

Chapter 284-19 WAC

WASHINGTON ESSENTIAL PROPERTY INSURANCE INSPECTION AND PLACEMENT PROGRAM

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

284-19-030	Effective date. [Order R-73-2, § 284-19-030, filed 3/30/73; Order R-69-1, § 284-19-030, filed 1/28/69.] Repealed by 98-13-095 (Matter No. R 98-10), filed 6/16/98, effective 7/17/98. Statutory Authority: RCW 48.02.060.
284-19-200	Termination of program. [Statutory Authority: RCW 48.02.060, 86-20-039 (Order R 86-4), § 284-19-200, filed 9/25/86; 84-23-006 (Order R 84-5), § 284-19-200, filed 11/8/84; Order R 77-1, § 284-19-200, filed 3/24/77; Order R-73-2, § 284-19-200, filed 3/30/73; Order R-69-1, § 284-19-200, filed 1/28/69.] Repealed by 87-22-022 (Order R 87-11), filed 10/27/87. Statutory Authority: RCW 48.02.060 and 48.58.010(5).

WAC 284-19-010 Title. These rules and regulations are titled the **Washington essential property insurance inspection and placement program** (referred to as the program).

[Statutory Authority: RCW 48.02.060, 98-13-095 (Matter No. R 98-10), § 284-19-010, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-010, filed 1/28/69.]

WAC 284-19-020 Purposes of program. The purposes of the program are:

- (1) To assure stability in the property insurance market of this state.
- (2) To encourage maximum use, in obtaining essential property insurance, of the available, normal insurance market provided by authorized insurers.
- (3) To make essential property insurance available where it cannot be obtained through the normal insurance market, subject to the conditions stated in this chapter.
- (4) To encourage the improvement of the condition of properties located in the state of Washington and to further orderly community development.
- (5) To establish a FAIR plan (fair access to insurance requirements), an industry placement facility and a joint reinsurance association for the equitable distribution and place-

ment of risks among insurers in the manner and subject to the conditions stated in this chapter.

[Statutory Authority: RCW 48.02.060, 06-15-030 (Matter No. R 2006-03), § 284-19-020, filed 7/10/06, effective 8/10/06; 98-13-095 (Matter No. R 98-10), § 284-19-020, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-020, filed 1/28/69.]

WAC 284-19-040 Participation. Participation in this program is mandatory for all insurers and fraternal benefit societies authorized to engage in the property insurance business in this state, who have "premiums written," as defined in this chapter.

[Statutory Authority: RCW 48.02.060, 98-13-095 (Matter No. R 98-10), § 284-19-040, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-040, filed 1/28/69.]

WAC 284-19-050 Definitions. (1) "Insurer" means any insurance company or other organization licensed to write and engage in writing property insurance business, including the property insurance components of multiperil policies, on a direct basis, in this state.

(2) "Essential property insurance" means the coverage against direct loss to real and tangible personal property at a fixed location that is provided in the standard fire policy and extended coverage endorsement, and shall include also the perils of vandalism and malicious mischief and such additional lines of property insurance as may be designated by the commissioner. Essential property insurance specifically includes insurance against direct loss to property which is being constructed or rehabilitated (builder's risk coverage). It does not include automobile insurance or insurance on farm or manufacturing risks.

(3) "Industry placement facility" (referred to as the facility) means the organization formed by insurers to assist applicants in securing essential property insurance and to administer the FAIR plan and the joint reinsurance association.

(4) "Inspection bureau" means the Washington Surveying and Rating Bureau.

(5) "Premiums written" means gross direct premiums (excluding that portion of premiums on risks ceded to the joint reinsurance association) charged during the second preceding calendar year with respect to property in this state on all policies of property insurance and property insurance components of all multiperil policies, as defined and computed by the facility, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

(6) A "service insurer" means any company designated by the facility and approved by the commissioner to issue policies under this program.

