

WSR 08-07-007
EXPEDITED RULES
OFFICE OF
ADMINISTRATIVE HEARINGS

[Filed March 6, 2008, 10:14 a.m.]

Title of Rule and Other Identifying Information: WAC 10-04-020 Function—Organization—Offices, identifies locations of agency offices and title for the managers of agency field offices.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jane L. Habegger, Office of Administrative Hearings, P.O. Box 42489, Olympia, WA 98504-2489, AND RECEIVED BY May 19, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule change is to notify the public that the office of administrative hearings (OAH) has relocated our Everett field office to Seattle and we have changed the title for the administrative law judge who manages each OAH field office from senior administrative law judge to assistant deputy chief administrative law judge.

Reasons Supporting Proposal: This rule change is needed to ensure that our stakeholders, including the public at large, is correctly informed regarding the location of our offices and the proper title for the administrative law judge who is responsible for managing each of our field offices.

Statutory Authority for Adoption: Chapter 34.12 RCW.
 Statute Being Implemented: RCW 34.12.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of administrative hearings, public and governmental.

Name of Agency Personnel Responsible for Drafting: Jane L. Habegger, 2420 Bristol Court S.W., Olympia, WA, (360) 753-4625; Implementation and Enforcement: Chief ALJ Roosevelt Currie, 2420 Bristol Court S.W., Olympia, WA, (360) 664-2031.

March 6, 2008
 Jane L. Habegger
 Assistant Deputy Chief
 Administrative Law Judge

AMENDATORY SECTION (Amending WSR 06-08-009, filed 3/23/06, effective 4/23/06)

WAC 10-04-020 Function—Organization—Offices.

The office of administrative hearings conducts impartial administrative hearings for state agencies and local governments pursuant to chapter 34.12 RCW. The office is under the direction of the chief administrative law judge.

Administrative law judges preside over hearings in adjudicative proceedings and issue initial or final orders, including findings of fact and conclusions of law.

The administrative office is located at 2420 Bristol Ct. SW, P.O. Box 42488, Olympia, Washington, 98504-2488. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday except legal holidays. Administrative law judges are assigned to field offices located in ((~~Everett~~)) Olympia, Seattle, Spokane, Vancouver, and Yakima. Each office is headed by a ((~~senior~~)) assistant deputy chief administrative law judge.

All written communications by parties pertaining to a particular case shall be filed with the field office, if any, assigned to the case, and otherwise with the chief administrative law judge or designee at the administrative office.

WSR 08-07-052
EXPEDITED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed March 14, 2008, 11:39 a.m.]

Title of Rule and Other Identifying Information: Recommended changes to WAC 392-410-315 Equivalency course of study, credit for work based learning. Clarification of existing requirements to support improved student learning and safety, liability and accountability for all stakeholders to:

- Ensure that all students are able to access work based learning.
- Better differentiate and define terms used in the current WAC language.
- Update alignment with related policies and state agencies.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Diane Carver, Office of Superintendent of Public Instruction (OSPI), P.O. Box 47200, Olympia, WA 98504-7200, AND RECEIVED BY May 19, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- Ensure that all students are able to access work based learning.
- Better differentiate and define terms used in the current WAC language.
- Update alignment with related policies and state agencies.

- Clarify who can coordinate a worksite learning experience.

Reasons Supporting Proposal: This newest version of the WAC change proposal is based on the feedback we received in the hearing on October 26, 2007. Following is an overview of the feedback we received during that hearing which prompted the changes to the WAC language.

(1) At the hearing, Phyllis Lawson confirmed that she could initiate a change to the related certification WAC to use the term "worksite" rather than "work based." (This is why most instances of the term "work based" have been changed to "worksite.")

(2) Cal Brody asked that we add a statement to include working in the school setting as well as the community.

(3) Bryan Jefferies asked that we make a change to the wording of what the worksite learning coordinator will do when not onsite during the experience.

(4) The superintendent from Central Valley (Spokane) asked that we add a comment about when a district employee may be required to supervise the student onsite.

(5) Several district CTE directors (in particular Debbie McCleary from Kennewick) asked that we modify the wording regarding the age of a student participating in "instructional" worksite learning to allow those younger than sixteen to participate under certain circumstances.

(6) Other changes were based on semantics.

Statutory Authority for Adoption: RCW 28A.305.130.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting: Diane Carver, CTE, (360) 725-6258; Implementation: Betty Klattenhoff, CTE, (360) 725-6243; and Enforcement: Betty Klattenhoff, CTE, (360) 725-6256.

May 14, 2008

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 08-04-074, filed 2/4/08, effective 3/6/08)

WAC 392-410-315 Equivalency course of study—Credit for work based learning. School districts may accept worksite learning in lieu of either required or elective high school credits if such worksite learning meets the standards under subsections (1) through (5) of this section. Comprehensive guidelines are available on the OSPI web site in the ((work based learning coordination manual/guidelines)) worksite learning manual.

(1) Definitions:

(a) "Work based learning" means a learning experience that connects knowledge and skills obtained in the classroom to those needed outside the classroom, and comprises a range of activities and instructional strategies designed to assist students in developing or fulfilling their education plans.

(b) "Worksite learning" means a learning experience that occurs at a qualified worksite outside the classroom in fulfillment of a student's educational or career plan through the coordination of a ((work based)) worksite learning ((certifi-

ated)) certified teacher. Direct instruction and supervision is provided by a qualified worksite supervisor.

(c) "Worksite learning coordinator" means a ((certifi-
eated)) certified school district employee responsible for coordinating worksite learning experiences. For career and technical education programs, the coordinator must possess a ((work based)) worksite learning certificate (WAC 181-77-068). For noncareer and technical education programs, the coordinator must successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program.

(d) "Worksite supervisor" means a qualified adult from the worksite responsible for overseeing the worksite learning experience and acting as liaison between the worksite and school district.

