

WSR 13-17-112
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed August 21, 2013, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-01-116.

Title of Rule and Other Identifying Information: The department proposes to amend current sections and adopt new sections in chapter 388-845 WAC as identified below.

The proposed amendments are in WAC 388-845-0001 Definitions, 388-845-0015 What HCBS waivers are provided by the developmental disabilities administration (DDA)?, 388-845-0020 When were the HCBS waivers effective?, 388-845-0030 Do I meet criteria for HCBS waiver-funded services?, 388-845-0035 Am I guaranteed placement on a waiver if I meet waiver criteria?, 388-845-0040 Is there a limit to the number of people who can be enrolled in each HCBS waiver?, 388-845-0041 What is DDD responsibility to provide my services under the DDD HCBS waivers administered by DDD?, 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be enrolled?, 388-845-0050 How do I request to be enrolled in a waiver?, 388-845-0051 How will I be notified of the decision by DDD to enroll me in a waiver?, 388-845-0052 What is the process if I am already on a DDD HCBS waiver and request enrollment onto a different waiver DDD HCBS?, 388-845-0055 How do I remain eligible for the waiver?, 388-845-0060 Can my waiver enrollment be terminated?, 388-845-0065 What happens if I am terminated or choose to disenroll from a waiver?, 388-845-0070 What determines if I need ICF/ID level of care?, 388-845-0100 What determines which waiver I am assigned to?, 388-845-0105 What criteria determine assignment to the community protection waiver?, 388-845-0110 Are there limitations to the waiver services I can receive?, 388-845-0115 Does my waiver eligibility limit my access to DDD nonwaiver services?, 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver?, 388-845-0200 What waiver services are available to me?, 388-845-0205 Basic waiver services (repealed), 388-845-0210 Basic Plus waiver services, 388-845-0215 CORE waiver services, 388-845-0220 Community protection waiver services, 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services, 388-845-0305 Who is a qualified provider of AFH services?, 388-845-0405 Who is a qualified provider of ARC services?, 388-845-0420 Who is a qualified provider of assistive technology?, 388-845-0425 Are there limits to the assistive technology I can receive?, 388-845-0500 What is behavior support and consultation?, 388-845-0501 What is included in behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver?, 388-845-0505 Who is a qualified provider of behavior management and consultation?, 388-845-0506 Who is a qualified provider of behavior ~~(management)~~ support and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver?, 388-845-0510 Are there limits to the behavior support and

consultation I can receive?, 388-845-0603 Who is eligible to receive community access services?, 388-845-0605 Who are qualified providers of community access services?, 388-845-0610 Are there limits to community access services I can receive?, 388-845-0700 What is a community guide service?, 388-845-0705 Who is a qualified community guide?, 388-845-0710 Are there limitations to the community guide services I can receive?, 388-845-0750 What are community transition services?, 388-845-0800 What is emergency assistance?, 388-845-0810 How do I qualify for emergency assistance?, 388-845-0820 Are there limits to my use of emergency assistance?, 388-845-0900 What are environmental accessibility adaptations?, 388-845-0905 Who is a qualified provider for building these environmental accessibility adaptations?, 388-845-0910 What limitations apply to environmental accessibility adaptations?, 388-845-1000 What are extended state plan services?, 388-845-1010 Who is a qualified provider of extended state plan services?, 388-845-1015 Are there limits to the extended state plan services I can receive?, 388-845-1030 What are individual technical assistance services?, 388-845-1035 Who are qualified providers of individualized technical assistance services?, 388-845-1040 Are there limits to the individualized technical assistance services I can receive?, 388-845-1100 What are behavioral health crisis diversion bed services?, 388-845-1105 Who is a qualified provider of mental health crisis diversion bed services?, 388-845-1110 What are the limits of mental health crisis diversion bed services?, 388-845-1150 What are mental health stabilization services?, 388-845-1160 Are there limitations to the behavioral health stabilization services that I can receive?, 388-845-1175 Who is a qualified provider of nurse delegation?, 388-845-1300 What are personal care services?, 388-845-1305 Who are the qualified providers of personal care services?, 388-845-1310 Are there limits to the personal care services I can receive?, 388-845-1400 What are prevocational services?, 388-845-1405 Who are the qualified providers of prevocational services?, 388-845-1410 Are there limits to the prevocational services I can receive?, 388-845-1505 Who are qualified providers of residential habilitation services for the Core waiver?, 388-845-1510 Who are qualified providers of residential habilitation services for the community protection waiver?, 388-845-1515 Are there limits to the residential habilitation services I can receive?, 388-845-1600 What is respite care?, 388-845-1605 Who is eligible to receive respite care?, 388-845-1607 Can someone who lives with me be my respite provider?, 388-845-1610 Where can respite care be provided?, 388-845-1615 Who are qualified providers of respite care?, 388-845-1620 Are there limits to the respite care I can receive?, 388-845-1650 What are sexual deviancy evaluations?, 388-845-1655 Who is a qualified provider of sexual deviancy evaluations?, 388-845-1660 Are there limitations to the sexual deviancy evaluations I can receive?, 388-845-1705 Who is a qualified provider of skilled nursing services?, 388-845-1710 Are there limitations to the skilled nursing services I can receive?, 388-845-1800 What are specialized medical equipment and supplies?, 388-845-1805 Who are the qualified providers of specialized medical equipment and supplies?, 388-845-1810 Are there limitations to my receipt of specialized medical equipment

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Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on October 22, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 23, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 22, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 8, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend and add new sections to chapter 388-845 WAC, DDD home and community based services waivers, in order to comply with the requirements of SSB 6384 (related to community access services); to remove basic waiver, to add dental services as a waiver service option until January 1, 2014; to align this chapter with amendments to chapter 388-828 WAC for community access services; and to make updates to WAC and RCW references, titles and links, names of state agencies and updates to language structure so that readers will have an easier and better overall understanding of the rules.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040, 74.08.090.

Statute Being Implemented: RCW 71A.12.030, 71A.12.-040, 34.05.100, 71A.12.120.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Kris Pederson, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3445; and Enforcement: Mark Eliason, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business impact statement is not required as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

August 21, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

WAC 388-845-0001 Definitions. "~~((ADSA))~~ ADS" ~~((means the aging and disability services administration, an administration within the department of social and health services))~~ is a term used to refer to the partnership among three administrations within DSHS including developmental disabilities (DDA), aging and long-term support (ALISA) and behavioral health and services integration (BHSIA). These "ADS" administrations work collaboratively to more effectively support people with developmental disabilities, vulnerable adults (including aging), and people with mental health support needs.

"Aggregate services" means a combination of services subject to the dollar limitations in the ~~((Basic and))~~ Basic Plus waivers.

"CARE" means ~~((the))~~ comprehensive assessment and reporting evaluation.

"Client or person" means a person who has a developmental disability as defined in RCW 71A.10.020(3) and has been determined eligible to receive services by the ~~((division))~~ administration under chapter 71A.16 RCW.

"Community crisis stabilization services" or "CCSS" means a state operated program that provides short term supports to participants who meet specific criteria and who are in crisis and/or who are at risk of hospitalization or institutional placement.

~~"((DD)) DDA" means the ((division of)) developmental disabilities administration, ((a division within the aging and disability services administration)) of the department of social and health services.~~

~~"((DD)) DDA assessment" refers to the standardized assessment tool as defined in chapter 388-828 WAC, used by ((DD)) DDA to measure the support needs of persons with developmental disabilities.~~

"Department" means the department of social and health services.

"EPSDT" means early and periodic screening, diagnosis, and treatment, medicaid's child health component providing a mandatory and comprehensive set of benefits and services for children up to age twenty one as defined in WAC ((388-534-0100)) 182-534-0100.

~~("Employment/day program services" means community access, person-to-person, individualized technical assistance, prevocational services or supported employment services subject to the dollar limitations in the Basic and Basic Plus waivers.)~~

"Enhanced respite services" means respite care for DDA enrolled children and youth, who meet specific criteria, in a DDA contracted and licensed staffed residential setting.

"Evidence based treatment" means the use of physical, mental and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically supported treatment (EST).

"Family" means relatives who live in the same home with the eligible client. Relatives include spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your relatives live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"HCBS waivers" means home and community based services waivers.

"Home" means present or intended place of residence.

~~"((ICF/MR)) ICF/ID" means an intermediate care facility for ((the mentally retarded)) individuals with intellectual disabilities.~~

"Individual support plan (ISP)" is a document that authorizes and identifies the ~~((DD)) DDA~~ paid services and unpaid supports to meet a client's assessed needs.

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

"Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within

the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his/her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of ~~((DD)) DDA~~ planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of ~~((DD)) DDA~~ when the client does not have a legal guardian and the client is requesting or receiving ~~((DD)) DDA~~ services.

~~"((Providers)) Provider" means an individual or agency who meets the provider qualifications and is contracted with ((ADSA)) ADS to provide services to you.~~

"Respite assessment" means an algorithm within the ~~((DD)) DDA~~ assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the ~~((Basic)) Basic~~ Plus, Children's Intensive In-Home Behavioral Support, or Core waiver.

"SSI" means Supplemental Security Income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means a state-paid cash assistance program for certain clients of the ~~((division of)) developmental disabilities administration.~~

"State funded services" means services that are funded entirely with state dollars.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0015 What HCBS waivers are provided by the ~~((division of)) developmental disabilities administration ((DD)) DDA)?~~ ~~((DD)) DDA~~ provides services through ~~((five)) four~~ HCBS waivers:

- (1) ~~((Basic waiver;~~
- ~~((2))~~) Basic Plus waiver;
- ~~((3))~~ (2) Core waiver;
- ~~((4))~~ (3) Community Protection waiver; and
- ~~((5))~~ (4) Children's Intensive In-Home Behavioral Support waiver (CIIBS).

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0020 When were the HCBS waivers effective? ~~((Basic)) Basic~~ Plus, Children's Intensive In-Home Behavioral Support, Core and Community Protection waivers were effective ~~((April 1, 2004)) September 1, 2012.~~ ~~((Children's Intensive In-Home Behavioral Support waiver was effective May 1, 2009.))~~

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? You meet criteria for ~~((DDD))~~ DDA HCBS waiver-funded services if you meet all of the following:

- (1) You have been determined eligible for ~~((DDD))~~ DDA services per RCW 71A.10.020~~((3))~~.
- (2) You have been determined to meet ICF/ID level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.
- (3) You meet disability criteria established in the Social Security Act.
- (4) You meet financial eligibility requirements as defined in WAC 388-515-1510.
- (5) You choose to receive services in the community rather than in an ICF/ID facility.
- (6) You have a need for monthly waiver services or monthly monitoring as identified in your individual support plan.
- (7) You are not residing in hospital, jail, prison, nursing facility, ICF/ID, or other institution.
- (8) Additionally, for the Children's Intensive In-Home Behavioral Support (CIIBS) waiver-funded services:
 - (a) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;
 - (b) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;
 - (c) You live with your family; and
 - (d) Your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s), have signed the participation agreement.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0035 Am I guaranteed placement on a waiver if I meet waiver criteria? (1) If you are not currently enrolled in a waiver, meeting criteria for the waiver does not guarantee access to or receipt of waiver services.