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

[Statutory Authority: RCW 48.02.060. 06-15-030 (Matter No. R 2006-03), § 284-19-050, filed 7/10/06, effective 8/10/06; 98-13-095 (Matter No. R 98-10), § 284-19-050, filed 6/16/98, effective 7/17/98; Order R-73-2, § 284-19-050, filed 3/30/73; Order R-70-1, § 284-19-050, filed 7/31/70; Order R-69-1, § 284-19-050, filed 1/28/69.]

WAC 284-19-060 FAIR plan—Inspections and reports. (1) Any person having an insurable interest in real or tangible personal property at a fixed location is entitled to an inspection of the property by the inspection bureau at no cost, upon application to the facility. The inspection may be requested by the property owner, a representative of the property owner, the insurer, or the insurance producer and need not be in writing. Requests for inspections shall be transcribed on a form approved by the facility. A deposit premium is not required as a precondition to inspection.

(2) The owner of the building need not be present for a tenant to obtain an inspection, but the inspection bureau must be provided full access to the property for which insurance is sought.

(3) An inspection report shall be made for each property inspected. The report shall cover pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph of the property may be taken during the inspection.

(4) During the inspection, the inspector shall point out features of structure and occupancy to the applicant or a representative of the applicant, if present, and shall indicate those features which may result in condition charges if the risk is accepted. The inspector has no authority to advise whether the facility will provide the coverage.

(5) The report shall include a rate make-up statement, including any condition charges or surcharges imposed by inspection or under the program, or under any substandard rating plan approved by the commissioner. A copy of the inspection report shall be made available to the applicant or the applicant's agent upon request.

[Statutory Authority: RCW 48.02.060. 06-15-030 (Matter No. R 2006-03), § 284-19-060, filed 7/10/06, effective 8/10/06; 98-13-095 (Matter No. R 98-10), § 284-19-060, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-060, filed 1/28/69.]

WAC 284-19-070 FAIR plan business—Distribution and placement. (1) The facility shall not require that the applicant demonstrates that he or she is unable to obtain insurance in the normal market, as a precondition to the placement of business under the FAIR plan. The facility, however, may require an insurance producer to furnish copies of documents or information showing what effort was made by the insurance producer to obtain insurance in the normal market. The facility shall forward to the commissioner the names of insurance producers who fail to cooperate or who appear to fail to make reasonable efforts on behalf of applicants for insurance to obtain insurance in the normal market.

(2) Assessments upon each insurer participating in this program shall be levied by the facility on the same percentage allocation basis as the insurer's premiums written bears to the total of all premiums written by all insurers participating in the program.

(a) The maximum limit of liability that may be placed through this program on any one property at one location is \$1,500,000. The facility undertakes the responsibility of

seeking to place that portion of a risk that exceeds \$1,500,000.

(b) The term "at one location" as used in this chapter refers to real and personal property consisting of and contained in a single building, or consisting of and contained in contiguous buildings under one ownership.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5). 11-01-159 (Matter No. R 2010-09), § 284-19-070, filed 12/22/10, effective 1/22/11. Statutory Authority: RCW 48.02.060. 98-13-095 (Matter No. R 98-10), § 284-19-070, filed 6/16/98, effective 7/17/98. Statutory Authority: RCW 48.01.030, 48.02.060, 48.18.480, and 48.30.020. 79-08-019 (Order R 79-3), § 284-19-070, filed 7/11/79; Order R-69-1, § 284-19-070, filed 1/28/69.]

WAC 284-19-080 Procedure after inspection and submission. (1) Within three business days after receipt of the inspection report, the facility shall notify the insured and the agent that:

(a) The risk is acceptable; or

(b) The risk will be acceptable if the improvements noted in the action report are made by the applicant and confirmed by reinspection; or

(c) The risk is not acceptable for the reasons stated in the action report.

(2) If the risk is accepted by the facility, and upon receipt of premium, the policy or binder shall be delivered within two business days. No coverage shall commence until the application is accepted and the premium paid to the facility.

