Any notified entity identified in subsection (7) of this section may raise concerns, either verbally or in writing, to the department about the department's decision how to prioritize an application. The concern must be raised within thirty calendar days of receiving the department's notification. The department will consider the concerns as it processes the application.

AMENDATORY SECTION (Amending Order 97-14, filed 2/27/98, effective 3/30/98)

WAC 173-152-040 Basin assessments. (1) The department may conduct assessments to assemble and ((~~correlate~~)) compare information related to:

(a) Water use((~~,~~));

(b) Water availability((~~,~~));

(c) The quantity of water allocated to existing rights((~~, claims,~~));

(d) Known or potential water rights not recorded within the state water right record, and claims to water rights including those recorded within the water rights claims registry;

(e) Instream flow((~~,~~)); and

(f) The hydrology of a basin ((~~to use in making decisions on future water resource allocation and use~~)).

(2)The department may also enter into agreements or contracts with public or private parties to conduct assessments.

((~~Geographic areas or same water sources within a regional office service area will be identified or considered for assessment~~)) (3) In cooperation with federal, state, tribal, and local jurisdictions and other interested parties((~~. In determining a basin or same water source to assess, the department's consideration may include, but is not limited to, the following factors~~)), each regional office and the department in processing applications under chapter 90.90 RCW will consider assessing a geographic area or water source within its service area using criteria such as:

(a) The number and age of pending applications, and the quantities of water requested((~~,~~)).

(b) The projected population, growth and off-stream needs for water in the area((~~,~~)).

(c) Known water quality problems((~~,~~)).

(d) Existence of distressed or endangered fish stocks((~~,~~)).

(e) Risk of impairment to senior rights (including instream flow rights)((~~,~~)).

(f) Availability of data related to water supply and future need, ((~~streamflow~~)) stream flow needs for instream values, and hydrogeology of the basin((~~,~~)).

(g) The number of claims to water rights submitted pursuant to chapter 90.14 RCW((~~, and~~)).

(h) The ability of the department to support local land use activities.

(((~~(2)~~))) (4) Each regional office and the department in processing applications under chapter 90.90 RCW may conduct multiple basin assessments ((~~may be conducted within a region~~)) at the same time. When the department determines ((~~it~~)) conducting a basin assessment is in the public interest ((~~to conduct a basin assessment~~)), it will:

(a) Publish notice of the intent to conduct a basin assessment once a week, for two consecutive weeks in a newspaper of general circulation within the geographic area((~~,~~)).

(b) ((~~Hold in abeyance~~)) Notify any Indian tribe with potential interest in the basin of the intent.

(c) Temporarily cease making decisions on all competing water right applications in the basin ((after publication of a notice to initiate a basin assessment and)) proposed for assessment until the initial basin assessment is complete and published except for applications prioritized pursuant to WAC 173-152-050((; and)).

(((c))) (d) Make decisions on competing applications after the initial basin assessment is complete and published to the extent sufficient information is available.

(((3))) (5) Initial basin or water source assessments will be conducted to assemble the following existing information:

(a) Physical characterization of the watershed related to:

(i) Climatic impacts to water resources((;)).

(ii) Geology((;)).

(iii) ((Streamflow)) Stream flow trends((;)).

(iv) ((Ground water)) Groundwater elevation trends and the contribution of ((ground water)) groundwater to ((streamflows; and)) stream flows.

(v) Surface and ((ground water)) groundwater quality in the basin or water source.

(b) Out-of-stream water use characterization related to:

(i) Water rights, federal rights, and claims to water rights((;)).

(ii) Estimated use of water pursuant to water rights and claims to water rights((;)).

(iii) Water use pursuant to RCW 90.44.050((;)).

(iv) Extent of unauthorized water use((; and)).

(v) Potential future demands for out-of-stream water use in the basin.

(c) Instream water use characterization related to:

(i) National Pollution Discharge Elimination System permits and the need for instream flow for pollution assimilation;

(ii) Fish stocks and habitat requirements, including existing, defined or engineered, or approved restoration projects;

(iii) Wildlife habitat requirements;

(iv) Recreational requirements; and

(v) Water rights and claims to water rights.

(((4))) (6) Upon completion and publication of the initial basin assessment, the department ((in consultation)) will consult with the public and federal, state, tribal, local jurisdictions and interested parties ((will)) to evaluate the basin assessment. The evaluation will assess the data, analysis, and presentation of information in the basin assessment in terms of quality, adequacy, and utility to make decisions on future water resource allocation and use.

(((5))) (7) The department will make decisions on competing applications for water from a water source ((of water)) within the basin where sufficient information for water resource allocation exists. If the department determines that the information assembled and ((correlated)) compared is not sufficient, the department may withdraw the water source from appropriation pursuant to RCW 90.54.050(2). The department in consultation with the public, federal, state, tribal, local jurisdictions and interested parties will design and conduct additional investigations, to the extent resources allow, to obtain the information necessary to make future decisions on water allocation and use.

(((6))) (8) The department shall make available on-line information obtained and compiled during an initial basin assessment of the water resources in a basin or water source ((will be contained in an open file technical report at the regional or field office)).

AMENDATORY SECTION (Amending Order 97-14, filed 2/27/98, effective 3/30/98)

WAC 173-152-050 Criteria for priority processing of competing applications. At ecology's discretion, the department may approve an application for priority processing that addresses one of the criteria below:

(1) Within each regional office and among applications processed under chapter 90.90 RCW, the department may prioritize an application ((may be processed prior to)) ahead of competing applications if the application resolves or alleviates a situation under either (a) or (b) of this subsection.

(a) A public health or safety emergency ((caused by a failing)) exists for a public water ((supply)) system currently providing potable water to existing users.

Inadequate water rights for a public water system to serve existing hook-ups or to accommodate future population growth or other future uses do not constitute a public health or safety emergency. The application must ((be filed)) specifically propose to correct the actual or anticipated cause(s) of the ((public water system failure)) emergency. ((To be considered a failing public water system, the system)) An emergency must meet one or more of the following conditions:

(((a) The department, upon notification by and in consultation with the department of health or local health authority, determines)) (i) A public water system has failed((, or is in danger of failing within one year,)) to meet state board of health standards for the delivery of potable water to existing water system users in adequate quantity or quality to meet basic human drinking, cooking and sanitation needs((;

(b))).

(ii) The current water source has failed or will fail within one year so that the public water system is or will become incapable of exercising its existing water right to meet existing needs for drinking, cooking and sanitation purposes after all reasonable water use efficiency and conservation efforts have been implemented((; or

(c))).

(iii) A change in source is required to meet drinking water quality standards and avoid unreasonable treatment costs, or the state department of health determines that the existing source of supply is or will become unacceptable for human use.

((~~(2) An application may be processed prior to~~))

(b) Any emergency exists, other than for a public water system, for which immediate action is necessary for preservation of public health or safety.

(2) Within each regional office and among applications processed under chapter 90.90 RCW, the department may prioritize an application ahead of all competing applications, but only after those applications prioritized in subsection (1) of this section, if the department determines the application:

(a) ((Immediate action is necessary for preservation of public health or safety; or)) Is for a public water system or source in danger of failing within five years, and priority pro-

cessing by the department may correct the anticipated cause(s) of the emergency prior to actual system failure.

(b) ((~~The~~)) Was filed by claimants participating in an adjudication, and the court requires a prompt decision.

(c) Is for a proposed water use that is nonconsumptive and if approved would substantially enhance or protect the quality of the natural environment((~~.~~

~~(3) An application for change or transfer to an existing water right may be processed prior to competing applications provided one or more of the following criteria are satisfied:~~

~~(a) The change or transfer if approved would substantially enhance the quality of the natural environment; or~~

~~(b) The change or transfer if approved would result in providing public water supplies to meet general needs of the public for regional areas;~~

~~(c) The change or transfer was filed by water right holders participating in an adjudication, and a decision is needed expeditiously to ensure that orders or decrees of the superior court will be representative of the current water use situation.~~

~~(4) Within each regional office, the department shall process applications satisfying the criteria in subsections (1) through (3) of this section in the following priority:~~

~~(a) Public health and safety emergencies under subsection (1) of this section;~~

~~(b) Preservation of other public health and safety concerns under subsection (2)(a) of this section;~~

~~(c) Transfers or changes under subsection (3)(a) of this section;~~

~~(d) Transfers or changes under subsection (3)(b) of this section;~~

~~(e) Transfers or changes under subsection (3)(c) of this section; and~~

~~(f) Nonconsumptive uses under subsection (2)(b) of this section~~)), such as:

(i) Donations to the trust program intended to enhance instream flows or groundwater preservation.

(ii) A change or transfer of water into the state trust water right program in accordance with chapter 90.38 or 90.42 RCW, if that transfer provides a substantial environmental benefit.

(d) Is for a change or transfer and, if approved, would result in providing for public water supplies including, but not limited to, consolidation of two or more public water systems, to meet general public needs for the regional areas.

(e) Is for a seasonal water right change effective for a term of one year or less.

(f) Proposes temporary water use for an identified period such as:

(i) A public project such as road building.

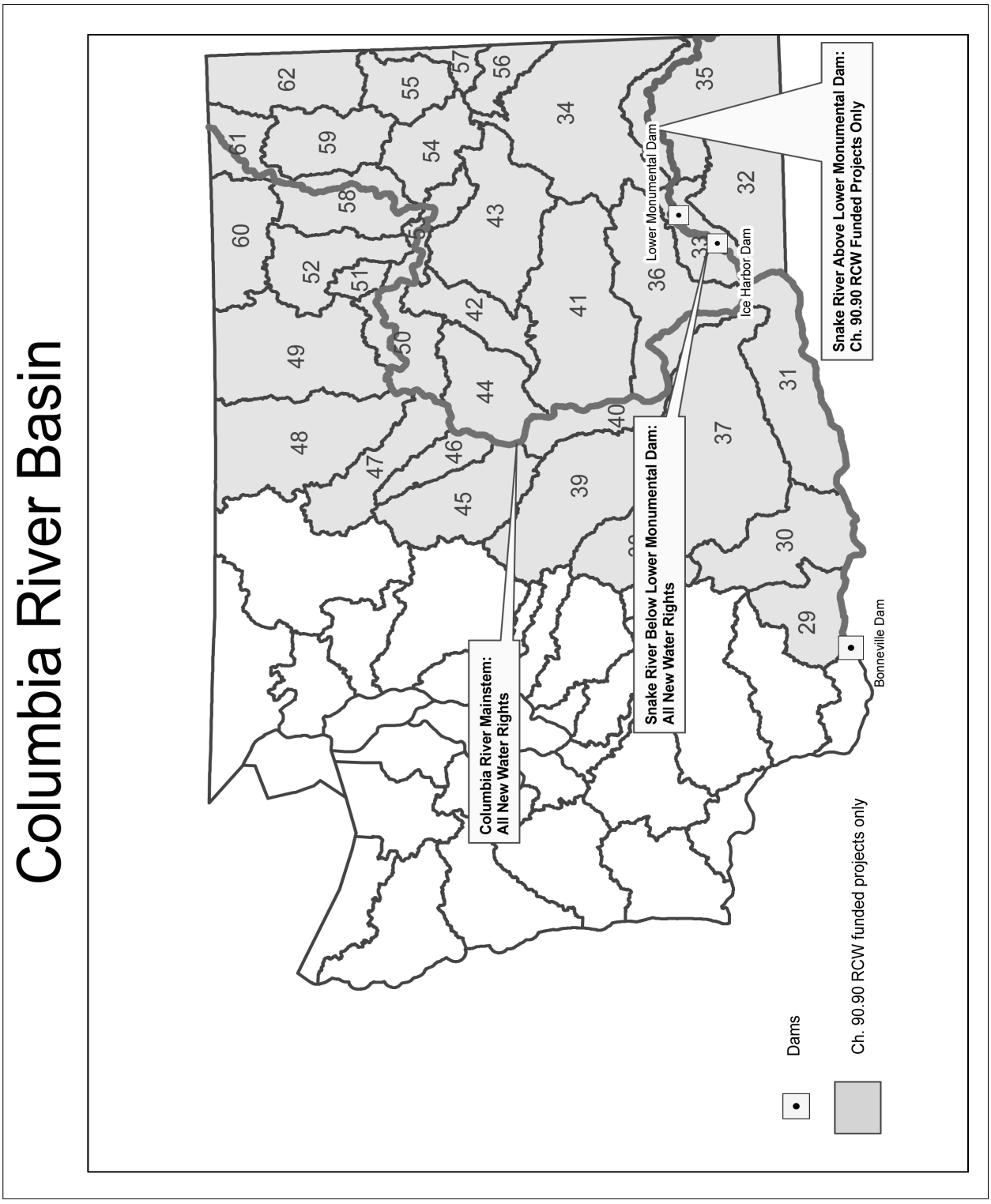
(ii) A private project directly related to renewable energy or environmental enhancement.

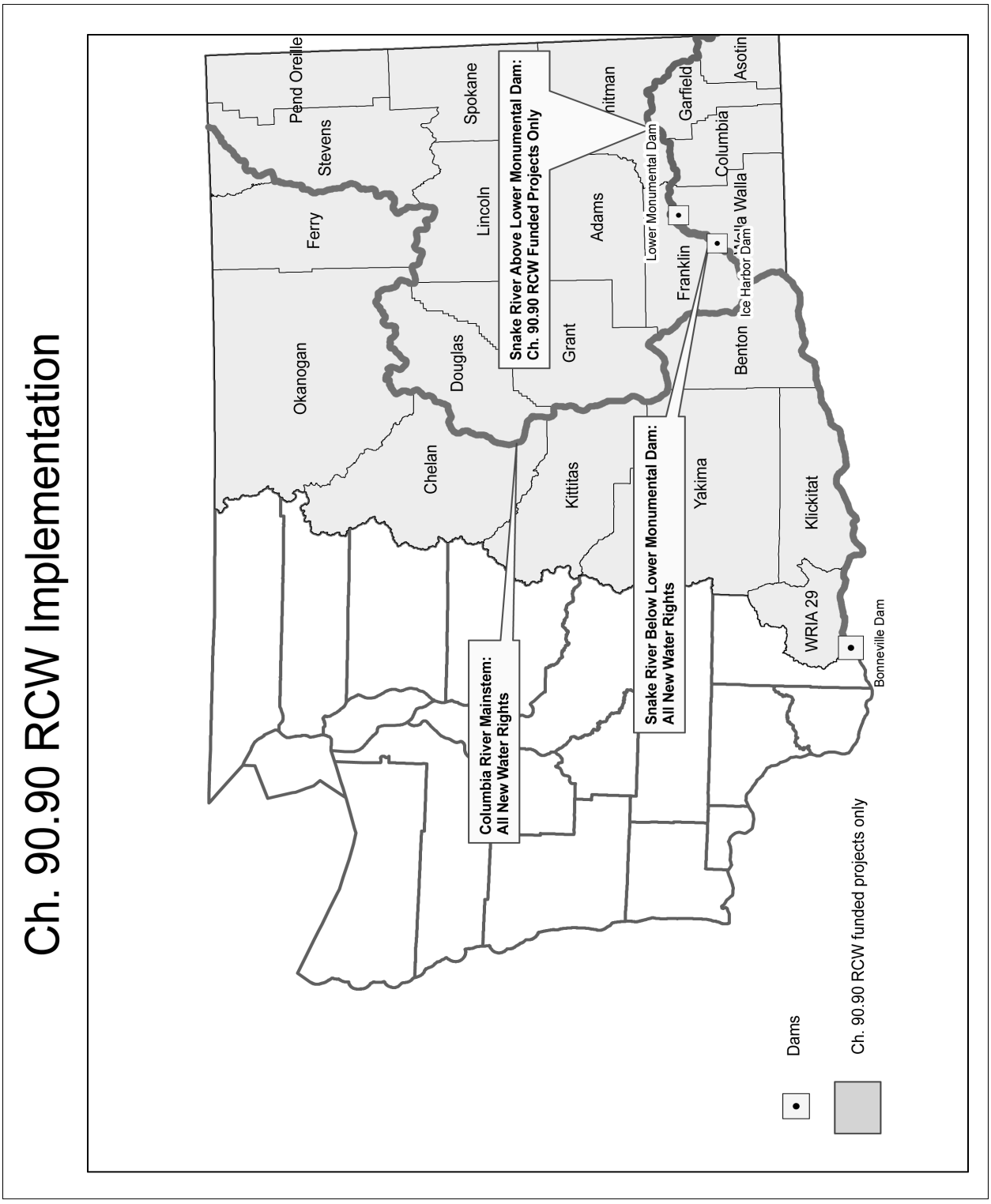
(g) Proposes a water budget neutral project as defined in WAC 173-152-020(18).

(3) The department may prioritize ahead of competing applications, except as prioritized in subsections (1) and (2) of this section, a new application for diversionary rights into reservoirs that, if approved, would not conflict with adopted state instream flow rules, federal flow targets, or federal biological opinions, and is funded or supported pursuant to chapter 90.90 RCW.

AMENDATORY SECTION (Amending Order 97-14, filed 2/27/98, effective 3/30/98)

WAC 173-152-060 Exceptions. Nothing in this chapter precludes the department from processing an application((~~s or requests~~)) filed for ((~~temporary permits, preliminary permits or for emergent or emergency circumstances under RCW 43.83B.410, 90.03.383(7), or 90.03.390 and/or~~)) a project where the law provides a specific process for evaluation of ((~~an~~)) the application and issuance of a decision, or where the law provides or allows for expedited processing of an application.


Columbia River Basin
Columbia River Mainstem: All New Water Rights
Snake River Below Lower Monumental Dam: All New Water Rights
Snake River Above Lower Monumental Dam: Ch. 90.90 RCW Funded Projects Only
Lower Monumental Dam
Ice Harbor Dam
Bonneville Dam
Dams
Ch. 90.90 RCW funded projects only


Ch. 90.90 RCW Implementation
Pend Oreille
Stevens
Ferry
Okanogan
Chelan
Douglas
Lincoln
Spokane
Grant
Adams
Whitman
Garfield
Asotin
Columbia
Walla Walla
Franklin
Benton
Kittitas
Yakima
Klickitat
WRIA 29
Snake River Above Lower Monumental Dam: Ch. 90.90 RCW Funded Projects Only
Columbia River Mainstem: All New Water Rights
Snake River Below Lower Monumental Dam: All New Water Rights
Lower Monumental Dam
Ice Harbor Dam
Bonneville Dam
Dams
Ch. 90.90 RCW funded projects only

WSR 11-01-133
PERMANENT RULES
LIQUOR CONTROL BOARD
[Filed December 21, 2010, 9:03 a.m., effective January 21, 2011]

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

Purpose: Implementation of legislation passed in 2010 required changes in current rule or adoption of new rules to clarify and provide further guidance to licensees who are impacted by the new regulations. As part of the liquor control board's ongoing rules review process, chapter 314-02 WAC was also reviewed for relevance, clarity, and accuracy. Several sections were moved from chapter 314-16 WAC to chapter 314-02 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 314-02-085, 314-02,095, 314-16-195, 314-16-260, 314-16-265, 314-16-270 and 314-16-275; and amending WAC 314-02-005, 314-02-010, 314-02-015, 314-02-025, 314-02-030, 314-02-033, 314-02-035, 314-02-038, 314-02-041, 314-02-0411, 314-02-045, 314-02-100, 314-02-105, 314-02-120, 314-02-125, and 314-02-130.

Statutory Authority for Adoption: RCW 66.08.030, 66.24.363.

Adopted under notice filed as WSR 10-20-169 on October 6, 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 6, Amended 16, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 16, Repealed 7.

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: December 15, 2010.

Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

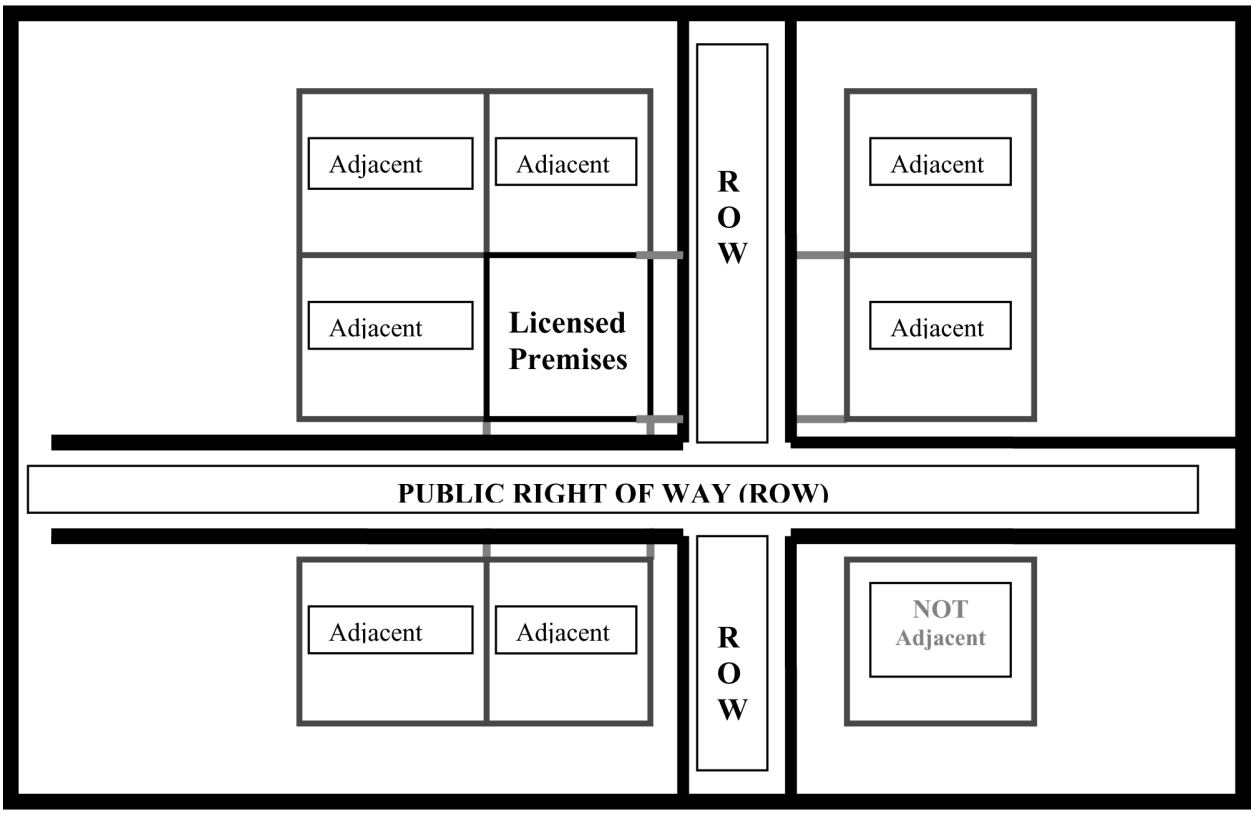
WAC 314-02-005 What is the purpose of chapter 314-02 WAC? Chapter 314-02 WAC outlines the qualifications for the following liquor licenses ((~~and permits~~)):

(1) Spirits, beer, and wine restaurants;
(2) Nightclubs;
(3) Spirits, beer, and wine restaurant restricted;
(4) Hotels;
(((~~4~~))) (5) Beer and/or wine restaurants;
(6) Sports/entertainment facilities;
(((~~5~~))) (7) Snack bars;
(((~~6~~))) (8) Taverns;
(((~~7~~))) (9) Motels;
(((~~8) Bed and breakfasts;~~
~~(9)~~))) (10) Nonprofit arts organizations;
(((~~10) Public houses;~~))
(11) Grocery stores;
(12) Beer/wine specialty shops; and
(13) Beer/wine gift delivery ((~~business~~)) businesses.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-010 Definitions. The following definitions are to clarify the purpose and intent of the rules and laws governing liquor licenses and permits. Additional definitions can be found in RCW 66.04.010.

(1) "Adjacent" means having a common endpoint or border where the extension of the property lines of the licensed premises contacts that common border.



(2) "Appetizer" means a small portion of food served before the main course of a meal to stimulate the appetite. An appetizer does not qualify as minimum food service.

(3) "Banquet room" means any room used primarily for the sale and service of food and liquor to private groups.

(((~~3~~))) (4) "Customer service area" means areas where food and/or liquor are normally sold and served to the public, i.e., lounges and dining areas. A banquet room is not considered a customer service area.

(((~~4~~))) (5) "Dedicated dining area." In order for an area to qualify as a dedicated dining area, it must be a distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. See WAC 314-02-025 for more information.

(((~~5~~))) (6) "Designated area" means a space where alcohol may be sold, served, or consumed.

(((~~6~~))) (7) "Entertainer" means someone who performs for an audience such as a disc jockey, singer, or comedian, or anyone providing entertainment services for the licensee. An entertainer is considered an employee of the liquor licensee per WAC 314-01-005. Patrons participating in entertainment are not considered employees.

(((~~7~~))) (8) "Entertainment" means dancing, karaoke, singing, comedy shows, concerts, TV broadcasts, contests with patron participation and/or performing for an audience.

(((~~8~~))) (9) "Food counter" means a table or counter set up for the primary purpose of food service to customers who sit or stand at the counter. Any alcohol served is incidental to food service.

