

# Chapter 284-22 WAC

## USL&H ASSIGNED RISK PLAN

### WAC

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**WAC 284-22-010 Title.** These rules and regulations, adopted under the authority of chapter 177, Laws of 1993, shall be entitled the Washington United States Longshore and Harbor Workers' Compensation Act assigned risk plan (hereinafter referred to as "the assigned risk plan").

[Statutory Authority: RCW 48.02.060, 93-20-019 (Order R 93-17), § 284-22-010, filed 9/24/93, effective 10/25/93. Statutory Authority: RCW 48.02.060 and 1992 c 209, 92-19-095 (Order R 92-12), § 284-22-010, filed 9/16/92, effective 10/17/92.]

**WAC 284-22-020 Purpose.** The purposes of the assigned risk plan are:

(1) To promote a strong and healthy maritime industry, within Washington state, by ensuring the continued availability of workers' compensation coverage required by the United States Longshore and Harbor Workers' Act and maritime employers' liability coverage incidental to such workers' compensation coverage for employers who are unable to purchase it through the normal insurance market.

(2) To provide a mechanism through which the net income or loss of the assigned risk plan is shared by authorized insurers writing primary or excess United States Longshore and Harbor Workers' insurance within Washington state and the Washington state industrial insurance fund.

[Statutory Authority: RCW 48.02.060 and 48.22.070, 03-03-052 (Matter No. R 2001-10), § 284-22-020, filed 1/13/03, effective 2/13/03. Statutory Authority: RCW 48.02.060, 93-20-019 (Order R 93-17), § 284-22-020, filed 9/24/93, effective 10/25/93. Statutory Authority: RCW 48.02.060 and 1992 c 209, 92-19-095 (Order R 92-12), § 284-22-020, filed 9/16/92, effective 10/17/92.]

**WAC 284-22-030 Effective date.** (1) The assigned risk plan shall become effective at 12:01 a.m. July 1, 1992.

(2) The assigned risk plan shall not terminate until all policies under the plan have expired and outstanding obligations incurred under such policies have been satisfied.

[Statutory Authority: RCW 48.02.060, 95-18-106, § 284-22-030, filed 9/6/95, effective 10/7/95; 93-20-019 (Order R 93-17), § 284-22-030, filed 9/24/93, effective 10/25/93. Statutory Authority: RCW 48.02.060 and 1992 c 209, 92-19-095 (Order R 92-12), § 284-22-030, filed 9/16/92, effective 10/17/92.]

**WAC 284-22-040 Territory.** (1) The assigned risk plan shall provide coverage only for employers who are unable to purchase United States Longshore and Harbor Workers' Compensation Act (USL&H) coverage and maritime

employers' liability coverage incidental to such workers' compensation coverage for their operations within the state of Washington.

(2) The assigned risk plan may, at its discretion, provide USL&H coverage and maritime employers' liability coverage incidental to such workers' compensation coverage for Washington state employers who are unable to purchase USL&H coverage for their Washington employees who temporarily work out-of-state.

[Statutory Authority: RCW 48.02.060 and 48.22.070, 10-11-056 (Matter No. R 2008-07), § 284-22-040, filed 5/13/10, effective 6/13/10. Statutory Authority: RCW 48.02.060 and 1992 c 209, 92-19-095 (Order R 92-12), § 284-22-040, filed 9/16/92, effective 10/17/92.]

**WAC 284-22-050 Definitions.** (1) "Administrator" means any organization designated by the assigned risk plan and approved by the commissioner to provide administrative support for the plan. Such support shall be defined by the governing committee in its operating plan. It may include, but is not limited to, acceptance, processing, and distribution of incoming applications to the servicing carrier(s), collection of and accounting for premium income, determination of assigned risk plan reserves, investment of assigned risk plan assets, collection of statistical data, actuarial assistance for rate making, development of policy contracts, and auditing the activities of servicing carrier(s) to ensure that the assigned risk plan's rules are being applied properly.

(2) "Applicant" means an employer, seeking coverage from the assigned risk plan, who has, in good faith, been unable to purchase United States Longshore and Harbor Workers' Compensation Act coverage from authorized insurers writing such coverage in Washington. "Applicant" does not include employers seeking coverage through the plan solely because of the lack of availability of maritime employers' liability coverage.

(3) "Authorized insurer" means any insurance company licensed to write workers' compensation insurance on a direct basis in this state.

(4) "Commissioner" means the commissioner of insurance of the state of Washington.

(5) "Governing committee" means the committee responsible for administering the assigned risk plan. It shall consist of thirteen members, who shall be appointed by the commissioner. The director of the department of labor and industries shall be one member. The remaining members shall be selected to insure equal representation of each of the following interest groups; authorized insurers writing primary or excess workers' compensation insurance, insurance producers, organized labor, and maritime employers.