(2) If you are currently on a waiver and you have been determined to have health and welfare needs that can be met only by services available on a different waiver, you are not guaranteed enrollment in that different waiver.

(3) WAC 388-845-0041, 388-845-3080 and 388-845-3085 describe ~~((DDD's))~~ DDA's responsibilities to provide services.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0040 Is there a limit to the number of people who can be enrolled in each HCBS waiver? Each waiver has a capacity limit on the number of people who can be served in a waiver year. In addition, ~~((DDD))~~ DDA has the authority to limit capacity based on availability of funding for new waiver participants.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

WAC 388-845-0041 What is ~~((DDD's))~~ DDA's responsibility to provide my services under the ~~((DDD))~~ DDA HCBS waivers administered by ~~((DDD))~~ DDA? If you are enrolled in an HCBS waiver administered by DDD.

(1) ~~((DDD))~~ DDA will provide an annual comprehensive assessment to evaluate your health and welfare need. Your individual support plan, as specified in WAC 388-845-3055, will document:

- (a) Your identified health and welfare needs; and
 - (b) Your HCBS waiver services and nonwaiver services authorized to meet your assessed need.
- (2) You have access to ~~((DDD))~~ DDA paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and 388-845-0115.
- (3) ~~((DDD))~~ DDA will provide waiver services you need and qualify for within your waiver.
- (4) ~~((DDD))~~ DDA will not deny or limit, based on lack of funding, the number of waiver services for which you are eligible.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0045 When there is capacity to add people to a waiver, how does ~~((DDD))~~ DDA determine who will be enrolled? When there is capacity on a waiver and available funding for new waiver participants, ~~((DDD))~~ DDA may enroll people from the statewide data base in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) ~~((DDD))~~ DDA may also consider any of the following populations in any order:

- (a) Priority populations as identified and funded by the legislature.
- (b) Persons ~~((DDD))~~ DDA has determined to be in immediate risk of ICF/ID admission due to unmet health and welfare needs.
- (c) Persons identified as a risk to the safety of the community.
- (d) Persons currently receiving services through state-only funds.
- (e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060 (1)(i).

(3) For the Basic Plus waiver only, ~~((DDD))~~ DDA may consider persons who need the waiver services available in the Basic Plus waiver to maintain them in their family's home or in their own home.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0050 How do I request to be enrolled in a waiver? (1) You can contact ~~((DD))~~ DDA and request to be enrolled in a waiver or to enroll in a different waiver at any time.

(2) If you are assessed as meeting ICF/ID level of care as defined in WAC 388-845-0070 and chapter 388-828 WAC, your request for waiver enrollment will be documented by ~~((DD))~~ DDA in a statewide data base.

(3) For the Children's Intensive In-Home Behavioral Support (CIIBS) waiver only, if you are assessed as meeting both ICF/ID level of care and CIIBS eligibility as defined in WAC 388-845-0030 and chapter 388-828 WAC, your request for waiver enrollment will be documented by ~~((DD))~~ DDA in a statewide data base.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0051 How will I be notified of the decision by ~~((DD))~~ DDA to enroll me in a waiver? ~~((DD))~~ DDA will notify you in writing of its decision to enroll you in a waiver or its decision to deny your request to be enrolled in a waiver.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0052 What is the process if I am already on a DDA HCBS waiver and request enrollment onto a different waiver DDA HCBS? (1) If you are already enrolled in a ~~((DD))~~ DDA HCBS waiver and you request to be enrolled in a different waiver ~~((DD))~~ DDA will do the following:

(a) Assess your needs to determine whether your health and welfare needs can be met with services available on your current waiver or whether those needs can only be met through services offered on a different waiver.

(b) If ~~((DD))~~ DDA determines your health and welfare needs can be met by services available on your current waiver your enrollment request will be denied.

(c) If ~~((DD))~~ DDA determines your health and welfare needs can only be met by services available on a different waiver your service need will be reflected in your ISP.

(d) If ~~((DD))~~ DDA determines there is capacity on the waiver that is determined to meet your needs, ~~((DD))~~ DDA will place you on that waiver.

(2) You will be notified in writing of ~~((DD's))~~ DDA's decision under subsection (1)(a) of this section and if your health and welfare needs cannot be met on your current waiver, ~~((DD))~~ DDA will notify you in writing whether there is capacity on the waiver that will meet your health and welfare needs and whether you will be enrolled on that waiver. If current capacity on that waiver does not exist, your eligibility for enrollment onto that different waiver will be tracked on a statewide data base.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0055 How do I remain eligible for the waiver? Once you are enrolled in a ~~((DD))~~ DDA HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

(1) You complete a reassessment with ~~((DD))~~ DDA at least once every twelve months to determine if you continue to meet all of these eligibility requirements; and

(2) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC ~~((388-513-1320))~~ 182-513-1320 (3)(b), or your health and welfare needs require monthly monitoring, which will be documented in your client record; and

(3) You complete an in-person ~~((DD))~~ DDA assessment/reassessment interview administered in your home per WAC 388-828-1520.

(4) In addition, for the Children's Intensive In-Home Behavioral Supports waiver, you must:

(a) Be under age twenty-one;

(b) Live with your family; and

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0060 Can my waiver enrollment be terminated? ~~((DD))~~ DDA may terminate your waiver enrollment if ~~((DD))~~ DDA determines that:

(1) Your health and welfare needs cannot be met in your current waiver or for one of the following reasons:

(a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;

(b) You do not have an identified need for a waiver service at the time of your annual individual support plan;

(c) You do not use a waiver service at least once in every thirty consecutive days and your health and welfare do not require monthly monitoring;

(d) You are on the community protection waiver and:

(i) You choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(ii) You engage in any behaviors identified in WAC 388-831-0240 (1) through (4); and

(iii) ~~((DD))~~ DDA determines that your health and safety needs or the health and safety needs of the community cannot be met in the community protection program.

(e) You choose to disenroll from the waiver;

(f) You reside out-of-state;

(g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(h) You refuse to participate with ~~((DD))~~ DDA in:

(i) Service planning;

(ii) Required quality assurance and program monitoring activities; or

(iii) Accepting services agreed to in your individual support plan as necessary to meet your health and welfare needs.

(i) You are residing in a hospital, jail, prison, nursing facility, ICF/ID, or other institution and remain in residence at least one full calendar month, and are still in residence:

(i) At the end of that full calendar month, there is no immediate plan for you to return to the community; or

(ii) At the end of the twelfth month following the effective date of your current individual support plan, as described in WAC 388-845-3060; or

~~((ii))~~ (iii) The end of the waiver fiscal year, whichever date occurs first.

(j) Your needs exceed the maximum funding level or scope of services under the ~~((Basic or))~~ Basic Plus waiver as specified in WAC 388-845-3080; or

(k) Your needs exceed what can be provided under WAC 388-845-3085; or

(2) Services offered on a different waiver can meet your health and welfare needs and ~~((DDD))~~ DDA enrolls you on a different waiver.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0065 What happens if I am terminated or choose to disenroll from a waiver? If you are terminated from a waiver or choose to disenroll from a waiver, ~~((DDD))~~ DDA will notify you.

(1) ~~((DDD))~~ DDA cannot guarantee continuation of your current services, including medicaid eligibility.

(2) Your eligibility for nonwaiver state-only funded ~~((DDD))~~ DDA services is based upon availability of funding and program eligibility for a particular service.

(3) If you are terminated from the CIIBS waiver due to turning age twenty-one, ~~((DDD))~~ DDA will assist with transition planning at least twelve months prior to your twenty-first birthday.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0070 What determines if I need ICF/ID level of care? ~~((DDD))~~ DDA determines if you need ICF/ID level of care based on your need for waiver services. To reach this decision, ~~((DDD))~~ DDA uses the ~~((DDD))~~ DDA assessment as specified in chapter 388-828 WAC.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0100 What determines which waiver I am assigned to? ~~((If there is capacity, DDD))~~ DDA will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your ~~((DDD))~~ DDA assessment as described in chapter 388-828 WAC and the following criteria:

(1) ~~((For the Basic waiver:~~

~~(a) You must live with your family or in your own home;~~

~~(b) Your family/caregiver's ability to continue caring for you can be maintained with the addition of services provided in the Basic waiver; and~~

~~(c) You do not need out-of-home residential services.~~

~~((2)))~~ For the Basic Plus waiver~~((s))~~ your health and welfare needs ~~((exceed the amount allowed in the Basic waiver or))~~ require a waiver service ~~((that is not contained in the Basic waiver; and~~

~~(a) You are at high risk of out-of-home placement or loss of your current living situation; or~~

~~(b) You require out-of-home placement and your health and welfare needs can be met in an adult family home or adult residential care facility))~~ to remain in the community.

~~((3)))~~ (2) For the Core waiver:

(a) You are at immediate risk of out-of-home placement; and/or

(b) You have an identified health and welfare need for residential services that cannot be met by the Basic Plus waiver.

~~((4)))~~ (3) For the Community Protection waiver, refer to WAC 388-845-0105 and chapter 388-831 WAC.

~~((5)))~~ (4) For the Children's Intensive In-Home Behavioral Support waiver, you:

(a) Are age eight or older and under age eighteen;

(b) Live with your family;

(c) Are assessed at high or severe risk of out of home placement due to challenging behavior per chapter 388-828 WAC; and

(d) You have a signed participation agreement from your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0105 What criteria determine assignment to the community protection waiver? ~~((DDD))~~ DDA may assign you to the community protection waiver only if you are at least eighteen years of age, not currently residing in a hospital, jail or other institution, and meet the following criteria:

(1) You have been identified by ~~((DDD))~~ DDA as a person who meets one or more of the following:

(a) You have been convicted of or charged with a crime of sexual violence as defined in chapter 71.09 RCW;

(b) You have been convicted of or charged with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger as determined by a qualified professional;

(d) You have not been convicted and/or charged, but you have a history of stalking, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; or

(e) You have committed one or more violent offense, as defined in RCW 9.94A.030.