(((~~9~~))) (10) "Game room" means an area of a business set up for the primary purpose of patrons using games or gaming devices.

(((~~10~~))) (11) "Limited food service" means items such as appetizers, sandwiches, salads, soups, pizza, hamburgers, or fry orders.

(12) "Liquor bar" means a table or counter where alcohol is stored or prepared and served to customers who sit or stand at the bar. Liquor bars can only be in lounges or in premises where minors are not allowed at any time.

(((~~11~~))) (13) "Lounge" means the portion of a restaurant used primarily for the preparation, sale, and service of beer, wine, or spirits. Minors are not allowed in a lounge (see RCW 66.44.316 for information on employees and professional musicians under twenty-one years of age).

(((~~12~~))) (14) "Minimum food service" means items such as sandwiches, salad, soup, pizza, hamburgers, and fry orders.

(((~~13~~))) (15) "Minor" means a person under twenty-one years of age.

(((~~14~~))) (16) "On-premises liquor licensed premises" means a building in which a business is located inside that is allowed to sell alcohol for consumption on the licensed premises.

(17) "Service bar" means a fixed or portable table, counter, cart, or similar work station primarily used to prepare, mix, serve, and sell alcohol that is picked up by employees or customers. Customers may not be seated or allowed to consume food or alcohol at a service bar.

(((~~15~~))) (18) "Snack food" means items such as peanuts, popcorn, and chips.

AMENDATORY SECTION (Amending WSR 09-02-012, filed 12/29/08, effective 1/29/09)

WAC 314-02-015 What is a spirits, beer, and wine restaurant license? (1) Per RCW 66.24.400, this license allows a restaurant to:

(a) Serve spirits by the individual glass for on-premises consumption;

(b) Serve beer by the bottle or can or by tap for on-premises consumption;

(c) Serve wine for on-premises consumption;

(d) Allow patrons to remove recorked wine from the licensed premises ((~~in accordance with RCW 66.24.400~~));

(e) Sell wine by the bottle for off-premises consumption with the appropriate endorsement; and

(f) Sell kegs of malt liquor with the appropriate endorsement.

(2) To obtain and maintain a spirits, beer, and wine restaurant license, the restaurant must be open to the public at least five hours a day during the hours of ((~~11:00~~)) 8:00 a.m. and 11:00 p.m., five days a week. The board may consider written requests for exceptions to this requirement due to demonstrated hardship, and may grant an exception under such terms and conditions as the board determines are in the best interests of the public.

(3) All applicants for a spirits, beer, and wine license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant. The term "bona fide restaurant" is defined in RCW 66.24.410(2).

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-025 What are the floor space requirements to obtain and maintain a spirits, beer, and wine restaurant license or a beer and wine restaurant license? (1) The liquor control board has the responsibility to classify what licensed premises or what portions of the licensed premises are off-limits to minors. (RCW 66.44.310(2).) Minors may not purchase, possess, or consume liquor, and may not enter any areas that are classified as off-limits to minors. (RCW 66.44.290 and 66.44.310.) The purpose of this rule is to clarify the ways in which licensees can prevent minors from consuming alcohol or entering restricted areas.

(2) Dedicated dining areas - If a spirits, beer, and wine restaurant licensee or a beer and wine restaurant licensee that allows minors chooses to have live music, Karaoke, patron dancing, live entertainment, or contests involving physical participation by patrons in the dedicated dining area after 11:00 p.m., the licensee must either:

(a) Request board approval to reclassify the dining area to a lounge for the period of time that live entertainment is conducted, thus restricting minors during that time; or

(b) Notify the board's licensing and regulation division in writing at least forty-eight hours in advance that the sale, service, and consumption of liquor will end in the dedicated dining area after 11:00 p.m.

Request or notifications may cover one event or a series of recurring events over a period of time.

(3) **Barriers -** Licensees must place barriers around ((~~game rooms and~~)) areas that are classified as off-limits to minors and around game rooms.

(a) The barriers must clearly separate restricted areas, and must be at least forty-two inches high.

(b) The barriers must be permanently affixed (folding or retractable doors or other barriers that are permanently affixed are acceptable). A portable or moveable rope and stanchion is not acceptable. Those licensees that have been approved by the board for moveable barriers prior to the effective date of this rule may keep their movable barriers until the licensee requests alterations to the premises or the premises change ownership.

(c) Liquor bars cannot be used as the required barriers (see definition of liquor bar in WAC 314-02-010((~~(7)~~)) (10)).

(d) Entrances to restricted areas may not be wider than ten feet. If a licensee has more than one entrance along one wall, the total entrance areas may not exceed ten feet.

(e) "Minor prohibited" signs, as required by WAC 314-11-060(1), must be posted at each entrance to restricted areas.

(4) If the business allows minors, the business's primary entrance must open directly into a dedicated dining area or into a neutral area, such as a lobby or foyer, that leads directly to a dedicated dining area. Minors must be able to access restrooms without passing through a lounge or other age-restricted area.

(5) **Floor plans -** When applying for a license, the applicant must provide to the board's licensing and regulation division two copies of a detailed drawing of the entire premises. The drawing must:

(a) Be drawn one foot to one-quarter-inch scale;

(b) Have all rooms labeled according to their use; e.g., dining room, lounge, game room, kitchen, etc.; and

(c) Have all barriers labeled in a descriptive way; e.g., "full wall," "half wall," etc.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-030 Can a spirits, beer, and wine restaurant exclude persons under twenty-one years of age from the premises? A spirits, beer, and wine restaurant licensee may exclude minors from the entire premises at all times ((~~or at certain times~~)) as approved by the board.

(1) To exclude minors from the entire licensed premises at all times ((~~or at certain times,~~)) the applicant or licensee must:

(a) Indicate during the liquor license application process that he/she does not wish to have minors on the entire premises at all times ((~~or at certain times indicated by the applicant or licensee~~)); or

(b) If already licensed as a spirits, beer, and wine restaurant that allows minors, the applicant may request permission from the board's licensing and regulation division to exclude minors at all times or ((~~at certain times indicated by the applicant or licensee~~)) for a specific event. See WAC 314-02-130 for instructions on requesting this approval.

(c) Spirits, beer, and wine restaurant licensees who exclude minors from the entire premises at all times or at certain times must meet all other requirements of this license,

including the food service requirements outlined in WAC 314-02-035.

(d) During the times that a spirits, beer, and wine restaurant licensee excludes minors from the entire premises, the licensee may not employ minors. (See ((~~WAC 314-11-040~~)) RCW 66.44.316 for more information on employing minors.)

(2) Restaurants that have less than fifteen percent of their total customer service area dedicated to dining must exclude minors from the entire premises. The licensee ((~~must~~)):

(a) Must pay the ((~~two thousand dollars~~)) largest annual license fee (less than fifty percent dedicated dining; ((~~and~~))

(b) Must meet all other requirements of this license, including the food service requirements outlined in WAC 314-02-035((~~.~~)); and

(c) May not employ minors at any time. (See RCW 66.44.316 for information on employing certain persons eighteen years and over under specific conditions.)

(3) See WAC 314-11-060(1) regarding requirements for "minors prohibited" signage.

AMENDATORY SECTION (Amending WSR 05-22-022, filed 10/24/05, effective 11/24/05)

WAC 314-02-033 Do spirits, beer, and wine restaurants that exclude minors from the premises have to put barriers around their dedicated dining area(s)? Spirits, beer, and wine restaurant licensees who exclude minors from the entire premises at all times are only required to place the barriers described in WAC 314-02-025(2) around dedicated dining areas for the purpose of paying the ((~~one thousand six hundred dollar~~)) lower annual license fee (fifty percent to ninety-nine percent dedicated dining area). Restaurants that do not allow minors at any time and do not wish to have barriers around their dining area(s) must pay the ((~~two thousand dollar~~)) higher annual license fee (less than fifty percent dedicated dining area). (See WAC 314-02-020 for an explanation of fees.)

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-035 What are the food service requirements for a spirits, beer, and wine restaurant license? (1) A spirits, beer, and wine restaurant licensee must serve at least ((~~four~~)) eight complete meals. ((~~Per RCW 66.24.410(2), a complete meal does not include hamburgers, sandwiches, salads, or fry orders.~~)) The board may make an exception to the eight complete meal requirement on a case-by-case basis. Establishments shall be maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. For purposes of this title:

(a) "Complete meal" means an entree and at least one ((~~additional course~~)) side dish.

(b) "Entree" means the main course of a meal. ((~~To qualify as one of the four required complete meals, the entree must require the use of a dining implement to eat, and cannot consist of a hamburger, sandwich, salad, or fry order~~)) Some examples of entrees are fish, steak, chicken, pork, pasta, pizza, hamburgers, seafood salad, Cobb salad, chef's salad, sandwiches, and breakfast items (as long as they include a side dish). Entrees do not include snack items, or menu items which consist solely of precooked frozen food that is reheated, or consist solely of carry-out items obtained from another business.

(c) Examples of side dishes are soups, vegetables, salads, potatoes, french fries, rice, fruit, and bread.

(2) The restaurant must maintain the kitchen equipment necessary to prepare the complete meals required under this section ((~~and RCW 66.24.410(2)~~)).

(3) The complete meals must be prepared on the restaurant premises.

(4) A chef or cook must be on duty while complete meals are offered.

(5) A menu must be available to customers ((~~that lists, at a minimum, the required complete meals~~)).

(6) The food items required to maintain the menu must be on the restaurant premises. These items must be edible.

(7) Restaurants that have one hundred percent dedicated dining area must maintain complete meal service any time liquor is available for sale, service, or consumption.

(8) Restaurants with less than one hundred percent dedicated dining area ((~~restaurants in the one thousand seven hundred sixty-eight dollar or two thousand two hundred ten dollar fee category~~)) must maintain complete meal service for a minimum of five hours a day during the hours of ((~~11:00~~)) 8:00 a.m. and 11:00 p.m. ((~~on any day liquor is served~~)), five days a week. The board may consider written requests for exceptions to this requirement due to demonstrated hardship, under such terms and conditions as the board determines are in the best interests of the public.

(((~~(a) Minimum~~)) Limited food service, such as appetizers, sandwiches, salads, soups, pizza, hamburgers, or fry orders, must be available outside of these hours. Snacks such as peanuts, popcorn, and chips do not qualify as limited food service.

(((~~(b) Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.~~)))

(9) The hours of complete meal service must be conspicuously posted on the premises or listed on the menu. ((~~If applicable,~~)) A statement that ((~~minimum~~)) limited food service is available outside of those hours must also be posted or listed on the menu.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-038 Can a spirits, beer, and wine nightclub license exclude persons under twenty-one years of age from the premises? A spirits, beer, and wine nightclub licensee may exclude minors from the premises at all times.

(1) To exclude minors from the entire licensed premises at all times, the applicant must:

(a) Indicate during the liquor license application process that he/she does not wish to have minors on the entire premises at all times; or

(b) If already licensed as a spirits, beer, and wine nightclub license that allows minors, the licensee may request permission from the board's licensing and regulation division to exclude minors at all times. See WAC 314-02-130 for instructions on requesting this approval.

(2) Spirits, beer, and wine nightclub licensees who exclude minors from the premises may not employ minors. (See ((~~WAC 314-11-040~~)) RCW 66.44.310 for more information on employing minors.)

AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

WAC 314-02-041 What is a hotel license? (1) Per RCW 66.24.590, this license allows a hotel to:

(a) Serve spirits by the individual serving ((~~at retail~~)) for consumption on the licensed premises;

(b) Serve beer, including strong beer, and wine for consumption on the licensed premises;

(c) Sell at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms;

(d) Provide, without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for consumption on the licensed premises at a specified regular date, time, and place. Self-service by guests is prohibited;

(e) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occupants of private residential units which are part of the buildings or complex of buildings, that include the hotel;

(f) Sell beer, including strong beer, and wine, in the manufacturer's sealed container at retail sales locations within the hotel premises; and

(g) Place in guest rooms at check-in, complimentary beer, including strong beer, or wine in a manufacturer's sealed container.

(2) The annual fee for a hotel license is two thousand dollars.

AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

WAC 314-02-0411 What are the food service requirements for a hotel license? (1) A hotel licensee must have the ability to serve ((~~at least four~~)) complete meals to hotel guests or any other patron of the hotel who is offered alcohol service for on-premise consumption at a food outlet on the hotel premises. Food outlets include room service, banquets, bars/lounges, restaurants, or coffee shops. "Complete meal" is defined in WAC 314-02-035.

(2) Complete meals must be prepared on the hotel premises.

(3) A menu must be available to hotel guests and patrons offered alcohol service that lists, at a minimum, the required complete meals.

(4) The food items required to maintain the menu must be located on the licensed premises. These items must be edible.

(5)(a) Licensees must maintain complete meal service for a minimum of five hours a day between the hours of 11:00 a.m. and 2:00 a.m. on any day that liquor is served. The board may consider written requests for exceptions to this requirement due to a demonstrated hardship and may allow exceptions under terms and conditions the board determines are in the best interests of the public.

(b) Minimum food service must be available during hours of alcohol service when complete meal service is not offered. Minimum food service includes items such as hamburgers or fry orders. Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.

(6) Hours of complete meal service must be listed on the menu. If applicable, a statement must be posted or listed on the menu that minimum food service is available when alcohol is served and complete meal service is unavailable.

NEW SECTION

WAC 314-02-042 Spirits, beer and wine restaurant restricted—Qualifications. (1) Spirits, beer and wine restaurant restricted licensees shall govern their operations in selling liquor in accordance with the regulations set forth in Title 66 RCW. Such licensees may sell liquor in accordance with these regulations, only to members, invited guests, and holders of cards as authorized by chapter 314-40 WAC.

(2)(a) Applications for new spirits, beer and wine restaurant restricted licenses shall be accompanied by proof that:

(i) The business has been in operation for at least one year immediately prior to the date of its application. Such proof should include records of membership as well as an indication as to numbers and types of membership.

(ii) Membership or admission will not be denied to any person because of race, creed, color, national origin, sex or the presence of any sensory, mental or physical handicap.

(b) Spirits, beer and wine restaurant restricted applicants and licensees must meet the provisions of WAC 314-02-035.

(3) Under RCW 66.24.450, the board may issue an endorsement allowing the club to hold up to forty nonclub, member-sponsored events using club liquor.

(a) Each event must have a sponsoring member from the club.

(b) Each visitor and/or guest may only attend the event by invitation of the sponsoring member(s).

(c) Event may not be open to the general public.

(d) At least seventy-two hours prior to any nonclub event, the sponsoring member, or any club officer, must provide to the board: The date, time, and location of the event, the name of the sponsor of the event, and a brief description of the purpose of the event.

(e) A list of all invited guests and visitors must be available for inspection during the nonclub event.

(4) Under RCW 66.24.450, the board may issue an endorsement allowing the holder of a spirits, beer, and wine private club license to sell bottled wine for off-premises consumption.

(a) Spirits and beer may not be sold for off-premises consumption.

(b) Bottled wine may only be sold to members, visitors, and guests defined under WAC 314-40-005. Bottled wine may not be sold to the general public.

(5) See chapter 314-40 WAC for additional rules on clubs.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-045 What is a beer and/or wine restaurant license? (1) Per RCW 66.24.320 and 66.24.354, this license allows a restaurant to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	$221
(b) Serve wine for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked wine from the premises).	$221
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	$133
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-115 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) All applicants for a beer and/or wine restaurant license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant, as defined in RCW 66.04.010(30).

(a) Minimum food service is required, as defined in WAC 314-02-010((~~(12)~~)) (14).

(b) To obtain and maintain a beer and/or wine restaurant license, the restaurant must be open to the public at least five hours a day, five days a week. The board may consider written requests to this requirement due to demonstrated hardship, and may grant an exception under such terms and conditions as the board determines are in the best interests of the public.

(3) If a beer and/or wine restaurant's dedicated dining area comprises less than fifteen percent of the total customer service area, the premises must maintain a tavern license (see WAC 314-02-070 regarding the tavern license).

NEW SECTION

WAC 314-02-056 Sports/entertainment facility license—Purpose. (1) **What is the purpose of the rules governing the use of alcohol in sports/entertainment facilities?**

(a) In RCW 66.24.570, the legislature established a spirits, beer, and wine license for arenas, coliseums, stadiums, or other facilities where sporting, entertainment, and special events are presented.

(b) These rules provide a framework for the enforcement of liquor laws and regulations, particularly those prohibiting the sale of alcohol to persons under twenty-one years of age or persons who are apparently intoxicated.

(c) This framework recognizes the unique conditions associated with events attended by large crowds consisting of diverse age groups.

(2) **Will the liquor control board recognize the differences between types of sports/entertainment facilities?** Yes. A sports/entertainment facility must submit an operating plan, which must be approved by the board prior to the issuance of a license. All plans are required to meet the minimum standards outlined in WAC 314-02-058. The board will take into consideration the unique features of each facility when approving an operating plan, including the seating accommodations, eating facilities, and circulation patterns.

NEW SECTION

WAC 314-02-057 Definitions. (1) **Premises -** buildings, parking lots, and any open areas that are adjacent to and owned, leased, or managed by the licensee and under the licensee's control.

(2) **Event categories -** types of events that the licensee expects to hold on the premises:

(a) **Professional sporting event -** a contest involving paid athletes and sanctioned by a professional sports organization that regulates the specific sport.

(i) A preapproved level of alcohol service will be applied to the professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, horse racing, hockey, and track and field events (relay races, dashes, pole vaulting, etc.).

(ii) For all other professional sporting events, the board will determine the level of alcohol service on a case-by-case basis, as approved in the operating plan.

(b) **Amateur sporting event -** a contest or demonstration involving athletes who receive no monetary compensation that is sanctioned by a national or regional amateur athletic regulatory organization.

(c) **Entertainment event -** a concert, comedy act, or similar event intended for the entertainment of the audience.

(d) **Special event -** a convention, trade show, or other public/private event to large too be held in a separate banquet or meeting room within the facility.

(e) **Private event -** an event not open to the public such as a wedding, private party, or business meeting, where the facility or a portion of the facility where the event is held is not accessible to the general public during the time of the private event.

(3) **Hawking -** the practice of selling alcohol in seating areas by roving servers who carry the beverages with them, as outlined in WAC 314-02-058(4). Because of row seating arrangements, servers normally do not have direct access to customers. Therefore, service usually requires that drinks, money, and identification be passed down rows, involving other spectators.

(4) **Club seats -** a specifically designated and controlled seating area that is distinct from general seating with food and beverage service provided by servers directly to the customer.

NEW SECTION

WAC 314-02-058 Sports/entertainment facility licenses—Operating plans. (1) **What rules govern the submission of operating plans?**

(a) To receive a license, a sports/entertainment facility must submit an operating plan for board approval.

(b) Once approved, the plan remains in effect until the licensee requests a change or the board determines that a change is necessary due to demonstrated problems or conditions not previously considered or adequately addressed in the original plan.

(c) The plan must be submitted in a format designated by the board.

(d) The plan must contain all of the following elements:

(i) How the sports/entertainment facility will prevent the sale and service of alcohol to persons under twenty-one years of age and those who appear to be intoxicated.

(ii) The ratio of alcohol service staff and security staff to the size of the audiences at events where alcohol is being served.

(iii) Training provided to staff who serve, regulate, or supervise the service of alcohol.

(iv) The facility's policy on the number of alcoholic beverages that will be served to an individual patron during one transaction.

(v) A list of event categories (see WAC 314-02-057(2)) to be held in the facility at which alcohol service is planned, along with a request for the level of alcohol service at each event.

(vi) The date must be included in the operating plan.

(vii) The pages must be numbered in the operating plan.

(viii) The operating plan must be signed by a principal of the licensed entity.

(e) Prior to the first of each month, the licensee must provide a schedule of events for the upcoming month to the facility's local liquor enforcement office. This schedule must show the date and time of each event during which alcohol service is planned. The licensee must notify the local enforcement office at least seventy-two hours in advance of any events where alcohol service is planned that were not included in the monthly schedule. Notice of private events is not required when the event is being held in conjunction with a professional or amateur sporting event, an entertainment event, or a special event as outlined in WAC 314-02-057(2).

(2) **May the liquor control board impose any other mandatory standards as a part of an operating plan?** Yes. To prevent persons who are under twenty-one years of age or who appear intoxicated from gaining access to alcohol, the board may impose the following standards as part of an operating plan:

(a) The board may require that an operating plan include additional mandatory requirements if it is judged by the board that the plan does not effectively prevent violations of liquor laws and regulations, particularly those that prevent persons under twenty-one years of age or who are apparently intoxicated from obtaining alcohol.

(b) To permit alcohol servers to establish the age of patrons and to prevent over-service, sports/entertainment facilities must meet minimum lighting requirements established by WAC 314-11-055 in any area where alcohol is served or consumed. For the purpose of establishing a permanent technical standard, an operating plan may include a lighting standard measured in foot candles, so long as the candle power of the lighting is, at all times, sufficient to permit alcohol servers to establish the validity of documents printed in eight point type.

(3) **Where will spirits, beer, and wine be allowed in a sports/entertainment facility?** The purpose of the following matrix is to outline where and when alcohol service will normally be permitted. Due to the unique nature of each facility, the board will determine the permitted alcohol service based on the facility's approved operating plan.

(a) If alcohol service is requested outside of the parameters listed below, a special request with justification for the alcohol service area must be submitted with the operating plan for consideration by the board.

Type of event as defined in WAC 314-02-057	Beer, wine, and spirits may be sold and served in approved restaurants, lounges, private suites, and club rooms	Beer, wine, and spirits may be sold and served in temporary lounges, beer gardens, or other approved service areas	Wine may be served and consumed in club seats during events	Beer and wine may be consumed throughout seating areas during events	Hawking - beer may be served throughout seating areas, subject to the provisions of WAC 314-02-058(4)
Professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, horse racing, hockey, and track and field events	x	x	x	x	x

Type of event as defined in WAC 314-02-057	Beer, wine, and spirits may be sold and served in approved restaurants, lounges, private suites, and club rooms	Beer, wine, and spirits may be sold and served in temporary lounges, beer gardens, or other approved service areas	Wine may be served and consumed in club seats during events	Beer and wine may be consumed throughout seating areas during events	Hawking - beer may be served throughout seating areas, subject to the provisions of WAC 314-02-058(4)
All other professional sporting events (level of alcohol service will be determined on a case-by-case basis per the approved operating plan)	x	x	x	x	
Amateur sporting events	x	x			
Entertainment events	x	x			
Special events	x	x			

(b) For private events, beer, wine, and spirits may be served in the area where the event is held. This area may be a separate meeting or banquet room or the entire facility.

(c) In order to minimize youth access to alcohol, the board may prohibit or restrict the service of alcohol at events where the attendance is expected to be over thirty percent persons under twenty-one years of age. This restriction will not apply to the professional sporting events outlined in WAC 314-02-057 (2)(a).

(4) **Will hawking be allowed at sports/entertainment facilities?** Subject to the provisions of this rule, hawking may be permitted in general seating areas for the sale and consumption of beer, at the professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, horse racing, hockey, and track and field events only, as defined by WAC 314-02-057 (2)(a).

(a) An operating plan must include procedures for hawkers to verify the age of purchasers and to prevent service to apparently intoxicated persons.

(b) During hawking, any patron may decline to handle alcoholic beverages, either on behalf of themselves and for any person under their supervision. When a patron objects to handling alcohol, hawkers must accommodate the objection. The facility operating plan will address how hawking will be managed, including how hawkers will respond to patron objections to handling alcohol.

(c) Each facility's hawking authorization will be reviewed by the board one year after the facility commences hawking under these rules and then every two years. This review, which will take no more than ninety days, will recommend the continuation, modification, or repeal of the hawking authorization. The decision to continue hawking will be based on:

(i) The facility's demonstrated record of preventing service of liquor to persons under twenty-one years of age and to persons who appear intoxicated; and

(ii) Public input submitted to the board. The licensee must post written notices to its patrons at fixed points of alcohol sales on the premises and in programs at events where hawking occurs for at least sixty days prior to the review period, stating that the facility's hawking authorization is up for review by the board, and directing comment to the board. The wording and method of notice must be approved by the board.

NEW SECTION

WAC 314-02-059 How will the operating plans be enforced? (1) The board will inspect sports/entertainment facilities and issue violation notices for:

(a) Infractions of all liquor laws and rules, particularly with regard to persons who appear intoxicated or who are under twenty-one years of age; and

(b) Any significant deviation from the approved operating plan.

(2) Violations of liquor laws or rules that occur as a result of not following the approved operating plan will be considered aggravating circumstances, which permit the board to impose added penalties.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-100 What is a grocery store license? (1) Per RCW 66.24.360, a grocery store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred sixty-six dollars.

(3) In order to obtain and maintain a grocery store license, the premises must be stocked with an inventory of at least three thousand dollars wholesale value of food for

human consumption, not including soft drinks, beer, or wine. This minimum inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained at the premises at all times the business is licensed, with the exception of:

(i) The beginning and closing inventory for seasonal operations; or

(ii) When the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) A grocery store licensee may sell beer in kegs or other containers holding at least four gallons and less than five and one-half gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(5) A grocery store licensee may sell beer and wine over the internet. See WAC 314-03-020 regarding internet sales and delivery.