(3) In the event a risk is declined because it fails to meet reasonable underwriting standards, the facility will so notify the applicant and the commissioner. Reasonable underwriting standards shall include the following:

(a) Physical condition of the property, such as its construction, heating, wiring, evidence of previous fires or general deterioration;

(b) Its present use or housekeeping, such as vacancy, overcrowding, storage of rubbish or flammable materials;

(c) Other specific characteristics of ownership, condition, occupancy or maintenance which are violative of public policy and result in unreasonable exposures to loss. Neighborhood or area location or any environmental hazard beyond the control of the property owner is not an acceptable criterion for declining a risk.

(4) If the risk is conditionally declined because the property does not meet reasonable underwriting standards, but can be improved to meet such standards, the facility shall promptly advise the applicant and the commissioner what improvements noted in the action report should be made to the property. Upon completion of the improvements by the applicant or property owner, the facility will have the property promptly reinspected.

(5) If the inspection of the property reveals that there are one or more substandard conditions, surcharges shall be imposed in conformity with the substandard rating plan approved by the commissioner. In this event, the facility shall advise the applicant of what improvements, if any, the applicant may make to bring the property to insurable condition at unsurcharged rates.

[Statutory Authority: RCW 48.02.060. 98-13-095 (Matter No. R 98-10), § 284-19-080, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-080, filed 1/28/69.]

WAC 284-19-090 Joint reinsurance association. (1) A joint reinsurance association referred to as the association is created consisting of all insurers.

(2) The association is authorized to assume and cede reinsurance on behalf of insurers for eligible risks written by insurers through the FAIR plan. The reinsurance assumed by the association is 100% of each risk written under this program under \$1,500,000.

(3) Each insurer participates in the total writings, expenses, profits and losses of the association in proportion to its premiums written.

(4) If any reinsuring member fails, by reason of insolvency, to pay its proportion of any expense or of any loss as an assuming reinsurer incurred by the facility under the program, the unpaid loss or expense shall be paid by the remaining members. Each remaining member contributes in the manner provided for in the distribution of expenses and losses under the program, deleting the proportion of the defaulting member. The facility is subrogated to the rights of the remaining members in any liquidation proceeding and has full authority on their behalf to exercise such rights in any action or proceeding.

[Statutory Authority: RCW 48.02.060. 98-13-095 (Matter No. R 98-10), § 284-19-090, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-090, filed 1/28/69.]

WAC 284-19-100 Standard policy coverage—Coding. All policies issued shall be for essential property insurance on standard policy forms. The policies shall be separately coded and issued for a term of one year, at rates set by the inspection bureau under filings approved by the commissioner. Individual company deviation filings shall not apply to risks written under this program.

[Statutory Authority: RCW 48.02.060. 98-13-095 (Matter No. R 98-10), § 284-19-100, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-100, filed 1/28/69.]

WAC 284-19-110 Cancellation and nonrenewal under this program. (1) The facility shall not cancel or nonrenew a policy issued under this program except:

(a) For cause which would have been grounds for nonacceptance of the risk under the program had the cause been known to the insurer at the time of acceptance; or

(b) For nonpayment of premium; or

(c) With the approval of the governing committee.

(2) Notice of cancellation or nonrenewal, together with a statement of the reason, shall be sent to the insured.

(3) Any cancellation or nonrenewal notice to the insured shall be accompanied by a statement that the insured has a right of appeal as provided in WAC 284-19-120.

[Statutory Authority: RCW 48.02.060. 98-13-095 (Matter No. R 98-10), § 284-19-110, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-110, filed 1/28/69.]

WAC 284-19-120 Right of appeal. (1) Any applicant or insurer has a right of appeal to the committee, including the right to appear in person before the committee, if requested by the party seeking appeal.

(2) A decision of the committee may be appealed to the commissioner.

(3) Each denial of insurance under this program shall be accompanied by a statement setting forth the provisions of this section.

(4) Notification of appeal may be made to the committee through the manager of the facility or any member of the committee.

(5) All appeals to the committee or to the commissioner shall be in writing and must indicate in what respect the applicant feels aggrieved.