(2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and

(3) You comply with the specialized supports and restrictions in your:

- (a) Individual support plan;
- (b) Individual instruction and support plan (IISP); and/or
- (c) Treatment plan provided by ~~((DD))~~ DDA approved certified individuals and agencies.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0110 Are there limitations to the waiver services I can receive? There are limitations to waiver services. In addition to the limitations to your access to nonwaiver services cited for specific services in WAC 388-845-0115, the following limitations apply:

(1) A service must be offered in your waiver and authorized in your ~~((plan of care or))~~ individual support plan.

(2) ~~((Mental))~~ Behavioral health stabilization services may be added to your ~~((plan of care or))~~ individual support plan after the services are provided.

(3) Waiver services are limited to services required to prevent ~~((ICF/MR))~~ ICF/ID placement.

(4) The cost of your waiver services cannot exceed the average daily cost of care in an ~~((ICF/MR))~~ ICF/ID.

(5) Waiver services cannot replace or duplicate other available paid or unpaid supports or services.

(6) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

(7) The ~~((Basic and))~~ Basic Plus ~~((waivers have))~~ waiver has yearly limits on some services and combinations of services. The combination of services is referred to as aggregate services ~~((or employment/day program services))~~.

(8) Your choice of qualified providers and services is limited to the most cost effective option that meets your health and welfare needs.

(9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities per WAC 182-501-0175 are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

(10) Other out-of-state waiver services require an approved exception to rule before ~~((DD))~~ DDA can authorize payment.

(11) Waiver services do not cover co-pays, deductibles, dues, membership fees or subscriptions.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0115 Does my waiver eligibility limit my access to ~~((DD))~~ DDA nonwaiver services? If you are enrolled in a ~~((DD))~~ DDA HCBS waiver:

(1) You are not eligible for state-only funding for ~~((DD))~~ DDA services; and

(2) You are not eligible for medicaid personal care.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

WAC 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver? Your participation in one of the ~~((DD))~~ DDA HCBS waivers may affect your continued receipt of state supplemental payment from ~~((DD))~~ DDA. To continue to receive SSP, you must meet ~~((DD/SSP))~~ DDA/SSP programmatic eligibility requirements as identified in WAC 388-827-0115.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0200 What waiver services are available to me? Each of the ~~((DD))~~ DDA HCBS waivers has a different scope of service and your individual support plan defines the waiver services available to you.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0210 Basic Plus waiver services.

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior ((management)) support and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6192 per year on any combination of these services
	EMPLOYMENT ((DAY-PROGRAM)) SERVICES:	((May not exceed \$9944 per year))

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	((Community access Person to person)) Prevocational services Supported employment <u>Individual technical assistance</u>	((This amount may be increased to a maximum of \$19,888 per year by exception to rule based on client need)) <u>Limits are determined by DDA assessment and employment status</u>
	<u>Community Access</u> Adult foster care (adult family home) Adult residential care ((boarding home)) <u>assisted living facility</u>	<u>Limits are determined by DDA assessment</u> Determined per department rate structure
	((MENTAL)) <u>BEHAVIORAL HEALTH STABILIZATION SERVICES:</u> Behavior ((management)) <u>support and consultation</u> ((Mental)) <u>Behavioral health crisis diversion bed services</u> ((Skilled nursing)) Specialized psychiatric services	Limits determined by a ((mental)) <u>behavioral health professional or ((DDD)) DDA</u>
	Personal care	Limits determined by the CARE tool used as part of the ((DDD)) <u>DDA assessment</u>
	Respite care	Limits are determined by the ((DDD)) <u>DDA assessment</u>
	Sexual deviancy evaluation	Limits are determined by ((DDD)) <u>DDA</u>

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	Emergency assistance is only for <u>Basic Plus waiver aggregate services</u> ((and/or employment/day program services contained in the Basic Plus waiver))	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0215 CORE waiver services.

CORE WAIVER	SERVICES	YEARLY LIMIT
	Behavior ((management)) <u>support and consultation</u> Community guide Community transition Environmental accessibility adaptations Occupational therapy <u>Physical therapy</u> Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	Determined by the ((plan of care or)) individual support plan, not to exceed the average cost of an ((ICF/MR)) <u>ICF/ID</u> for any combination of services
	Residential habilitation	<u>Limits are determined by DDA assessment</u>
	Community access ((Person to person)) <u>Employment services</u>	
	Prevocational services Supported employment <u>Individualized technical assistance</u>	<u>Limits are determined by DDA assessment and employment status</u>

CORE WAIVER	SERVICES	YEARLY LIMIT
	((MENTAL)) BEHAVIORAL HEALTH STABILIZATION SERVICES: Behavior ((management)) <u>support</u> and consultation ((Mental)) Behavioral health crisis diversion bed services ((Skilled nursing)) Specialized psychiatric services	Limits determined by a ((mental)) <u>behavioral</u> health professional or ((DDD)) <u>DDA</u>
	Personal care	Limits determined by the CARE tool used as part of the ((DDD)) <u>DDA</u> assessment
	Respite care	Limits are determined by the ((DDD)) <u>DDA</u> assessment

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Speech, hearing and language services Staff/family consultation and training Transportation Residential habilitation ((Person-to-person)) <u>Employment Services:</u> Prevocational services Supported employment <u>Individual technical assistance</u>	Limits determined by <u>DDA</u> assessment and <u>employment status</u>
	((MENTAL)) BEHAVIORAL HEALTH STABILIZATION SERVICES: Behavioral ((management)) <u>support</u> and consultation ((Mental)) Behavioral health crisis diversion bed services ((Skilled nursing)) Specialized psychiatric services	Limits determined by a ((mental)) <u>behavioral</u> health professional or ((DDD)) <u>DDA</u>

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0220 Community protection waiver services.

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior ((management)) <u>support</u> and consultation Community transition Environmental accessibility adaptations Occupational therapy Physical therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services	Determined by the ((plan of care or)) individual support plan, not to exceed the average cost of an ((ICF/MR)) <u>ICF/ID</u> for any combination of services

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services.

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> Behavior ((management)) <u>support</u> and consultation Staff/family consultation and training Environmental accessibility adaptations Occupational therapy Physical therapy 	Determined by the individual support plan. Total cost of waiver services cannot exceed the average cost of \$4,000 per month per participant.

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> • Sexual deviancy evaluation • Nurse delegation • Specialized medical equipment/supplies • Specialized psychiatric services • Speech, hearing and language services • Transportation • Assistive technology • Therapeutic equipment and supplies • Specialized nutrition and clothing • Vehicle modifications 	
	Personal care	Limits determined by the ((DD)) <u>DDA</u> assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.
	Respite care <u>Behavioral health Stabilization services:</u> <u>Behavioral support and consultation</u> <u>Crisis diversion bed services</u> <u>Specialized psychiatric services</u>	Limits determined by the ((DD)) <u>DDA</u> assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services. <u>Limits determined by behavioral health specialist</u>

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0305 Who is a qualified provider of AFH services? The provider of AFH services must be licensed and contracted with ~~((ADSA))~~ ADS as an AFH who has successfully completed the ~~((DD))~~ DDA specialty training provided by the department.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0405 Who is a qualified provider of ARC services? The provider of ARC services must:

- (1) Be a licensed assisted living facility;
- (2) Be contracted with ~~((ADSA))~~ ADS to provide ARC services; and
- (3) Have completed the required and approved ~~((DD))~~ DDA specialty training.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0420 Who is a qualified provider of assistive technology? The provider of assistive technology must be an assistive technology vendor contracted with ~~((DD))~~ DDA or one of the following professionals contracted with ~~((DD))~~ DDA and duly licensed, registered or certified to provide this service:

- (1) Occupational therapist;
- (2) Physical therapist;
- (3) Speech and language pathologist;
- (4) Certified music therapist;
- (5) Certified recreation therapist; ~~((or))~~
- (6) Audiologist; or
- (7) Behavior specialist.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0425 Are there limits to the assistive technology I can receive? (1) Providers of assistive technology services must be certified, registered or licensed therapists as required by law and contracted with ~~((DD))~~ DDA for the therapy they are providing.

(2) Vendors of assistive technology must maintain a business license required by law and be contracted with ~~((DD))~~ DDA to provide this service.

(3) Assistive technology may be authorized as a waiver service by obtaining an initial denial of funding or information showing that the technology is not covered by medicaid or private insurance.

(4) The department does not pay for experimental technology.

(5) The department requires your treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:

- (a) The treating professional has personal knowledge of and experience with the requested and alternative technology; and

(b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(6) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection (5) above.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0500 What is behavior support and consultation? (1) Behavior support and consultation may be provided to persons on any of the (~~(DDD)~~) DDA HCBS waivers and includes the development and implementation of programs designed to support waiver participants using:

(a) Individualized strategies for effectively relating to caregivers and other people in the waiver participant's life; and

(b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, conducting a functional assessment, development and implementation of a positive behavior support plan).

(2) Behavior support and consultation may also be provided as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0501 What is included in behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver? (1) In addition to the definition in WAC 388-845-0500, behavior support and consultation in the CIIBS waiver must include the following characteristics:

(a) Treatment must be evidence based, driven by individual outcome data, and consistent with (~~(DDD's)~~) DDA's positive behavior support guidelines as outlined in contract;

(b) The following written components will be developed in partnership with the child and family by a behavior specialist as defined in WAC 388-845-0506:

(i) Functional behavioral assessment; and

(ii) Positive behavior support plan based on functional behavioral assessment.

(c) Treatment goals must be objective and measurable. The goals must relate to an increase in skill development and a resulting decrease in challenging behaviors that impede quality of life for the child and family; and

(d) Behavioral support strategies will be individualized and coordinated across all environments, such as home, school, and community, in order to promote a consistent approach among all involved persons.

(2) Behavior support and consultation in the CIIBS waiver may also include the following components:

(a) Behavioral technicians (as defined in WAC 388-845-0506) may implement positive behavior support plans (~~(may be implemented by a behavioral technician as defined in~~

~~WAC 388-845-0506 and))~~ which may include 1:1 behavior interventions and skill development activity.