(6) A grocery store applicant or licensee may apply for an international exporter endorsement for five hundred dollars a year, which allows the sale of beer and wine for export to locations outside the United States.

(7) A grocery store applicant or licensee may apply for a beer and wine tasting endorsement which allows beer and wine tastings on the grocery store premises. The annual fee for this endorsement is two hundred dollars.

NEW SECTION

WAC 314-02-102 What are the requirements for a grocery store licensee to conduct beer and wine tastings? (1) To be issued a beer and wine tasting endorsement, the licensee must meet the following criteria:

(a) The licensee has retail sales of grocery products for off-premises consumption, not to include candy, soda pop, beer or wine, that are more than fifty percent of the licensee's gross sales, or the licensee is a membership organization that requires members to be at least eighteen years of age;

(b) The licensee operates a fully enclosed retail area encompassing at least nine thousand square feet. The board may issue the endorsement to a licensee with a retail area with less than nine thousand square feet if there is no licensee in the community that meets the nine thousand square foot requirement under the following conditions: There must be at least two employees on duty any time the licensee is conducting beer and wine tasting events. One employee must be dedicated to beer and wine tastings during these events;

(c) The licensee has not had more than one public safety administrative violation within the last two years. The two-year window is counted from two years prior to the date of the application for the beer and wine tasting endorsement. (See WAC 314-29-020 for a list of public safety violations.)

(2) In addition to the conditions in RCW 66.24.363, a beer and wine tasting must be conducted under the following:

(a) The licensee must provide a sketch of the tasting area. Fixed or moveable barriers are required around the tasting area to ensure persons under twenty-one years of age do not possess or consume alcohol;

(b) Signs advertising beer and wine tastings may not be placed in the windows or outside of the premises that can be viewed from the public right of way;

(c) Persons serving beer and wine during tasting events must hold a class 12 alcohol server permit.

(3) Licensees are required to send a list of scheduled beer and wine tastings to their regional enforcement office at the beginning of each month. The date and time for each beer and wine tasting must be included.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-105 What is a beer and/or wine specialty store license? (1) Per RCW 66.24.371, a beer and/or wine specialty store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred eleven dollars.

(3) Qualifications for license—To obtain and maintain a beer and/or wine specialty store license, the premises must be stocked with an inventory of beer and/or wine in excess of three thousand dollars wholesale value. This inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained on the premises at all times the premises is licensed, with the exception of beginning and closing inventory for seasonal operations or when the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) Qualifications to sample—A beer and/or wine specialty store licensee may allow customers to sample beer and wine for the purpose of sales promotion, if the primary business is the sale of beer and/or wine at retail, and the licensee meets the requirements outlined in either (a) or (b) of this subsection:

(a) A licensee's gross retail sales of beer and/or wine exceeds fifty percent of all gross sales for the entire business; or

(b) The licensed premises is a beer and/or wine specialty store that conducts bona fide cooking classes for the purpose of pairing beer and/or wine with food, under the following conditions:

(i) The licensee must establish to the satisfaction of the board that the classes are bona fide cooking courses. The licensee must charge participants a fee for the course(s).

(ii) The sampling must be limited to a clearly defined area of the premises.

(iii) The licensee must receive prior approval from the board's licensing and regulation division before conducting sampling with cooking classes.

(iv) Once approved for sampling, the licensee must provide the board's enforcement and education division a list of all scheduled cooking classes during which beer and/or wine samples will be served. The licensee must notify the ((~~board~~)) board's enforcement and education division at least forty-eight hours in advance if classes are added.

(5) Licensees who qualify for sampling under subsection (4) of this rule may sample under the following conditions:

(a) No more than a total of eight ounces of alcohol may be provided to a customer during any one visit to the premises;

(b) Each sample must be two ounces or less; and

(c) No more than one sample of any single brand and type of beer or wine may be provided to a customer during any one visit to the premises.

(6) A beer and/or wine specialty store licensee may sell beer in kegs or other containers holding at least four gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

AMENDATORY SECTION (Amending WSR 09-02-012, filed 12/29/08, effective 1/29/09)

WAC 314-02-120 How do licensees get keg registration forms? (1) The board will provide keg registration forms free of charge to licensees who hold (a) a beer and/or wine restaurant license in combination with an off-premises beer and/or wine endorsement; (b) a tavern license in combination with an off-premises beer and/or wine endorsement; or (c) a beer and/or wine specialty shop license with a keg endorsement.

(2) Licensees who hold a grocery store license with a keg endorsement, or a spirits, beer, and wine restaurant license with a keg endorsement, must purchase the keg registration forms. Keg registration books can be ordered on-line at the liquor control board web site or from ((~~their local board~~)) the enforcement ((~~office~~)) customer service line for four dollars per book of twenty-five forms.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-125 What types of activities on a licensed premises require notice to the board? Liquor licensees must notify their local enforcement office in writing at least ((~~forty-eight hours before~~)) five days prior to conducting the following activities unless the licensee has received an exception from their enforcement officer:

(1) Male/female dance reviews, subject to the provisions of WAC 314-11-050;

(2) Live boxing or wrestling;

(3) Contests or games where patrons are part of the entertainment; ((~~and~~))

(4) Hours of operation in between 2:00 a.m. and 6:00 a.m. for licensees that sell liquor for on-premises consumption; and

(5) Outside service for one-time events such as a holiday celebration where liquor service and consumption is planned to extend to an area of the premises that does not have board approval for liquor service. The licensee must have leasehold rights to the area where alcohol service and consumption is planned.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-130 What types of changes to a licensed premises require board approval? The following changes to a licensed premises require prior board approval, by submitting a form provided by the board's licensing and regulation division:

Type of alteration	Approval process and timeline
(1) • excluding persons under twenty-one years of age from a spirits, beer, and wine restaurant or a spirits, beer, and wine nightclub; • excluding persons under twenty-one years of age from the dining area of a beer and/or wine restaurant; • reclassifying a lounge as open to persons under twenty-one years of age; • extending the location of alcohol service, such as a beer garden or patio/deck service (areas must be enclosed with a barrier a minimum of forty-two inches in height); ((~~• storing liquor off of the licensed premises;~~)) • initiating room service in a hotel or motel when the restaurant is not connected to the hotel or motel; ((~~• installing a pass-through window for walk-up customers; and~~ ~~• using a licensed premises as an access to another business.~~)) (2) • any alteration that affects the size of a premises' customer service area.	(a) The board's licensing and regulation division will ((~~respond to~~)) make initial contact on the request for alteration within five business days. (b) The licensee may begin liquor service in conjunction with the alteration as soon as approval is received. (c) Board approval will be based on the alteration meeting the requirements outlined in this title. (a) The board's licensing and regulation division will ((~~respond to~~)) make an initial response on the licensee's request for alteration within five business days. (b) The licensee must contact their local liquor control agent when the alteration is completed. (c) The licensee may begin liquor service in conjunction with the alteration after the completed alteration is inspected by the liquor control agent.

Type of alteration	Approval process and timeline
	(d) Board approval will be based on the alteration meeting the requirements outlined in this title.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-02-085	What is a bed and breakfast permit?
WAC 314-02-095	What is a public house license?

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-16-195	Spirits, beer and wine restaurant restricted—Qualifications.
WAC 314-16-260	Sports/entertainment facility license—Purpose.
WAC 314-16-265	Definitions.
WAC 314-16-270	Sports/entertainment facility licenses—Operating plans.
WAC 314-16-275	How will the operating plans be enforced?

WSR 11-01-139
PERMANENT RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Securities Division)

[Filed December 21, 2010, 2:09 p.m., effective January 21, 2011]

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

Purpose: The securities division is hereby amending WAC 460-44A-501 and 460-80-108 to conform the definitions of "accredited investor" contained therein to the definition of that term in the Dodd-Frank Wall Street Reform and Consumer Protection Act enacted July 21, 2010, Public Law No. 111-203. The expedited adoption of these amendments is authorized by RCW 34.05.353 (1)(b) as the amendments adopt without material change the amendments to the "accredited investor" definition enacted under federal law and the division did not receive any objection to the proposed expedited adoption of these amendments.

Citation of Existing Rules Affected by this Order: Amending 2 [WAC 460-44A-501 and 460-80-108].

Statutory Authority for Adoption: For WAC 460-44-501 is RCW 21.20.450, 21.20.320 (1), (9) and (17) and 21.20.210; and for WAC 460-80-108 is RCW 19.100.250 and 19.100.030(5).

Adopted under notice filed as WSR 10-17-060 on August 12, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, 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: December 21, 2010.

Scott Jarvis
Director

AMENDATORY SECTION (Amending WSR 98-11-014, filed 5/12/98, effective 6/12/98)

WAC 460-44A-501 Definitions and terms. As used in rules WAC 460-44A-501 through 460-44A-508, the following terms shall have the meaning indicated:

(1) "Accredited investor" shall mean any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of the securities to that person:

(a) Any bank as defined in section 3 (a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in section 3 (a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2 (a)(48) of that act; any small business investment company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a

self-directed plan, with investment decisions made solely by persons that are accredited investors;

(b) Any private business development company as defined in section 202 (a)(22) of the Investment Advisers Act of 1940;

(c) Any organization described in section 501 (c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $5,000,000;

(d) Any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer;

(e) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000 excluding the value of the primary residence of such natural person;

(f) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(g) Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the securities offered, whose purchase is directed by a sophisticated person as described in 17 CFR Sec. 230.506 (b)(2)(ii); and

(h) Any entity in which all of the equity owners are accredited investors.

(2) "Affiliate" an "affiliate" of, or person "affiliated" with, a specified person shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified;

(3) "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and noncash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Such valuations of noncash consideration must be reasonable at the time made;

(4) "Business combination" shall mean any transaction of the type specified in paragraph (a) of Rule 145 under the Securities Act of 1933 and any transaction involving the acquisition by one issuer, in exchange for all or a part of its own or its parent's stock, of stock of another issuer if, immediately after the acquisition, the acquiring issuer has control of the other issuer (whether or not it had control before the acquisition);

(5) "Calculation of number of purchasers." For purposes of calculating the number of purchasers under WAC 460-44A-504 and 460-44A-505 the following shall apply:

(a) The following purchasers shall be excluded:

(i) Any relative, spouse or relative of the spouse of a purchaser who has the same principal residence as the purchaser;

(ii) Any trust or estate in which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (iii) collectively have more than fifty percent of the beneficial interest (excluding contingent interests);

(iii) Any corporation or other organization of which a purchaser and any of the persons related to him as specified in WAC 460-44A-501 (5)(a)(i) or (ii) collectively are beneficial owners of more than fifty percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(iv) Any accredited investor.

(b) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under WAC 460-44A-501 (1)(h), then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of WAC 460-44A-501 through 460-44A-508, except to the extent provided in (a) of this subsection.

(c) A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

Note: The issuer must satisfy all the other provisions of WAC 460-44A-501 through 460-44A-505 for all purchasers whether or not they are included in calculating the number of purchasers. Clients of an investment adviser or customers of a broker-dealer shall be considered the "purchasers" under WAC 460-44A-501 through 460-44A-505 regardless of the amount of discretion given to the investment adviser or broker-dealer to act on behalf of the client or customer.

(6) "Executive officer" shall mean the president, any vice-president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy making function, or any other person who performs similar policy making functions for the issuer. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy making functions for the issuer.

(7) "Issuer" as defined in Section 2(4) of the Securities Act of 1933 or RCW 21.20.005(7) shall apply, except that in the case of a proceeding under the Federal Bankruptcy Code (11 U.S.C. 101 et seq.), the trustee or debtor in possession shall be considered the issuer in an offering under a plan or reorganization, if the securities are to be issued under the plan.

(8) "Purchaser representative" shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

(a) Is not an affiliate, director, officer or other employee of the issuer, or beneficial owner of ten percent or more of any class of the equity securities or ten percent or more of the equity interest in the issuer, except where the purchaser is:

(i) A relative of the purchaser representative by blood, marriage or adoption and not more remote than a first cousin;

(ii) A trust or estate in which the purchaser representative and any person related to him as specified in WAC 460-44A-501 (8)(a)(i) or (iii) collectively have more than fifty percent of the beneficial interest (excluding contingent interest) or of which the purchaser representative serves as trustee, executor, or in any similar capacity; or

(iii) A corporation or other organization of which the purchaser representative and any persons related to him as specified in WAC 460-44A-501 (8)(a)(i) or (ii) collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests;

(b) Has such knowledge and experience in financial and business matters that he is capable of evaluating, alone, or together with other purchaser representatives of the purchaser, or together with the purchaser, the merits and risks of the prospective investment;

(c) Is acknowledged by the purchaser in writing, during the course of the transaction, to be his purchaser representative in connection with evaluating the merits and risks of the prospective investment; and

(d) Discloses to the purchaser in writing a reasonable time prior to the sale of securities to that purchaser any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

Note 1: A person acting as a purchaser representative should consider the applicability of the registration and anti-fraud provisions relating to broker-dealers under chapter 21.20 RCW and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq., as amended) and relating to investment advisers under chapter 21.20 RCW and the Investment Advisers Act of 1940.

Note 2: The acknowledgment required by paragraph (8)(c) and the disclosure required by paragraph (8)(d) of this WAC 460-44A-501 must be made with specific reference to each prospective investment. Advance blanket acknowledgment, such as for "all securities transactions" or "all private placements," is not sufficient.

Note 3: Disclosure of any material relationships between the purchaser representative or his affiliates and the issuer or its affiliates does not relieve the purchaser representative of his obligation to act in the best interest of the purchaser.

AMENDATORY SECTION (Amending WSR 09-22-050, filed 10/29/09, effective 11/29/09)

WAC 460-80-108 Exemption for offer and sale to accredited investors pursuant to RCW 19.100.030(5). For the purpose of the exemption of RCW 19.100.030(5), an "accredited investor" shall mean any person who comes within any of the following categories, or who the franchisor reasonably believes comes within any of the following categories, at the time of the sale of the franchise to that person:

(1) Any bank as defined in section 3 (a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in section 3 (a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2 (a)(48) of that act; any small business investment company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(2) Any private business development company as defined in section 202 (a)(22) of the Investment Advisers Act of 1940;

(3) Any organization described in section 501 (c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the franchise offered, with total assets in excess of $5,000,000;

(4) Any director, executive officer, or general partner of the franchisor of the franchises being offered or sold, or any director, executive officer, or general partner of a general partner of that franchisor;

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000 excluding the value of the primary residence of such natural person;

(6) Any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(7) Any trust, with total assets in excess of $5,000,000, not formed for the specific purpose of acquiring the franchise offered, whose purchase is directed by a sophisticated person as described in 17 CFR Sec. 230.506 (b)(2)(ii); and

(8) Any entity in which all of the equity owners are accredited investors.

WSR 11-01-141
PERMANENT RULES
DEPARTMENT OF HEALTH
(Podiatric Medical Board)

[Filed December 21, 2010, 2:49 p.m., effective January 21, 2011]

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

Purpose: WAC 246-922-650 establishes consistent standards for podiatric physicians who administer sedation in an

office-based surgery setting. The adopted rule will reduce the risk of substandard care, inappropriate administration of anesthesia, and other serious complications in the office-based surgery setting.

Statutory Authority for Adoption: RCW 18.22.015.

Other Authority: RCW 18.130.050.

Adopted under notice filed as WSR 10-19-046 on September 13, 2010.

A final cost-benefit analysis is available by contacting Erin Obenland, Podiatric Medical Board, P.O. Box 47852, Olympia, WA 98504-7852,phone (360) 236-4945, fax (360) 236-2901, e-mail erin.obenland@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 27, 2010.

Blake T. Maresh
Executive Director

NEW SECTION

WAC 246-922-650 Safe and effective analgesia and anesthesia administration in office-based settings. (1) Purpose. The purpose of this rule is to promote and establish consistent standards, continuing competency, and to promote patient safety. The podiatric medical board establishes the following rule for physicians licensed under chapter 18.22 RCW who perform surgical procedures and use analgesia or sedation in office-based settings. This rule does not apply to any office-based procedures performed with the use of general anesthesia.

(2) Definitions. The following terms used in this subsection apply throughout this rule unless the context clearly indicates otherwise:

(a) "Board" means the podiatric medical board.

(b) "Deep sedation" or "analgesia" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(c) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway. Sedation that unintentionally progresses to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

(d) "Local infiltration" means the process of infusing a local anesthetic agent into the skin and other tissues to allow painless wound irrigation, exploration and repair, and other procedures.

(e) "Major conduction anesthesia" means the administration of a drug or combination of drugs to interrupt nerve impulses without loss of consciousness, such as epidural, caudal, or spinal anesthesia, lumbar or brachial plexus blocks, and intravenous regional anesthesia. Major conduction anesthesia does not include isolated blockade of small peripheral nerves, such as digital nerves.

(f) "Minimal sedation" or "analgesia" means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected. Minimal sedation is limited to oral or intramuscular medications, or both.

(g) "Moderate sedation" or "analgesia" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(h) "Office-based surgery" means any surgery or invasive medical procedure requiring analgesia or sedation, performed in a location other than a hospital, or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(i) "Physician" means a podiatric physician licensed under chapter 18.22 RCW.

(3) Exemptions. This rule does not apply to physicians when:

(a) Performing surgery and medical procedures that require only minimal sedation (anxiolysis) or analgesia, or infiltration of local anesthetic around peripheral nerves;

(b) Performing surgery in a hospital, or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW;

(c) Performing surgery using general anesthesia. General anesthesia cannot be a planned event in an office-based surgery setting. Facilities in which physicians perform procedures in which general anesthesia is a planned event are regulated by rules related to hospitals, or hospital-associated surgical centers licensed under chapter 70.41 RCW, or ambulatory surgical facilities licensed under chapter 70.230 RCW.

(4) Application of rule. This rule applies to physicians practicing independently or in a group setting who perform office-based surgery employing one or more of the following levels of sedation or anesthesia:

(a) Moderate sedation or analgesia; or

(b) Deep sedation or analgesia; or

(c) Major conduction anesthesia below the ankle.

(5) Accreditation or certification. Within three hundred sixty-five calendar days of the effective date of this rule, a physician who performs a procedure under this rule must ensure that the procedure is performed in a facility that is appropriately equipped and maintained to ensure patient safety through accreditation or certification from one of the following:

(a) The Joint Commission (JC);

(b) The Accreditation Association for Ambulatory Health Care (AAAHC);

(c) The American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF); or

(d) The Centers for Medicare and Medicaid Services (CMS).

(6) Presence of an anesthesiologist or anesthetist. For procedures requiring spinal or major conduction anesthesia above the ankle, a physician authorized under chapter 18.71 or 18.57 RCW or a certified registered nurse anesthetist authorized under chapter 18.79 RCW must administer the anesthesia. Under RCW 18.22.035 (4)(b), podiatrists shall not administer spinal anesthetic or any anesthetic that renders the patient unconscious.

(7) Qualifications for administration of sedation and analgesia shall include:

(a) Completion of a continuing medical education course in conscious sedation; or

(b) Relevant training in a residency training program; or

(c) Having privileges for conscious sedation granted by a hospital medical staff.

(8) At least one licensed health care practitioner currently certified in advanced resuscitative techniques appropriate for the patient age group (e.g., advanced cardiac life support (ACLS), pediatric advanced life support (PALS) or advanced pediatric life support (APLS)) must be present or immediately available with age-size-appropriate resuscitative equipment throughout the procedure and until the patient has met the criteria for discharge from the facility.

(9) Sedation assessment and management.

(a) Sedation is a continuum. Depending on the patient's response to drugs, the drugs administered, and the dose and timing of drug administration, it is possible that a deeper level of sedation will be produced than initially intended.

(b) Licensed health care practitioners intending to produce a given level of sedation should be able to "rescue" patients who enter a deeper level of sedation than intended.

(c) If a patient enters into a deeper level of sedation than planned, the licensed health care practitioner must return the patient to the lighter level of sedation as quickly as possible, while closely monitoring the patient to ensure the airway is patent, the patient is breathing, and that oxygenation, the heart rate and blood pressure are within acceptable values.

(10) Separation of surgical and monitoring functions.

(a) The physician performing the surgical procedure must not provide the anesthesia or monitoring.

(b) The licensed health care practitioner, designated by the physician to administer intravenous medications and monitor the patient who is under moderate sedation, may assist the operating physician with minor, interruptible tasks of short duration once the patient's level of sedation and vital signs have been stabilized, provided that adequate monitoring of the patient's condition is maintained. The licensed health care practitioner who administers intravenous medications and monitors a patient under deep sedation or analgesia must not perform or assist in the surgical procedure.

(11) Emergency care and transfer protocols. A physician performing office-based surgery must ensure that in the event of a complication or emergency:

(a) All office personnel are familiar with a written and documented plan to timely and safely transfer patients to an appropriate hospital.

(b) The plan must include arrangements for emergency medical services and appropriate transfer of the patient to the hospital.

(12) Medical record. The physician performing office-based surgery must maintain a legible, complete, comprehensive and accurate medical record for each patient.

(a) The medical record must include:

(i) Identity of the patient;

(ii) History and physical, diagnosis, and plan;

(iii) Appropriate lab, X-ray, or other diagnostic reports;

(iv) Appropriate preanesthesia evaluation;

(v) Narrative description of procedure;

(vi) Pathology reports, if relevant;

(vii) Documentation of which, if any, tissues and other specimens have been submitted for histopathologic diagnosis;

(viii) Provision for continuity of post-operative care; and

(ix) Documentation of the outcome and the follow-up plan.

(b) When moderate or deep sedation, or major conduction anesthesia is used, the patient medical record must include a separate anesthesia record that documents:

(i) Type of sedation or anesthesia used;

(ii) Drugs (name and dose) and time of administration;

(iii) Documentation at regular intervals of information obtained from the intraoperative and post-operative monitoring;

(iv) Fluids administered during the procedure;

(v) Patient weight;

(vi) Level of consciousness;

(vii) Estimated blood loss;

(viii) Duration of procedure; and

(ix) Any complication or unusual events related to the procedure or sedation/anesthesia.

WSR 11-01-158

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed December 22, 2010, 9:36 a.m., effective April 1, 2011]

Effective Date of Rule: April 1, 2011.

Purpose: In December 2009 Eva Santos, director, department of personnel (DOP), brought together a team of human resource professionals from twelve state agencies and charged them with developing and recommending a uniform, enterprise-wide process for the inclusion and band placement of WMS positions. The ultimate goal is to improve accountability, transparency, and consistency of the WMS as a whole.

The team began its work in December 2009 and sent their final recommendations which included draft rules to DOP in February 2010. DOP staff used the team's recommended draft rules as a starting point. We discussed the first draft at the September 15, 2010, rules meeting and had an open comment period through September 30, 2010. Changes were made based on comments received.

Note: This filing is to correct the effective date of these rules originally filed under WSR 10-23-043. The correct effective date for this filing should be April 1, 2011.

Citation of Existing Rules Affected by this Order: Repealing WAC 357-58-545 and 357-58-030.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 10-20-173 on October 6, 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 5, Amended 0, 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 5, Amended 0, Repealed 2.

Date Adopted: December 21, 2010.

Eva N. Santos
Director

NEW SECTION

WAC 357-58-027 Must agencies maintain position descriptions for each WMS position? Agencies must maintain a current position description for each WMS position.

NEW SECTION

WAC 357-58-028 Must a standard form be used to describe each WMS position? A standard form developed by the director, or an alternate form approved by the director, must be used for each WMS position description.

NEW SECTION

WAC 357-58-032 What is the requirement for agencies to develop procedures which address determining inclusion in WMS and evaluating positions for placement within the management bands? (1) Each agency must develop a WMS inclusion and evaluation procedure consistent with this chapter and guidelines established by the department.

(2) The inclusion and evaluation procedure must be approved by the director.

(3) The procedure must include processes for requesting and determining inclusion and evaluating and re-evaluating positions for placement within management bands. The procedure must require, at a minimum:

(a) Appointment of a human resource professional as the agency's WMS coordinator who serves as the single point of contact for the department regarding WMS issues.

(b) Use of a form prescribed by the director or an alternate form approved by the director for requests to establish or re-evaluate WMS positions.

(c) Approval of the request for inclusion or evaluation by the position's agency head or designee.

(d) Inclusion determination and position evaluation must be performed by a committee of three or more people, which must include:

i. The agency's WMS coordinator;

ii. A manager from the agency who has comprehensive knowledge of the agency's business; and

iii. A management representative from another agency or human resource professional from another agency.

(e) Only those who have successfully completed training may participate on a WMS committee. The training must satisfy the core curriculum as defined by the department.

NEW SECTION

WAC 357-58-565 What mechanism must be used to report WMS inclusion and evaluation activities? (1) Agencies must submit their WMS activity reports to the department and make them available as prescribed by the department.

(2) A roll-up of all agencies' WMS activities will be made available to agencies.

NEW SECTION

WAC 357-58-546 What is the department's authority to review actions taken by an agency under chapter 357-58 or to audit an agency's WMS processes? (1) Under the authority of RCW 41.06.130 and 41.06.500, the director of the department of personnel retains the right to review:

(a) Any action taken by an agency under chapter 357-58 WAC; and

(b) An agency's administration of the WMS program.