(e) "((Work based)) Worksite learning agreement" means a contract that specifies the terms and conditions under which the worksite learning experience shall occur. It is agreed to and signed by the school district, worksite supervisor, student, and the student's parents/guardians.

(f) "Program orientation" means a meeting conducted by a worksite learning coordinator giving information to a worksite supervisor about the ((work based)) worksite learning program of the school. The orientation clarifies program objectives, establishes support systems, and delineates the responsibilities and rights of the various parties—school/district, worksite, students, and parents/guardians. The worksite learning coordinator qualifies the worksite and the worksite supervisor.

(g) "((New)) Employee orientation" means training for the student facilitated by a worksite supervisor or designee (e.g., human resources). This is necessary for students in cooperative worksite learning and instructional worksite learning experiences. The orientation includes worksite safety procedures and practices, workers' rights and responsibilities, issues related to harassment, and employer policies, procedures and expectations. The orientation shall also include a description of the formal accident prevention program of the worksite.

(h) "Instructional worksite learning" means a learning experience that takes place in the community (or school if the experience is comparable to that in a community setting) as part of a specific course content where the student performs tasks in order to gain desired skills, competencies, qualifications or industry certifications through direct instruction.

(i) "Cooperative worksite learning" means a learning experience where a student practices in the community (or school if the experience is comparable to that in a community setting) the skills and knowledge learned in the classroom. An employer/employee relationship must exist if the work performed by the student results in a net increase in productivity or profitability for the business or organization.

(j) "Qualifying class" means any high school class previously completed (successfully) or concurrently taken that directly connects the knowledge and skills learned in the class to opportunities provided by the worksite learning experience. For career and technical education funding, "qualifying classes" mean classes approved for career and technical education in the district offering worksite learning credit.

(2) The student shall be placed in a worksite that is appropriate to ~~((the))~~ his or her previous learning experience and educational goals which shall be formalized through a worksite learning agreement and worksite learning plan. The worksite learning experience shall be connected to the student's high school and beyond plan (WAC 180-51-061). The student must have taken or be concurrently enrolled in a qualifying class.

(a) The worksite learning plan shall articulate the connection between the education plan of the student and the ~~((work-based))~~ worksite learning experience.

(b) Evaluation of learning progress related to the worksite learning plan shall ~~((articulate clear, measurable learning objectives))~~ occur during the worksite learning experience.

(c) Evaluation of learning progress related to the worksite learning plan shall occur during the work based learning experience.

(i) Learning objectives shall be evaluated and updated on a regular basis as outlined in the worksite learning agreement.

(ii) Documentation of progress shall be on file in the district as outlined in the worksite learning agreement.

(3) The worksite learning experience shall be supervised by the school. A worksite learning coordinator shall be responsible for:

(a) Aligning the worksite learning experience to the education plan of the student;

(b) Identifying and developing ~~((work-based))~~ worksite learning sites, establishing ~~((work-based))~~ worksite learning agreements and ~~((work-based))~~ worksite learning plans, orienting and coordinating with a worksite supervisor on the ~~((work-based learning site))~~ worksite, and assessing and reporting student progress;

(c) Ensuring that a worksite supervisor:

(i) Has received an orientation on the worksite learning program of the school prior to placement of the student on the worksite; ~~((and))~~

(ii) Has provided the student with a new-employee orientation upon placement; ~~((and~~

~~((d) Applying))~~ (iii) Applies legal requirements of the employment of minors in accordance with chapters 296-125 and 296-131 WAC, particularly on issues of occupational health and safety, discrimination, harassment, worker/employer rights and responsibilities, and work rules for minors; ~~((and~~

~~((e))~~ (d) Possessing a valid Washington state secondary teaching certificate (chapter 181-79A or 181-77 WAC); ~~((and~~

~~((f))~~ (e) Successfully demonstrating competencies related to coordination techniques as verified by a professional educator standards board approved program; and

(f) Supervising the experience and communicating with the worksite supervisor when not on-site.

(4) ~~((One))~~ A 1.0 credit may be granted for no less than one hundred eighty hours for instructional worksite learning experience, and not less than three hundred sixty hours of cooperative worksite learning experience, or one credit may be granted on a competency basis as provided under WAC 180-51-050 (1)(b).

(a) A student participating in an instructional worksite learning experience shall receive instruction supervised by the school. The worksite learning coordinator oversees the

experience but does not need to be on-site with the student during the entire experience unless specific accommodations and a plan to address those accommodations are on file with the district requiring direct supervision of the student at the worksite. The student shall be sixteen years of age or older unless under direct supervision of a school district employee.

Career and technical education approved instructional worksite learning ~~((experience))~~ shall be coordinated by a certificated ~~((work-based))~~ worksite learning coordinator who is also certificated in the program area where credit is offered.

(b) A student participating in a cooperative worksite learning experience shall be legally employed if the work being performed by the student results in a net increase in productivity or profitability for the business or organization. The student shall be sixteen years of age or older.

(i) Career and technical education approved cooperative worksite learning shall be coordinated by a certificated worksite learning coordinator.

(ii) The cooperative worksite learning experience shall be a direct extension of a qualifying ~~((course))~~ class.

(5) The superintendent of public instruction shall report biennially at the state board's fall meeting on the use of the ~~((work-based))~~ worksite learning credit option authorized in this section.

WSR 08-07-073
EXPEDITED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed March 18, 2008, 11:25 a.m.]

Title of Rule and Other Identifying Information: Certain sections of rules implementing the Mortgage Broker Practices Act (chapters 19.146 RCW and 208-660 WAC) must be amended to not contravene SB 6471, Laws of 2008. The sections are WAC 208-660-006, definition of "mortgage broker" and 208-660-008 (5), (6), (7), and (8).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Elizabeth Stancil, Department of Financial Institutions, Division of Consumer Services, P.O. Box 41200, Olympia, WA 98504-1200, (360) 902-8786, estancil@dfi.wa.gov, AND RECEIVED BY May 20, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Certain sections of the rules must be amended to not contravene SB 6471, Laws of 2008.