(b) Positive behavior support plans may include recommendations by a music and/or recreation therapist, as defined in WAC (~~(388-845-0506)~~) 388-845-2005.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0505 Who is a qualified provider of behavior (~~(management)~~) support and consultation? Under the (~~(Basic,)~~) Basic Plus, Core, and Community Protection waivers, the provider of behavior (~~(management)~~) support and consultation must be one of the following professionals contracted with (~~(DDD)~~) DDA and duly licensed, registered or certified to provide this service:

(1) Marriage and family therapist;

(2) Mental health counselor;

(3) Psychologist;

(4) Sex offender treatment provider;

(5) Social worker;

(6) Registered nurse (RN) or licensed practical nurse (LPN);

(7) Psychiatrist;

(8) Psychiatric advanced registered nurse practitioner (ARNP);

(9) Physician assistant working under the supervision of a psychiatrist;

(10) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW; (~~(or)~~)

(11) Polygrapher; or

(12) State operated behavior support agency limited to behavioral health stabilization services.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

WAC 388-845-0506 Who is a qualified provider of behavior (~~(management)~~) support and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver? (1) Under the CIIBS waiver, providers of behavior (~~(management)~~) support and consultation must be contracted with (~~(DDD)~~) DDA to provide CIIBS intensive services as one of the following two provider types:

(a) Master's or PhD level behavior specialist, licensed or certified/registered to provide behavioral assessment, intervention, and training;

(b) Behavior technician, licensed or certified/registered to provide behavioral intervention and training, following the lead of the behavior specialist.

(2) Providers of behavior (~~(management)~~) support and consultation per WAC 388-845-0505 may be utilized to provide counseling and/or therapy services to augment the work of the CIIBS intensive service provider types.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0510 Are there limits to the behavior support and consultation I can receive? The following

limits apply to your receipt of behavior support and consultation:

(1) ~~((DDD))~~ DDA and the treating professional will determine the need and amount of service you will receive, subject to the limitations in subsection (2) below.

(2) The dollar limitations for aggregate services in your ~~((Basic and))~~ Basic Plus waiver limit the amount of service unless provided as a behavioral health stabilization service.

(3) ~~((DDD))~~ DDA reserves the right to require a second opinion from a department-selected provider.

(4) Behavior support and consultation not provided as a behavioral health stabilization service requires prior approval by the ~~((DDD))~~ DDA regional administrator or designee.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

WAC 388-845-0603 Who is eligible to receive community access services? You are eligible to receive community access services when you are enrolled in the ~~((Basic,))~~ Basic Plus or Core waivers and you meet one of the following conditions below:

(1) You are age sixty-two or older; or

(2) You are twenty-one or older and you have participated in a ~~((DDD))~~ DDA employment program for nine months; or

(3) You and/or your legal representative request that ~~((DDD))~~ DDA grant an exception, per chapter 71A.12 RCW, to the requirement that you participate in an employment program for nine months prior to transitioning to a community access service because:

(a) You have a medical condition that requires hospitalization or ongoing care by a medical professional and that affects your ability to participate in daily activities to the degree that employment would:

(i) Result in a significant decline in your ability to function; or

(ii) Seriously endanger your health.

(b) You have been available for employment planning activities and an employment provider has not provided services within ninety days of your request for employment services.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0605 Who are qualified providers of community access services? Providers of community access services must be a county or an individual or agency contracted with a county or ~~((DDD))~~ DDA to provide community access services.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

WAC 388-845-0610 Are there limits to community access services I can receive? The following limits apply to your receipt of community access services:

(1) You cannot receive community access services if you are receiving prevocational or supported employment services.

~~((3))~~ (2) The ~~((amount of community access services you may receive cannot exceed the employment/day program yearly limit that is established in your HCBS waiver))~~ maximum hours of community access services you may receive are determined by the DDA assessment per WAC 388-828-9310.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0700 What is a community guide service? Community guide service increases access to informal community supports. Services are short-term and designed to develop creative, flexible and supportive community resources for individuals with developmental disabilities. This service is available in ~~((Basic,))~~ Basic Plus and CORE waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0705 Who is a qualified community guide? Any individual or agency contracted with ~~((DDD))~~ DDA as a "community guide" is qualified to provide this service.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0710 Are there limitations to the community guide services I can receive? (1) You may not receive community guide services if you are receiving residential habilitation services as defined in WAC 388-845-1500 because your residential provider can meet this need.

(2) The dollar limitations for aggregate services in your ~~((Basic or))~~ Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0750 What are community transition services? (1) Community transition services are reasonable costs (necessary expenses in the judgment of the state for you to establish your basic living arrangement) associated with moving from:

(a) An institutional setting to a community setting in which you are living in your own home or apartment, responsible for your own living expenses and receiving services from a ~~((DDD))~~ DDA certified residential habilitation services provider as defined in WAC 388-845-1505 and 388-845-1510; or

(b) A provider operated setting, such as a group home, staffed residential, adult family home or companion home in the community to a community setting in which you are living in your own home or apartment, responsible for your own living expenses, and receiving services from a ~~((DDD))~~ DDA certified residential habilitation services provider as defined in WAC 388-845-1505 and 388-845-1510.

(2) Community transition services include:

(a) Security deposits (not to exceed the equivalent of two month's rent) that are required to obtain a lease on an apartment or home;

(b) Essential furnishings such as a bed, a table, chairs, window blinds, eating utensils and food preparation items;

(c) Moving expenses required to occupy your own home or apartment;

(d) Set-up fees or deposits for utility or service access (e.g., telephone, electricity, heating); and

(e) Health and safety assurances, such as pest eradication, allergen control or one-time cleaning prior to occupancy.

(3) Community transition services are available in the CORE and community protection waivers.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0800 What is emergency assistance?

Emergency assistance is a temporary increase to the yearly Basic Plus waiver aggregate (~~((services and/or employment/day program services))~~) dollar limit (~~((specified in the Basic and Basic Plus waiver))~~) when additional waiver aggregate services are required to prevent (~~((ICF/MR-))~~) ICF/ID placement. (~~((These additional services are limited to the services provided in your waiver.))~~)

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0810 How do I qualify for emergency assistance? You qualify for emergency assistance only if you have used all of your waiver aggregate funding and your current situation meets one of the following criteria:

(1) You involuntarily lose your present residence for any reason either temporary or permanent;

(2) You lose your present caregiver for any reason, including death;

(3) There are changes in your caregiver's mental or physical status resulting in the caregiver's inability to perform effectively for the individual; or

(4) There are significant changes in your emotional or physical condition that requires a temporary increase in the amount of a waiver service.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0820 Are there limits to my use of emergency assistance? All of the following limitations apply to your use of emergency assistance:

(1) Prior approval by the (~~((DDD))~~) DDA regional administrator or designee is required based on a reassessment of your (~~((plan of care or))~~) individual support plan to determine the need for emergency services;

(2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current plan of care or individual support plan;

(3) Emergency assistance services are limited to the Basic Plus waiver aggregate services (~~((and employment/day program services in the Basic and Basic Plus waivers))~~);

(4) Emergency assistance may be used for interim services until:

(a) The emergency situation has been resolved; or

(b) You are transferred to alternative supports that meet your assessed needs; or

(c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-0900 What are environmental accessibility adaptations? (1) Environmental accessibility adaptations are available in all of the (~~((DDD))~~) DDA HCBS waivers and provide the physical adaptations to the home required by the individual's individual support plan needed to:

(a) Ensure the health, welfare and safety of the individual; or

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.

(2) Environmental accessibility adaptations may include the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing specialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) For the CIIBS waiver only, adaptations include repairs to the home necessary due to property destruction caused by the participant's behavior.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0905 Who is a qualified provider for building these environmental accessibility adaptations? The provider making these environmental accessibility adaptations must be a registered contractor per chapter 18.27 RCW and contracted with (~~((DDD))~~) DDA.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-0910 What limitations apply to environmental accessibility adaptations? The following service limitations apply to environmental accessibility adaptations:

(1) Environmental accessibility adaptations require prior approval by the (~~((DDD))~~) DDA regional administrator or designee.

(2) With the exception of damage repairs under the CIIBS waiver, environmental accessibility adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.

(3) Environmental accessibility adaptations cannot add to the total square footage of the home.

(4) The dollar limitations for aggregate services in your ~~((Basic or))~~ Basic Plus waiver limit the amount of service you may receive.

(5) Damage repairs under the CIIBS waiver are subject to the following restrictions:

(a) Limited to the cost of restoration to the original condition.

(b) Repairs to personal property and normal wear and tear are excluded.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1000 What are extended state plan services? Extended state plan services refer to physical therapy; occupational therapy; and speech, hearing and language services available to you under medicaid without regard to your waiver status. They are "extended" services when the waiver pays for more services than is provided under the state medicaid plan. These services are available under all ~~((DDD))~~ DDA HCBS waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1010 Who is a qualified provider of extended state plan services? Providers of extended state plan services must be certified, registered or licensed therapists as required by law and contracted with ~~((DDD))~~ DDA for the therapy they are providing.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1015 Are there limits to the extended state plan services I can receive? (1) Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under medicaid and any other private health insurance plan;

(2) The department does not pay for treatment determined by DSHS to be experimental;

(3) The department and the treating professional determine the need for and amount of service you can receive:

(a) The department may require a second opinion from a department selected provider.

(b) The department will require evidence that you have accessed your full benefits through medicaid before authorizing this waiver service.

(4) The dollar limitations for Basic Plus waiver aggregate services ~~((in your Basic or Basic Plus waiver))~~ limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

WAC 388-845-1030 What are individual technical assistance services? Individualized technical assistance service is assessment and consultation ~~((to))~~ with the

employment provider and/or client to identify and address existing barriers to employment. This is in addition to supports received through supported employment services or pre-vocational services for individuals who have not yet achieved their employment goal.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

WAC 388-845-1035 Who are qualified providers of individualized technical assistance services? Providers of individualized technical assistance service must be a county or an individual or agency contracted with a county or ~~((DDD))~~ DDA.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

WAC 388-845-1040 Are there limits to the individualized technical assistance services I can receive? (1) Individualized technical assistance service cannot exceed ~~((six))~~ three months in an individual's plan year.

(2) These services are available on the ~~((Basic,))~~ Basic Plus, Core and Community Protection Waivers.

(3) Individual must be receiving supported employment or pre-vocational services.

(4) ~~((The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of supported employment service you may receive))~~ Services are limited to additional hours per WACs 388-828-9355 and 388-828-9360.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1100 What are behavioral health crisis diversion bed services? Behavioral health crisis diversion bed services are temporary residential and behavioral services that may be provided in a client's home ~~((or)),~~ licensed or certified setting or state operated setting. These services are available to eligible clients who are at risk of serious decline of mental functioning and who have been determined to be at risk of psychiatric hospitalization. These services are available in all four HCBS waivers administered by ~~((DDD))~~ DDA as behavioral health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1105 Who is a qualified provider of ~~((mental))~~ behavioral health crisis diversion bed services? Providers of ~~((mental))~~ behavioral health crisis diversion bed services must be:

(1) ~~((DDD))~~ DDA certified residential agencies per chapter 388-101 WAC; ~~((or))~~

(2) Other department licensed or certified agencies; or

(3) State operated agency.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1110 What are the limits of ~~((mental))~~ behavioral health crisis diversion bed services? (1) ~~((Mental))~~ Behavioral health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a ~~((mental))~~ behavioral health professional and/or ~~((DDD))~~ DDA.