(2) An agency's compliance with WMS procedures and rules will be audited. Audit requirements will be prescribed by the department.

Reviser's note: The unnecessary underscoring 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.

REPEALER

The following chapters of the Washington Administrative Code are repealed:

WAC 357-58-545	Does the director of the department of personnel have the rights to review an agency's administration of WMS?

WAC 357-58-030	Who determines if a position is included in the WMS?

Reviser's note: The repealer section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to chapters is probably intended to be sections.

WSR 11-01-159
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-09—Filed December 22, 2010, 9:37 a.m., effective January 22, 2011]

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

Purpose: Amending the WACs to change the terms, agent, broker, and solicitor to the term insurance producer makes the rules consistent with statutory references enacted in 2008 legislation.

Citation of Existing Rules Affected by this Order: Amending WAC 284-02-010, 284-02-030, 284-02-040, 284-02-060, 284-02-070, 284-04-405, 284-04-900, 284-12-080, 284-12-095, 284-12-110, 284-12-220, 284-12-270, 284-17B-005, 284-17B-010, 284-17B-015, 284-17B-020, 284-17B-025, 284-17B-030, 284-17B-035, 284-17B-040, 284-17B-045, 284-17B-050, 284-17B-060, 284-17B-075, 284-19-070, 284-19-165, 284-23-020, 284-23-400, 284-23-410, 284-23-420, 284-23-430, 284-23-440, 284-23-455, 284-23-460, 284-23-480, 284-23-485, 284-30-350, 284-30-550, 284-30-560, 284-30-580, 284-30-600, 284-30-610, 284-30-660, 284-30-750, 284-30-850, 284-30-860, 284-30-865, 284-30-870, 284-30-872, 284-36A-035, 284-50-020, 284-50-030, 284-54-300, 284-66-030, 284-66-130, 284-66-142, 284-66-240, 284-66-243, 284-66-330, 284-66-340, 284-66-350, 284-83-063, 284-92-240, 284-92-440, and 284-92-450.

Statutory Authority for Adoption: RCW 48.02.060 (3)(a).

Other Authority: RCW 48.17.010(5).

Adopted under notice filed as WSR 10-21-072 on October 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 65, 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 65, Repealed 0.

Date Adopted: December 22, 2010.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2003-09, filed 12/14/06, effective 1/14/07)

WAC 284-02-010 What are the responsibilities of the insurance commissioner and the office of the insurance commissioner (OIC) staff? The insurance commissioner is responsible for regulating the insurance industry and all persons or entities transacting insurance business in this state in the public interest. The position of insurance commissioner was established by the legislature as an independent, elective office in 1907. The insurance laws and the authority of the insurance commissioner are found in Title 48 RCW. The insurance commissioner's powers are set forth in chapter 48.02 RCW.

(1) **General powers and tasks.**

(a) To carry out the task of enforcing the insurance code the commissioner:

(i) May make rules and regulations governing activities under the insurance code (Title 48 RCW);

(ii) May conduct investigations to determine whether any person has violated any provision of the insurance code, including both informal and formal hearings;

(iii) May take action (including levying of fines and revocation of authority to transact business in this state) against an insurance company, fraternal benefit society, charitable gift annuity providers, health maintenance organization, health care service contractor, motor vehicle service contract provider, service contract provider, protection product guarantee providers, self-funded multiple employer welfare arrangement, and ((~~viatical~~)) life settlement provider; and

(iv) May issue, refuse to issue or renew, place on probation, revoke, or suspend the licenses of insurance ((~~agents, brokers, solicitors,~~)) producers, title insurance agents, surplus line brokers, adjusters, ((~~and~~)) insurance education providers, reinsurance intermediaries, ((~~viatical~~)) and life settlement brokers, or may fine any of them for violations of the insurance code.

(b) All insurers and other companies regulated under the insurance code must meet financial, legal, and other requirements and must be licensed, registered, or certified by the OIC prior to the transaction of insurance in this state.

(c) The OIC is responsible for collecting a premium-based tax levied against insurers and other companies transacting insurance business in this state. The funds collected from health care companies are deposited into the state's health services account. All other taxes are deposited into the state's general fund.

(d) Any person engaged in the marketing or sale of insurance in Washington must hold a license issued by the OIC. The OIC oversees the prelicensing education, testing, licensing, continuing education, and renewal of ((~~agent, broker, and solicitor~~)) insurance producer, surplus line broker and title insurance agent licenses.

(e) Public and independent adjusters must be licensed by the OIC. The OIC is responsible for the processing of licenses, background checks, affiliations, testing, renewals, terminations, and certificates for individuals and business entities, both resident and nonresident, who act as independent or public adjusters in Washington.

(f) The OIC assists persons who have complaints about companies, ((~~agents~~)) insurance producers, surplus line brokers and title insurance agents, or other licensees of the OIC. OIC investigators follow up on consumer complaints, look into circumstances of disputes between consumers and licensees, and respond to questions.

(g) The OIC publishes and distributes consumer guides and fact sheets to help inform consumers about their choices and rights when buying and using insurance.

(2) **Orders.** The commissioner may issue a cease and desist order based on the general enforcement powers granted by RCW 48.02.080, or may bring an action in court to enjoin violations of the insurance code.

(3) **SHIBA.** The OIC offers assistance statewide to consumers regarding health care insurance and health care access through its statewide health insurance benefits advisors (SHIBA) "HelpLine" program. Volunteers are trained by OIC employees to provide counseling, education, and other assistance to residents of Washington. Information about SHIBA, including how to become a SHIBA volunteer, can be found on the OIC web site (www.insurance.wa.gov).

(4) **Publication of tables for courts and appraisers.** The insurance commissioner publishes tables showing the average expectancy of life and values of annuities and life and term estates for the use of the state courts and appraisers (RCW 48.02.160).

(5) **Copies of public documents.** Files of completed investigations, complaints against insurers or other persons or entities authorized to transact the business of insurance by the OIC, and copies of completed rate or form filings are generally available for public inspection and copying during business hours (see chapter 284-03 WAC) at the OIC's office in Tumwater, subject to other applicable law. Access by the public to information and records of the insurance commissioner is governed by chapter 284-03 WAC and the Public Records Act (chapter 42.56 RCW). Information on how to request copies of public documents is available on the OIC web site (www.insurance.wa.gov).

(6) **Web site.** The insurance commissioner maintains a web site at: www.insurance.wa.gov. Current detailed information regarding insurance, persons and entities authorized to transact insurance business in this state, consumer tips, links to Washington's insurance laws and rules, a list of publications available to the public, and other valuable information can be found on the web site.

(7) **Toll-free consumer hotline.** Members of the OIC staff respond to inquiries of consumers who telephone the agency's toll-free consumer hotline at 1-800-562-6900.

(8) **Location of offices.** The OIC's headquarters office is located in the insurance building on the state Capitol campus in Olympia. Branch offices are located in Tumwater, Seattle and Spokane. Addresses for the office locations can be found on the OIC web site (www.insurance.wa.gov) or by calling the commissioner's consumer hotline (1-800-562-6900).

(9) **Antifraud program.** Beginning in 2007, the OIC (in partnership with the Washington state patrol, county prosecutors, and the state attorney general's office) will investigate and assist in prosecuting fraudulent activities against insurance companies. Information about this program can be found on the OIC web site (www.insurance.wa.gov).

AMENDATORY SECTION (Amending Matter No. R 2003-09, filed 12/14/06, effective 1/14/07)

WAC 284-02-030 How can service of process over foreign and alien insurers be made? (1) Although domestic insurers are served with legal process personally, the insurance commissioner is the party on whom service of process must be made on all foreign and alien insurers, whether authorized to transact business in this state or not. The exact procedures are set forth in the applicable statutes.

(a) Service of process against authorized foreign and alien insurers, other than surplus line insurers, must be made according to the requirements of RCW 48.05.200 and 48.05.-210. RCW 48.05.220 specifies the proper venue for such actions.

(b) Service of process against surplus line insurers can be made on the commissioner by following the procedures set forth in RCW 48.05.215 and 48.15.150. (A surplus lines insurer markets coverage which cannot be procured in the ordinary market from authorized insurers.)

(c) Service of process against other unauthorized insurers may be made on the commissioner based on the procedures set forth in RCW 48.05.215.

(d) The commissioner is not authorized to accept service of process on domestic or foreign health care service contractors or health maintenance organizations.

(2) Where service of process against a foreign or alien insurer is made through service upon the commissioner (according to the requirements of RCW 48.05.210 or 48.05.-215), against a nonresident ((~~agent or broker~~)) insurance producer, surplus line broker, title insurance agent (RCW ((~~48.17.340~~)) 48.17.173, or 48.15.073) or against a ((~~viatical~~)) life settlement provider or broker (chapter 48.102 RCW or chapter 284-97 WAC), this service must be made by personal service at, or by registered mail sent to, the Tumwater office of the insurance commissioner only, and must otherwise comply with the requirements of the applicable statute.

(3) Service upon any location other than the Tumwater office of the OIC is not permissible and will not be accepted.

(4) As authorized by RCW 1.12.060, whenever the use of "registered" mail is called for, "certified" mail with return receipt requested may be used.

AMENDATORY SECTION (Amending Matter No. R 2003-09, filed 12/14/06, effective 1/14/07)

WAC 284-02-040 Where can information about applying for a license as ((~~agent,~~)) an adjuster((~~, broker,~~)) or ((~~solicitor~~)) insurance producer, surplus line broker or title insurance agent be found? The requirements for licensing are generally found in chapter 48.17 RCW. The requirements for surplus line brokers are found in chapter 48.15 RCW.

(1) Licensing requirements and instructions for obtaining a license as an insurance ((~~agent,~~)) adjuster((~~, broker~~)) or ((~~solicitor~~)) producer, a surplus line broker, a title insurance agent, as a ((~~viatical~~)) life settlement broker, or for any other license required for the transaction of the business of insurance under Title 48 RCW may be obtained from the OIC's licensing ((~~section~~)) and education program.

(2) The OIC web site includes forms and instructions for applicants at: www.insurance.wa.gov.

AMENDATORY SECTION (Amending Matter No. R 2003-09, filed 12/14/06, effective 1/14/07)

WAC 284-02-060 Where can information regarding filing a complaint against a company, ((~~agent, broker, solicitor~~)) insurance producer, surplus line broker, title insurance agent, adjuster, or other person or entity authorized by the OIC be found? (1) A complaint or grievance against a person or entity authorized to transact the business of insurance under Title 48 RCW may be filed with the OIC. The complainant should supply as many facts as possible to assist the OIC in the investigation of the complaint. Complaints should include: The correct name of the insurance company or other entity issuing the policy or contract; the policy number; the claim number; the name of the ((~~agent, broker, solicitor~~)) insurance producer, surplus line broker, title insurance agent, adjuster, ((~~viatical~~)) life settlement broker, or any other person or entity offering to sell you insurance or to settle your claim; the date of loss or the date of the company's or other licensee's action; and a complete explanation of the loss or other problem.

(2) A form that can be used to make a complaint may be requested from the OIC by telephone or can be found on the OIC web site (www.insurance.wa.gov). Use of this form may be helpful in organizing the information, but its use is not required.

(3) If personal medical information is provided to the OIC, the OIC's medical release form must be signed and submitted by the appropriate person.

AMENDATORY SECTION (Amending Matter No. R 2008-24, filed 9/2/09, effective 10/3/09)

WAC 284-02-070 How does the OIC conduct hearings? (1) **Generally.**

(a) Hearings of the OIC are conducted according to chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). In addition to general hearings conducted pursuant to RCW 48.04.010, two specific types of hearings are conducted pursuant to the Administrative Procedure Act: Rule-making hearings and adjudicative proceedings or contested case hearings. Contested case hearings include appeals from disciplinary actions taken by the commissioner.

(b) **How to demand or request a hearing.** Under RCW 48.04.010 the commissioner is required to hold a hearing upon demand by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if the failure is deemed an act under the insurance code or the Administrative Procedure Act.

(i) Hearings can be demanded by an aggrieved person based on any report, promulgation, or order of the commissioner.

(ii) Requests for hearings must be in writing and delivered to the Tumwater office of the OIC. The request must specify how the person making the demand has been aggrieved by the commissioner, and must specify the grounds to be relied upon as the basis for the relief sought.

(c) Accommodation will be made for persons needing assistance, for example, where English is not their primary language, or for hearing impaired persons.

(2) **Proceedings for contested cases or adjudicative hearings.**

(a) Provisions specifically relating to disciplinary action taken against persons or entities authorized by the OIC to transact the business of insurance are contained in RCW 48.17.530, 48.17.540, 48.17.550, 48.17.560, chapter 48.102 RCW, and other chapters related to specific licenses. Provisions applicable to other adjudicative proceedings are contained in chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The uniform rules of practice and procedure appear in Title 10 of the Washington Administrative Code. The grounds for disciplinary action against insurance ((~~agents, brokers, solicitors,~~)) producers, title insurance agents and adjusters are contained in RCW 48.17.-530; grounds for disciplinary action against surplus line brokers are contained in RCW 48.15.140; grounds for similar action against insurance companies are contained in RCW 48.05.140; grounds for actions against fraternal benefit societies are found at RCW 48.36A.300 (domestic) and RCW 48.36A.310 (foreign); grounds for actions against ((~~viatical~~)) life settlement providers are found in chapter 48.102 RCW; grounds for actions against health care service contractors are contained in RCW 48.44.160; and grounds for action against health maintenance organizations are contained in RCW 48.46.130. Grounds for actions against other persons or entities authorized by the OIC under Title 48 RCW are found in the chapters of Title 48 RCW applicable to those licenses.

(b) The insurance commissioner may suspend or revoke any license, certificate of authority, or registration issued by the OIC. In addition, the commissioner may generally levy fines against any persons or organizations having been authorized by the OIC.

(c) Adjudicative proceedings or contested case hearings of the insurance commissioner are informal in nature, and compliance with the formal rules of pleading and evidence is not required.

(i) The insurance commissioner may delegate the authority to hear and determine the matter and enter the final order under RCW 48.02.100 and 34.05.461 to a presiding officer; or may use the services of an administrative law judge in accordance with chapter 34.12 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The initial order of an administrative law judge will not become a final order without the commissioner's review (RCW 34.05.464).

(ii) The hearing will be recorded by any method chosen by the presiding officer. Except as required by law, the OIC is not required, at its expense, to prepare a transcript. Any party, at the party's expense, may cause a reporter approved by the presiding officer to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if, in the opinion of the presiding officer, the making of the additional recording does not cause distraction or disruption. If appeal from the insurance commissioner's order is made to the superior court, the recording of the hearing will be transcribed and certified to the court.

(iii) The insurance commissioner or the presiding officer may allow any person affected by the hearing to be present

during the giving of all testimony and will allow the aggrieved person a reasonable opportunity to inspect all documentary evidence, to examine witnesses, and to present evidence. Any person heard must make full disclosure of the facts pertinent to the inquiry.

(iv) Unless a person aggrieved by an order of the insurance commissioner demands a hearing within ninety days after receiving notice of that order, or in the case of persons or entities authorized by the OIC to transact the business of insurance under Title 48 RCW, within ninety days after the order was mailed to the most recent address shown in the OIC's licensing records, the right to a hearing is conclusively deemed to have been waived (RCW 48.04.010(3)).

(v) Prehearing or other conferences for settlement or simplification of issues may be held at the discretion and direction of the presiding officer.

(d) Discovery is available in adjudicative proceedings and contested cases pursuant to Civil Rules 26 through 37 as now or hereafter amended without first obtaining the permission of the presiding officer or the administrative law judge in accordance with RCW 34.05.446(2).

(i) Civil Rules 26 through 37 are adopted and incorporated by reference in this section, with the exception of CR 26 (j) and (3) and CR 35, which are not adopted for purposes of this section.

(ii) The presiding officer or administrative law judge is authorized to make any order that a court could make under CR 37 (a) through (e), including an order awarding expenses of the motion to compel discovery or dismissal of the action.

(iii) This rule does not limit the presiding officer's or administrative law judge's discretion and authority to condition or limit discovery as set forth in RCW 34.05.446(3).

(3) **Rule-making hearings.** Rule-making hearings are conducted based on requirements found in the Administrative Procedure Act (chapter 34.05 RCW) and chapter 34.08 RCW (the State Register Act).

(a) Under applicable law all interested parties must be provided an opportunity to express their views concerning a proposed rule, either orally or in writing. The OIC will accept comments on proposed rules by mail, electronic telefacsimile transmission, or electronic mail but will not accept comments by recorded telephonic communication or voice mail (RCW 34.05.325(3)).

(b) Notice of intention of the insurance commissioner to adopt a proposed rule or amend an existing rule is published in the state register and is sent to anyone who has requested notice in advance and to persons who the OIC determines would be particularly interested in the proceeding. Persons requesting paper copies of all proposed rule-making notices of inquiry and hearing notices may be required to pay the cost of mailing these notices (RCW 34.05.320(3)).

(c) Copies of proposed new rules and amendments to existing rules as well as information related to how the public may file comments are available on the OIC web site (www.insurance.wa.gov).

AMENDATORY SECTION (Amending Matter No. R 2000-08, filed 1/9/01, effective 2/9/01)

WAC 284-04-405 Exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions. (1) Exceptions for processing transactions at consumer's request. The requirements for initial notice in WAC 284-04-200 (1)(b), the opt out in WAC 284-04-215 and 284-04-300 and service providers and joint marketing in WAC 284-04-400 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

(a) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(b) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(c) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or

(d) Reinsurance or stop loss or excess loss insurance.

(2) Necessary to effect, administer or enforce a transaction means that the disclosure is:

(a) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(b) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's ((~~agent or broker~~)) insurance producer, surplus line broker, or title insurance agent;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(v) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or

other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

AMENDATORY SECTION (Amending Matter No. R 2000-08, filed 1/9/01, effective 2/9/01)

WAC 284-04-900 Sample clauses. Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the Federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1—Categories of information a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of WAC 284-04-210 (1)(a) to describe the categories of nonpublic personal information the licensee collects.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

• Information we receive from you on applications or other forms;

• Information about your transactions with us, our affiliates or others; and

• Information we receive from a consumer reporting agency.

A-2—Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirement of WAC 284-04-210 (1)(b) to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in WAC 284-04-400, 284-04-405, and 284-04-410.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

• Information we receive from you on applications or other forms, such as (provide illustrative examples, such as "your name, address, Social Security number, assets, income, and beneficiaries");

• Information about your transactions with us, our affiliates or others, such as (provide illustrative examples, such as "your policy coverage, premiums, and payment history"); and

• Information we receive from a consumer reporting agency, such as (provide illustrative examples, such as "your creditworthiness and credit history").

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described (describe location in the notice, such as "above" or "below").

A-3—Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of WAC 284-04-210 (1)(b), (c), and (d) to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in WAC 284-04-405 and 284-04-410.

Sample Clause A-3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A-4—Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of WAC 284-04-210 (1)(c) to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in WAC 284-04-400, 284-04-405, and 284-04-410, as well as when permitted by the exceptions in WAC 284-04-405 and 284-04-410.

Sample Clause A-4:

We may disclose nonpublic personal information about you to the following types of third parties:

• Financial service providers, such as (provide illustrative examples, such as "life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance ((~~agents~~)) producers");

• Nonfinancial companies, such as (provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"); and

• Others, such as (provide illustrative examples, such as "nonprofit organizations").

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A-5—Service provider/joint marketing exception

A licensee may use one of these clauses, as applicable, to meet the requirements of WAC 284-04-210 (1)(e) related to the exception for service providers and joint marketers in WAC 284-04-400. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with whom the licensee has contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

• Information we receive from you on applications or other forms, such as (provide illustrative examples, such as "your name, address, Social Security number, assets, income, and beneficiaries");

• Information about your transactions with us, our affiliates or others, such as (provide illustrative examples, such as "your policy coverage, premium, and payment history"); and

• Information we receive from a consumer reporting agency, such as (provide illustrative examples, such as "your creditworthiness and credit history").

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described (describe location in the notice, such as "above" or "below") to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6—Explanation of opt out right (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of WAC 284-04-210 (1)(f) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in WAC 284-04-400, 284-04-405, and 284-04-410.

Sample Clause A-6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may (describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)").

A-7—Confidentiality and security (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of WAC 284-04-210 (1)(h) to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

We restrict access to nonpublic personal information about you to (provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"). We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Chapter 284-12 WAC

((~~AGENTS, BROKERS~~)) INSURANCE PRODUCERS, TITLE INSURANCE AGENTS, SURPLUS LINE BROKERS, AND ADJUSTERS

AMENDATORY SECTION (Amending Order R 90-2, filed 1/31/90, effective 3/3/90)

WAC 284-12-080 Requirements for separate accounts. (1) The purpose of this section is to effectuate RCW 48.15.180, 48.17.600 and 48.17.480 with respect to the separation and accounting of premium funds by ((~~agents, brokers, solicitors, general agents~~)) insurance producers, title insurance agents and surplus line brokers, ((~~hereinafter called~~)) collectively referred to in this section as "producers." Pursuant to RCW 48.30.010, the commissioner has found and hereby defines it to be an unfair practice for any producer, except as allowed by statute, to conduct insurance business without complying with the requirements of RCW 48.15.180, 48.17.600 and this section. ((~~As provided in RCW 48.17.600, agents for title insurance companies or insurance brokers whose average daily balance for premiums received on behalf of insureds in the state of Washington equals or exceeds one million dollars, are exempt from subsections (1) through (6) of this section, except with respect to premiums and return premiums received in another licensing capacity.~~))

(2) All funds representing premiums and return premiums received on Washington business by a producer in his or her fiduciary capacity on or after January 1, 1987, shall be deposited in one or more identifiable separate accounts which may be interest bearing.

(a) A producer may deposit no funds other than premiums and return premiums to the separate account except as follows:

(i) Funds reasonably sufficient to pay bank charges;

(ii) Funds a producer may deem prudent for advancing premiums, or establishing reserves for the paying of return premiums; and

(iii) Funds for contingencies as may arise in the business of receiving and transmitting premiums or return premiums.

(b) A producer may commingle Washington premiums and return premiums with those produced in other states, but there shall be no commingling of any funds which would not be permitted by this section.

(3)(a) The separate account funds may be:

(i) Deposited in a checking account, demand account, or a savings account in a bank, national banking association, savings and loan association, mutual savings bank, stock savings bank, credit union, or trust company located in the state of Washington. Such an account must be insured by an entity of the federal government; or

(ii) Invested in United States government bonds and treasury certificates or other obligations for which the full faith and credit of the United States government is pledged for payment of principal and interest, repurchase agreements collateralized by securities issued by the United States government, and bankers acceptances. Insurers may, of course, restrict investments of separate account funds by their agent.

(b) A nonresident licensee, or a resident producer with affiliated operations under common ownership in two or more states, may utilize comparable accounts in another state provided such accounts otherwise meet the requirements of RCW 48.15.180, 48.17.600, 48.17.480 and this rule, and are accessible to the commissioner for purposes of examination or audit at the expense of the producer.

(4) Disbursements or withdrawals from a separate account shall be made for the following purposes only, and in the manner stated:

(a) For charges imposed by a bank or other financial institution for operation of the separate account;

(b) For payments of premiums, directly to insurers or other producers entitled thereto;

(c) For payments of return premiums, directly to the insureds or other persons entitled thereto;

(d) For payments of commissions and other funds belonging to the separate account's producer, directly to another account maintained by such producer as an operating or business account; and

(e) For transfer of fiduciary funds, directly to another separate premium account which meets the requirements of this section.

(5)(a) The entire premium received (including a surplus lines premium tax if paid by the insured) must be deposited into the separate account. Such funds shall be paid promptly to the insurer or to another producer entitled thereto, in accordance with the terms of any applicable agreement between the parties.

(b) Return premiums received by a producer and the producer's share of any premiums required to be refunded, must be deposited promptly to the separate account. Such funds shall be paid promptly to the insured or person entitled thereto.

(6)(a) Where a producer receives a premium payment in the form of an instrument, such as a check, which is made payable to an insurer, general agent or surplus line broker, the producer may forward such instrument directly to the payee if that can be done without endorsement or alteration. In such a case, the producer's separate account is not involved because the producer has not "received" any funds.

(b) If the producer receives a premium payment in the form of cash or an instrument requiring endorsement by the producer, such premium must be deposited into the producer's separate account, unless the insurer entitled to such funds has established other procedures by written direction to a producer who is its appointed agent, which procedures:

(i) Recognize that such agent is receiving premiums directly on behalf of the insurer; and

(ii) Direct the producer to give adequate receipts on behalf of the insurer; and

(iii) Require deposit of the proceeds into the insurer's own account or elsewhere as permitted by the insurer's direction.

Thus, for example, an insurer may utilize the services of a licensed ((~~agent, known in the industry~~)) insurance producer, acting as a "captive agent," in the sale of its insurance and in the operation of its places of business, and directly receive payments intended for it without such payments being deposited into and accounted for through the licensed ((~~agent's~~)) insurance producer's separate account. In such cases, for purposes of this rule, the insurer, as distinguished from the ((~~agent~~)) insurance producer, is actually "receiving" the funds and is immediately responsible therefor.