Reasons Supporting Proposal: If the rules are not amended they would be in opposition to recently passed legislation.

Statutory Authority for Adoption: RCW 43.320.040, 19.146.223.

Statute Being Implemented: Chapter 19.146 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy Fazio, 150 Israel Road, Tumwater, WA, (360) 902-8800; Implementation and Enforcement: Deborah Bortner, 150 Israel Road, Tumwater, WA, (360) 902-0511.

March 17, 2008

Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-006 Definitions. What definitions are applicable to these rules? Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

"Advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages.

"Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

"Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500 as of the effective date of these rules, which is the submission, whether written or computer-generated, of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

For a refinance or purchase application that is not a prequalification, the credit report may be enough to constitute an application. The credit report date determines when the mortgage broker, or loan originator on behalf of the mortgage broker, has gathered sufficient information to make a credit decision. This may be a trigger for early disclosures when the property address is known.

"Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by

an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

"Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

"Branch office" means a fixed physical location such as an office, separate from the principal place of business of the licensee, where the licensee holds itself out as a mortgage broker.

"Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

"Certificate of passing an approved examination" means a certificate signed by the testing administrator verifying that the individual performed with a satisfactory score or higher.

"Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

"Compensation or gain" means remuneration, benefits, or an increase in something having monetary value, including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

"Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.

"Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

"Consumer Protection Act" means chapter 19.86 RCW.

"Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

- A general partner, officer, director, or employer of another person;
- Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of another person; or
- Has similar status or function in the business as a person in this definition.

"Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

- Has been convicted of the crime in any jurisdiction;
- Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;
- Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or
- Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

"Department" means the department of financial institutions.

"Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210 (1)(e).

"Director" means the director of financial institutions.

"Discount points" or "points" mean a fee paid by a borrower to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on line 802 of the good faith estimate and settlement statement as a percentage of the loan amount.

"Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

"Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

"Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules to determine whether the licensee is in compliance with applicable laws and regulations.

Federal statutes and regulations used in these rules are:

- "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

- "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 202.

- "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

- "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

- "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

- "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

- "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 C.F.R. Part 203.

- "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

- "Homeowners Protection Act" means the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. Sec. 4901 et seq.

- "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 24 C.F.R. Part 3500 et seq.

- "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 C.F.R. Part 310.

- "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part 226 et seq.

"Federally insured financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

"Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

- Any conduct prohibited by the act;
- Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;
- Any conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; or
- Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or wire fraud, insider trading, money laundering, check fraud, or similar crimes.

"Independent contractor" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

The following factors may be considered to determine if a person is an independent contractor:

Is the person instructed about when, where and how to work?

Is the person guaranteed a regular wage?

Is the person reimbursed for business expenses?

Does the person maintain a separate business?

Is the person exposed to potential profits and losses?

Is the person provided employee benefits such as insurance, a pension plan, or vacation or sick pay?

"Licensee" means:

- A mortgage broker licensed by the director; or
- The principal(s) or designated broker of a mortgage broker; or
- A loan originator licensed by the director; or
- Any person subject to licensing under RCW 19.146.200; or
- Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

"License application fee" means immediately available funds paid to the department for each mortgage broker, loan originator, or mortgage broker branch office license application.

"Loan application" means the same as "application," in this section.

"Loan originator" means a natural person who:

- Takes a residential mortgage loan application for a mortgage broker; or
- Offers or negotiates terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

For purposes of further defining "loan originator," "taking a residential mortgage loan application" includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.

For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

"Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.

"Loan processor" means a natural person who performs clerical or support duties at the direction of and subject to the supervision and instruction of a licensed or exempt mortgage

broker. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms.

"Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

~~("Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain:~~

- ~~• Makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan;~~
- ~~or~~
- ~~• Holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan.~~

~~For purposes of this definition, a person "makes" a loan if: The loan is closed in their name, or they advance, offer to advance or make a commitment to advance funds to a borrower for a loan.~~

~~For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 24 C.F.R. Part 3500, Sec. 3500.2(b).~~

~~For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that they engage in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists, or other promotional items.)~~

"Mortgage broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the act.

"Mortgage Broker Practices Act" means chapter 19.146 RCW.

"Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

"Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

"Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

"Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

"Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

"Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

For purposes of this definition, a loan "primarily for personal, family, or household use" includes loan applications for a finance or refinance of a primary residence for any purpose, loan applications on second homes, and loan applications on nonowner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are intended to be used primarily for personal, family or household use.

"Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

- Residential real estate includes, but is not limited to:
 - A single family home;
 - A duplex;
 - A triplex;
 - A fourplex;
 - A single condominium in a condominium complex;
 - A single unit within a cooperative;
 - A manufactured home when the home and real property together will secure the residential mortgage loan; or
 - A fractile, fee simple interest in any of the above.
- Residential real estate does not include:
 - An apartment building or dwelling of five or more units;
 - A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings; or
 - Any dwelling on leased or rented land or space, such as dwellings in a manufactured home park unless the mortgage broker treats such property as residential real estate.

"Table-funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

"Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

"Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this

manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-008 Exemption from licensing. (1) If I am licensed as an insurance agent under RCW 48.17.060, must I have a separate license to act as a loan originator or mortgage broker? Yes. You will need a separate license as a loan originator or mortgage broker if you are a licensed insurance agent and you do any of the following:

- (a) Take a residential mortgage loan application for a mortgage broker;
- (b) Offer or negotiate terms of a mortgage loan for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;
- (c) Make a residential mortgage loan, or assist a person in obtaining or applying to obtain a residential mortgage loan, for compensation or gain; or
- (d) Hold yourself out as being able to perform any of the above services.

(2) Are insurance companies exempt from the Mortgage Broker Practices Act? Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington state office of the insurance commissioner are exempt from the Mortgage Broker Practices Act.