(2) These services are available in the ~~((Basic,))~~ CIIBS, Basic Plus, Core, and Community Protection waivers administered by ~~((DDD))~~ DDA as ~~((mental))~~ behavioral health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

(3) The costs of ~~((mental))~~ behavioral health crisis diversion bed services do not count toward the dollar limits for aggregate services in the ~~((Basic and))~~ Basic Plus waiver~~((s))~~.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1150 What are ~~((mental))~~ behavioral health stabilization services? ~~((Mental))~~ Behavioral health stabilization services assist persons who are experiencing a ~~((mental))~~ behavioral health crisis or meet criteria for enhanced respite or community crisis stabilization services. These services are available in the ~~((Basic,))~~ Basic Plus, Core, CIIBS and Community Protection waivers to ~~((adults))~~ individuals determined by ~~((mental))~~ behavioral health professionals or ~~((DDD))~~ DDA to be at risk of institutionalization ~~((in a psychiatric hospital without))~~ or hospitalization who need one ~~((of))~~ or more of the following services:

- (1) Behavior ~~((management))~~ support and consultation;
- (2) Specialized psychiatric services; or
- (3) ~~((Mental))~~ Behavioral health crisis diversion bed services.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1160 Are there limitations to the behavioral health stabilization services that I can receive?

(1) Behavioral health stabilization services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a ~~((mental))~~ behavioral health professional and/or ~~((DDD))~~ DDA.

(2) The costs of behavioral health stabilization services do not count toward the dollar limitations for aggregate services in the ~~((Basic and))~~ Basic Plus waiver.

(3) Behavioral health stabilization services require prior approval by ~~((DDD))~~ DDA or its designee.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1175 Who is a qualified provider of nurse delegation? Providers of nurse delegation are registered nurses contracted with ~~((DDD))~~ DDA to provide

this service or employed by a nursing agency contracted with ~~((DDD))~~ DDA to provide this service.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1300 What are personal care services? Personal care services as defined in WAC 388-106-0010 are the provision of assistance with personal care tasks. These services are available in the ~~((Basic,))~~ Basic Plus, CIIBS and Core waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1305 Who are the qualified providers of personal care services? (1) Qualified providers of personal care services may be individuals or licensed homecare agencies contracted with ~~((ADSA))~~ ADS.

(2) All individual providers and homecare agency providers must meet provider qualifications for in-home caregivers in WAC 388-71-0500 through 388-71-0556.

(3) Providers of personal care services for adults must comply with the training requirements in these rules governing medicaid personal care providers in WAC ~~((388-71-05670 through 388-71-05799))~~ 388-71-0841 through 388-71-1006. Additionally, providers must meet the certification requirements in WAC 388-71-0975 through 388-71-0980 and WAC 246-980-010 through 246-980-990.

(4) Natural, step, or adoptive parents can be the personal care provider of their adult child age eighteen or older.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1310 Are there limits to the personal care services I can receive? (1) You must meet the programmatic eligibility for medicaid personal care in chapter 388-106 WAC governing medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE).

(2) The maximum hours of personal care you may receive are determined by the CARE tool used as part of the ~~((DDD))~~ DDA assessment.

(a) Provider rates are limited to the department established hourly rates for in-home medicaid personal care.

(b) Homecare agencies must be licensed through the department of health and contracted with ~~((ADSA))~~ ADS.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1400 What are prevocational services? (1) Prevocational services typically occur in a specialized or segregated setting and include individualized monthly employment related activities in the community. Prevocational services are designed to prepare ~~((you for))~~ those interested in gainful employment in an integrated setting through training and skill development.

(2) Prevocational services are available in the (~~(Basic,))~~ Basic Plus, Core and Community Protection waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1405 Who are the qualified providers of prevocational services? Providers of prevocational services must be a county or an individual or agency contracted with a county or (~~(DDD))~~ DDA to provide prevocational services.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1410 Are there limits to the prevocational services I can receive? The following limitations apply to your receipt of prevocational services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive prevocational services.

(2) New referrals for prevocational services require prior approval by the (~~(DDD))~~ DDA regional administrator and county coordinator or their designees.

(3) Prevocational services are a time limited step on the pathway toward individual employment and are dependent on your demonstrating steady progress toward gainful employment over time. Your annual (~~(vocational assessment))~~ employment plan will include exploration of integrated settings within your next service year. Criteria that would trigger a review of your need for these services include, but are not limited to:

(a) Compensation at more than fifty percent of the prevailing wage;

(b) Significant progress made toward your defined goals;

(c) (~~Your expressed interest in competitive employment; and/or~~

(~~d))~~ Recommendation by your individual support plan team.

(4) You will not be authorized to receive prevocational services in addition to community access services or supported employment services.

(5) (~~The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.~~

(~~6))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-1505 Who are qualified providers of residential habilitation services for the Core waiver? Providers of residential habilitation services for participants in the Core waiver must be one of the following:

(1) Individuals contracted with (~~(DDD))~~ DDA to provide residential support as a "companion home" provider;

(2) Individuals contracted with (~~(DDD))~~ DDA to provide training as an "alternative living provider";

(3) Agencies contracted with (~~(DDD))~~ DDA and certified per chapter 388-101 WAC;

(4) State-operated living alternatives (SOLA);

(5) Licensed and contracted group care homes, foster homes, child placing agencies or staffed residential homes per chapter 388-148 WAC.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1510 Who are qualified providers of residential habilitation services for the community protection waiver? Providers of residential habilitation services for participants of the community protection waiver are limited to state operated living alternatives (SOLA) and supported living providers who are contracted with (~~(DDD))~~ DDA and certified under chapter 388-101 WAC as a residential community protection provider intensive supported living services (CP-ISLS).

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-1515 Are there limits to the residential habilitation services I can receive? (1) You may only receive one type of residential habilitation service at a time.

(2) None of the following can be paid for under the CORE or community protection waiver:

(a) Room and board;

(b) The cost of building maintenance, upkeep, improvement, modifications or adaptations required to assure the health and safety of residents, or to meet the requirements of the applicable life safety code;

(c) Activities or supervision already being paid for by another source;

(d) Services provided in your parent's home unless you are receiving alternative living services for a maximum of six months to transition you from your parent's home into your own home.

(3) Alternative living services in the CORE waiver cannot:

(a) Exceed forty hours per month;

(b) Provide personal care or protective supervision.

(4) The following persons cannot be paid providers for your service:

(a) Your spouse;

(b) Your natural, step, or adoptive parents if you are a child age seventeen or younger;

(c) Your natural, step, or adoptive parent unless your parent is certified as a residential agency per chapter 388-101 WAC or is employed by a certified or licensed agency qualified to provide residential habilitation services.

(5) The initial authorization of residential habilitation services requires prior approval by the (~~(DDD))~~ DDA regional administrator or designee.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1600 What is respite care? Respite care is short-term intermittent relief for persons who normally provide care for and live with you. This service is available in the (~~(Basic,)~~) Basic Plus, CIIBS, and Core waivers.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1605 Who is eligible to receive respite care? You are eligible to receive respite care if you are in the (~~(Basic,)~~) Basic Plus, CIIBS or Core waiver and:

(1) You live in a private home and no person living with you is contracted by (~~(ADSA))~~ ADS to provide you with a service; or

(2) You are age eighteen or older and:

(a) You live with your natural, step or adoptive parent(s) who is also contracted by (~~(ADSA))~~ ADS to provide you with a service; and

(b) No one else living with you is contracted by (~~(ADSA))~~ ADS to provide you with a service; or

(3) You are under the age of eighteen and:

(a) You live with your natural, step or adoptive parent(s); and

(b) There is a person living with you who is contracted by (~~(ADSA))~~ ADS to provide you with a service; or

(4) You live with a caregiver who is paid by (~~(DDD))~~ DDA to provide supports as:

(a) A contracted companion home provider; or

(b) A licensed children's foster home provider.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1607 Can someone who lives with me be my respite provider? Someone who lives with you may be your respite provider as long as (~~(they are))~~ he or she is not the person who normally provides care for you and is not contracted to provide any other ADS paid service to you.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1610 Where can respite care be provided? (1) Respite care can be provided in the following location(s):

(a) Individual's home or place of residence;

(b) Relative's home;

(c) Licensed children's foster home;

(d) Licensed, contracted and (~~(DDD))~~ DDA certified group home;

(e) Licensed assisted living facility contracted as an adult residential center;

(f) Adult residential rehabilitation center;

(g) Licensed and contracted adult family home;

(h) Children's licensed group home, licensed staffed residential home, or licensed childcare center;

(i) Other community settings such as camp, senior center, or adult day care center.

(2) Additionally, your respite care provider may take you into the community while providing respite services.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1615 Who are qualified providers of respite care? Providers of respite care can be any of the following individuals or agencies contracted with (~~(DDD))~~ DDA for respite care:

(1) Individuals meeting the provider qualifications under chapter 388-825 WAC;

(2) Homecare/home health agencies, licensed under chapter 246-335 WAC, Part 1;

(3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;

(4) Licensed and contracted adult family homes;

(5) Licensed and contracted adult residential care (~~(facility))~~ facilities;

(6) Licensed and contracted adult residential treatment (~~(facility))~~ facilities under chapter 246-337 WAC;

(7) Licensed child care centers under chapter 170-295 WAC;

(8) Licensed child day care centers under chapter 170-295 WAC;

(9) Adult day care providers under chapter 388-71 WAC contracted with (~~(DDD))~~ DDA;

(10) Certified provider under chapter 388-101 WAC when respite is provided within the (~~(DDD))~~ DDA contract for certified residential services; or

(11) Other (~~(DDD))~~ DDA contracted providers such as community center, senior center, parks and recreation, summer programs(~~(-adult day care))~~.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1620 Are there limits to the respite care I can receive? The following limitations apply to the respite care you can receive:

(1) The (~~(DDD))~~ DDA assessment will determine how much respite you can receive per chapter 388-828 WAC.

(2) Respite cannot replace:

(a) Day care while your parent or guardian is at work; and/or

(b) Personal care hours available to you. When determining your unmet need, (~~(DDD))~~ DDA will first consider the personal care hours available to you.

(3) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

(4) Your caregiver may not provide ~~((DDD))~~ DDA services for you or other persons during your respite care hours.

(5) If your personal care provider is your parent, your parent provider will not be paid to provide respite services to any client in the same month that you receive respite services.

(6) If your personal care provider is your parent and you live in your parent's adult family home you may not receive respite.