(c) When a producer receives premiums in the capacity of a surplus line broker, licensed pursuant to chapter 48.15 RCW, after a binder or other written evidence of insurance has been issued to the insured, subject to the express written direction of the insurer involved, such premiums may be removed from the separate account.

(7) The commissioner recognizes the practical problems of accounting for the small amounts of interest involved spread over a large number of insurers and insureds. Therefore, absent any agreement between the producer and the insured or insurer to the contrary, interest earned on the deposits held in the separate account may be retained by the producer and used to offset bank charges, establish reserves, pay return premiums, or for any of the purposes listed in subsection (2) of this section, or the interest may be removed to the operating account.

(8) A producer shall establish and maintain records and an appropriate accounting system for all premiums and return premiums received by the producer, and shall make such records available for inspection by the commissioner during regular business hours upon demand during the five years immediately after the date of the transaction.

(9) The accounting system used must effectively isolate the separate account from any operating accounts. All record-keeping systems, whether manual or electronic must provide an audit trail so that details underlying the summary data, such as invoices, checks, and statements, may be identified and made available on request. Such a system must provide the means to trace any transaction back to its original source or forward to final entry, such as is accomplished by a conventional double-entry bookkeeping system. When automatic data processing systems are used, a description of the system must be available for review by the commissioner. A balance forward system (as in an ordinary checking account) is not acceptable.

(10)(a) A producer that is a ((~~firm or corporation~~)) business entity may utilize one separate account for the funds received by its affiliated persons operating under its license, and such affiliated persons may deposit the funds they receive in such capacity directly into the separate account of their firm or corporation.

(b) ((~~Funds received by a solicitor may be deposited into and accounted for through the separate account of the agent or broker represented by the solicitor.~~

~~(c)~~)) Funds received by an ((~~agent~~)) insurance producer who is employed by and offices with another ((~~agent~~)) insurance producer may be deposited into and accounted for through the separate account of the employing ((~~agent~~)) insurance producer. This provision does not, however, authorize the ((~~agent employee~~)) insurance producer employee to represent an insurer as to which he or she has no appointment.

AMENDATORY SECTION (Amending Order R 91-7, filed 11/13/91, effective 1/1/92)

WAC 284-12-095 Unfair practice with respect to use of ((~~general agent~~)) insurance producer defined. It is an unfair or deceptive practice and an unfair method of competition pursuant to RCW 48.30.010 for an authorized insurer to cancel or refuse to renew any insurance policy because its contract or arrangement with ((~~a general agent~~)) an appointed or a nonappointed ((~~agent~~)) insurance producer through whom such policy was written has been terminated.

AMENDATORY SECTION (Amending Order R 88-12, filed 12/7/88)

WAC 284-12-110 Identification of ((~~agent or solicitor~~)) an insurance producer to a prospective insured. It shall be an unfair practice for an ((~~agent or solicitor~~)) insurance producer initiating a sales presentation away from his or her office to fail to inform the prospective purchaser, prior to commencing the sales presentation, that the ((~~agent or solicitor~~)) insurance producer is acting as an insurance ((~~agent or solicitor~~)) producer, and to fail thereafter to inform the prospective purchaser of the full name of the insurance company whose product the ((~~agent or solicitor~~)) insurance producer offers to the buyer. This rule shall apply to all lines of insurance and to all coverage solicited in this state including coverage under a group policy delivered in another state, whether or not membership in the group is also being solicited.

AMENDATORY SECTION (Amending Order R 93-13, filed 9/1/93, effective 10/2/93)

WAC 284-12-220 Licensed in this state. A person is licensed in this state for purposes of ((~~section 36~~)) RCW 48.98.010 (1) and (2), ((~~chapter 462, Laws of 1993,~~)) if ((~~he or she~~)) the person holds a resident or nonresident ((~~agent's~~)) insurance producer's license issued by the commissioner.

AMENDATORY SECTION (Amending Order R 94-14, filed 7/6/94, effective 8/6/94)

WAC 284-12-270 Expiration and renewal of appointments. Appointments of managing general agents shall be for two years. They expire unless timely renewed. They expire on the same date that ((~~agent~~)) insurance producer appointments for the same insurer expire under WAC 284-17-410.

Chapter 284-17B WAC

RENTAL CAR ((~~AGENT~~)) INSURANCE PRODUCER

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-005 What definitions are important throughout the chapter? Definitions:

(1) **"Endorsee"** means an unlicensed employee or agent of a rental car ((~~agent~~)) insurance producer who meets the requirements of this chapter.

(2) **"Person"** means an individual or a business entity.

(3) **"Rental agreement"** means any written master, corporate, group, or individual agreement setting forth the terms and conditions governing the use of a rental car rented or leased by a rental car company.

(4) **"Rental car"** means any motor vehicle that is intended to be rented or leased for a period of thirty consecutive days or less by a driver who is not required to possess a commercial driver's license to operate the motor vehicle and the motor vehicle is either of the following:

(a) A private passenger motor vehicle, including a passenger van, recreational vehicle, minivan, or sports utility vehicle; or

(b) A cargo vehicle, including a cargo van, pickup truck, or truck with a gross vehicle weight of less than twenty-six thousand pounds.

(5) **"Rental car ((~~agent~~)) insurance producer"** means any rental car company that is licensed to offer, sell, or solicit rental car insurance under this chapter.

(6) **"Rental car company"** means any person in the business of renting rental cars to the public, including a franchisee.

(7) **"Rental car insurance"** means insurance offered, sold, or solicited in connection with and incidental to the rental of rental cars, whether at the rental office or by preselection of coverage in master, corporate, group, or individual agreements that is:

(a) Nontransferable;

(b) Applicable only to the rental car that is the subject of the rental agreement;

(c) Limited to the following kinds of insurance:

(i) Personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

(ii) Liability insurance, including uninsured or underinsured motorist coverage, whether offered separately or in combination with other liability insurance, that provides protection to the renters and to other authorized drivers of a rental car for liability arising from the operation of the rental car during the rental period;

(iii) Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period; and

(iv) Roadside assistance and emergency sickness protection insurance.

(8) **"Renter"** means any person who obtains the use of a vehicle from a rental car company under the terms of a rental agreement.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-010 Who needs to be licensed as a rental car ((~~rental agent~~)) insurance producer? Any person in the business of renting cars to the public and offering rental car insurance must either:

(1) Be licensed under chapter 284-17 WAC; or

(2) Comply with chapter 48.115 RCW and this chapter.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-015 How can I apply for a rental car ((~~agent~~)) insurance producer license? Forms and instructions may be obtained by either calling the office of insurance commissioner or downloading them from the web site: www.insurance.wa.gov/. To apply for a rental car ((~~agent~~)) insurance producer license, the following must be submitted:

(1) A rental car ((~~agent~~)) insurance producer application signed by the applicant, an officer of the applicant, or owner of the rental car-company;

(2) A copy of articles of incorporation;

(3) A certificate of good standing from the secretary of state;

(4) Underwriting insurer appointment form, INS 18;

(5) The insurer's certification form as described in RCW 48.115.015 (2)(a) signed by the appointing authority;

(6) A list of all locations in Washington identifying the manager or direct supervisor at each;

(7) A list of the names of all endorsees to its rental car ((~~agent~~)) insurance producer license;

(8) Certification by the rental car company that the listed endorsees have met the training requirements in RCW 48.115.020(4) and are authorized to offer, sell, and solicit insurance in connection with the rental of vehicles as described in RCW 48.115.005(7).

(9) The training and education program and materials as described in RCW 48.115.020(4) and all brochures and other written materials provided to renters as described in RCW 48.115.025; and

(10) Initial fees:

a. License fee for two years:	$130 for business with under 50 employees
	$375 for business with 50 or more employees
b. Appointment fee:	$20 for each underwriting insurer
c. Location fee:	$35 for each additional location. Location fees are not required for locations where there are no endorsees due to waiver or approved alternate arrangement under WAC 284-17B-080

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-020 Do I have continuing reporting and recordkeeping requirements? (1) Yes. The list of names of all endorsees to the rental car ((~~agent~~)) insurance producer license must be updated quarterly on a calendar year basis and submitted at the time of license renewal. The rental car company must retain each list for a period of three years from submission. At any time, endorsee lists must be provided to the commissioner upon request.

(2) The ((~~agent~~)) rental car insurance producer must maintain records of each transaction which allows it to identify the endorsee for one year.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-025 How is a rental car ((~~agent~~)) insurance producer license renewed? Rental ((~~agent~~)) car insurance producer licenses are issued for a period of two years. A renewal notice will be mailed to each licensed rental car ((~~agent~~)) insurance producer every other year from the date of issuance. The renewal notice must be submitted with the rental car company certification form and applicable fee:

Date Fees are Received	*Fee Every Other Year*
	50 OR MORE EMPLOYEES
Prior to or on renewal date:	$375 with $35 per each additional location
1-30 days late	$562.50 with $35 per each additional location
31-60 days late	$749.75 with $35 per each additional location
61 or more days late	New license is required
	UNDER 50 EMPLOYEES
Prior to or on renewal date:	$130 with $35 per additional location
1-30 days late	$195 with $35 per each additional location
31-60 days late	$260 with $35 per each additional location
61 or more days late	New license is required

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-030 Can the rental car ((~~agent~~)) insurance producer endorse someone to act on behalf of the agent? Yes. An endorsee may act on behalf of the rental car ((~~agent~~)) insurance producer. The endorsee may act only in the offer, sale, or solicitation of rental car insurance. A rental car ((~~agent~~)) insurance producer is responsible for, and must supervise, all actions of its endorsees related to the offering, sale, or solicitation of rental car insurance.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-035 Who can be a rental car ((~~agent~~)) insurance producer endorsee? An employee or agent of a rental car ((~~agent~~)) insurance producer may be an endorsee under the authority of the rental car agent license, if all of the following conditions are met:

(1) The employee or agent is eighteen years of age or older;

(2) The employee or agent is a trustworthy person and has not committed any act set forth in RCW 48.17.530;

(3) The employee or agent has completed a training and education program; and

(4) The employee or agent has a current agreement or business relationship with the rental car company.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-040 Is the rental car ((~~agent~~)) insurance producer required to provide training and education to its endorsees? Yes. The rental car ((~~agent~~)) insurance producer must provide training and education to its endorsees as described in RCW 48.115.020(4).

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-045 What activities are prohibited for rental car ((~~agents~~)) insurance producers? A rental car ((~~agent~~)) insurance producer must comply with RCW 48.115.030.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-050 How should a rental car ((~~agent~~)) insurance producer account for premiums? A rental car ((~~agent~~)) insurance producer is required to treat money collected from renters purchasing rental car insurance as funds received in a fiduciary capacity, unless:

(1) The charges for rental car insurance coverage are itemized and related to a rental transaction; and

(2) The insurer has consented in writing that premiums do not need to be segregated from funds received by the rental car ((~~agent~~)) insurance producer. This written statement must be signed by an officer of the insurer.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-060 What information must be included in the written material or brochure? The brochure and written material must clearly, conspicuously, and in plain language:

(1) Summarize, clearly and correctly, the material terms, exclusions, limitations, and conditions of coverage offered to renters, including the identity of the insurer;

(2) Describe the process for filing a claim including a toll-free telephone number to report a claim;

(3) Provide the rental car ((~~agent's~~)) insurance producer's name, address, telephone number, and license number, and the commissioner's consumer hotline number;

(4) Inform the renter that the rental car insurance may duplicate coverage provided by the renter's personal automobile insurance policy, homeowners' insurance policy, or by another source of coverage;

(5) Inform the renter that when the rental car insurance is not the primary source of coverage, the renter's personal insurance will serve as the primary source of coverage;

(6) Inform the renter that the purchase of the rental car insurance is not required to rent a car from the rental car ((~~agent~~)) insurance producer; and

(7) Inform the renter that the rental car ((~~agent~~)) insurance producer and the endorsees are not qualified to evaluate the adequacy of the renter's existing insurance coverages.

(8) The policy or certificate of coverage and rates must be filed and approved by OIC as outlined in RCW 48.18.100 and 48.19.040.

(9) If the written material includes a certificate of coverage or policy, the form number and edition, if applicable, of the approved certificate of coverage or policy must be identified on the printed material. The insurer must certify that the policy or certificate of coverage and the rates have been approved and that the wording on the written material is exactly as approved.

(10)(a) The renter must acknowledge the receipt of the brochures and written materials. The acknowledgment may be in the brochure or written materials, rental agreement, or a separate document.

(b) For transactions conducted by electronic means, the rental car agent must comply with the requirements of (a) of this subsection. Acknowledgment of the receipt of the documents may be made by either written or digital signature.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-075 Does the commissioner have authority to suspend, fine, or revoke my license or refuse to license me? Yes, the commissioner may fine, suspend, revoke, or refuse to issue a license to a rental car ((~~agent~~)) insurance producer or applicant. See RCW 48.115.035.

AMENDATORY SECTION (Amending Matter No. R 98-10, filed 6/16/98, effective 7/17/98)

WAC 284-19-070 FAIR plan business—Distribution and placement. (1) The facility shall not require that the applicant demonstrates that he or she is unable to obtain insurance in the normal market, as a precondition to the placement of business under the FAIR plan. The facility, however, may require an ((~~agent or broker~~)) insurance producer to furnish copies of documents or information showing what effort was made by the ((~~agent or broker~~)) insurance producer to obtain insurance in the normal market. The facility shall forward to the commissioner the names of ((~~agents or brokers~~)) insurance producers who fail to cooperate or who appear to fail to make reasonable efforts on behalf of applicants for insurance to obtain insurance in the normal market.

(2) Assessments upon each insurer participating in this program shall be levied by the facility on the same percentage allocation basis as the insurer's premiums written bears to the total of all premiums written by all insurers participating in the program.

(a) The maximum limit of liability that may be placed through this program on any one property at one location is $1,500,000. The facility undertakes the responsibility of seeking to place that portion of a risk that exceeds $1,500,000.

(b) The term "at one location" as used in this chapter refers to real and personal property consisting of and contained in a single building, or consisting of and contained in contiguous buildings under one ownership.

AMENDATORY SECTION (Amending Order R-69-1, filed 1/28/69)

WAC 284-19-165 Cooperation of producers. All licensed insurance ((~~agents and brokers~~)) producers shall provide full cooperation in carrying out the aims and the operation of the FAIR plan.

AMENDATORY SECTION (Amending Order R-75-3, filed 8/22/75, effective 11/1/75)

WAC 284-23-020 Definitions. (1) For the purpose of this regulation:

(a) "Policy" shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides for life insurance or annuity benefits.

(b) "Insurer" shall include any organization or person which issues life insurance or annuities in this State and is engaged in the advertisement of a policy.

(c) "Advertisement" shall be material designed to create public interest in life insurance or annuities or in an insurer, or to induce the public to purchase, increase, modify, reinstate, or retain a policy including:

(i) Printed and published material, audiovisual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio and television scripts, billboards and similar displays;

(ii) Descriptive literature and sales aids of all kinds issued by an insurer or ((~~agent~~)) insurance producer, including but not limited to circulars, leaflets, booklets, depictions, illustrations and form letters;

(iii) Material used for the recruitment, training and education of an insurer's sales personnel((~~, agents, solicitors and brokers~~)) and insurance producers, which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate or retain a policy;

(iv) Prepared sales talks, presentations and material for use by sales personnel((~~, agents, solicitors and brokers~~)) and insurance producers.

(2) "Advertisement" for the purpose of this regulation shall not include:

(a) Communications or materials used within an insurer's own organization and not intended for dissemination to the public;

(b) Communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate or retain a policy;

(c) A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged, provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-400 Purpose. The purpose of this regulation is:

(1) To regulate the activities of insurers and ((~~agents and brokers~~)) insurance producers with respect to the replacement of existing life insurance and annuities;

(2) To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by:

(a) Assuring that the purchaser receives information with which a decision can be made in his or her own best interest;

(b) Reducing the opportunity for misrepresentation and incomplete disclosures; and

(c) Establishing penalties for failure to comply with the requirements of this regulation.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-410 Definition of replacement. "Replacement" means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing ((~~agent or broker~~)) insurance producer, or to the proposing insurer if there is no ((~~agent~~)) insurance producer, that by reason of such transaction, existing life insurance or annuity has been or is to be:

(1) Lapsed, forfeited, surrendered, or otherwise terminated;

(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(4) Reissued with any reduction in cash value; or

(5) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent of the loan value set forth in the policy.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-420 Other definitions. (1) "Conservation" means any attempt by the existing insurer or ((~~its agent, or by a broker~~)) an insurance producer to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include such routine administrative procedures as late payment reminders, late payment offers or reinstatement offers.

(2) "Direct-response sales" means any sale of life insurance or annuity where the insurer does not utilize an ((~~agent~~)) insurance producer in the sale or delivery of the policy.

(3) "Existing insurer" means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement."

(4) "Existing life insurance or annuity" means any life insurance or annuity in force, including life insurance under a

binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.

(5) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

(6) "Registered contract" means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-430 Exemptions. Unless otherwise specifically included, this regulation shall not apply to transactions involving:

(1) Credit life insurance;

(2) Group life insurance or group annuities, unless the new coverage under the insurance or annuity is solicited on an individual basis and the cost of such coverage is borne substantially by the individual;

(3) An application to the existing insurer that issued the existing life insurance when a contractual change or conversion privilege is being exercised;

(4) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(5) Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control; provided, however, ((~~agents or brokers~~)) insurance producers proposing replacement shall comply with the requirements of WAC 284-23-440 (1) and (2)(a) and (c); and

(6) Registered contracts shall be exempt only from the requirements of WAC 284-23-455 (2)(b) and (c), requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-440 Duties of ((~~agents and brokers~~)) insurance producers. (1) Each ((~~agent or broker~~)) insurance producer who initiates the application shall submit to the insurer to which an application for life insurance or annuity is presented, with or as part of each application:

(a) A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and

(b) A signed statement as to whether the ((~~agent or broker~~)) insurance producer knows replacement is or may be involved in the transaction.

(2) Where a replacement is involved, the ((~~agent or broker~~)) insurance producer shall:

(a) Present to the applicant, not later than at the time of taking the application, a completed notice regarding replacement in the form as described in WAC 284-23-485, or other substantially similar form approved by the commissioner. Answers must be succinct and in simple nontechnical language. They should fairly and adequately highlight the points raised by the questions, without overwhelming the applicant with verbiage and data. An answer may include a reference to the contract or another source, but it must be essentially complete without the reference. The notice (and a copy) shall be signed by the applicant after it has been completed and signed by the ((~~agent or broker~~)) insurance producer and the signed original shall be left with the applicant.

(b) Obtain with each application a list of all existing life insurance and/or annuity contracts to be replaced and properly identified by name of insurer, the insured and contract number. Such list shall be set forth on the notice regarding replacement required by WAC 284-23-485, immediately below the ((~~agent's or broker's~~)) insurance producer's name and address. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(c) Leave with the applicant the original or a copy of written or printed communications used for presentation to the applicant.

(d) Submit to the replacing insurer with the application, a copy of the replacement notice provided pursuant to WAC 284-23-440 (2)(a).

(3) Each ((~~agent or broker~~)) insurance producer who uses written or printed communications in a conservation shall leave with the applicant the original or a copy of such materials used.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-455 Duties of insurers that use ((~~agents or brokers~~)) insurance producers. Each insurer that uses an ((~~agent or broker~~)) insurance producer in a life insurance or annuity sale shall:

(1) Require with or as part of each completed application for life insurance or annuity, a statement signed by the ((~~agent or broker~~)) insurance producer as to whether he or she knows replacement is or may be involved in the transaction.

(2) Where a replacement is involved:

(a) Require from the ((~~agent or broker~~)) insurance producer with the application for life insurance or annuity (i) a list of all of the applicant's existing life insurance or annuities to be replaced and (ii) a copy of the replacement notice provided the applicant pursuant to WAC 284-23-440 (2)(a). Such existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(b) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to (a) of this subsection and a policy summary, contract summary, or ledger statement containing policy data on the proposed life insurance or annuity as required by the life insurance solicitation regulation, WAC 284-23-200 through 284-23-270, and/or the annuity and deposit fund disclosure regulation,

WAC 284-23-300 through 284-23-380. Cost indices and equivalent level annual dividend figures need not be included in the policy summary or ledger statement. This written communication shall be made within three working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

(c) Each existing insurer or such insurer's ((~~agent or a broker~~)) insurance producer that undertakes a conservation shall, within twenty days from the date the written communication plus the materials required in (a) and (b) of this subsection is received by the existing insurer, furnish the policyowner with a policy summary for the existing life insurance or a ledger statement containing policy data on the existing policy and/or annuity. Such policy summary or ledger statement shall be completed in accordance with the provisions of the life insurance solicitation regulation, WAC 284-23-200 through 284-23-270, except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The policy summary or ledger statement shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Cost indices and equivalent level annual dividend figures need not be included. When annuities are involved, the disclosure information shall be that required in a contract summary under the annuity and deposit fund disclosure regulation, WAC 284-23-300 through 284-23-380. The replacing insurer may request the existing insurer to furnish it with a copy of the summaries or ledger statement, which shall be furnished within five working days of the receipt of the request.

(3) The replacing insurer shall maintain evidence of the "Notice Regarding Replacement," the policy summary, the contract summary and any ledger statements used, and a replacement register, cross indexed, by replacing ((~~agent~~)) insurance producer and existing insurer to be replaced. The existing insurer shall maintain evidence of policy summaries, contract summaries or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later.

(4) The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within twenty days commencing from the date of delivery of the policy.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-460 Duties of insurers with respect to direct-response sales. (1) If in the solicitation of a direct response sale, the insurer did not propose the replacement, and a replacement is involved, the insurer shall send to the applicant, with the policy, a replacement notice as described in WAC 284-23-485 or other substantially similar form approved by the commissioner. In such instances the insurer may omit the portion of the form which is included under the heading "Statement to Applicant by ((~~Agent or Broker~~)) Insurance Producer," but including the portion beginning with "CAUTION" and continuing through the first three points down to and not including the fourth point which begins "Study the comments" without having to obtain approval of the form from the commissioner. The applicant's signature is not required on the notice.

(2) If the insurer proposes the replacement in connection with direct response sales, it shall:

(a) Provide to applicants or prospective applicants, with or as a part of the application, a replacement notice as described in WAC 284-23-485 or other substantially similar form approved by the commissioner.

(b) Request from the applicant with or as part of the application, a list of all existing life insurance or annuities to be replaced and properly identified by name of insurer, insured, and contract number.

(c) Comply with the requirements of WAC 284-23-455 (2)(b), if the applicant furnishes the names of the existing insurers, and the requirements of WAC 284-23-455(3), except that it need not maintain a replacement register.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-480 Penalties. (1) Any ((~~broker~~)) insurance producer, and any insurer, ((~~agent,~~)) representative, officer or employee of such insurer failing to comply with the requirements of this regulation shall be subject to such penalties as may be appropriate under the insurance laws of Washington.

(2) This regulation does not prohibit the use of additional material other than that which is required that is not in violation of this regulation or any other Washington statute or regulation.

(3) Policyowners have the right to replace existing life insurance after indicating in or as part of the applications for life insurance that such is not their intention; however, patterns of such action by policyowners who purchase the replacing policies from the same ((~~agent or broker~~)) insurance producer shall be deemed prima facie evidence of the licensee's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the licensee's intent to violate this regulation.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-485 Form to be used for notice regarding replacement.

(Insurance company's name and address)

IMPORTANT NOTICE REGARDING REPLACEMENT OF INSURANCE

(Save this notice! It may be important to you in the future.)

The decision to buy a new life insurance policy or annuity and discontinue or change an existing one is very important.

Your decision could be a good one—or a mistake. It should be carefully considered. The Washington state insurance commissioner requires us to give you this notice to help you make a wise decision.

STATEMENT TO APPLICANT BY ((~~AGENT OR BROKER~~)) INSURANCE PRODUCER:

(Use additional sheets, as necessary.)

I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following factors, which I call to your attention.

1. Can there be reduced benefits or increased premiums in later years? . . . No . . . Yes, explain:

2. Are there penalties, set up or surrender charges for the new policy? . . . No . . . Yes, explain, emphasizing any extra cost for early withdrawal:

3. Will there be penalties or surrender charges under the existing insurance as a result of the proposed transaction?
. . . No . . . Yes, explain:

4. Are there adverse tax consequences from the replacement under current tax law?. . . No . . . Yes, explain:

5. a) Are interest earnings a consideration in this replacement? No. . . . Yes. . . .
   b) If "yes," explain what portions of premiums or contributions will produce limited or no earnings. As pertinent, include in your explanation the need for minimum deposits to enhance earnings, and the reduction of earnings that may result from set-up charges, policy fees, and other factors.

6. Are minimum amounts required to be on deposit before excess interest will be paid? . . . No . . . Yes, explain:

7. If the new program is based on a variable or universal life insurance policy or a single-premium policy or annuity:
   a) Are the interest rates quoted before . . . or after . . . fees and mortality charges have been deducted?
   b) Interest rates are guaranteed for how long? . . .
   c) The minimum interest rate to be paid is how much? . . .
   d) If applicable, the rate you pay to borrow is . . . . . , and the limit on the amount that can be borrowed is . . . . .
   e) The surrender charges are . . . . .
   f) The death benefit is . . . . .