(3) If I make residential mortgage loans under the Consumer Loan Act, chapter 31.04 RCW, am I exempt from the Mortgage Broker Practices Act? If you are licensed under the Consumer Loan Act, only residential mortgage loans are exempt from the Mortgage Broker Practices Act. Complying with the Consumer Loan Act includes abiding by the requirements and restrictions of that act and counting all loans originated and made under that act for purposes of your annual assessment.

(4) If I make residential mortgage loans under the Consumer Loan Act, chapter 31.04 RCW, are my loan originators exempt from the Mortgage Broker Practices Act? Your loan originator employees are also exempt from the Mortgage Broker Practices Act for their loan originator activities on residential mortgage loans.

Your independent contractor loan originators are not exempt from the Mortgage Broker Practices Act for their residential mortgage loan originator activities.

(5) ~~(If I am an exempt mortgage broker because my business has been approved by and is subject to audit by Fannie Mae or Freddie Mac, am I subject to licensing or any other sections of the act?~~ You are not required to have a license to make loans that you sell to Fannie Mae or Freddie Mac, but you are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they

have paid for. You are also subject to the investigation and enforcement authority of the director.

Stated another way, if your mortgage business does not make and then sell all loans to Fannie Mae or Freddie Mae, you must have a license to broker or make the residential mortgage loans not sold to Fannie Mae or Freddie Mae.

~~(6) If I am an exempt mortgage broker because my business has been approved by and is subject to audit by Fannie Mae or Freddie Mae, are my loan originators subject to licensing or any other sections of the act?~~ Your loan originator employees are not required to have a license to conduct loan originator activities on loans made and then sold to Fannie Mae or Freddie Mae, but they are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. Your loan originator employees are also subject to the investigation and enforcement authority of the director.

Your loan originators must be licensed to act as loan originators on residential mortgage loans not made and then sold to Fannie Mae or Freddie Mae.

Your independent contractor loan originators are not exempt under this section.

~~(7) Am I exempt from the Mortgage Broker Practices Act if I make or acquire residential mortgage loans solely with my own funds for my own investment without intending to resell the residential mortgage loans?~~ You are exempt from the licensing requirements, but you are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. You are also subject to the investigation and enforcement authority of the director.

For purposes of this section, intent to resell residential mortgage loans is determined by your ability and willingness to hold the residential mortgage loans, indicated by, but not limited to, such measures as whether you have sold loans in the past, whether the loans conform to established secondary market standards for the sale of loans, and whether your financial condition would reasonably allow you to hold the residential mortgage loans.

~~(8) If I am an exempt mortgage broker because I am making or acquiring residential mortgage loans solely with my own funds for my own investment without intending to resell the residential mortgage loans, are my loan originators subject to licensing or any other sections of the act?~~ Your loan originator employees are not required to have a license, but they are subject to RCW 19.146.0201 through 19.146.080, and the rules associated with those sections of the act. Those sections include prohibited practices, certain required disclosures, the requirement of a writing for agreements, trust fund requirements, books and records

requirements, limitations on fees or compensation, and the requirement to provide the consumer with certain information they have paid for. Your loan originator employees are also subject to the investigation and enforcement authority of the director.

~~Your independent contractor loan originators are not exempt under this section.~~

~~(9)) As an attorney, must I have a mortgage broker or loan originator license to assist a person in obtaining or applying to obtain a residential mortgage loan in the course of my practice?~~

(a) If you are an attorney licensed in Washington and if the mortgage broker activities are incidental to your professional duties as an attorney, you are exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(c).

(b) Whether an exemption is available to you depends on the facts and circumstances of your particular situation. For example, if you hold yourself out publicly as being able to perform the services of a mortgage broker or loan originator, or if your fee structure for those services is different from the customary fee structure for your professional legal services, the department will consider you to be principally engaged in the mortgage broker business and you will need a mortgage broker or loan originator license before performing those services. A "customary" fee structure for the professional legal service does not include the receipt of compensation or gain associated with obtaining a residential mortgage loan on the property.

~~((10)) (6) As a licensed real estate broker or salesperson, must I have a mortgage broker or loan originator license when I assist the purchaser in obtaining financing for a residential mortgage loan involving a bona fide sale of real estate?~~ You are exempt from the act under RCW 19.146.020 (1)(g) if you only receive the customary real estate commission in connection with the transaction. A "customary" real estate commission does not include receipt of compensation or gain associated with the financing of the property. A "customary" real estate commission only includes the agreed upon commission designated in the listing or purchase and sale agreement for the bona fide sale of the subject property.

~~((11)) (7) Under what circumstances will the director approve an exemption under RCW 19.146.020(4) for the exclusive agents working as loan originators of an affiliate of a bank that is wholly owned by the bank holding company that owns that bank?~~

(a) The director will provide a written exemption from loan originator licensing for the exclusive agents of an affiliate of a bank that is wholly owned by the bank holding company that owns the bank if the director finds that the affiliate is licensed and is in "good standing" with the department and the affiliate has procedures in place, as evidenced by a written "plan of business," to reasonably assure the department that:

(i) The exclusive agents of the affiliate of a bank operate exclusively as loan originators for the affiliate and not for other mortgage brokers;

(ii) The affiliate of the bank requires continuing education for the exclusive agents that meets the same or similar

requirements approved by the director for licensed loan originators;

(iii) The affiliate of the bank will notify the department if the affiliate terminates an exclusive agent because the exclusive agent:

(A) Has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years; or

(B) Has been convicted of a felony, or a gross misdemeanor involving dishonesty or financial misconduct, within the prior seven years; or

(C) Has been subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(b) To qualify for this exemption, the affiliate must make a written request to the department and submit a "plan of business" with the request. After receipt of this request, the department will notify the affiliate in writing within ten business days whether the affiliate's exclusive agents qualify for the exemption, or if the department will conduct additional review of the affiliate and the "plan of business." The affiliates must receive the department's notice of qualification for exemption before the affiliate's exclusive agents take any action that would subject them to licensing under the act.