(7) ~~((DDD))~~ DDA may not pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(8) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1650 What are sexual deviancy evaluations? (1) Sexual deviancy evaluations:

(a) Are professional evaluations that assess the person's needs and the person's level of risk of sexual offending or sexual recidivism;

(b) Determine the need for psychological, medical or therapeutic services; and

(c) Provide treatment recommendations to mitigate any assessed risk.

(2) Sexual deviancy evaluations are available in all ~~((DDD))~~ DDA HCBS waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1655 Who is a qualified provider of sexual deviancy evaluations? The provider of sexual deviancy evaluations must:

(1) Be a certified sexual offender treatment provider (SOTP); and

(2) Meet the standards contained in WAC 246-930-030 (education required prior to ~~((examination))~~ certification) and WAC 246-930-040 (professional experience required prior to examination).

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1660 Are there limitations to the sexual deviancy evaluations I can receive? (1) Sexual deviancy evaluations must meet the standards contained in WAC 246-930-320.

(2) Sexual deviancy evaluations require prior approval by the ~~((DDD))~~ DDA regional administrator or designee.

(3) The costs of sexual deviancy evaluations do not count toward the dollar limits for aggregate services in the ~~((Basic or))~~ Basic Plus waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1705 Who is a qualified provider of skilled nursing services? The provider of skilled nursing services must be a licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the ~~((Nurse Practice Act))~~ Standards of Nursing Conduct or Practice chapter ~~((246-845))~~ 246-700 WAC and contracted with ~~((DDD))~~ DDA to provide this service.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1710 Are there limitations to the skilled nursing services I can receive? The following limitations apply to your receipt of skilled nursing services:

(1) Skilled nursing services with the exception of nurse delegation and nursing evaluations require prior approval by the ~~((DDD))~~ DDA regional administrator or designee.

(2) ~~((DDD))~~ DDA and the treating professional determine the need for and amount of service.

(3) ~~((DDD))~~ DDA reserves the right to require a second opinion by a department-selected provider.

(4) The dollar limitation for aggregate services in your Basic Plus waiver limits the amount of skilled nursing services ~~((unless provided as a behavioral health stabilization service))~~ you may receive.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1800 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are durable and nondurable medical equipment not available through medicaid or the state plan which enables individuals to:

(a) Increase their abilities to perform their activities of daily living; or

(b) Perceive, control or communicate with the environment in which they live.

(2) Durable ~~((and nondurable))~~ medical equipment and medical supplies are defined in WAC 182-543-1000 and ~~((182-543-2800))~~ 182-543-5500 respectively.

(3) Also included are items necessary for life support; and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) above.

(4) Specialized medical equipment and supplies are available in all ~~((DDD))~~ DDA HCBS waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1805 Who are the qualified providers of specialized medical equipment and supplies? The provider of specialized medical equipment and supplies must

be a medical equipment supplier contracted with ~~((DDD))~~ DDA or have a state contract as a Title XIX vendor.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies? The following limitations apply to your receipt of specialized medical equipment and supplies:

(1) Specialized medical equipment and supplies require prior approval by the ~~((DDD))~~ DDA regional administrator or designee for each authorization.

(2) ~~((DDD))~~ DDA reserves the right to require a second opinion by a department-selected provider.

(3) Items reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the medicaid state plan.

(4) Items must be of direct medical or remedial benefit to the individual and necessary as a result of the individual's disability.

(5) Medications, prescribed or nonprescribed, and vitamins are excluded.

(6) The dollar limitations for aggregate services in your ~~((Basic or))~~ Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-1845 Who are qualified providers of specialized nutrition and specialized clothing? (1) Providers of specialized nutrition are:

(a) Certified dietitians contracted with ~~((DDD))~~ DDA to provide this service or employed by an agency contracted with ~~((DDD))~~ DDA to provide this service; and

(b) Specialized nutrition vendors contracted with ~~((DDD))~~ DDA to provide this service.

(2) Providers of specialized clothing are specialized clothing vendors contracted with ~~((DDD))~~ DDA to provide this service.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

WAC 388-845-1850 Are there limitations to my receipt of specialized nutrition and specialized clothing?

(1) The following limitations apply to your receipt of specialized nutrition services:

(a) Specialized nutrition may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third party payments are available;

(b) Services must be safe, effective, and individualized;

(c) Services must be ordered by a physician licensed to practice in the state of Washington;

(d) Specialized diets must be periodically monitored by a certified dietitian;

(e) Specialized nutrition products will not constitute a full nutritional regime unless an enteral diet is the primary source of nutrition;

(f) Department coverage of specialized nutrition products is limited to costs that are over and above inherent family food costs;

(g) ~~((DDD))~~ DDA reserves the right to require a second opinion by a department selected provider; and

(h) Prior approval by regional administrator or designee is required.

(2) The following limitations apply to your receipt of specialized clothing:

(a) Specialized clothing may be authorized as a waiver service if the service is not covered by medicaid or private insurance. You must assist the department in determining whether third party payments are available.

(b) The department requires written documentation from an appropriate health professional regarding your need for the service. This recommendation must take into account that the health professional has recently examined you, reviewed your medical records, and conducted an assessment.

(c) The department may require a second opinion from a department selected provider that meets the same criteria as subsection (b) of this section.

(d) Prior approval by regional administrator or designee is required.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1900 What are specialized psychiatric services? (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing ~~((mental))~~ behavioral health symptoms. These services are available in all ~~((DDD))~~ DDA HCBS waivers.

(2) Service may be any of the following:

(a) Psychiatric evaluation,

(b) Medication evaluation and monitoring,

(c) Psychiatric consultation.

(3) These services are also available as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-1910 Are there limitations to the specialized psychiatric services I can receive? (1) Specialized psychiatric services are excluded if they are available through other medicaid programs.

(2) The dollar limitations for aggregate service in your ~~((Basic and))~~ Basic Plus waiver limit the amount of specialized psychiatric services unless provided as a behavioral health stabilization service.

(3) Specialized psychiatric services require prior approval by the ~~((DDD))~~ DDA regional administrator or designee.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-2000 What is staff/family consultation and training? (1) Staff/family consultation and training is

professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all ~~((DDD))~~ DDA HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the individual's individual support plan, including:

- (a) Health and medication monitoring;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) Positive behavior support;
- (e) Augmentative communication systems;
- (f) Diet and nutritional guidance;
- (g) Disability information and education;
- (h) Strategies for effectively and therapeutically interacting with the participant;
- (i) Environmental consultation; and
- (j) For the CIIBS waiver only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training? To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with ~~((DDD))~~ DDA:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;
- (14) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;
- (15) Certified dietician;
- (16) Recreation therapist registered in Washington and certified by the National Council for Therapeutic Recreation;
- (17) Providers listed in WAC 388-845-0506 and contracted with ~~((DDD))~~ DDA to provide CIIBS intensive services;
- (18) Certified music therapist (for CIIBS only); or
- (19) Psychiatrist.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-2010 Are there limitations to the staff/family consultation and training I can receive? (1) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff/family consultation and training.

(2) Staff/family consultation and training require prior approval by the ~~((DDD))~~ DDA regional administrator or designee.

(3) The dollar limitations for aggregate services in your ~~((Basic or))~~ Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-2100 What are supported employment services? Supported employment services are for those interested in integrated gainful employment. These services provide you with intensive ongoing support if you need individualized assistance to gain and/or maintain employment. These services are tailored to your individual needs, interests, abilities, and promote your career development. These services are provided in individual or group settings and are available in the ~~((Basic,))~~ Basic Plus, Core and Community Protection waivers.

(1) Individual supported employment services include activities needed to sustain minimum wage pay or higher. These services are conducted in integrated business environments and include the following:

(a) ~~((Creation of work opportunities through job development))~~ Intake: an initial meeting to gather and share basic information and a general overview of employment supports, resources in the community and the type of available supports that the individual may receive;

(b) ~~((On-the-job training))~~ Discovery: a person-centered approach to learn the individual's likes and dislikes, job preferences, employment goals and skills;

(c) ~~((Training for your supervisor and/or peer workers to enable them to serve as natural supports to you on the job))~~ Job preparation: includes activities of work readiness resume development, work experience, volunteer support transportation training;

(d) ~~((Modification of your work site tasks))~~ Marketing: a method to identify and negotiate jobs, building relationships with employers and customize employment development;

(e) ~~((Employment retention and follow along support))~~ Job coaching: the supports needed to keep the job; ~~((and))~~

(f) ~~((Development of career and promotional opportunities))~~ Job retention: the supports needed to keep the job, maintain relationship with employer, identify opportunities, negotiate a raise in pay, promotion and/or increased benefits.

(2) Group supported employment services are a step on your pathway toward gainful employment in an integrated setting and include:

(a) ~~((The activities outlined in individual supported employment services))~~ Supports and paid training in an integrated business setting;

(b) ~~((Daily))~~ Supervision by a qualified employment provider during working hours; ~~((and))~~

(c) Groupings of no more than eight workers with disabilities; and

(d) Individualized supports to obtain gainful employment.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-2105 Who are qualified providers of supported employment services? ~~Providers of supported employment services ((providers))~~ must be a county, or ~~((agencies))~~ agency or ~~((individuals))~~ an individual contracted with a county or ~~((DDD))~~ DDA.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-2110 Are there limits to the supported employment services I can receive? The following limitations apply to your receipt of supported employment services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive supported employment services.

(2) Payment will be made only for the employment support you require as a result of your disabilities.

(3) Payment for individual supported employment excludes the supervisory activities rendered as a normal part of the business setting.

(4) You will not be authorized to receive supported employment services in addition to community access or prevocational services.

(5) ~~((The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of supported employment service you may receive.~~

~~(6))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325 and might not equal the number of hours you spend on the job or in job related activities.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-2160 What is therapeutic equipment and supplies? (1) Therapeutic equipment and supplies are only available in the CIIBS waiver.

(2) Therapeutic equipment and supplies are equipment and supplies that are ~~((incorporated in))~~ necessary to implement a behavioral support plan or other therapeutic plan, designed by an appropriate professional, such as a sensory integration or communication therapy plan, and necessary in order to fully implement the therapy or intervention.

(3) Included are items such as a weighted blanket, supplies that assist to calm or redirect the child to a constructive activity, or a vestibular swing.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-2165 Who are qualified providers of therapeutic equipment and supplies? Providers of therapeutic equipment and supplies are therapeutic equipment and supply vendors contracted with ~~((DDD))~~ DDA to provide this service.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver individual support plan. This service is available in all ~~((DDD))~~ DDA HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides you access to waiver services, specified by your individual support plan.