(6) "Maritime employers' liability" means that liability imposed by 46 U.S.C. 688 (the Jones Act) and general maritime law for bodily injury including death of a master or member of the crew of any vessel.

(7) "Servicing carrier" means any authorized insurer designated by the assigned risk plan and approved by the commissioner and the United States Department of Labor to issue workers' compensation policies. It shall issue policies on behalf of the assigned risk plan, provide safety engineering, handle claims incurred by those covered by the assigned risk plan, provide premium audits, perform underwriting functions, and perform other duties as defined by the governing committee in its operating procedures.

(8) "State industrial insurance fund" means that entity defined in RCW 51.08.175 which provides primary workers' compensation insurance on a direct basis in this state.

(9) "United States longshore and harbor workers' compensation coverage" means that workers' compensation coverage required of employers by the United States Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Secs. 901 through 950. It is hereinafter referred to as USL&H coverage.

(10) "Written premium" means gross direct premiums (excluding premiums on risks written ceded to the assigned risk plan), within the state of Washington, charged during the first preceding calendar year with respect to United States Longshore and Harbor Workers' insurance, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

[Statutory Authority: RCW 48.02.060 and 48.22.070. 06-24-038 (Matter No. R 2006-09), § 284-22-050, filed 11/30/06, effective 12/31/06; 03-03-052 (Matter No. R 2001-10), § 284-22-050, filed 1/13/03, effective 2/13/03. Statutory Authority: RCW 48.02.060, 93-20-019 (Order R 93-17), § 284-22-050, filed 9/24/93, effective 10/25/93. Statutory Authority: RCW 48.02.060 and 1992 c 209, 92-19-095 (Order R 92-12), § 284-22-050, filed 9/16/92, effective 10/17/92.]

**WAC 284-22-060 Participation.** (1) Participation in the assigned risk plan is mandatory for all authorized insurers writing primary or excess United States Longshore and Harbor Workers' Act compensation insurance in Washington state, and for the state industrial insurance fund.

(2) Any assessments and distributions declared by the governing committee of the plan shall be allocated in accordance with RCW 48.22.070, fifty percent to the industrial insurance fund and fifty percent to the insurer participants as a group. Assessments and distributions shall be allocated amongst the eligible insurer participants according to their relative subject premium volumes as determined by the governing committee, subject to a reasonable de minimus premium threshold established by the governing committee for each assessment or distribution.

(3) For purposes of assessments and distributions, "subject premium" shall be for each authorized and eligible insurer its primary and excess written premiums for risks in the state of Washington covered under United States Longshore and Harbor Workers' Act compensation insurance, and maritime employer's liability insurance incidental to that workers' compensation insurance, for the relevant time periods as determined by the governing committee. If any insurer fails to provide its subject premium data in an accurate and timely manner upon request by the plan, the governing committee may, in its sole discretion, substitute that insurer's direct written premiums for workers' compensation reported or reportable in its statutory annual statement as statutory page fourteen data for the state of Washington, or the govern-

ing committee may, in its sole discretion, substitute a zero amount for that insurer.

(4) Timing and amount of assessments and distributions shall be at the discretion of the governing committee, subject to the commissioner's approval. Assessments shall be based upon a demonstrable need to obtain additional funds to safeguard the operations of the plan in a financially sound and responsible manner, including, but not limited to, fully funding all of the plan's current and long term financial obligations. The governing committee may request approval for distributions to plan participants from time to time, of surpluses incurred which exceed amounts deemed necessary by the governing committee to safeguard the operations of the plan in a financially sound and responsible manner, including, but not limited to, fully funding all of the plan's current and long term financial obligations. Notwithstanding any prior distributions which may have been approved or directed by the commissioner, if the plan has been terminated by the legislature, then the plan shall be required to distribute, in accordance with RCW 48.22.070, any surplus of funds after payment or provision for payment of all of the plan's liabilities.

[Statutory Authority: RCW 48.02.060 and 48.22.070. 03-03-052 (Matter No. R 2001-10), § 284-22-060, filed 1/13/03, effective 2/13/03. Statutory Authority: RCW 48.02.060, 93-20-019 (Order R 93-17), § 284-22-060, filed 9/24/93, effective 10/25/93. Statutory Authority: RCW 48.02.060 and 1992 c 209, 92-19-095 (Order R 92-12), § 284-22-060, filed 9/16/92, effective 10/17/92.]

**WAC 284-22-070 Administration.** (1) The governing committee shall be responsible for the administration of the assigned risk plan.

(2) The committee shall meet at least once each calendar quarter. Seven members shall constitute a quorum, provided that the department of labor and industries and each of the defined interest groups must be represented.