8. Are there other short or long term effects from the replacement that might be materially adverse?
. . . No . . . Yes, explain:

. . . .
Signature of ((~~Agent or Broker~~)) Insurance Producer — Date

. . . .
Name of ((~~Agent or Broker~~)) Insurance Producer (Print or Type) — Address

List of Policies or Contracts to be Replaced:

Company	Insured	Contract No.
______	______	_______

CAUTION: The insurance commissioner suggests you consider these points:

> Usually, contestable and suicide periods start again under a new policy. Benefits might be excluded under a new policy that would be paid under existing insurance.

> Terminating or altering existing coverage, before new insurance has been issued, might leave you unable to purchase other life insurance or let you buy it only at substantially higher rates.

> You are entitled to advice from the existing ((~~agent~~)) insurance producer or company. Such advice might be helpful.

> Study the comments made above by the ((~~agent or broker~~)) insurance producer. They apply to you and this proposal. They are important to you and your future.

Completed Copy
Received: . . . .
(Applicant's Signature) (Date)

THIS COMPLETED FORM SHOULD BE FILED PERMANENTLY WITH YOUR NEW INSURANCE POLICY.

AMENDATORY SECTION (Amending Order R 87-5, filed 4/21/87)

WAC 284-30-350 Misrepresentation of policy provisions. (1) No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.

(2) No insurance producer or title insurance agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

(3) No insurer shall deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.

(4) No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices the insurer's rights.

(5) No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.

(6) No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which release the insurer or its insured from its total liability.

(7) No insurer shall make a payment of benefits without clearly advising the payee, in writing, that it may require reimbursement, when such is the case.

AMENDATORY SECTION (Amending Order R 84-8, filed 12/27/84)

WAC 284-30-550 Receipts to be given. (1) ((~~Beginning June 1, 1985,~~)) To effectuate RCW 48.17.470 and 48.17.480 and to eliminate unfair practices in accord with RCW 48.30.010, any ((~~agent, solicitor~~)) insurance producer or other representative of an insurer who receives a contract payment or premium from or on behalf of an insured or applicant for homeowners', dwelling fire, private passenger automobile, motorcycle, individual life, or individual disability insurance shall deliver or mail a signed receipt therefor as promptly as possible, which should generally be no later than the next business day. Such receipt must be dated, identify the ((~~agent~~)) insurance producer and the ((~~agent's~~)) insurance producer's address, identify the person by or for whom payment is made, state the amount received, identify the applicable insurer by its full legal name (or the premium finance company or Washington automobile insurance plan if payment is intended therefor), and identify the contract or policy including a brief description of the coverage for which payment is received.

(2) The receipt need not be an independent document but may be incorporated in an application or binder, if appropriate.

(3) For purposes of this section "life insurance" includes annuities.

(4) For purposes of this section "insurer" includes a health care service contractor and a health maintenance organization, and "disability insurance" includes their contracts and agreements.

(5) This section shall not apply to the receipt of checks or other instruments payable on their face to the insurer, premium finance company or the Washington Automobile Insurance Plan. It also shall not apply to payments (other than by cash) received by an ((~~agent~~)) insurance producer after delivery of the policy for which payment is made, when the payment is pursuant to a premium financing arrangement with the ((~~agent~~)) insurance producer or in response to a billing by the ((~~agent~~)) insurance producer.

(6) A failure to comply with this section shall be an unfair practice pursuant to RCW 48.30.010, and a violation of a regulation pursuant to RCW 48.17.530.

(7) Each insurer shall inform its ((~~agents~~)) insurance producers and appropriate representatives of the requirements of this section.

AMENDATORY SECTION (Amending Order R 84-8, filed 12/27/84)

WAC 284-30-560 Applications and binders. (1) ((~~Beginning June 1, 1985,~~)) Every application form used in connection with homeowners', dwelling fire and vehicle insurance, shall contain a clear and conspicuous statement setting forth whether or not coverage has commenced.

(a) If coverage has commenced, the effective date shall be stated.

(b) If coverage has not commenced, there shall be an explanation as to the circumstances which will cause coverage to commence and the time when coverage will become effective.

(c) The statement concerning commencement of coverage shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the other contents of the application so as to be confusing, misleading or not readily evident.

(d) A copy of such application shall be delivered or mailed to the applicant promptly following its execution.

(2) ((~~Beginning June 1, 1985,~~)) Every binder used pending the issuance of a policy of property, marine and transportation, vehicle and general casualty insurance, as those kinds of insurance are defined in chapter 48.11 RCW, shall be reduced to writing or printed form and delivered or mailed to the insured as promptly as possible, which should generally be no later than the next business day.

(a) Such binder must be dated, identify the insurer in which coverage is bound, briefly describe the coverage bound, state the date and time coverage is effective, and acknowledge receipt of the amount of any premium money received.

(b) Such binder may be incorporated in or be attached to the application for the insurance but must be clear and conspicuous.

(3) Binders should be replaced promptly with insurance policies. With few exceptions and then only in compliance with RCW 48.18.230(2), insurers must replace binders within ninety days of their effective date.

(4) It shall be an unfair practice and unfair competition for an insurer or ((~~agent~~)) insurance producer to engage in acts or practices which are contrary to or not in conformity with the requirements of this section, and a violation of this section is prohibited and shall subject an insurer and ((~~agent~~)) insurance producer to the penalties or procedures set forth in RCW 48.05.140, 48.17.530, or 48.30.010.

(5) Each insurer shall inform its ((~~agents~~)) insurance producers and appropriate representatives of the requirements of this section.

AMENDATORY SECTION (Amending Order R 84-8, filed 12/27/84)

WAC 284-30-580 Policies to be delivered, not held by insurance producers or title insurance agents. (1) RCW 48.18.260 requires that policies be delivered within a reasonable period of time after issuance. If an insurer relies upon its appointed insurance producers or title insurance agents to make deliveries of its policies, the insurer, as well as the appointed insurance producer or title insurance agent, is responsible for any delay resulting from the failure of the appointed insurance producer or title insurance agent to act diligently.

(2) Insurance producers and title insurance agents delivering insurance policies to insureds must make an actual

physical delivery. It is not acceptable for an insurance producer or title insurance agent to merely obtain a receipt indicating a delivery and then to retain the policy, for safekeeping or otherwise, in the insurance producer's or title insurance agent's possession.

(3) Insurance producers and title insurance agents may obtain policies from owners or insureds and hold such policies briefly for analysis or servicing, giving a receipt therefor in every instance, but shall promptly return any such policies to their owners or insureds. Insurance producers and title insurance agents shall not otherwise take custody of, or hold, insurance policies, whether for fee or at no charge, unless a family or legal relationship clearly justifies such conduct, as, for example, where a policy belonging to a minor child of the insurance producer and title insurance agent is held, or where the insurance producer or title insurance agent is acting as a legal guardian or a court appointed representative and holds a policy of a ward or of an estate.

(4) It shall be an unfair practice and unfair competition for an insurer or insurance producer or title insurance agent to engage in acts or practices which are contrary to or not in conformity with the requirements of this section, and a violation of this section is prohibited and shall subject an insurer, insurance producer and title insurance agent to the penalties or procedures set forth in RCW 48.05.140, 48.17.530, or 48.30.010.

(5) Each insurer shall inform its appointed insurance producers or title insurance agents and appropriate representatives of the requirements of this section.

AMENDATORY SECTION (Amending Matter R 98-18, filed 9/14/00, effective 10/15/00)

WAC 284-30-600 Unfair practices with respect to out-of-state group life and disability insurance. (1) Under RCW 48.30.010, it is an unfair method of competition and an unfair practice for any insurer to engage in any insurance transaction, as defined in RCW 48.01.060, regarding life insurance, annuities, or disability insurance coverage on individuals in this state under a group policy delivered to a policyholder outside this state when:

(a) The policy or certificate providing coverage in the state of Washington, including, but not limited to, applications, riders, or endorsements, contains any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy or certificate.

(b) The policy or certificate providing coverage in the state of Washington, including, but not limited to, applications, riders, or endorsements, has any title, heading, or other indication of its provisions which is misleading.

(c) The policy or certificate delivered to residents of the state of Washington does not include all terms and conditions of the coverage.

(d) The type of group being covered under the contract providing coverage in the state of Washington does not qualify for group life insurance or group disability insurance under the provisions of Title 48 RCW.

(e) The coverage is being solicited by deceptive advertising.

(f) With respect to disability insurance, the policy or certificate providing coverage in the state of Washington does not:

(i) Provide that claims will be processed in compliance with RCW 48.21.130 through 48.21.148;

(ii) Meet the requirements as to benefits and coverage mandated by chapter 48.21 RCW and rules effectuating that chapter, specifically including those set forth in chapter 284-51 WAC, and WAC 284-30-610, 284-30-620 and 284-30-630;

(iii) With respect to long-term care insurance, also meet the requirements of chapter 48.84 RCW and chapter 284-54 WAC;

(iv) With respect to medicare supplemental insurance, also meet the requirements of chapter 48.66 RCW and chapter 284-66 WAC; and

(v) Meet the loss ratio standards applicable to group insurance under RCW 48.66.100 and 48.70.030 and chapter 284-60 WAC.

(g) With respect to life insurance, the out-of-state group policy or certificate providing coverage in the state of Washington fails to comply with the provisions of:

(i) Chapter 48.24 RCW;

(ii) WAC 284-23-550 and 284-23-600 through 284-23-730;

(iii) WAC 284-30-620; and

(iv) WAC 284-30-630.

(2) Except as provided in subsection (3)(c) of this section, for purposes of this section it is immaterial whether the coverage is offered by means of a solicitation through: A sponsoring organization; the mail broadcast or print media; electronic communication, including electronic mail and web sites; licensed ((~~agents or brokers~~)) insurance producers; or any other method of communication.

(3) It is further defined to be an unfair practice for any insurer marketing group insurance coverage in this state to do the following with respect to the coverage:

(a) To fail to comply with the requirements of this state relating to advertising and claims settlement practices, and to fail to furnish the commissioner, upon request, copies of all advertising materials intended for use in this state;

(b) To fail to file copies of all certificate forms and any other related forms providing coverage in Washington, including trust documents or articles of incorporation with the commissioner at least thirty days prior to use; and

(c) To fail to file with the commissioner a copy of the disclosure statement required by WAC 284-30-610, where the sale of coverage to individuals in this state will be through solicitation by ((~~agents, solicitors or brokers~~)) insurance producers. The disclosure statement must be appropriately completed, as it appears when delivered to the Washington individuals who are solicited by the Washington licensees.

The disclosure form must also be filed at least thirty days prior to any solicitation of coverage.

(4) This section does not apply to self-funded plans that are defined by and subject to the federal Employee Retirement Income Security Act of 1974 (ERISA) or to insurers

when acting as third-party administrators for self-funded ERISA plans.

AMENDATORY SECTION (Amending Matter R 98-18, filed 9/14/00, effective 10/15/00)

WAC 284-30-610 Unfair practices with respect to the solicitation of coverage under out-of-state group policies. (1) It is an unfair method of competition and an unfair practice for((:)) an insurer to permit ((~~its appointed~~)) a licensed ((~~agent;~~

~~An insurance agent;~~

~~Solicitor; or~~

~~A broker,~~)) insurance producer, whether appointed by the insurer or not, to solicit an individual in the state of Washington to buy or apply for life insurance, annuities, or disability insurance coverage when the coverage is provided under the terms of a group policy delivered to an association or organization (or to a trustee designated by the association or organization), as policyholder, outside this state, unless the following steps are taken:

(a) An accurately completed disclosure statement, substantially in the form set forth in subsection (2) of this section, must be brought to the attention of the individual being solicited before the application for coverage is completed and signed. The disclosure form must be signed by both the soliciting licensee and the individual being solicited and it must be given to the individual.

(b) A copy of the completed disclosure statement must be submitted by the soliciting licensee, with the application for coverage, to the insurer providing the coverage.

(c) The insurer must confirm the accuracy of the form's contents, and retain the copy for not less than three years from the date the coverage commences or from the date received, whichever is later.

(2) Disclosure statement form: (Type size to be no less than ten-point)

(Insurer's name and address)

IMPORTANT INFORMATION ABOUT THE COVERAGE YOU ARE BEING OFFERED

Save this statement! It may be important to you in the future. The Washington State Insurance Commissioner requires that we give you the following information about the coverage offered to you under a group policy issued by (insurer), (to/on behalf of) (association or organization).

The policy is subject to and governed by the laws of the state of . . . . . .

The certificate of coverage issued to you is governed by the state of Washington.

The Washington State Insurance Commissioner has authority to assist you concerning your coverage.

To keep this coverage, you (must/need not) continue membership in the group. If you are not now a member, the initial cost of membership is $. . . . Additional dues or membership fees are currently $. . . . per . . . . Membership costs (may/will not) increase in future years. You will also have the premiums to pay.

The coverage (can/can not) be discontinued by the group. It (can/can not) be terminated by the insurer. If the group organization ceases to exist, your coverage (would/would not) terminate. You (are/are not) entitled by the contract to convert your coverage to your own policy.

(Group organization's name) (will/will not) be paid for its participation in this insurance program. (An explanation of payments must be inserted here.).

If you apply for this coverage, you (will/will not) have a "free look" (of . . . . days*) during which you may cancel your contract and recover your premium without obligation. Your membership fee to join the group (is/is not) refundable. *(Omit phrase, "of . . . . days", if there is no "free look.")

DELIVERED to the applicant this . . . . . day of (month), (year), by

(Signed) . . . . . (((~~agent, solicitor or broker~~)) insurance producer).

Printed Name: . . . . . .

I ACKNOWLEDGE THAT I HAVE RECEIVED AND UNDERSTAND THIS DISCLOSURE STATEMENT: . . . . . Applicant.

(3) This section does not apply with respect to coverage provided to individuals under a group contract which is provided for a group of a type described in RCW 48.24.035, 48.24.040, 48.24.060, 48.24.080, 48.24.090, or 48.24.095.

AMENDATORY SECTION (Amending Order R 88-12, filed 12/7/88)

WAC 284-30-660 Deceptive use of quotations or evaluations prohibited. (1) It is an unfair or deceptive practice and an unfair method of competition pursuant to RCW 48.30.010 for any insurance company, ((~~broker, agent, or solicitor~~)) insurance producer, surplus line broker, or title insurance agent in connection with the business of insurance, to utilize quotations or evaluations from rating or advisory services or other independent sources, in a manner likely to deceive the persons to whom the information is directed.

(2) Acts which are prohibited by this section include the following examples:

(a) If an insurer represents in its advertising that it has received an "A+" rating from an advisory service, such representation is deceptive unless it includes a clear explanation that such advisory service's practice is to rate insurance companies on the basis of "AAA," "AA," and declining to "A," if such is the case. The absence of such explanation would reasonably cause the ordinary person to believe falsely that the insurer had received the highest rating available from the service.

(b) Similarly, quoting figures or comments from a report, such as those representing claims paid or the capital or reserves or the quality of an insurer, in a manner to suggest that such figures or comments are impressive or that the report demonstrates the company to be particularly strong

financially or of high quality relative to other companies, when such is not the case, creates a false impression and is deceptive.

AMENDATORY SECTION (Amending Order R 87-5, filed 4/21/87)

WAC 284-30-750 ((~~Brokers'~~)) Insurance producers' and surplus line brokers' fees to be disclosed. It shall be an unfair practice for any ((~~broker~~)) insurance producer or surplus line broker providing services in connection with the procurement of insurance to charge a fee in excess of the usual commission which would be paid to an ((~~agent~~)) insurance producer or surplus line broker without having advised the insured or prospective insured, in writing, in advance of the rendering of services, that there will be a charge and its amount or the basis on which such charge will be determined.

AMENDATORY SECTION (Amending Matter No. R 2007-01, filed 8/20/07, effective 9/20/07)

WAC 284-30-850 Authority, purpose, and effective date. In order to prevent unfair methods of insurance sales to active duty service members of the United States armed forces, unfair competition, and unfair or deceptive acts or practices by insurers, fraternal benefit societies, ((~~agents, brokers or solicitors~~)) or insurance producers, WAC 284-30-850 through 284-30-872 are adopted. These rules may be called the "military sales practices" rules.

(1) The Military Personnel Financial Services Protection Act (P.L. 109-290) was enacted by the 109th Congress to protect members of the United States armed forces from unscrupulous practices regarding the sale of insurance, financial, and investment products on and off military installations. The act requires this state to adopt rules that meet sales practice standards adopted by the National Association of Insurance Commissioners to protect members of the United States armed forces from dishonest and predatory insurance sales practices both on and off of a military installation.

(2) Based on the commissioner's authority under RCW 48.30.010 to define by rule methods of competition and other acts and practices in the conduct of the business of insurance found by the commissioner to be unfair or deceptive, after evaluation of the acts and practices of insurers, fraternal benefit societies, ((~~agents, brokers,~~)) or ((~~solicitors~~)) insurance producers that informed the need for P.L. 109-290, and because the commissioner is required by that act to adopt rules that meet the sales practice standards adopted by the National Association of Insurance Commissioners and federal law, the commissioner finds the acts or practices set forth in WAC 284-30-850 through 284-30-872 to be unfair or deceptive methods of competition or unfair or deceptive acts or practices in the business of insurance.

(3) These military sales practices rules are effective for all benefit contracts, insurance policies and certificates solicited, issued, or delivered in this state on and after (the effective date of these rules).

AMENDATORY SECTION (Amending Matter No. R 2007-01, filed 8/20/07, effective 9/20/07)

WAC 284-30-860 Exemptions. (1) The following life insurance solicitations or sales are exempt from the requirements of WAC 284-30-850 through 284-30-872:

(a) Credit life insurance.

(b) Group life insurance where there is no in-person face-to-face solicitation of individuals by a licensed ((~~agent, broker, or solicitor~~)) insurance producer or where the policy or certificate does not include a side fund.

(c) An application to the insurer that issued the existing policy or certificate when a contractual change or a conversion privilege is being exercised; or when the existing insurance policy or certificate is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term life conversion privilege is exercised among corporate affiliates.

(d) Individual, stand-alone policies of health or disability income insurance.

(e) Contracts offered by Servicemembers Group Life Insurance (SGLI) or Veterans Group Life Insurance (VGLI), as authorized by 38 U.S.C. section 1965 et seq., and contracts offered by State Sponsored Life Insurance (SSLI) as authorized by 37 U.S.C. Section 707 et seq.

(f) Life insurance policies or certificates offered through or by a nonprofit military association, qualifying under section 501(c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer.

(g) Contracts used to fund any of the following:

(i) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) A plan described by sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the IRC, as amended, if established or maintained by an employer;

(iii) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) Prearranged funeral contracts.

(2) Nothing in WAC 284-30-850 through 284-30-872 shall be construed to restrict the ability of nonprofit organizations or other organizations to educate members of the United States armed forces in accordance with federal Department of Defense Instruction 1344.07 "Personal Commercial Solicitation on DOD Installations," or any successor directive.

(3)(a) For purposes of the military sales practices rules, general advertisements, direct mail and internet marketing do not constitute "solicitation." Telephone marketing does not constitute "solicitation" only if the caller explicitly and conspicuously discloses that the product being solicited is life insurance and the caller makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation.

(b) Nothing in this section shall be construed to exempt an insurer, ((~~agent, broker,~~)) or ((~~solicitor~~)) insurance producer from the military sales practices rules in any in-person face-to-face meeting established as a result of the solicitation exemptions listed in this section.

AMENDATORY SECTION (Amending Matter No. R 2007-01, filed 8/20/07, effective 9/20/07)

WAC 284-30-865 Definitions. The following definitions apply to the military sales practices rules, unless the context clearly requires otherwise:

(1) "Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component, such as national guard or reserve, while serving under published orders for active duty or full-time training. This term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of fewer than thirty-one calendar days.

(2) "Department of Defense (DOD) personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

(3) "Door-to-door" means a solicitation or sales method whereby an ((~~agent, broker, or solicitor~~)) insurance producer proceeds randomly or selectively from household to household without a prior specific appointment.

(4) "General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance or the promotion of an insurer((~~, agent, broker,~~)) or ((~~solicitor~~)) insurance producer.

(5) "Insurer" means an insurance company, as defined in RCW 48.01.050, that provides life insurance products for sale in this state. The term "insurer" also includes fraternal benefit societies, as defined at RCW 48.36A.010. Whenever the term "insurer," "policy," or "certificate" is used in these military sales practices rules, it includes insurers and fraternal benefit societies and applies to all insurance policies, benefit contracts, and certificates of life insurance issued by them.

(6) "Known" or "knowingly" means, depending on its use in WAC 284-30-870 and 284-30-872, that the insurer or ((~~agent, broker, or solicitor~~)) insurance producer had actual awareness, or in the exercise of ordinary care should have known at the time of the act or practice complained of that the person being solicited is either:

(a) A service member; or

(b) A service member with a pay grade of E-4 or below.

(7) "Life insurance" has the meaning set forth in RCW 48.11.020.

(8) "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(9) "MyPay" means the Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(10) "Service member" means any active duty officer (commissioned and warrant) or any enlisted member of the United States armed forces.

(11) "Side fund" means a fund or reserve that is part of or is attached to a life insurance policy or certificate (except for individually issued annuities) by rider, endorsement, or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

(a) Accumulated or cash value or secondary guarantees provided by a universal life policy;

(b) Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or

(c) A premium deposit fund which:

(i) Contains only premiums paid in advance which accumulate at interest;

(ii) Imposes no penalty for withdrawal;

(iii) Does not permit funding beyond future required premiums;

(iv) Is not marketed or intended as an investment; and

(v) Does not carry a commission, either paid or calculated.

(12) "Specific appointment" means a prearranged appointment that has been agreed upon by both parties and is definite as to place and time.

(13) "United States armed forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

AMENDATORY SECTION (Amending Matter No. R 2007-01, filed 8/20/07, effective 9/20/07)

WAC 284-30-870 Practices declared to be unfair or deceptive when committed on a military installation. (1) The following acts or practices by an insurer((~~, agent, broker,~~)) or ((~~solicitor~~)) insurance producer are found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance when committed on a military installation and solicited in-person face-to-face:

(a) Knowingly soliciting the purchase of any life insurance policy or certificate door to door or without first establishing a specific appointment for each meeting with the prospective purchaser.

(b) Soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary.

(c) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

(d) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing, or other areas where the installation commander has prohibited solicitation.

(e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

(f) Posting unauthorized bulletins, notices, or advertisements.

(g) Failing to present DD Form 2885 Personal Commercial Solicitation Evaluation, to service members solicited or

encouraging service members solicited not to complete or submit a DD Form 2885.

(h) Knowingly accepting an application for life insurance or issuing a policy or certificate of life insurance on the life of an enlisted member of the United States armed forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement related to the sale of life insurance established by regulations, directives, or rules of the DOD or any branch of the United States armed forces.

(2) The following acts or practices by an insurer((~~, agent, broker,~~)) or ((~~solicitor~~)) insurance producer are found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance or improper influences or inducements when committed on a military installation:

(a) Using DOD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

(b) Using an ((~~agent, broker, or solicitor~~)) insurance producer to participate in any education or orientation program sponsored by United States armed forces.

AMENDATORY SECTION (Amending Matter No. R 2007-01, filed 8/20/07, effective 9/20/07)

WAC 284-30-872 Practices declared to be unfair or deceptive regardless of where they occur. (1) The following acts or practices by an insurer((~~, agent, broker,~~)) or ((~~solicitor~~)) insurance producer are found by the commissioner and declared to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance or improper influences or inducements regardless of the location where they occur:

(a) Submitting, processing, or assisting in the submission or processing of any allotment form or similar device used by the United States armed forces to direct a service member's pay to a third party for the purchase of life insurance. For example, the using or assisting in the use of a service member's "MyPay" account or other similar internet or electronic medium to pay for life insurance is prohibited. For purposes of these military sales practices rules, assisting a service member by providing insurer or premium information necessary to complete any allotment form is not an unfair, deceptive, or prohibited practice.

(b) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

(i) Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. § 4301 et seq. and regulations promulgated thereunder; and

(ii) Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

(c) Employing any device or method, or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's leave and earnings statement (or equivalent or successor form) as "savings" or "checking" and where the service member has no formal banking relationship.

(d) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

(e) Using DOD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to their family members.

(f) Offering or giving anything of value, directly or indirectly, to DOD personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation or sale of life insurance to another service member.

(g) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited.

(h) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income in order to purchase life insurance.

(2) The following acts or practices by an insurer((~~, agent, broker,~~)) or ((~~solicitor~~)) insurance producer may lead to confusion regarding the source, sponsorship, approval, or affiliation of the insurer or any ((~~agent, broker or solicitor~~)) insurance producer. They are each found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer((~~, agent, broker,~~)) or ((~~solicitor~~)) insurance producer, or the policy or certificate offered is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. government, the United States armed forces, or any state or federal agency or governmental entity.

(i) For example, the use of the following titles, including but not limited to the following is prohibited: Battalion insurance counselor, unit insurance advisor, Servicemen's Group Life Insurance conversion consultant, or veteran's benefits counselor.