(2) Whenever possible, you must use family, neighbors, friends, or community agencies that can provide this service without charge.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2205 Who is qualified to provide transportation services? (1) The provider of transportation services can be an individual or agency contracted with ~~((DDD))~~ DDA whose contract includes transportation in the statement of work.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-2210 Are there limitations to the transportation services I can receive? The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace medicaid transportation services.

(3) Transportation is limited to travel to and from a waiver service.

(4) Transportation does not include the purchase of a bus pass.

(5) Reimbursement for provider mileage requires prior approval by ~~((DDD))~~ DDA and is paid according to contract.

(6) This service does not cover the purchase or lease of vehicles.

(7) Reimbursement for provider travel time is not included in this service.

(8) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(9) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

(10) The dollar limitations for aggregate services in your ~~((Basic or))~~ Basic Plus waiver limit the amount of service you may receive.

(11) Transportation services require prior approval by the ~~((DDD))~~ DDA regional administrator or designee.

(12) If your individual personal care provider uses his/her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to sixty

miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of sixty miles per month. This cost is not counted toward the dollar limitation for aggregate services in the ~~((Basic or))~~ Basic Plus waiver.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-2265 Who are providers of vehicle modifications? Providers of vehicle modifications are:

- (1) Vehicle service providers contracted with ~~((DDD))~~ DDA to provide this service; or
- (2) Vehicle adaptive equipment vendors contracted with ~~((DDD))~~ DDA to provide this service.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

WAC 388-845-2270 Are there limitations to my receipt of vehicle modification services? The following limitations apply to your receipt of vehicle modifications under the CIIBS waiver:

- (1) Prior approval by the regional administrator or designee is required.
- (2) Vehicle modifications are excluded if they are of general utility without direct medical or remedial benefit to the individual.
- (3) Vehicle modifications must be the most cost effective modification based upon a comparison of contractor bids as determined by ~~((DDD))~~ DDA.
- (4) Modifications will only be approved for a vehicle that serves as the participant's primary means of transportation and is owned by the family.
- (5) The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.
- (6) The department may require a second opinion from a department selected provider that meets the same criteria as subsection (5) of this section.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-3000 What is the process for determining the services I need? Your service needs are determined through the ~~((DDD))~~ DDA assessment and the service planning process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the ISP.

- (1) You receive an initial and annual assessment of your needs using a department-approved form.
 - (a) You meet the eligibility requirements for ICF/ID level of care.
 - (b) The "comprehensive assessment reporting evaluation (CARE)" tool will determine your eligibility and amount of personal care services.

(c) If you are in the ~~((Basic))~~ Basic Plus, CIIBS, or Core waiver, the ~~((DDD))~~ DDA assessment will determine the amount of respite care available to you.

(2) From the assessment, ~~((DDD))~~ DDA develops your waiver individual support plan (ISP) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-3055 What is a waiver individual support plan (ISP)? (1) The individual support plan (ISP) is the primary tool ~~((DDD))~~ DDA uses to determine and document your needs and to identify the services to meet those needs.

- (2) Your ISP must include:
 - (a) Your identified health and welfare needs;
 - (b) Both paid and unpaid services and supports approved to meet your identified health and welfare needs as identified in WAC 388-828-8040 and 388-828-8060; and
 - (c) How often you will receive each waiver service; how long you will need it; and who will provide it.
- (3) For an initial ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.
- (4) For a reassessment or review of your ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.
- (5) You may choose any qualified provider for the service, who meets all of the following:
 - (a) Is able to meet your needs within the scope of their contract, licensure and certification;
 - (b) Is reasonably available;
 - (c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and
 - (d) Agrees to provide the service at department rates.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-3056 What if I need assistance to understand my individual support plan? If you are unable to understand your individual support plan and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your individual support plan, ~~((DDD))~~ DDA will take the following steps:

- (1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your individual support plan.
- (2) Continue your current waiver services.
- (3) If the office of the attorney general or a court determines that you do not need a legal representative, ~~((DDD))~~ DDA will continue to try to provide necessary supplemental accommodations in order to help you understand your individual support plan.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-3060 When is my individual support plan effective? Your individual support plan is effective the last day of the month in which ~~((DDD))~~ DDA signs it after a signature or consent is obtained.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-3061 Can a change in my individual support plan be effective before I sign it? If you verbally request a change in service to occur immediately, ~~((DDD))~~ DDA can sign the individual support plan and approve it prior to receiving your signature.

(1) Your individual support plan will be mailed to you for signature.

(2) You retain the same appeal rights as if you had signed the individual support plan.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-3062 Who is required to sign or give verbal consent to the individual support plan? (1) If you do not have a legal representative, you must sign or give verbal consent to the individual support plan.

(2) If you have a legal representative, your legal representative must sign or give verbal consent to the individual support plan.

(3) If you need assistance to understand your individual support plan, ~~((DDD))~~ DDA will follow the steps outlined in WAC 388-845-3056 (1) and (3).

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-3063 Can my individual support plan be effective before the end of the month? You may request to ~~((DDD))~~ DDA to have your individual support plan effective prior to the end of the month. The effective date will be the date ~~((DDD))~~ DDA signs it after receiving your signature or verbal consent.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-3070 What happens if I do not sign or verbally consent to my individual support plan (ISP)? If ~~((DDD))~~ DDA is unable to obtain the necessary signature or verbal consent for an initial, reassessment or review of your individual support plan (ISP), ~~((DDD))~~ DDA will take one or more of the following actions:

(1) If this individual support plan is an initial plan, ~~((DDD))~~ DDA will be unable to provide waiver services. ~~((DDD))~~ DDA will not assume consent for an initial plan and will follow the steps described in WAC 388-845-3056 (1) and (3).

(2) If this individual support plan is a reassessment or review and you are able to understand your ISP:

(a) ~~((DDD))~~ DDA will continue providing services as identified in your most current ISP until the end of the ten-day advance notice period as stated in WAC 388-825-105.

(b) At the end of the ten-day advance notice period, unless you file an appeal, ~~((DDD))~~ DDA will assume consent and implement the new ISP without the required signature or verbal consent as defined in WAC 388-845-3062 above.

(3) If this individual support plan is a reassessment or review and you are not able to understand your ISP, ~~((DDD))~~ DDA will continue your existing services and take the steps described in WAC 388-845-3056.

(4) You will be provided written notification and appeal rights to this action to implement the new ISP.

(5) Your appeal rights are in WAC 388-845-4000 and 388-825-120 through 388-825-165.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-3075 What if my needs change? You may request a review of your individual support plan at any time by calling your case manager. If there is a significant change in your condition or circumstances, ~~((DDD))~~ DDA must reassess your individual support plan with you and amend the plan to reflect any significant changes. This reassessment does not affect the end date of your annual individual support plan.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-3080 What if my needs exceed the maximum yearly funding limit or the scope of services under the ~~((Basic or))~~ Basic Plus waiver? (1) If you are on the ~~((Basic or))~~ Basic Plus waiver and your assessed need for services exceeds the maximum permitted, ~~((DDD))~~ DDA will make the following efforts to meet your health and welfare needs:

(a) Identify more available natural supports;

(b) Initiate an exception to rule to access available nonwaiver services not included in the ~~((Basic or))~~ Basic Plus waiver other than natural supports;

(c) Authorize emergency ~~((services))~~ assistance up to six thousand dollars per year if your needs meet the definition of emergency ~~((services))~~ assistance in WAC 388-845-0800.

(2) If emergency ~~((services))~~ assistance and other efforts are not sufficient to meet your needs, you will be offered:

(a) An opportunity to apply for an alternate waiver that has the services you need;

(b) Priority for placement on the alternative waiver when there is capacity to add people to that waiver;

(c) Placement in an ICF/ID.

(3) If none of the options in subsections (1) and (2) above is successful in meeting your health and welfare needs, ~~((DDD))~~ DDA may terminate your waiver eligibility.

(4) If you are terminated from a waiver, you will remain eligible for nonwaiver ~~((DDD))~~ DDA services but access to state-only funded ~~((DDD))~~ DDA services is limited by availability of funding.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-3085 What if my needs exceed what can be provided under the CIIBS, Core or Community Protection waiver? (1) If you are on the CIIBS, Core or Community Protection waiver and your assessed need for services exceeds the scope of services provided under your waiver, ((~~DD~~)) DDA will make the following efforts to meet your health and welfare needs:

- (a) Identify more available natural supports;
 - (b) Initiate an exception to rule to access available nonwaiver services not included in the CIIBS, Core or Community Protection waiver other than natural supports;
 - (c) Offer you the opportunity to apply for an alternate waiver that has the services you need, subject to WAC 388-845-0045;
 - (d) Offer you placement in an ICF/ID.
- (2) If none of the above options is successful in meeting your health and welfare needs, ((~~DD~~)) DDA may terminate your waiver eligibility.
- (3) If you are terminated from a waiver, you will remain eligible for nonwaiver ((~~DD~~)) DDA services but access to state-only funded ((~~DD~~)) DDA services is limited by availability of funding.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3090 What if my identified health and welfare needs are less than what is provided in my current waiver? If your identified health and welfare needs are less than what is provided in your current waiver, ((~~DD~~)) DDA may terminate you from your current waiver and enroll you in a waiver that meets but does not exceed your assessed need for waiver services.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-3095 Will I have to pay toward the cost of waiver services? (1) You are required to pay toward board and room costs if you live in a licensed facility or in a companion home as room and board is not considered to be a waiver service.

- (2) You will not be required to pay towards the cost of your waiver services if you receive SSI.
- (3) You may be required to pay towards the cost of your waiver services if you do not receive SSI. ((~~DD~~)) DDA determines what amount, if any, you pay in accordance with WAC ((388-515-1510)) 182-515-1510.

AMENDATORY SECTION (Amending WSR 13-04-005, filed 1/24/13, effective 2/24/13)

WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver? (1) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited to the decision that you are not eligible to have your request documented in a statewide data base due to the following:

(a) You do not need ICF/ID level of care per WAC 388-845-0070, 388-828-8040 and 388-828-8060; or

(b) You requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(2) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited to the following:

(a) ((~~DD~~s)) DDA's decision that the services contained in a different waiver are not necessary to meet your health and welfare needs and that the services available on your current waiver can meet your health and welfare needs; or

(b) ((~~DD~~s)) DDA's decision that you are not eligible to have your request documented in a statewide database because you requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(3) If ((~~DD~~)) DDA determines that the services offered in a different waiver are necessary to meet your health and welfare needs, but there is not capacity on the different waiver, you do not have the right to appeal any denial of enrollment on a different waiver when ((~~DD~~)) DDA determines there is not capacity to enroll you on a different waiver.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-4010 How do I appeal a department action? (1) Your rights to appeal a department decision are in RCW 71A.10.050 and WAC 388-825-120 and are limited to an applicant, recipient, or former recipient of services from the ((~~division of developmental disabilities~~)) DDA.