(c) The exemption granted by the director remains valid as long as the affiliate complies in all material respects with its "plan of business" and the affiliate remains in good standing with the department.

~~((12))~~ **(8) What are the responsibilities of a mortgage broker that is exempt from the licensing provisions of the act?** The owners of companies exempt from licensing under RCW 19.146.020 (1)(e), (g), or (4), are responsible for:

(a) Complying with RCW 19.146.0201 through 19.146.080, and 19.146.235;

(b) Ensuring compliance with the act by all persons representing the exempt mortgage broker; and

(c) Notifying the director of any change affecting the mortgage broker's exempt status under the act.

~~((13))~~ **(9) Are the independent contractors of a mortgage broker exempt under RCW 19.146.020 (1)(b), (c), (e), and (g) themselves exempt?** No. After January 1, 2007, an independent contractor working as a loan originator for a mortgage broker exempt under RCW 19.146.020 (1)(b), (c), (e), and (g) must hold a loan originator license.

~~((14))~~ **(10) What other persons or entities are exempt from the Mortgage Broker Practices Act?**

(a) Any person doing any act under order of any court except for a person subject to an injunction to comply with any provision of the act or any order of the director issued under the act.

(b) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (b).

~~((15))~~ **(11) When is a CLI provider exempt from the licensing requirements of the act?** A CLI provider is exempt from the licensing requirements of the act:

(a) When the CLI provider meets the general statutory requirements under RCW 19.146.020 (1)(a), (c), (d), (e), (g), or (h); or

(b) When a real estate broker or salesperson licensed in Washington, acting as a CLI provider and a real estate agent, obtains financing for a real estate transaction involving a bona fide sale of real estate and does not receive either:

(i) A separate fee for the CLI service; or

(ii) A sales commission greater than that which would be otherwise customary in connection with the sales transaction; or

(c) When a person, acting as a CLI provider:

(i) Provides only information regarding rates, terms, and lenders;

(ii) Complies with all requirements of subsection ~~((16))~~ **(12)** of this section;

(iii) Does not represent or imply to a borrower that they are able to obtain a residential mortgage loan from a mortgage broker or lender;

(iv) Does not accept a loan application, assist in the completion of a loan application, or submit a loan application to a mortgage broker or lender on behalf of a borrower;

(v) Does not accept any deposit for third-party provider services or any loan fees from a borrower in connection with a loan, regardless of when the fees are paid;

(vi) Does not negotiate interest rates or terms of a loan with a mortgage broker or lender on behalf of a borrower; and

(vii) Does not provide to the borrower a good faith estimate or other disclosure(s) required of mortgage brokers or lender(s) by state or federal law.

(d) If the CLI provider is not exempt under (a), (b), or (c) of this subsection, the CLI provider is not required to have a mortgage broker license if the CLI provider does not receive any fee or other compensation or gain, directly or indirectly, for performing or facilitating the CLI service.

~~((16))~~ **(12) When is a CLI provider required to have a mortgage broker license?**

(a) If a CLI provider, who is not otherwise exempt from the licensing requirements of the act, performs any act that would otherwise require that they be licensed, including accepting a loan application, or submitting a loan application to a mortgage broker or lender, the CLI provider must obtain a mortgage broker license.

(b) Example - License required: A CLI provider uses an internet-based CLI system in which an abbreviated application is available for online completion by borrower. Once the borrower presses "submit," the information collected in the abbreviated application is forwarded to lender. The information contains the borrower's name, Social Security number, contact information, purpose of the loan sought (e.g., purchase, refinance, home equity, second mortgage), size of loan requested, annual salary, and a self-declaration of total unsecured debt. The electronic entries made by the borrower are then used by lender to electronically populate "form fields" and to initiate lender's loan application. A loan originator for the lender then follows up with borrower to complete the loan

application. On or after closing, CLI provider receives a CLI service fee.

(c) Example - License not required: A CLI provider uses an internet-based CLI system in which various interactive informational tools are present, including an online "prequalification" tool. Based upon borrower's self-declared data input, borrower receives an indication of borrower's "maximum affordable loan amount," based upon standard norms of debt-to-income ratio and loan-to-value ratio, and also subject to verification of information, availability and suitability of loan products, and independent underwriting by any lender. The borrower indicates a desire for follow-up from one or more lenders by inputting personal contact information and pressing "submit." A number of lenders receive only the personal identity information of borrower and not any financial information. However, the CLI system has been programmed (and may be continuously reprogrammed) to route personal contact information to certain lenders based upon borrower's "prequalification" data input and the lending criteria of each of the lenders for whom CLI provider has a relationship. None of borrower's self-declared financial information is actually submitted to any of the lenders whose criteria match borrower's profile. Loan originators from lender A and lender B initiate contact with borrower based solely on borrower's contact information. Lender A and lender B, through their assigned loan originators, contact borrower with the object of beginning and hopefully completing a loan application. In this example, CLI provider has not taken a loan application.

~~((17))~~ **(13) Must the CLI provider provide any disclosures?**

(a) Yes. If a borrower using or accessing the CLI services pays for the CLI service, either directly or indirectly, the CLI provider must give the following disclosure:

(i) The amount of the fee the CLI provider charges the borrower for the service;

(ii) That the use of the CLI system is not required to obtain a residential mortgage loan; and

(iii) That the full range of loans available may not be listed on the CLI system, and different terms and conditions, including lower rates, may be available from others not listed on the system.

(b) Each CLI provider must give the borrower a copy of the disclosure form when the first CLI service is provided to the borrower. The form must be signed and dated by the borrower and a copy maintained as part of the CLI provider's books and records for at least two years.

~~((18))~~ **(14) Are CLI system providers subject to enforcement under the act?** Yes. CLI system providers are responsible for any violations of the act and will be subject to any applicable fines or penalties.

WSR 08-07-074

EXPEDITED RULES

PUBLIC EMPLOYMENT RELATIONS COMMISSION

[Filed March 18, 2008, 12:09 p.m.]