(6) The committee shall make decisions in writing on appeals within fifteen business days after notification of appeal is received, unless delayed by mutual consent. The majority of committee members must concur in all decisions adverse to the party seeking appeal.

(7) Appeals to the commissioner under this program, in all other respects not set forth in this chapter, shall be handled in accordance with chapters 48.04 and 34.05 RCW (Administrative Procedure Act).

[Statutory Authority: RCW 48.02.060. 98-13-095 (Matter No. R 98-10), § 284-19-120, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-120, filed 1/28/69.]

WAC 284-19-130 Commission. Commission under this program shall be 10 percent on the policy premium and paid to the licensed producer designated by the applicant.

[Statutory Authority: RCW 48.02.060. 98-13-095 (Matter No. R 98-10), § 284-19-130, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-130, filed 1/28/69.]

WAC 284-19-140 Administration. (1) This program shall be administered by a governing committee (referred to as the committee) of the facility, subject to the supervision of the commissioner, and operated by a manager appointed by the committee.

(2) The committee consists of nine members, including five insurers, one of which is elected from each of the following:

(a) American Insurance Association;

(b) Alliance of American Insurers;

(c) National Association of Independent Insurers;

(d) All other stock insurers; and

(e) All other nonstock insurers.

A sixth member shall be an insurer designated as the service insurer under the program. The commissioner shall designate a sixth member if there is more than one service insurer. The other three members are individuals who are appointed by the commissioner to serve, none of whom have a direct or indirect interest in any insurer except as a policyholder. The individual members serve for a period of one year or until their successors are appointed. Not more than one insurer in a group under the same management or ownership shall serve on the committee at the same time. One of the six insurers on the governing committee shall be a domestic insurer.

(3) The governing committee may issue operating procedures and other directives to carry out the purposes of this plan and directives of the commissioner.

(4) Each person serving on the committee or any subcommittee, each member of the facility, and each officer and employee of the facility shall be indemnified by the facility against all costs and expenses actually and necessarily

incurred in connection with the defense of any action, suit, or proceeding in which he or she is made a party by reason of being or having been a member of the committee, or a member or officer or employee of the facility except in relation to matters as to which he or she has been judged in such action, suit, or proceeding to be liable by reason of willful misconduct in the performance of duties as a member of the committee, or a member or officer or employee of the facility. This indemnification does not apply to any loss, cost, or expense on insurance policy claims under the program. Indemnification is not exclusive of other rights to which such member or officer may be entitled as a matter of law.

[Statutory Authority: RCW 48.02.060, 98-13-095 (Matter No. R 98-10), § 284-19-140, filed 6/16/98, effective 7/17/98. Statutory Authority: RCW 48.01.030, 48.02.060, 48.18.480, and 48.30.020, 79-08-019 (Order R 79-3), § 284-19-140, filed 7/11/79; Order R-69-1, § 284-19-140, filed 1/28/69.]

WAC 284-19-150 Annual and special meetings. (1)

There shall be an annual meeting of the insurers on a date fixed by the committee. The three associations (WAC 284-19-140(2)) shall designate or elect their representatives to the committee. The two nonassociation groups of companies shall elect their respective representatives by a majority vote counted on a weighted basis in accordance with each insurer's premiums written and the aggregate premiums written for all insurers in the respective groups of companies. Representatives on the committee shall serve for a period of one year or until successors are elected or designated.

(2) A special meeting may be called at a time and place designated by the committee or upon the written request to the committee of any ten insurers, not more than one of which may be a group under the same management or ownership.

(3) Twenty days' notice of the annual or special meeting shall be given in writing by the committee to the insurers. A majority of the insurers constitutes a quorum. Voting by proxy is permitted. Notice of any meeting shall be accompanied by an agenda for the meeting.

(4) Any matter, including amendment of this program, may be proposed and voted upon by mail, provided the procedure is unanimously authorized by the members of the committee present and voting at any meeting of the committee. If approved by the committee, notice of any proposal is mailed to the insurers not less than twenty days prior to the final date fixed by the committee for voting.