(ii) A person is not prohibited from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Examples include, but are not limited to the following: Chartered life under-

writer (CLU), chartered financial consultant (ChFC), certified financial planner (CFP), master of science in financial services (MSFS), or masters of science financial planning (MS).

(b) Soliciting the purchase of any life insurance policy or certificate through the use of or in conjunction with any third-party organization that promotes the welfare of or assists members of the United States armed forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that the insurer((~~, agent, broker, solicitor~~)) or insurance producer, or the insurance policy or certificate is affiliated, connected, or associated with endorsed, sponsored, sanctioned, or recommended by the U.S. government, or the United States armed forces.

(3) The following acts or practices by an insurer((~~, agent, broker,~~)) or ((~~solicitor~~)) insurance producer lead to confusion regarding premiums, costs, or investment returns. They are each found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

(b) Misrepresenting the mortality costs of a life insurance policy or certificate (except for individually issued annuities), including stating or implying that the policy or certificate costs nothing or is free.

(4) The following acts or practices by an insurer((~~, agent, broker,~~)) or ((~~solicitor~~)) insurance producer regarding Servicemembers Group Life Insurance (SGLI) or Veterans Group Life Insurance (VGLI) are each found by the commissioner to be false, misleading, unfair, or deceptive methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Making any representation regarding the availability, suitability, amount, cost, exclusions, or limitations to coverage provided to service members or dependents by SGLI or VGLI, which is false, misleading, or deceptive.

(b) Making any representation regarding conversion requirements, including the costs of coverage, exclusions, or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading, or deceptive.

(c) Suggesting, recommending, or encouraging a service member to cancel or terminate his or her SGLI policy, or issuing a life insurance policy or certificate which replaces an existing SGLI policy unless the replacement takes effect upon or after separation of the service member from the United States armed forces.

(5) The following acts or practices regarding disclosure by an insurer((~~, agent, broker,~~)) or ((~~solicitor~~)) insurance producer are declared to be false, misleading, unfair, or deceptive methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance regardless of the location where the act occurs:

(a) Deploying, using, or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an ((~~agent, broker, or solicitor~~)) insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.

(b) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person face-to-face meeting with a prospective purchaser.

(c) Except for individually issued annuities, failing to clearly and conspicuously disclose the fact that the policy or certificate being solicited is life insurance.

(d) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the Military Personnel Financial Services Protection Act (P.L. 109-290), p. 16.

(e) Except for individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time of application is taken:

(i) An explanation of any free look period with instructions on how to cancel any policy or certificate issued by the insurer; and

(ii) Either a copy of the application or a written disclosure. The copy of the application or the written disclosure must clearly and concisely set out the type of life insurance, the death benefit applied for, and its expected first year cost. A basic illustration that meets the requirements of this state will be considered a written disclosure.

(6) The following acts or practices by an insurer((~~, agent, broker,~~)) or ((~~solicitor~~)) insurance producer are each found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Except for individually issued annuities, recommending the purchase of any life insurance policy or certificate which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

(b) Offering for sale or selling a life insurance policy or certificate which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

(i) "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate, survivors, or dependents.

(ii) Other military survivor's benefits include, but are not limited to: The death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE healthcare benefits, survivor housing benefits and allowances, federal income tax forgiveness, and Social Security survivor benefits.

(c) Except for individually issued annuities, offering for sale or selling any life insurance policy or certificate which includes a side fund:

(i) Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(ii) Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined policy or certificate. For this disclosure, the effective rate of return must consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule must be provided for at least each policy year from year one to year ten and for every fifth policy year thereafter, ending at age one hundred, policy maturity, or final expiration; and

(iii) Which by default diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due.

(d) Except for individually issued annuities, offering for sale or selling any life insurance policy or certificate which after considering all policy benefits, including but not limited to endowment, return of premium, or persistency, does not comply with standard nonforfeiture law for life insurance.

(e) Selling any life insurance policy or certificate to a person known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service, except for accidental death coverage (for example, double indemnity) which may be excluded.

AMENDATORY SECTION (Amending Matter No. R 96-5, filed 11/4/96, effective 12/5/96)

WAC 284-36A-035 Confidentiality of RBS reports—Use of information for comparative purposes—Use of information to monitor solvency. (1) All RBS reports, to the extent the information is not required to be set forth in a publicly available annual statement schedule, including the results or report of any examination or analysis of a fraternal benefit society that are filed with the commissioner constitute information that might be damaging to the fraternal benefit society if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

(2) The comparison of a fraternal benefit society's total adjusted surplus to its RBS level is a regulatory tool that may indicate the need for possible corrective action with respect to the fraternal benefit society, and is not a means to rank fraternal benefit societies generally. Therefore, except as otherwise required under the provisions of this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBS level of any fraternal benefit society, or of any component derived in the calculation, by any fraternal benefit society, ((~~agent, broker~~)) insurance producer, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding a fraternal benefit society's total adjusted surplus to its RBS level or an inappropriate comparison of any other amount to the fraternal benefit society's RBS level is published in any written publication and the fraternal benefit society is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the fraternal benefit society may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBS instructions and RBS reports are solely for use by the commissioner in monitoring the solvency of fraternal benefit societies and the need for possible corrective action with respect to fraternal benefit societies and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a fraternal benefit society or any affiliate is authorized to write.

AMENDATORY SECTION (Amending Order R-76-2, filed 3/4/76)

WAC 284-50-020 Applicability. (1) These rules shall apply to every "advertisement," as that term is hereinafter defined, in WAC 284-50-030, subsections (1), (7), (8) and (9), unless otherwise specified in these rules, intended for presentation distribution, or dissemination in this state when such presentation, distribution, or dissemination is made either directly or indirectly by or on behalf of an insurer, ((~~agent, broker,~~)) or ((~~solicitor~~)) insurance producer as those terms are defined in the insurance code of this state and these rules.

(2) Every insurer shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer for whom such advertisements are prepared.

AMENDATORY SECTION (Amending Order R-76-2, filed 3/4/76)

WAC 284-50-030 Definitions. (1) An advertisement for the purpose of these rules shall include:

(a) Printed and published material, audio visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, television scripts, billboards, and similar displays; and

(b) Descriptive literature and sales aids of all kinds issued by an insurer, ((~~agent,~~)) or ((~~broker~~)) insurance producer for presentation to members of the insurance buying public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters; and

(c) Prepared sales talks, presentations, and material for use by ((~~agents, brokers, and solicitors~~)) insurance producers.

(2) "Policy" for the purpose of these rules shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides disability benefits, or medical, surgical, or hospital expense benefits, whether on an indemnity, reimbursement, service, or prepaid basis, except when issued in connection with another kind of insurance other than life and except disability, waiver of premium, and double indemnity benefits included in life insurance and annuity contracts.

(3) "Insurer" for the purposes of these rules shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, health care service contractor, health maintenance organization, and any other legal entity which is defined as an "insurer" in the insurance code of this state and is engaged in the advertisement of a policy as "policy" is defined in this regulation.

(4) "Exception" for the purpose of these rules shall mean any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the policy.

(5) "Reduction" for the purpose of these rules shall mean any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.

(6) "Limitation" for the purpose of these rules shall mean any provision which restricts coverage under the policy other than an exception or a reduction.

(7) "Institutional advertisement" for the purpose of these rules shall mean an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of accident and sickness insurance, or the promotion of the insurer.

(8) "Invitation to inquire" for the purpose of these rules shall mean an advertisement having as its objective the creation of a desire to inquire further about the product and which is limited to a brief description of the loss for which the benefit is payable, and which may contain:

(a) The dollar amount of benefit payable, and/or

(b) The period of time during which the benefit is payable; provided the advertisement does not refer to cost. An advertisement which specifies either the dollar amount of benefit payable or the period of time during which the benefit is payable shall contain a provision in effect as follows:

"For costs and further details of the coverage, including exclusions, any reductions or limitations and the terms under which the policy may be continued in force, see your ((~~agent~~)) insurance producer or write to the company."

(9) "Invitation to contract" for the purpose of these rules shall mean an advertisement which is neither an invitation to inquire nor an institutional advertisement.

AMENDATORY SECTION (Amending Order R 95-5, filed 9/11/95, effective 10/12/95)

WAC 284-54-300 Information to be furnished, style. (1) Each ((~~broker, agent~~)) insurance producer, or other representative of an insurer selling or offering benefits that are designed, or represented as being designed, to provide long-term care insurance benefits, shall deliver the disclosure form as set forth in WAC 284-54-350 not later than the time of application for the contract. If an ((~~agent~~)) insurance producer has solicited the coverage, the disclosure form shall be signed by that ((~~agent~~)) insurance producer and a copy left with the applicant. The insurer shall maintain a copy in its files.

(2) The disclosure form required by this section shall identify the insurer issuing the contract and may contain additional appropriate information in the heading. The informational portion of the form shall be substantially as set forth in WAC 284-54-350 and words emphasized therein shall be underlined or otherwise emphasized in each form issued. The form shall be printed in a style and with a type character that is easily read by an average person eligible for long-term care insurance.

(3) Where inappropriate terms are used in the disclosure form, such as "insurance," "policy," or "insurance company," a fraternal benefit society, health care service contractor, or health maintenance organization shall substitute appropriate terminology.

(4) In completing the form, each subsection shall contain information which succinctly and fairly informs the purchaser as to the contents or coverage in the contract. If the contract provides no coverage with respect to the item, that shall be so stated. Address the form to the reasonable person likely to purchase long-term care insurance.

(5) A policy which provides for the payment of benefits based on standards described as "usual," "customary," or "reasonable" (or any combination thereof), or words of similar import, shall include an explanation of such terms in its disclosure form and in the definitions section of the contract.

(6) If the contract contains any gatekeeper provision which limits benefits or precludes the insured from receiving benefits, such gatekeeper provision shall be fully described.

(7) All insurers shall use the same disclosure form. It is intended that the information provided in the disclosure form will appear in substantially the same format provided to enable a purchaser to compare competing contracts easily.

(8) The information provided shall include the statement: "This is NOT a medicare supplement policy," and shall otherwise comply with WAC 284-66-120.

(9) The required disclosure form shall be filed by the insurer with the commissioner prior to use in this state.

(10) In any case where the prescribed disclosure form is inappropriate for the coverage provided by the contract, an alternate disclosure form shall be submitted to the commissioner for approval or acceptance prior to use in this state.

(11) Upon request of an applicant or insured, insurers shall make available a disclosure form in a format which meets the requirements of the Americans With Disabilities Act and which has been approved in advance by the commissioner.

AMENDATORY SECTION (Amending Matter No. R 2009-08, filed 11/24/09, effective 1/19/10)

WAC 284-66-030 Definitions. For purposes of this chapter:

(1) "Applicant" means:

(a) In the case of an individual medicare supplement insurance policy, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement insurance policy, the proposed certificate holder.

(2) "Certificate" means any certificate delivered or issued for delivery in this state under a group medicare supplement insurance policy regardless of the situs of the group master policy.

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

(4) "Issuer" includes insurance companies, fraternal benefit societies, health care service contractors, health maintenance organizations, and any other entity delivering or issuing for delivery medicare supplement policies or certificates.

(5) "Direct response issuer" means an issuer who, as to a particular transaction, is transacting insurance directly with a potential insured without solicitation by, or the intervention of, a licensed insurance ((~~agent~~)) producer.

(6) "Disability insurance" is insurance against bodily injury, disablement or death by accident, against disablement resulting from sickness, and every insurance relating to disability insurance. For purposes of this chapter, disability insurance includes policies or contracts offered by any issuer.

(7) "Health care expense costs," for purposes of WAC 284-66-200(4), means expenses of a health maintenance organization or health care service contractor associated with the delivery of health care services that are analogous to incurred losses of insurers.

(8) "Policy" includes agreements or contracts issued by any issuer.

(9) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

(10) "Premium" means all sums charged, received, or deposited as consideration for a medicare supplement insurance policy or the continuance thereof. An assessment or a membership, contract, survey, inspection, service, or other similar fee or charge made by the issuer in consideration for the policy is deemed part of the premium. "Earned premium" means the "premium" applicable to an accounting period whether received before, during or after that period.

(11) "Prestandardized medicare supplement benefit plan," "prestandardized benefit plan" or "prestandardized plan" means a group or individual policy of medicare supplement insurance issued prior to January 1, 1990.

(12) "Replacement" means any transaction where new medicare supplement coverage is to be purchased, and it is known or should be known to the proposing ((~~agent~~)) insurance producer or other representative of the issuer, or to the proposing issuer if there is no ((~~agent~~)) insurance producer, that by reason of the transaction, existing medicare supplement coverage has been or is to be lapsed, surrendered or otherwise terminated.

(13) "Secretary" means the Secretary of the United States Department of Health and Human Services.

(14) "1990 standardized medicare supplement benefit plan" means a group or individual policy of medicare supplement insurance issued on or after January 1, 1990, and prior to June 1, 2010, and includes medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the issuer at the request of the insured.

(15) "2010 standardized medicare supplement benefit plan" or "2010 plan" means a group or individual policy of medicare supplement insurance with an effective date for coverage on or after June 1, 2010.

AMENDATORY SECTION (Amending Matter No. R 2004-08, filed 8/4/05, effective 9/4/05)

WAC 284-66-130 Requirements for application forms and replacement of medicare supplement insurance coverage. (1) Application forms must include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has another medicare supplement, medicare advantage, medicaid coverage, or another health insurance or other disability policy or certificate in force or whether a medicare supplement insurance policy or certificate is intended to replace any other policy or certificate of a health care service contractor, health maintenance organization, disability insurer, or fraternal benefit society presently in force. A supplementary application or other form to be signed by the applicant and ((~~agent~~)) insurance producer containing the questions and statements, may be used: If the coverage is sold without an ((~~agent~~)) insurance producer, the supplementary application must be signed by the applicant.

[Statements]

(1) You do not need more than one medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) If you are sixty-five or older, you may be eligible for benefits under medicaid and may not need a medicare supplement policy.

(4) If, after purchasing this policy, you become eligible for medicaid, the benefits and premiums under your medicare supplement policy can be suspended if requested during your entitlement to benefits under medicaid for twenty-four months. You must request this suspension within ninety days of becoming eligible for medicaid. If you are no longer entitled to medicaid, your suspended medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within ninety days of losing medicaid eligibility. If the medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(5) If you are eligible for, and have enrolled in a medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health benefit plan. If you suspend your medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within 90 days of losing your employer or union-based group health plan. If the medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(6) Counseling services may be available in your state to provide advice concerning your purchase of medicare supplement insurance and concerning medical assistance through the state medicaid program, including benefits as a "Qualified Medicare Beneficiary" (QMB) and a "Specified Low-Income Medicare Beneficiary" (SLMB).

[Questions]

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. **PLEASE ANSWER ALL QUESTIONS.**

[Please mark Yes or No below with an "X"]

To the best of your knowledge.

(1)(a) Did you turn age 65 in the last 6 months?

Yes ☐ No ☐

(b) Did you enroll in medicare Part B in the last 6 months?

Yes ☐ No ☐

(c) If yes, what is the effective date?

(2) Are you covered for medical assistance through the state medicaid program?

[NOTE TO APPLICANT; If you are participating in a "Spend - Down Program" and have not met your "Share of Cost," please answer NO to this question.]

Yes ☐ No ☐

If yes,

(a) Will medicaid pay your premiums for this medicare supplement policy?

Yes ☐ No ☐

(b) Do you receive any benefits from medicaid OTHER THAN payments toward your medicare Part B premium?

Yes ☐ No ☐

(3)(a) If you had coverage from any medicare plan other than original medicare within the past 63 days (for example, a medicare advantage plan, or a medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START / / END / /

(b) If you are still covered under the medicare plan, do you intend to replace your current coverage with this new medicare supplement policy?

Yes ☐ No ☐

(c) Was this your first time in this type of medicare plan?

Yes ☐ No ☐

(d) Did you drop a medicare supplement policy to enroll in the medicare plan?

Yes ☐ No ☐

(4)(a) Do you have another medicare supplement policy in force?

Yes ☐ No ☐

(b) If so, with what company and what plan do you have [optional for Direct Mailers]?

_____

_____

_____

(c) If so, do you intend to replace your current medicare supplement policy with this policy?

Yes ☐ No ☐

(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union or individual plan.)

Yes ☐ No ☐

(a) If so, with what company and what kind of policy?

_____

_____

_____

(b) What are your dates of coverage under the other policy?

START / / END / /

(If you are still covered under the other policy, leave "END" blank.)

_____

(2) ((~~Agents~~)) Insurance producers must list any other medical or health insurance policies sold to the applicant.

(a) List policies sold that are still in force.

(b) List policies sold in the past five years that are no longer in force.

(3) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, must be returned to the applicant by the insurer upon delivery of the policy.

(4) Upon determining that a sale will involve replacement of medicare supplement coverage, an issuer, other than a direct response issuer, or its ((~~agent~~)) appointed insurance producer, must furnish the applicant, before issuing or delivering the medicare supplement insurance policy or certificate, a notice regarding replacement of medicare supplement insurance coverage. One copy of the notice, signed by the applicant and the ((~~agent~~)) insurance producer (except where the coverage is sold without an ((~~agent~~)) insurance producer), must be provided to the applicant and an additional signed copy must be kept by the issuer. A direct response issuer must deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of medicare supplement insurance coverage.

(5) The notice required by subsection (4) of this section for an issuer, must be provided in substantially the form set forth in WAC 284-66-142 in no smaller than twelve point type, and must be filed with the commissioner before being used in this state.

(6) The notice required by subsection (4) of this section for a direct response insurer must be in substantially the form set forth in WAC 284-66-142 and must be filed with the commissioner before being used in this state.

(7) A true copy of the application for a medicare supplement insurance policy issued by a health maintenance organization or health care service contractor for delivery to a resident of this state must be attached to or otherwise physically made a part of the policy when issued and delivered.

(8) Where inappropriate terms are used, such as "insurance," "policy," or "insurance company," a fraternal benefit society, health care service contractor or health maintenance organization may substitute appropriate terminology.

(9) Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Matter No. R 2006-13, filed 2/26/07, effective 3/29/07)

WAC 284-66-142 Form of replacement notice.

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE OR MEDICARE ADVANTAGE

[Insurance company's name and address]

SAVE THIS NOTICE!
IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing medicare supplement or medicare advantage insurance and replace it with a policy to be issued by [Company name] Insurance Company. Your new policy will provide thirty days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this medicare supplement coverage is a wise decision, you should terminate your present medicare supplement or medicare advantage coverage. You should evaluate the need for other disability coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, ((~~AGENT [BROKER~~)) [INSURANCE PRODUCER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this medicare supplement policy will not duplicate your existing medicare supplement or, if applicable, medicare advantage coverage because you intend to terminate your existing medicare supplement coverage or leave your medicare advantage plan. The replacement policy is being purchased for the following reason(s) (check one):

. . . . Additional benefits.

. . . . No change in benefits, but lower premiums.

. . . . Fewer benefits and lower premiums.

. . . . My plan has outpatient prescription drug coverage and I am enrolling in Part D.

. . . . Disenrollment from a medicare advantage plan.

Please explain reason for disenrollment. [optional only for direct mailers]

. . . . Other. (please specify)

1. NOTE: If the issuer of the medicare supplement policy being applied for does not, or is otherwise prohibited from imposing preexisting condition limitations, please skip to statement 2 below. If you have had your current medicare supplement policy less than three months, health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary

periods in the new policy (or coverage) to the extent such time was spent (depleted) under original policy.

3. If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

. . . . . .

(Signature of ((~~Agent, Broker~~)) Insurance producer, or Other Representative)*

[Typed Name and Address of Issuer, ((~~Agent or Broker~~)) or Insurance producer]

. . . . . .

(Applicant's Signature)

. . . . . .

(Date)

*Signature not required for direct response sales.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Matter No. R 2004-08, filed 8/4/05, effective 9/4/05)

WAC 284-66-240 Filing requirements and premium adjustments. (1) All policy forms issued or delivered on or after January 1, 1990, and before July 1, 1992, as well as any future rate adjustments to such forms, must demonstrate compliance with the loss ratio requirements of WAC 284-66-200 and policy reserve requirements of WAC 284-66-210, unless the forms meet the standards of WAC 284-66-063 and 284-66-203. All filings of rate adjustments must be accompanied by the proposed rate schedule and an actuarial memorandum completed and signed by a qualified actuary as defined in WAC 284-05-060. In addition to the actuarial memorandum, the following supporting documentation must be submitted to demonstrate to the satisfaction of the commissioner that rates are not excessive, inadequate, or unfairly discriminatory and otherwise comply with the requirements of this chapter. If any of the items listed below are inappropriate due to the pricing methodology used by the pricing actuary, the commissioner may waive the requirements upon request of the issuer.

(a) Filings of issue age level premium rates must be accompanied by the following:

(i) Anticipated loss ratios stated on a policy year basis for the period for which the policy is rated. Filings of future rate adjustments must contain the actual policy year loss ratios experienced since inception;

(ii) Anticipated total termination rates on a policy year basis for the period for which the policy is rated. The termination rates should be stated as a percentage and the source of the mortality assumption must be specified. Filings of future rate adjustments must include the actual total termination rates stated on a policy year basis since inception;

(iii) Expense assumptions including fixed and percentage expenses for acquisition and maintenance costs;

(iv) Schedule of total compensation payable to ((~~agents~~)) insurance producers and other producers as a percentage of premium, if any;

(v) Specimen copy of the compensation agreements or contracts between the issuer and ((~~its agents, brokers, general agents~~)) any insurance producers, or others whose compensation is based in whole or in part on the sale of medicare supplement insurance policies, the agreements demonstrating compliance with WAC 284-66-350 (where appropriate);

(vi) Other data necessary in the reasonable opinion of the commissioner to substantiate the filing.

(b) Filings of community rated forms must be accompanied by the following:

(i) Anticipated loss ratio for the accounting period for which the policy is rated. The duration of the accounting period must be stated in the filing, established based on the judgment of the pricing actuary, and must be reasonable in the opinion of the commissioner. Filings for rate adjustment must demonstrate that the actual loss ratios experienced during the three most recent accounting periods, on an aggregated basis, have been equal to or greater than the loss ratios required by WAC 284-66-200.

(ii) Expense assumptions including fixed and percentage expenses for acquisition and maintenance costs;

(iii) Schedule of total compensation payable to ((~~agents~~)) insurance producers and other producers as a percentage of premium, if any;

(iv) Specimen copy of the compensation agreements or contracts between the insurer and ((~~its agents, brokers, general agents,~~)) any insurance producers or others whose compensation is based in whole or in part on the sale of medicare supplement insurance policies, the agreements demonstrating compliance with WAC 284-66-350 (where appropriate);

(v) Other data necessary in the reasonable opinion of the commissioner to substantiate the filing.

(2) Every issuer must make premium adjustments that are necessary to produce an expected loss ratio under the policy that will conform with the minimum loss ratio standards of WAC 284-66-200.

(3) No premium adjustment that would modify the loss ratio experience under the policy, other than the adjustments described in this section, may be made with respect to a policy at any time other than upon its renewal or anniversary date.

(4) Premium refunds or premium credits must be made to the premium payer no later than upon renewal if a credit is

given, or within sixty days of the renewal or anniversary date if a refund is provided.

(5) For purposes of rate making and requests for rate increases, all individual medicare supplement policy forms of an issuer are considered "similar policy forms" including forms no longer being marketed.

AMENDATORY SECTION (Amending Matter No. R 2009-08, filed 11/24/09, effective 1/19/10)

WAC 284-66-243 Filing and approval of policies and certificates and premium rates. (1) An issuer may not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner according to the filing requirements and procedures prescribed by the commissioner.

(2) An issuer may not use or change premium rates for a medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner according to the filing requirements and procedures prescribed by the commissioner.

(3)(a) Except as provided in (b) of this subsection, an issuer may not file for approval more than one form of a policy or certificate of each type for each standard medicare supplement benefit plan.

(b) An issuer may offer, with the approval of the commissioner, up to four additional policy forms or certificate forms of the same type for the same standard medicare supplement benefit plan, one for each of the following cases:

(i) The inclusion of new or innovative benefits;

(ii) The addition of either direct response or ((~~agent~~)) insurance producer marketing methods;

(iii) The addition of either guaranteed issue or underwritten coverage;

(iv) The offering of coverage to individuals eligible for medicare by reason of disability. The form number for products offered to enrollees who are eligible by reason of disability must be distinct from the form number used for a corresponding standardized plan offered to an enrollee eligible for medicare by reason of age.

(c) For the purposes of this section, a "type" means an individual policy, a group policy, an individual medicare SELECT policy, or a group medicare SELECT policy.

(4)(a) Except as provided in (a)(i) of this subsection, an issuer must continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the commissioner. A policy form or certificate form is not considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve months.

(i) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty days before discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer may no longer offer for sale the policy form or certificate form in this state.

(ii) An issuer that discontinues the availability of a policy form or certificate form under (a)(i) of this subsection, may not file for approval a new policy form or certificate form of the same type for the same standard medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of medicare supplement business to another issuer is considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology is considered a discontinuance under (a) of this subsection, unless the issuer complies with the following requirements:

(i) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in that the revised rating methodology and resultant rates differ from the existing rating methodology and resultant rates.

(ii) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential that is in the public interest.