Title of Rule and Other Identifying Information: WAC 391-25-396 Special provision—State civil service employees, permits certification of a bargaining unit state civil service employees by means of a majority card check; and 391-55-071 Special provision—State patrol personnel, limits the subjects of bargaining that an interest arbitrator can consider during an interest arbitration proceeding involving uniformed personnel at the Washington state patrol.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Dario de la Rosa, Public Employment Relations Commission, 112 Henry Street N.E., Suite 300, P.O. Box 40919, Olympia, WA 98504-0919, AND RECEIVED BY May 20, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment to WAC 391-25-396 and the proposed repeal of WAC 391-25-397 corrects a typographical error adopted. The agency intended the existing language in WAC 391-25-397 to amend and replace the existing language contained within WAC 391-25-396. This amendment merely corrects that typographical error, and does not change any of the rights, or language, contained within the recently adopted WAC 391-25-397.

The agency had originally proposed to repeal the existing language in WAC 391-55-071. However, stakeholders pointed out that a legislative change to RCW 41.56.473 necessitated the proposed amendment to the existing language in WAC 391-55-071, rather than a repeal of the rule. This amendment reflects an agreed upon change to the language in the rule.

Reasons Supporting Proposal: To correct a typographical error in drafting and to adopt an agreed upon amendment.

Statutory Authority for Adoption: For WAC 391-25-396 is RCW 41.58.05 [41.58.050], 41.80.080; and for WAC 391-55-071 is RCW 41.58.050, 41.56.090.

Name of Agency Personnel Responsible for Drafting: Dario de la Rosa, Olympia, Washington, (360) 570-7328; Implementation and Enforcement: Cathleen Callahan, Olympia, Washington, (360) 570-7312.

March 18, 2008
Dario de la Rosa
General Counsel

AMENDATORY SECTION (Amending WSR 03-03-064, filed 1/14/03, effective 2/14/03)

WAC 391-25-396 Special provision—State civil service employees. (~~WAC 391-25-391 and the practices and precedents applicable under chapter 41.56 RCW shall also be applicable to state civil service employees.~~) (1) In addition to the cross-check of records permitted by WAC 391-25-391 and the procedures under WAC 391-25-410, where only one organization is seeking certification as the representative of unrepresented employees covered by chapters 41.06 and 41.80 RCW, the executive director may issue a direction of cross-check utilizing the procedures outlined in WAC 391-25-410 if the showing of interest submitted in support of the petition indicates that the petitioning organization has been authorized by a majority of the employees to act as their representative for the purposes of collective bargaining, provided:

The authorization cards submitted in support of a petition under this section must, at a minimum, contain the following:

(a) The employee's name typed or printed legibly, the employee's signature, and the date of the employee's signature;

(b) A statement that the employee designates the named labor organization as the employee's exclusive bargaining representative for purposes of collective bargaining;

(c) A statement that the showing of interest may be used for purposes of a cross-check election under this rule;

(d) A statement that the employee understands that the employee's signature on the card may be used to obtain certification of the named labor organization as the exclusive bargaining representative of the employee without a secret ballot election; and

(e) A statement that the employee has the right to ask the agency to revoke the employee's authorization card for purposes of cross-check of records. The agency shall notify the petitioner of the existence and number of any such revocation(s) prior to the commencement of the cross-check, but shall not disclose the identities of the employees involved.

(2) An authorization card that fails to comply with subsection (1) of this section shall be invalid for purposes of initiating a cross-check of records under this rule.

(3) A direction of cross-check and other rulings in the proceedings up to the issuance of a tally are interim orders, and may only be appealed to the commission by objections under WAC 391-25-590 after the cross-check. An exception is made for rulings on whether the employer or employees are subject to the jurisdiction of the commission, which may be appealed under WAC 391-25-660.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 391-25-397	Special provision—State employees.
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AMENDATORY SECTION (Amending WSR 99-14-060, filed 7/1/99, effective 8/1/99)

WAC 391-55-071 Special provision—State patrol personnel. In the case of mediation involving officers of the Washington state patrol appointed under RCW 43.43.020, the mediator shall not consider (~~rates of pay or wage levels and~~) any matters relating to retirement benefits or health care benefits or other employee insurance benefits.

WSR 08-07-086

EXPEDITED RULES

DEPARTMENT OF AGRICULTURE

[Filed March 19, 2008, 8:58 a.m.]

Title of Rule and Other Identifying Information: WAC 16-302-010 Agencies that certify seed in Washington state.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Victor Shaul, Washington State Department of Agriculture, 21 North 1st Avenue, Yakima, WA 98902, fax (509) 249-6950, e-mail vshaul@agr.wa.gov, AND RECEIVED BY May 20, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to use the expedited rule-making process to update the address listed in rule for the Washington State Crop Improvement Association. Additionally, this process will also update the phone number for the department's seed program.

Reasons Supporting Proposal: The Washington State Crop Improvement Association moved their office headquarters from Yakima to Pullman. Therefore, it is necessary to update the address accordingly. Additionally, the phone number currently listed in WAC for the department's seed program is out of date. Therefore, it is necessary to update the phone number.

Statutory Authority for Adoption: Chapters 15.49 and 34.05 RCW.

Statute Being Implemented: RCW 15.49.005.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Victor Shaul, Operations Manager,

Yakima, (509) 249-6950; and Enforcement: Fawad Shah, Program Manager, Yakima, (509) 249-6959.

March 19, 2008
Dennis Hannapel
Assistant Director

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

WAC 16-302-010 Agencies that certify seed in Washington state. (1) Seed certification in Washington state is conducted under the authority of chapter 15.49 RCW. The department conducts seed certification in cooperation with the WSCIA, Washington State University and AOSCA.