(5) At any regular or special meeting at which the vote of the insurers is or may be required on any proposal, including amendment to this program, or any vote of the insurers which may be taken by mail on any proposal, such votes shall be cast and counted on a weighted basis in accordance with each insurer's premiums written. A proposal becomes effective when approved by at least two-thirds of the votes cast on the weighted basis, except amendments to this program that will require administrative action by the commissioner.

[Statutory Authority: RCW 48.02.060, 98-13-095 (Matter No. R 98-10), § 284-19-150, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-150, filed 1/28/69.]

WAC 284-19-160 Duties of the committee. (1) The committee shall meet as often as may be required to perform the general duties of the administration of the program or on

the call of the commissioner. Three insurers of the committee shall constitute a quorum.

(2) The committee may appoint a manager to budget expenses, levy assessments, disburse funds and perform all other duties provided in this chapter or necessary or incidental to the proper administration of the program. The manager serves at the pleasure of the committee. The adoption of or substantive changes in pension plans or employee benefit programs is subject to approval of the insurers. Assessments upon each insurer shall be levied on the basis of its premiums written.

(3) Annually the manager prepares an operating budget that is subject to approval of the committee. The budget shall be furnished to the insurers after approval. Any contemplated expenditure in excess of or not included in the annual budget requires prior approval by the committee.

(4) The committee furnishes to all insurers and to the commissioner a written report of operations annually in a form and detail as the committee may determine.

[Statutory Authority: RCW 48.02.060, 98-13-095 (Matter No. R 98-10), § 284-19-160, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-160, filed 1/28/69.]

WAC 284-19-165 Cooperation of producers. All licensed insurance producers shall provide full cooperation in carrying out the aims and the operation of the FAIR plan.

[Statutory Authority: RCW 48.02.060 (3)(a) and 48.17.010(5), 11-01-159 (Matter No. R 2010-09), § 284-19-165, filed 12/22/10, effective 1/22/11; Order R-69-1, § 284-19-165, filed 1/28/69.]

WAC 284-19-170 Public education and notices required. (1) All insurers shall undertake a continuing public education program in cooperation with producers and others, to assure that the program receives adequate public attention.

(2) All insurers terminating a property insurance policy shall give any policyholder eligible for coverage under this program notice of cancellation or refusal to renew as required under chapters 48.18 and 48.53 RCW. The insurers shall explain the procedure for making application under this program in or accompanying the notice.

[Statutory Authority: RCW 48.02.060, 98-13-095 (Matter No. R 98-10), § 284-19-170, filed 6/16/98, effective 7/17/98; Order R 77-1, § 284-19-170, filed 3/24/77; Order R-69-1, § 284-19-170, filed 1/28/69.]

WAC 284-19-180 Statistics, records and reports. (1) **Statistics.** The facility shall maintain separate statistics on business written in accordance with this plan. The facility shall make:

- (a) A quarterly report to the commissioner including:
 - (i) Number of requests for inspections,
 - (ii) Number of risks inspected,
 - (iii) The number of risks accepted, total and average premiums charged, high and low premiums,
 - (iv) The number of risks declined, and
 - (v) The number of reinspections made on conditionally declined risks.

(b) Additional reports as required by the commissioner.

(2) **Records.** The facility shall maintain complete and separate records of all business transactions, including copies of all policies and endorsements issued in accordance with this plan.

(3) **Reports to members.** Regular reports of the facility's operations shall be submitted to all members by the committee. The reports shall include:

- (a) Premiums written and earned;
- (b) Losses, including loss adjustment expense, paid and incurred;
- (c) All other expenses incurred; and
- (d) Outstanding liabilities.

[Statutory Authority: RCW 48.02.060. 98-13-095 (Matter No. R 98-10), § 284-19-180, filed 6/16/98, effective 7/17/98; Order R-69-1, § 284-19-180, filed 1/28/69.]