(5)(a) Except as provided in (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard medicare supplement benefit plan must be combined for purposes of the refund or credit calculation prescribed in WAC 284-66-203.

(b) Forms assumed under an assumption reinsurance agreement may not be combined with the experience of other forms for purposes of the refund or credit calculation.

(6) An issuer may set rates only on a community rated basis or on an issue-age level premium basis for policies issued prior to January 1, 1996, and may set rates only on a community rated basis for policies issued after December 31, 1995.

(a) For policies issued prior to January 1, 1996, community rated premiums must be equal for all individual policyholders or certificateholders under a standardized medicare supplement benefit form. Such premiums may not vary by age or sex. For policies issued after December 31, 1995, community rated premiums must be set according to RCW 48.66.045(3).

(b) Issue-age level premiums must be calculated for the lifetime of the insured. This will result in a level premium if the effects of inflation are ignored.

(7) All filings of policy or certificate forms must be accompanied by the proposed application form, outline of coverage form, proposed rate schedule, and an actuarial memorandum completed, signed and dated by a qualified actuary as defined in WAC 284-05-060. In addition to the actuarial memorandum, the following supporting documentation must be submitted to demonstrate to the satisfaction of the commissioner that rates are not excessive, inadequate, or unfairly discriminatory and otherwise comply with the requirements of this chapter:

(a) Anticipated loss ratios stated on a calendar year basis by duration for the period for which the policy is rated. Filings of future rate adjustments must contain the actual calendar year loss ratios experienced since inception, both before and after the refund required, if any and the actual loss ratios in comparison to the expected loss ratios stated in the initial rate filing on a calendar year basis by duration if applicable;

(b) Anticipated total termination rates on a calendar year basis by duration for the period for which the policy is rated. The termination rates should be stated as a percentage and the source of the mortality assumption must be specified. Filings of future rate adjustments must include the actual total termination rates stated on a calendar year basis since inception;

(c) Expense assumptions including fixed and percentage expenses for acquisition and maintenance costs;

(d) Schedule of total compensation payable to ((~~agents~~)) insurance producers and other producers as a percentage of premium, if any;

(e) A complete specimen copy of the compensation agreements or contracts between the issuer and its ((~~agents, brokers, general agents~~)) insurance producers, as well as the contracts between ((~~general agents and agents~~)) any insurance producers or others whose compensation is based in whole or in part on the sale of medicare supplement insurance policies. The agreements must demonstrate compliance with WAC 284-66-350 (where appropriate);

(f) Other data necessary in the reasonable opinion of the commissioner to substantiate the filing.

AMENDATORY SECTION (Amending Matter No. R 2004-08, filed 8/4/05, effective 9/4/05)

WAC 284-66-330 Standards for marketing. (1) Every issuer marketing medicare supplement insurance coverage in this state, directly or through its producers, must:

(a) Establish marketing procedures to assure that any comparison of policies or certificates by its ((~~agents or other~~)) insurance producers will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp or other appropriate means, on the first page of the policy or certificate the following:

"NOTICE TO BUYER: THIS (POLICY, CONTRACT OR CERTIFICATE) MAY NOT COVER ALL OF YOUR MEDICAL EXPENSES."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for medicare supplement insurance already has disability insurance and the types and amounts of any such insurance.

(e) Establish auditable procedures for verifying compliance with this section.

(2) In addition to the acts and practices prohibited in chapter 48.30 RCW, chapters 284-30 and 284-50 WAC, and this chapter, the commissioner has found and hereby defines the following to be unfair acts or practices and unfair methods of competition, and prohibited practices for any issuer, or their respective ((~~agents~~)) appointed insurance producers either directly or indirectly:

(a) Twisting. Making misrepresentations or misleading comparisons of any insurance policies or issuers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, keep, or convert any insurance policy.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or otherwise applying undue pressure to coerce the purchase of, or recommend the purchase of, insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance ((~~agent~~)) producer or insurance company.

AMENDATORY SECTION (Amending Matter No. R 2004-08, filed 8/4/05, effective 9/4/05)

WAC 284-66-340 Appropriateness of recommended purchase and excessive insurance. (1) In recommending the purchase or replacement of any medicare supplement policy or certificate an ((~~agent~~)) insurance producer must make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(2) Any sale of a medicare supplement policy or certificate that will provide an individual more than one medicare supplement policy or certificate is prohibited.

(3) An issuer may not issue a medicare supplement policy or certificate to an individual enrolled in medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

AMENDATORY SECTION (Amending Matter No. R 2004-08, filed 8/4/05, effective 9/4/05)

WAC 284-66-350 Permitted compensation arrangements. (1)(a) The commissioner has found and hereby defines it to be an unfair act or practice and an unfair method of competition, and a prohibited practice, for any issuer, directly or indirectly, to provide commission to an ((~~agent~~)) insurance producer or other representative for the solicitation, sale, servicing, or renewal of a medicare supplement policy or certificate that is delivered or issued for delivery to a resident within this state unless the commission is identical as to percentage of premium for every policy year as long as the coverage under the policy or certificate remains in force with premiums being paid, or waived by the issuer, for the coverage.

(b) Each commission payment must be made by the issuer no later than sixty days following the date on which the applicable premiums, that are the basis of the commission calculation, were paid. Each payment must be paid to either the producing ((~~agent~~)) insurance producer who originally sold the policy or to a successor ((~~agent~~)) insurance producer designated by the issuer to replace the producing ((~~agent~~)) insurance producer, or shared between them on some basis. The distribution of the commission payments must be designated by the issuer in its various ((~~agents'~~)) insurance producers' commission agreements and it may not terminate, reduce or keep the commission payment as long as the policy or cer-

tificate remains in force with premiums being paid, or waived by the issuer, for the coverage thereunder.

(c) Where an issuer provides a portion of the total commission for the solicitation, sale, servicing, or renewal of a medicare supplement policy or certificate to ((~~a general agent~~)) an insurance producer, sales manager, district representative or other supervisor who has marketing responsibilities (other than a producing or successor ((~~agent~~)) insurance producer), while such portion of total commissions continues to be paid it must be identical as to percentage of premium for every policy year as long as coverage under the policy or certificate remains in force with premiums being paid, or waived by the issuer, for the coverage.

(2) For purposes of this section, "commission" includes pecuniary or nonpecuniary remuneration of any kind relating to the solicitation, sale, servicing, or renewal of the policy or certificate, including but not limited to bonuses, gifts, prizes, advances on commissions, awards and finders fees.

(3) This section does not apply to salaried employees of an issuer who have marketing responsibilities if the salaried employee is not compensated, directly or indirectly, on any basis dependent upon the sale of insurance being made, including but not limited to considerations of the number of applications submitted, the amount or types of insurance, or premium volume.

AMENDATORY SECTION (Amending Matter No. R 2008-09, filed 11/24/08, effective 12/25/08)

WAC 284-83-063 Notice to applicant regarding replacement of individual accident and sickness or long-term care insurance marketed by an insurance producer. The following notice is required in WAC 284-83-060(3):

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL [ACCIDENT AND SICKNESS] [HEALTH] OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing [accident and sickness] [health] or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] insurance company. Your new policy provides thirty days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all [accident and sickness] [health] or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY [((~~AGENT, BROKER,~~)) INSURANCE PRODUCER OR OTHER REPRESENTATIVE]:

(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

(1) Health conditions that you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

(2) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

(3) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its ((~~[agent]~~)) appointed [insurance producer] regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

(4) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before your sign it, reread it carefully to be certain that all information has been properly recorded.

(Signature of ((~~[Agent, Broker]~~)) [Insurance Producer] or Other Representative)

[Typed Name and Address of ((~~[Agent or Broker]~~)) [Insurance Producer]]

The above "Notice to Applicant" was delivered to me on:

(Applicant's Signature) (Date)

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order R 93-10, filed 9/1/93, effective 10/2/93)

WAC 284-92-240 Suspension and revocation of registration. The grounds for suspension or revocation mentioned in this section are in addition to those mentioned elsewhere in this regulation or in other applicable law or regulation. The registration of a purchasing group may be suspended or revoked:

(1) If any basis exists on which, if the purchasing group were an insurer, ((~~agent,~~)) or ((~~broker~~)) insurance producer, its certificate of authority or its license could be suspended or revoked.

(2) If any insurer issuing policies for the purchasing group is subject, or would be subject if it were an authorized insurer, to suspension or revocation of its certificate of authority under RCW 48.05.140.

(3) If any insurer issuing policies for or to the purchasing group has any order of supervision, receivership, conservation, or liquidation, or any order similar to such an order, entered against it in any state or country by a court or insurance commissioner (or equivalent supervisory official).

(4) If the purchasing group solicits or accepts, or permits the solicitation or acceptance, of insurance applications by a person not licensed in Washington as an insurance ((~~agent or~~)) producer or surplus line broker; or does or permits any other act, by a person not licensed as an ((~~agent or~~)) insurance producer or surplus line broker, if that act may be performed only by one so licensed.

(5) If the purchasing group fails to reply fully, accurately, and in writing to an inquiry of the commissioner.

AMENDATORY SECTION (Amending Order R 93-10, filed 9/1/93, effective 10/2/93)

WAC 284-92-440 Suspension and revocation of registration. The grounds for suspension or revocation mentioned in this section are in addition to those mentioned elsewhere in this regulation or in other applicable law or regulation. In addition, a domestic risk retention group is subject to the same sanctions, on the same grounds, as a domestic insurer, including revocation of its certificate of authority. The registration of a risk retention group may be suspended or revoked if:

(1) Any basis exists on which, if the risk retention group were an authorized insurer, its certificate of authority could be suspended or revoked, under chapter 48.05 RCW or otherwise.

(2) If the risk retention group has any order of supervision, receivership, conservation, or liquidation, or any order similar to such an order, entered against it in any state or country by a court or insurance commissioner (or equivalent supervisory official); or any such court or official finds that the risk retention group is in a hazardous financial or financially impaired condition.

(3) If the risk retention group solicits or accepts, or permits the solicitation or acceptance, of insurance applications by anyone not appropriately licensed as an ((~~agent or~~)) insurance producer or surplus line broker; or does or permits any other act by a person not appropriately licensed as an ((~~agent or~~)) insurance producer or surplus line broker, if that act may be performed only by one so licensed.

(4) An order is entered by a court enjoining the risk retention group from soliciting or selling insurance, or operating.

(5) If the risk retention group fails to respond fully, accurately, and in writing to an inquiry of the commissioner.

AMENDATORY SECTION (Amending Order R 93-10, filed 9/1/93, effective 10/2/93)

WAC 284-92-450 ((~~Agents~~)) Insurance producers. Only appropriately licensed ((~~agents or~~)) insurance producers or surplus line brokers may solicit or accept applications for insurance to be issued by a risk retention group.

WSR 11-01-163
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 08-12—Filed December 22, 2010, 11:11 a.m., effective January 22, 2011]

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

Purpose: Chapter 173-539A WAC, Upper Kittitas ground water rule establishes a withdrawal of groundwater within a portion of WRIA 39 in Kittitas County, Washington. The withdrawal is designed to prevent new uses of water that negatively affect flows in the Yakima River and its tributaries while a groundwater study is performed. The withdrawal includes an exception for new groundwater appropriations using the groundwater exemption or new permits when the new consumptive use is mitigated by one or more pre-1905 water rights held by ecology in the trust water right program of equal or greater consumptive quantity. The rule includes a second exception for withdrawals of groundwater for structures for which building permit applications were vested prior to July 16, 2009.

Once effective, this rule supersedes the current emergency rule filed on November 5, 2010.

Statutory Authority for Adoption: RCW 90.54.050.

Other Authority: Chapter 43.27A RCW.

Adopted under notice filed as WSR 10-17-040 on August 10, 2010.

Changes Other than Editing from Proposed to Adopted Version: Ecology reduced the reporting requirement for water measurement data from five times per year, within thirty days following each of five reporting periods, to one time per year by January 31.

A final cost-benefit analysis is available by contacting Tryg Hoff, Department of Ecology, Water Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6631, fax (360) 407-6574, e-mail tryg.hoff@ecy.wa.gov.

NOTE: A final cost-benefit analysis and a revised small business economic impact statement are available by contacting the person above.

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 12, 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 12, Amended 0, Repealed 0.

Date Adopted: December 21, 2010.

Ted Sturdevant
Director

Chapter 173-539A WAC

UPPER KITTITAS GROUNDWATER RULE

NEW SECTION

WAC 173-539A-010 Purpose. The purpose of this rule is to withdraw from appropriation all unappropriated ground water within upper Kittitas County pending completion of a ground water study. New ground water withdrawals will be limited to those that are water budget neutral, as defined in this rule.

NEW SECTION

WAC 173-539A-020 Authority. RCW 90.54.050 provides that when lacking enough information to support sound decisions, ecology may withdraw waters of the state from new appropriations until sufficient information is available. Before withdrawing waters of the state, ecology must consult with standing committees of the legislature on water management. Further, RCW 90.44.050 authorizes ecology to establish metering requirements for permit-exempt wells where needed.

In 1999, ecology imposed an administrative moratorium on issuing any ground water permits for new consumptive uses in the Yakima basin, which includes Kittitas County. That moratorium did not apply to permit-exempt withdrawals. In 2007, ecology received a petition seeking unconditional withdrawal of all unappropriated ground water in Kittitas County until enough is known about potential effects from new permit-exempt wells on senior water rights and stream flows. Ecology consulted with standing committees of the Washington state legislature on the petition and proposed withdrawal. Ecology rejected the proposed unconditional withdrawal, and instead signed a memorandum of agreement (MOA) with Kittitas County. Ecology proposed a rule in January 2009 and Kittitas County questioned ecology's authority for the proposed rule. Ecology later invoked the dispute resolution process under the MOA and the MOA was later terminated.

NEW SECTION

WAC 173-539A-025 Applicability. This rule applies to new uses of ground water relying on the authority of the exemption from permitting found at RCW 90.44.050, as defined in WAC 173-539A-030, and to any new permit authorizing the withdrawal of public ground water within the upper Kittitas area boundaries issued on or after July 16, 2009.

NEW SECTION

WAC 173-539A-027 Advisory. All unmitigated withdrawals that began after May 10, 1905, may be subject to future curtailment due to conflicts with senior water rights. All unmitigated users are advised to obtain mitigation through senior trust water rights to avoid such curtailment.

NEW SECTION

WAC 173-539A-030 Definitions. The definitions provided below apply only to this chapter.

"Applicant" includes the owner(s) of parcels that are the subject of a land use application, a person making a request for water budget neutral determination, or a person requesting a permit to appropriate public ground water.

"Common ownership" means any type or degree of legal or equitable property interest held by an applicant in any proximate parcel. Common ownership also includes a joint development arrangement between an applicant and any owner of a proximate parcel. A joint development arrangement is defined as involving significant voluntary joint activity and cooperation between the applicant and the owner(s) of one or more proximate parcels with respect to the development of parcels in question. Joint activity and cooperation that is customary or required by land use or other legal requirements does not itself constitute a joint development arrangement. A joint development arrangement may be evidenced by, but is not limited to, agreements for coordinated development and shared use of services or materials for permitting, design, engineering, architecture, plat or legal documents, financing, marketing, environmental review, clearing or preparing land, or construction (including road construc-

tion); covenants; agreements for common use of building materials, equipment, structures, facilities, lands, water, sewer, or other infrastructure.

"Consumptive use" of a proposed withdrawal is the total depletion that the withdrawal has on any affected surface water bodies.

"Ecology" means the department of ecology.

"Exemption" or **"ground water exemption"** means the exemption from the permit requirement for a withdrawal of ground water provided under RCW 90.44.050.

"Existing use of the ground water exemption" means a use of ground water under the authority of the exemption from permitting where water was:

(a) First regularly and beneficially used prior to July 16, 2009; and

(b) The water right is perfected within the five years following the first regular beneficial use for that purpose. Water to serve a parcel that is part of a group use begun within five years of the date water was first regularly and beneficially used on one or more parcels in the group is an existing use if the group use remains within the limit of the permit exemption.

"Group use" means use of the ground water exemption for two or more parcels. A group use includes use of the exemption for all parcels of a proposed development. It further includes use of the exemption for all parcels that are proximate and held in common ownership with a proposed new development. If a parcel that is part of a group use is later divided into multiple parcels more than five years following the first use, the new uses of the exemption on the resulting multiple parcels will be considered a separate group use distinct from the original group.

"Land use application" means an application to Kittitas County requesting a:

- Subdivision;
- Short subdivision;
- Large lot subdivision;
- Administrative or exempt segregation;
- Binding site plan; or
- Performance based cluster plat.

"New use of the ground water exemption" means a valid permit-exempt use of ground water begun on or after July 16, 2009. When an existing group use is expanded to serve a parcel in the future, the expanded use is a new use if it begins more than five years after the date water was first regularly and beneficially used for that purpose on any parcel in the group.

"Parcel" means any parcel, land, lot, tract or other unit of land.

"Proximate" means all parcels that have at least one of the following attributes:

- Share any common boundary; or
- Are separated only by roads, easements, or parcels in common ownership; or
- Are within five hundred feet of each other at the nearest point.

"Proximate shortplat" means a shortplat that would be considered a group use with another subdivision or shortplat.

"Regular beneficial use" means a use of water under the ground water permit exemption that is recurring or functioning at fixed, uniform, or normal intervals and is done in conformity with established usages, rules, or discipline.

"Total water supply available" means the amount of water available in any year from natural flow of the Yakima River, and its tributaries, from storage in the various government reservoirs on the Yakima watershed and from other sources, to supply the contract obligations of the United States to deliver water and to supply claimed rights to the use of water on the Yakima River, and its tributaries, heretofore recognized by the United States.

"Upper Kittitas County" is the area of Kittitas County delineated in WAC 173-539A-990.

"Water budget neutral project" means an appropriation or project where withdrawals of public ground water are proposed in exchange for placement of other water rights into the trust water right program that are at least equivalent to the amount of consumptive use.

NEW SECTION

WAC 173-539A-040 Withdrawal of unappropriated water in upper Kittitas County. (1) Beginning on the effective date of this rule, all public ground waters within the upper Kittitas County are withdrawn from appropriation. No new appropriation or withdrawal of ground water may occur, including those exempt from permitting, except:

(a) Uses of ground water for a structure for which a building permit is granted and the building permit application vested prior to July 16, 2009; and

(b) Uses determined to be water budget neutral under WAC 173-539A-050.

(2) The exception for water used at structures provided in subsection (1)(a) of this section shall not apply or shall cease to apply if the structure is not completed and a water system that uses the new appropriation is not operable within the time allowed under the building permit. This shall not in any case exceed three years from the date the permit application vested. The exception is to avoid potential hardship and does not reflect ecology's view on when the priority date for a permit-exempt water right is established.

(3) Water to serve a parcel that is part of an existing group use is not a new appropriation or withdrawal if the water use to serve such parcel began within five years of the date water was first beneficially used on any parcel in the group, if the first use was prior to July 16, 2009, and the group use remains within the limit of the permit exemption.

NEW SECTION

WAC 173-539A-050 Water budget neutral projects. (1) Persons proposing a new use of ground water shall apply to ecology for a permit to appropriate public ground water or, if seeking to rely on the ground water permit-exemption, shall submit to ecology a request for determination that the proposed permit-exempt use would be water budget neutral.

(2) As part of a permit application to appropriate public ground water or a request for a determination of water budget neutrality, applicants or requestors shall include the following information:

(a) Identification of one or more water rights that would be placed into the trust water right program to offset the con-

sumptive use (as calculated pursuant to subsection (3) of this section) associated with the proposed new use of ground water;

(b) A site map;

(c) The area to be irrigated (in acres);

(d) A soil report, if proposed discharge is to a septic system and the applicant or requestor proposes to deviate from the values in subsection (3) of this section;

(e) A property covenant that prohibits trees or shrubs over the septic drain field; and

(f) A copy of the sewer utility agreement, if the proposed wastewater discharge is to a sanitary sewer system.

(3) Consumptive use will be calculated using the following assumptions: Thirty percent of domestic in-house use on a septic system is consumptively used; ninety percent of outdoor use is consumptively used; twenty percent of domestic in-house use treated through a wastewater treatment plant which discharges to surface water is consumptively used.

(4) Applications for public ground water or requests for a determination of water budget neutrality will be processed concurrent with trust water right applications necessary to achieve water budget neutrality, unless:

(a) A suitable trust water right is already held by the state in the trust water right program; and

(b) The applicant or requestor has executed an agreement to designate a portion of the trust water right for mitigation of the applicant's proposed use.

(5) Applications to appropriate public ground water or requests for determination of water budget neutrality that do not include the information listed in subsection (2) of this section will be rejected and returned to the applicant.

(6) To the extent that ecology determines that the mitigation offered would not reliably mitigate to be water budget neutral, ecology may deny the request or limit its approval to a lesser amount.

NEW SECTION

WAC 173-539A-060 Expedited processing of trust water applications, and new water right applications or requests for a determination of water budget neutrality associated with trust water rights. (1) RCW 90.42.100 authorizes ecology to use the trust water right program for water banking purposes within the Yakima River Basin.

(2) Ecology may expedite the processing of an application for a new water right or a request for a determination of water budget neutrality under Water Resources Program Procedures PRO-1000, Chapter One, including any amendments thereof, if the following requirements are met:

(a) The application or request must identify an existing trust water right or pending application to place a water right in trust, and such trust water right would have an equal or greater contribution to flow during the irrigation season, as measured on the Yakima River at Parker that would serve to mitigate the proposed use. This trust water right must have priority earlier than May 10, 1905, and be eligible to be used for instream flow protection and mitigation of out-of-priority uses.

(b) The proposed use on the new application or request must be for domestic, group domestic, lawn or noncommercial garden, municipal water supply, stock watering, or industrial purposes within the Yakima River Basin. The proposed use must be consistent with any agreement governing the use of the trust water right.

(3) If an application for a new water right or a request for a determination of water budget neutrality is eligible for expedited processing under subsection (2) of this section and is based upon one or more pending applications to place one or more water rights in trust, processing of the pending trust water right application(s) shall also be expedited.

(4) Upon determining that the application or request is eligible for expedited processing, ecology will do the following:

(a) Review the application or request to withdraw ground water to ensure that ground water is available from the aquifer without detriment or injury to existing rights, considering the mitigation offered.

(b) Condition the permit or determination to ensure that existing water rights, including instream flow water rights, are not impaired if the trust water right is from a different source or located downstream of the proposed diversion or withdrawal. The applicant or requestor also has the option to change their application to prevent the impairment. If impairment cannot be prevented, ecology must deny the permit or determination.

(c) Condition each permit or determination to ensure that the tie to the trust water right is clear, and to accurately reflect any limitations or constraints in the trust water right.

(d) Condition or otherwise require that the trust water right will serve as mitigation for impacts to "total water supply available."

NEW SECTION

WAC 173-539A-070 Measuring and reporting water use. (1) For residential uses (domestic use and irrigation of not more than 1/2 acre of noncommercial lawn and garden) of ground water within upper Kittitas County that begin after July 8, 2008, a meter must be installed for each residential connection or each source well that serves multiple residential connections in compliance with the requirements of WAC 173-173-100.

(2) For all other uses within upper Kittitas County that begin after November 25, 2009, including permit-exempt uses, a meter must be installed for each source well in compliance with such requirements as prescribed in WAC 173-173-100.

(3) Water users must collect metering data for each recording period. The following table shows the five recording periods during each water year (October 1 through September 30):

Recording Period
October 1 - March 31
April 1 - June 30
July 1 - July 31
August 1 - August 31
September 1 - September 30

(4) Water users must report their measurement data as follows:

Recording and Reporting Requirements			
Average diversion rate in gallons per minute	**< 10 gpm**	**10-49 gpm**	**> 50 gpm**
Recording frequency	Monthly	Biweekly	Weekly
Volume or rate to report	Maximum rate of diversion	Maximum rate of diversion	Maximum rate of diversion
	Annual total volume	Annual total volume	Annual total volume
Date data must be reported to department	By Jan. 31 of the following calendar year	By Jan. 31 of the following calendar year	By Jan. 31 of the following calendar year
Monthly means calendar month			
Weekly means Monday 12:01 a.m. to Sunday 12:00 p.m.			
Biweekly means once every two weeks			
Daily means 12:01 a.m. to 12:00 p.m.			
1 gallon per minute is equivalent to .002 cubic feet per second			

NEW SECTION

WAC 173-539A-080 Educational information, technical assistance and enforcement. (1) To help the public comply with this chapter, ecology may prepare and distribute technical and educational information on the scope and requirements of this chapter.

(2) When ecology finds that a violation of this rule has occurred, we shall first attempt to achieve voluntary compliance. One approach is to offer information and technical assistance to the person, in writing, identifying one or more means to legally carry out the person's purposes.

(3) To obtain compliance and enforce this chapter, ecology may impose such sanctions as suitable, including, but not limited to, issuing regulatory orders under RCW 43.27A.190 and imposing civil penalties under RCW 90.03.600.

NEW SECTION

WAC 173-539A-090 Appeals. All of ecology's final written decisions pertaining to permits, regulatory orders, and other related decisions made under this chapter are subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

WAC 173-539A-990 Appendix 1—Map of upper Kittitas County boundaries.