(2) The WSCIA is designated to assist the department in the certification of certain agricultural seeds. A memorandum of understanding between the department and the WSCIA designates WSCIA to act as the director's duly authorized agent for the purpose of certifying seed of buckwheat, chickpeas, field peas, lentils, millet, soybeans, small grain, sorghum and forest trees. The address and phone number for the WSCIA office is (~~(414 S. 46th Avenue, Yakima, WA 98908, (509) 966-2234)~~) 1610 N.E. Eastgate Blvd. Suite 610, Pullman, WA 99163, 509-335-8250.

(3) The department's seed program certifies seed other than buckwheat, chickpeas, field peas, lentils, millet, soybeans, small grain, sorghum and forest trees. The address and phone number for the department seed program office is 21 N. 1st Avenue, Yakima, WA 98902, (~~((509) 225-2630)~~) 509-249-6950.

WSR 08-07-087

EXPEDITED RULES

DEPARTMENT OF REVENUE

[Filed March 19, 2008, 9:49 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-255 Carbonated beverage syrup tax, this rule explains the carbonated beverage syrup tax imposed by chapter 82.64 RCW. The syrup tax is an excise tax on the syrup, sold in this state, for use in making carbonated beverages.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-0127, e-mail GayleC@dor.wa.gov, AND RECEIVED BY May 19, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is

proposing to amend WAC 458-20-255 to make an edit change.

RCW 82.64.030(3) provides an exemption for wholesale sales of trademarked syrup "to a bottler appointed by the owner of the trademark to manufacture, distribute, and sell such trademarked syrup within a specified geographic territory." The wording [in] subsection (5)(d) of the rule (wholesale sales of trademarked syrup to bottlers) erroneously uses the term "trademarked carbonated beverage" instead of "trademarked syrup." This editing error appears to have occurred when the rule was previously revised to eliminate references to a separate carbonated beverage tax that no longer exists. Citations to statutes have also been added.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: Chapter 82.64 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6126; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

March 19, 2008

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-23-067, filed 11/9/06, effective 12/10/06)

WAC 458-20-255 Carbonated beverage syrup tax.

(1) **Introduction.** This section explains the carbonated beverage syrup tax (syrup tax) as imposed by chapter 82.64 RCW. The syrup tax is an excise tax on the number of gallons of carbonated beverage syrup sold in this state, for use in producing carbonated beverages that are sold at wholesale or retail in this state. The syrup tax is in addition to all other taxes.

Except as otherwise provided in this rule, the provisions of chapters 82.04, 82.08, 82.12 and 82.32 RCW regarding definitions, due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all general administrative provisions apply to the syrup tax.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the syrup tax. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **What is carbonated beverage syrup?** Carbonated beverage syrup (syrup) is a concentrated liquid that is added to carbonated water to produce a carbonated beverage. "Syrup" includes concentrated liquid marketed by manufacturers to which purchasers add water, carbon dioxide, or carbonated water to produce a carbonated beverage. "Carbonated beverage" includes any nonalcoholic liquid intended for human consumption that contains any amount of carbon

dioxide. Examples include soft drinks, mineral waters, seltzers, and fruit juices, if carbonated, and frozen carbonated beverages known as FCBs. "Carbonated beverage" does not include products such as bromides or carbonated liquids commonly sold as pharmaceuticals.

(3) **When is syrup tax imposed and how is it determined?** Syrup tax is imposed on the wholesale or retail sales of syrup within this state. The syrup tax is determined by the number of gallons of syrup sold. Fractional amounts are taxed proportionally.

(a) **When should syrup tax be reported and paid?** The frequency of reporting and paying the syrup tax coincides with the reporting periods of taxpayers for their business and occupation (B&O) tax. For example, a wholesaler who reports B&O tax monthly would also report any syrup tax liability on the monthly excise tax return.

(b) **What if I sell both previously taxed and nontaxed syrups?** Persons selling syrups in this state, some of which have been previously taxed in this or other states and some of which have not, may contact the department of revenue (department) for authorization to use formulary tax reporting. Prior to reporting in this manner, the person must receive a special ruling from the department that allows formulary reporting. A ruling may be obtained by writing the department at:

Taxpayer Information and Education
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

Persons selling previously taxed syrups should refer to subsections (5)(a) and (6) of this section for information about an exemption or credit that may be applicable to such sales.

(4) **Who is responsible for paying the syrup tax?** This subsection explains who is responsible for payment of the syrup tax for both wholesale and retail sales of syrup in this state.

(a) **Wholesale sales.** A wholesaler making a wholesale sale of syrup in this state must collect the tax from the buyer and report and pay the tax to the department. If, however, the wholesaler is prohibited from collecting the tax under the Constitution of this state or the Constitution or laws of the United States, the wholesaler is liable for the tax. A wholesaler who fails or refuses to collect the syrup tax with intent to violate the provisions of chapter 82.64 RCW, or to gain some advantage directly or indirectly is guilty of a misdemeanor. The buyer is responsible for paying the syrup tax to the wholesaler. The syrup tax required to be collected by the wholesaler is a debt from the buyer to the wholesaler, until the tax is paid by the buyer to the wholesaler. Except as provided in subsection (5)(b)(ii) of this section, the buyer is not obligated to pay or report the syrup tax to the department.

(b) **Retail sales.** A retailer making a retail sale in this state of syrup purchased from a wholesaler who has not collected the tax must report and pay the tax to the department. Except as provided in subsection (5)(b)(ii) of this section, the buyer is not obligated to pay or report the syrup tax to the department.

(5) **Exemptions:** This subsection provides information on exemptions from the syrup tax.

(a) **Previously taxed syrup.** Any successive sale of previously taxed syrup is exempt. See RCW 82.64.030(1). "Previously taxed syrup" is syrup on which tax has been paid under chapter 82.64 RCW.