(3) Members of the governing committee shall serve without compensation. However, each person serving on the governing committee or any subcommittee thereof shall be indemnified by the assigned risk plan for all costs and expenses actually and necessarily incurred in connection with the defense of any action, suit, or proceeding in which such person is a named party by reason of being a member of the governing committee. This indemnification shall not apply in those instances in which the person has been judged in such action, suit, or proceeding to be liable by reason of willful misconduct in performance of his/her duties as a member of the committee.

(4) The committee shall:

(a) Select a presiding officer.

(b) Draft and submit to the commissioner for approval operating procedures for the assigned risk plan. Such procedures shall be drafted to carry out the purposes of chapter 209, Laws of 1992. These procedures shall include, but are not limited to, provisions:

(i) Defining the specific conditions under which employers become eligible for coverage.

(ii) Defining the role and functions of the administrator.

(iii) Defining the role and function of the servicing carrier(s). These roles shall include the requirement that the ser-

vicings) carrier file the assigned risk plan's policy forms and rates with the commissioner, on its behalf, prior to use.

(iv) Establishing specific procedures for the control of the assigned risk plan's funds. These procedures shall ensure that anyone handling funds do so responsibly.

(v) Defining standard policy forms similar to those used for USL&H and maritime employers' liability coverage in the voluntary market within Washington and requiring the use of such forms by the servicing carrier(s).

(vi) Defining how the rates to be used by the servicing carrier(s) shall be established. The procedures shall require that rates be developed in an actuarially sound manner. They must also require that the servicing carrier(s) use these rates when issuing assigned risk policies.

(vii) Establishing how an applicant's eligibility for maritime employers' liability will be determined. The procedure must provide an eligibility test to be applied at the time of acceptance of the applicant for such coverage and not upon receipt of notice of a claim.

(viii) Defining the limits of maritime employers' liability coverage to be offered by the assigned risk plan. The assigned risk plan must offer such coverage with limits up to one hundred thousand dollars per occurrence. It may provide higher limits if the governing committee deems such limits are necessary to promote its purpose.

(ix) Defining a procedure under which appeals received from applicants, persons insured, or participating insurers aggrieved by any action or decision of the assigned risk plan will be received, investigated, and resolved.

(c) Select an administrator.

(d) Select the servicing carrier(s).

(e) Retain such accounting, actuarial, clerical, professional, or other services as the committee deems necessary to operate the assigned risk plan in a sound and competent manner.

(f) Maintain separate statistics on business written by the assigned risk plan. These statistics shall be in sufficient detail to permit the committee and the commissioner to determine the financial condition of the plan when necessary. In any event, the committee shall make quarterly reports to the commissioner providing the following information:

(i) The number of applications received by the administrator.

(ii) The number of policies issued.

(iii) The amount of premiums written during the previous quarter and year-to-date.

(iv) The amount of losses incurred and paid, and allocated loss adjustment expense incurred and paid during the previous quarter and year-to-date.

(g) Initiate and carry out, with the approval of the commissioner, such interim and regular assessments of those participating in the assigned risk plan as may be necessary and reasonable for its operation in a sound and competent manner.

(h) Take such other actions as the committee considers necessary and appropriate to properly administer the activities of the assigned risk plan.

[Statutory Authority: RCW 48.02.060 and 1992 c 209, 92-19-095 (Order R 92-12), § 284-22-070, filed 9/16/92, effective 10/17/92.]

(5/13/10)

**WAC 284-22-080 Approval by commissioner.** (1) The commissioner shall approve the assigned risk plan's operating procedures if they provide for the fair, reasonable, and equitable administration of the assigned risk plan for all concerned.

(2) The commissioner shall approve rate and form filings made by the servicing carrier(s) on behalf of the plan using the same standards that would apply to an insurance program designed and filed with the commissioner by an authorized insurer.

(3) The commissioner shall approve the assigned risk plan's requests for interim and regular assessments, and requests for distributions from time to time, upon receipt of evidence that such assessments are necessary, or such distributions are prudent, and that such assessments or distributions ensure the plan's continued operation in a financially sound and responsible manner.

[Statutory Authority: RCW 48.02.060 and 48.22.070. 03-03-052 (Matter No. R 2001-10), § 284-22-080, filed 1/13/03, effective 2/13/03. Statutory Authority: RCW 48.02.060 and 1992 c 209, 92-19-095 (Order R 92-12), § 284-22-080, filed 9/16/92, effective 10/17/92.]

**WAC 284-22-090 Right of appeal.** Any applicant, person insured under the plan, or participating insurer, aggrieved by a ruling or decision of the plan shall have a right to appeal such decision to the commissioner. Appeals to the commissioner under this program shall in all other respects not set forth herein, be handled in accordance with chapters 48.04 and 34.05 RCW.

[Statutory Authority: RCW 48.02.060 and 1992 c 209, 92-19-095 (Order R 92-12), § 284-22-090, filed 9/16/92, effective 10/17/92.]