(i) All persons selling or otherwise transferring possession of taxed syrup, except retailers, must separately itemize the amount of the syrup tax on the invoice, bill of lading, or other instrument of sale. Beer and wine wholesalers selling syrup on which the syrup tax has been paid and who are prohibited under RCW 66.28.010 from having a direct or indirect financial interest in any retail business may, instead of a separate itemization of the amount of the syrup tax, provide a statement on the instrument of sale that the syrup tax has been paid. For purposes of the payment and the itemization of the syrup tax, the tax computed on standard units of a product (e.g., cases, liters, gallons) may be stated in an amount rounded to the nearest cent. In competitive bid documents, unless the syrup tax is separately itemized in the bid documents, the syrup tax will not be considered as included in the bid price. In either case, the syrup tax must be separately itemized on the instrument of sale except when the separate itemization is prohibited by law.

(ii) Any person prohibited by federal or state law, ruling, or requirement from itemizing the syrup tax on an invoice, bill of lading, or other document of delivery must retain the documentation necessary for verification of the payment of the syrup tax.

(iii) A subsequent sale of syrup sold or delivered upon an invoice, bill of lading, or other document of sale that contains a separate itemization of the syrup tax is exempt from the tax. However, a subsequent sale of syrup sold or delivered to the subsequent seller upon an invoice, bill of lading, or other document of sale that does not contain a separate itemization of the syrup tax is conclusively presumed to be previously untaxed syrup, and the seller must report and pay the syrup tax unless the sale is otherwise exempt.

(iv) The exemption for syrup tax previously paid is available for any person selling previously taxed syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the prior seller.

(v) **Example.** Company A sells to Company B a syrup on which Company A paid a similar syrup tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid (see subsection (6) of this section). It provides Company B with an invoice containing a separate itemization of the syrup tax. Company B's subsequent sale is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) **Syrup transferred out-of-state.** Any syrup that is transferred to a point outside the state for use outside the state is exempt. See RCW 82.64.030(2). The exemption for the sale of exported syrup may be taken by any seller within the chain of distribution.

(i) **Required documentation.** The prior approval of the department is not required to claim an exemption from the syrup tax for exported syrup. The seller, at the time of sale, must retain in its records an exemption certificate completed

by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "Certificate of Tax Exempt Export Carbonated Beverage Syrup," or another certificate with substantially the same information. A blank exemption certificate can be obtained through the following means:

(A) From the department's internet web site at <http://dor.wa.gov>;

(B) By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options); or

(C) By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.

(ii) The exemption certificate may be used so long as some portion of the syrup is exported. Sellers are under no obligation to verify the amount of syrup to be exported by their buyers providing such certificates. Buyers providing exemption certificates for exported syrup agree to become liable for tax and any associated penalties and interest on syrup that is not exported.

(iii) Example. Company A sells a previously untaxed syrup to Company C. Company C provides the seller with a completed exemption certificate as explained in ~~((subsection (5)))~~(b)(i) of this ~~((section))~~ subsection. Company C sells the syrup to Company D, who provides Company C with an exemption certificate. Company D decides to not export a portion of the purchased syrup. Companies A and C can both accept exemption certificates. Company D is responsible for paying syrup tax on the syrup not exported.

(iv) Persons who make sales of syrup to persons outside this state must keep the proofs required by WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) to substantiate the out-of-state sales.

(c) **Taxation prohibited under the United States Constitution.** Persons or activities that the state is prohibited from taxing under the United States Constitution are exempt. See RCW 82.64.050(1).

(d) **Wholesale sales of trademarked syrup to bottlers.** Any wholesale sale of a trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell the trademarked ~~((carbonated beverage))~~ syrup within a specific geographic territory is exempt. See RCW 82.64.030(3).

(6) Syrup tax credits.

(a) **B&O tax credit for syrup tax paid.** Chapter 245, Laws of 2006 (SSB 6533) provided a B&O tax credit effective July 1, 2006. The credit is available to any buyer of syrup using the syrup in making carbonated beverages that are then sold, provided that the syrup tax, imposed by RCW 82.64.-020, has been paid. The tax credit is a percentage of the syrup tax paid.

(i) **How much is the credit?** For syrup purchased July 1, 2006, through June 30, 2007, the B&O tax credit for the buyer is equivalent to twenty-five percent of the syrup tax paid. From July 1, 2007, through June 30, 2008, the allowable credit is fifty percent. From July 1, 2008, through June 30, 2009, the credit is seventy-five percent. As of July 1, 2009, the buyer is entitled to a B&O tax credit of one hundred percent of the syrup tax paid.

(ii) **When can the credit be taken?** The B&O tax credit can be claimed against taxes due for the tax reporting period in which the taxpayer purchased the syrup. The credit cannot exceed the amount of B&O tax due, nor can credit be refunded. Unused credit may be carried over and used for future reporting periods for a maximum of one year. The year starts at the end of the reporting period in which the syrup was purchased and credit was earned. See (b)(ii)(B)(iii) of this subsection for record documentation and retention.

(b) **Credit for syrup tax paid to another state.** Credit is allowed against the taxes imposed by chapter 82.64 RCW for any syrup tax paid to another state with respect to the same syrup. The amount of the credit cannot exceed the tax liability arising under chapter 82.64 RCW. The amount of credit is limited to the amount of tax paid in this state upon the wholesale sale of the same syrup in this state. In addition, the credit may not be applied against any tax paid or owed in this state other than the syrup tax imposed by chapter 82.64 RCW.

(i) **What is a state?** For purposes of the syrup tax credit, "state" is any state of the United States other than Washington, or any political subdivision of another state; the District of Columbia; and any foreign country or political subdivision of a foreign country.

(ii) **What is a syrup tax?** For purposes of the syrup tax credit, "syrup tax" means a tax that is:

(A) Imposed on the sale at wholesale of syrup and is not generally imposed on other activities or privileges; and

(B) Measured by the volume of the syrup.

(ii) **How and when to claim the credit.** Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when possible. The excise tax return provides a line for reporting syrup tax, and the credit must be taken in the credit section under the credit classification "other credits." A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidence of entitlement to credits be submitted with the return. Such proofs must be retained in permanent records for the purpose of verification of credits taken.