(2) If you want to appeal a department action, you must request an appeal within ninety days from receipt of the department notice of the action you are disputing.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-4015 Will my services continue during an appeal? Services may continue according to the provisions contained in WAC 388-825-145.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-845-0205 Basic waiver services.

WSR 13-19-006

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF FISH AND WILDLIFE

[Filed September 5, 2013, 11:12 a.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-20-100 and new WAC 220-16-881

through 220-16-887 from WSR 13-10-083, which was filed on May 1, 2013. The Washington fish and wildlife commission did not adopt any changes in WAC 220-20-100, and it did not adopt new WAC 220-16-881 through 220-16-887.

Lori Preuss
Rules Coordinator

WSR 13-19-031
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed September 10, 2013, 12:13 p.m.]

September 10, 2013
Randy Dorn
State Superintendent
of Public Instruction

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-031.

Title of Rule and Other Identifying Information: Chapter 392-502 WAC, Online learning—Approval of multidistrict online providers.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, Brouillet Conference Room, 4th Floor, 600 Washington S.E., Olympia, WA 98504-7200, on October 22, 2013, at 1:00 p.m.

Date of Intended Adoption: October 23, 2013.

Submit Written Comments to: Karl Nelson, 4507 University Way N.E., Suite 204, Seattle, WA 98105, e-mail karl.nelson@k12.wa.us, fax (206) 616-4595, by October 22, 2013.

Assistance for Persons with Disabilities: Contact Wanda Griffin by October 22, 2013, TTY (360) 664-3631 or (360) 725-6133.

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

- (1) Correct an incorrect citation in WAC 392-502-001.
- (2) Modify the definitions of an "online course" and "online school program" in WAC 392-502-010 to align with the modifications made by ESSB 5946 (2013).
- (3) Remove several components that applied to previous school years or were otherwise out-of-date.
- (4) Clarify how "candidates for accreditation" can fulfill the accreditation assurance as required in ESSB 5946.
- (5) Adds an approval assurance on the topic of alternative learning experiences (ALE).
- (6) Clarify the approval requirements for state funding in light of ESSB 5946 in WAC 392-502-080.

Reasons Supporting Proposal: The changes to chapter 392-502 WAC are necessary to implement changes to chapter 28A.250 RCW, the online learning statute, made by the legislature in ESSB 5946 (2013). In addition, several sections have been streamlined and clarified by correcting errors or removing out-of-date requirements.

Statutory Authority for Adoption: Chapter 28A.250 RCW and RCW 28A.150.290.

Statute Being Implemented: Chapter 28A.250 RCW.

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Karl Nelson, 4507 University Way N.E., Suite 204, Seattle, WA 98105, (206) 616-9940; and Enforcement: Peter Tamayo, 600 Washington Street S.E., Olympia, WA 98504-7200, (360) 664-3631.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

AMENDATORY SECTION (Amending WSR 12-03-067, filed 1/12/12, effective 2/12/12)

WAC 392-502-001 Authority. The authority for these rules is RCW ((~~7-60-055, which authorizes the superintendent of public instruction to adopt rules defining minimum requirements and accountability for alternative learning experience online programs~~)) 28A.150.290 and ((~~RCW~~)) 28A.250.020, which authorizes the superintendent to adopt by rule criteria and processes for approving online providers.

AMENDATORY SECTION (Amending WSR 12-15-025, filed 7/11/12, effective 8/11/12)

WAC 392-502-010 Definitions. As used in this chapter, the term:

- (1) "Multidistrict online provider" means:
 - (a) A private or nonprofit organization that enters into a contract with a school district to provide online courses or programs to K-12 students from more than one school district;
 - (b) A private or nonprofit organization or a school district that enters into contracts with multiple school districts to provide online courses or programs to K-12 students from those districts; or
 - (c) Except as provided in (c)(i) and (ii) of this subsection, a school district that provides online courses or programs to students who reside outside the geographic boundaries of the school district.
 - (i) "Multidistrict online provider" does not include a school district online learning program in which fewer than ten percent of the students enrolled in the program are from other districts under the interdistrict student transfer provisions of RCW 28A.225.225.
 - (ii) "Multidistrict online provider" also does not include regional online learning programs that are jointly developed and implemented through an interdistrict cooperative program between two or more school districts or between one or more school districts and an educational service district, unless the annual average headcount of students who reside outside the geographic boundaries of those school districts and who are enrolled in the regional online program is ten percent or more of the total program enrollment headcount.

Any agreement establishing such a program must address, at minimum, how the districts share student full-time equivalency for state basic education funding purposes and how categorical education programs, including special education, are provided to eligible students.

(2) "Online course" means a course, or grade-level course work, in which:

(a) More than half of the course content is delivered electronically using the internet or other computer-based methods; and

(b) More than half of the teaching is conducted from a remote location through an online course learning management system or other online or electronic tools; and

(c) A certificated teacher has the primary responsibility for the student's instructional interaction pertaining to the online course. Primary responsibility means the teacher is the principal individual who provides instructional interactions that may include, but are not limited to, direct instruction, review of assignments, assessment, testing, progress monitoring, and educational facilitation; and

(d) Students have access to the teacher synchronously, asynchronously, or both.

An online course may be delivered to students at school as part of the regularly scheduled school day. An online course also may be delivered to students, in whole or in part, independently from a regular classroom schedule. ~~((Online courses delivered to students independently of a regular classroom schedule must comply with RCW 28A.150.262 and WAC 392-121-182 to qualify for state basic education funding.))~~

(3) "Online school program" means a school program that(~~(-~~

~~(a) Offers courses or grade-level course work that are delivered primarily electronically using the internet or other computer-based methods;~~

~~(b) Offers courses or grade-level course work that are taught by a teacher primarily from a remote location using online or other electronic tools. Students enrolled in an online program may have access to the teacher synchronously, asynchronously, or both;~~

~~(c)) offers a sequential set of online courses or grade-level course work that may be taken in a single school term or throughout the school year in a manner that could provide a full-time basic education program if so desired by the student. Students may enroll in the program as part-time or full-time students(~~(- and~~~~

~~(d) Has an online component of the program with online lessons and tools for student and data management)).~~

An online school program may be delivered to students at school as part of the regularly scheduled school day. An online school program also may be delivered to students, in whole or in part, independently from a regular classroom schedule. ~~((Online programs delivered to students independently of a regular classroom schedule must comply with RCW 28A.150.262 and WAC 392-121-182 to qualify for state basic education funding.))~~

(4) "Online provider" means any provider of an online course or program, multidistrict online providers, all school district online learning programs, and all regional online learning programs.

(5) "Accrediting organizations" means the designated bodies identified by the superintendent of public instruction ~~((after consultation with the Washington council for online learning))~~ and published on the superintendent of public instruction web site. Accrediting organizations are for providers to use to satisfy the accreditation qualification for being an approved online provider.

(6) "Affiliate provider" means a school district that:

(a) Provides online courses offered by one or more approved online provider that provides the course content, the technology platform, and the instructional component of the courses; and

(b) Does not modify the content or instruction of the approved provider's offerings. An affiliate provider may not offer to its students any online course or courses that are provided by a nonapproved online provider.

(7) "Single-district provider" means a school district online provider that is not a multidistrict online provider or an affiliate provider.

(8) For the purposes of this section, "primarily" is defined as more than half.

AMENDATORY SECTION (Amending WSR 12-15-025, filed 7/11/12, effective 8/11/12)

WAC 392-502-020 Online provider approval process and timeline. (1) This section sets forth the process that online providers must follow to be approved in accordance with RCW 28A.250.020. Beginning with the 2013-14 school year, all online providers must be approved by the superintendent of public instruction for districts to collect state funding, to the extent otherwise allowed by state law, for courses offered by those providers in accordance with WAC 392-502-080.

~~(2) ((If at the end of the 2011-12 school year, the annual average headcount for that school year of students who reside outside the geographic boundaries of a school district or regional online learning program and are enrolled in a school district online program or regional online learning program increases to ten percent or more of the total online program enrollment headcount, the program:~~

~~(a) Must seek approval prior to November 1, 2013.~~

~~(b) May continue operating during the 2012-13 school year, but not the following school year unless approved as a multidistrict online provider.~~

~~(3) Prior to the 2012-13 school year, multidistrict online providers seeking approval must submit an application for approval. The application form is outlined on the superintendent of public instruction web site. The superintendent or his or her designee will review submitted applications for compliance with the assurances and designated approval criteria set forth in WAC 392-502-030 and must meet or exceed the acceptable defined score.~~

~~(4) Beginning with the 2013-14 school year,))~~ All online providers seeking approval must apply to the superintendent of public instruction for approval as follows:

(a) Multidistrict online providers must submit an application as outlined on the superintendent of public instruction web site which will be reviewed for compliance with the designated approval criteria and must meet or

exceed the acceptable defined score. Multidistrict online providers must comply with the superintendent of public instruction's required assurances.

(b) Affiliate providers must submit an affiliate provider application as outlined on the superintendent of public instruction web site. Affiliate providers must also comply with the superintendent of public instruction's required assurances.

(c) Single-district providers must submit a single-district provider application as outlined on the superintendent of public instruction web site. Single-district providers must also comply with the superintendent of public instruction's required assurances.

If, at the end of a school year, the annual average headcount for that school year of students who reside outside the geographic boundaries of a single-district provider and are enrolled in an online program offered by the single-district provider increases to ten percent or more of the total program enrollment headcount, the program shall be required to apply as a multidistrict online provider in the next approval cycle. The program may continue operating the year of the required approval review, but not the following school year unless approved as a multidistrict online provider.

~~((5))~~ (3) The superintendent of public instruction makes decisions regarding approval of multidistrict provider applications submitted pursuant to this chapter no later than November 1st of each year. A multidistrict online provider's approval status takes effect the beginning of the school year following the date of the superintendent's approval of the online provider's application. Single-district and affiliate providers may apply at any point, and, subject to the requirements of approval, can be approved immediately by the superintendent of public instruction.

~~((6) For the 2011-12 school year, final modifications to the conditions for approval, required assurances, approval criteria, and application forms will appear on the superintendent of public instruction's web site by February 15, 2012.~~

~~((7))~~ (4) Beginning with the 2012-13 school year, any proposed modifications to the conditions for approval, required assurances, approval criteria, and application forms will appear on the superintendent of public instruction web site by October 1st of each year. The superintendent will accept feedback ~~((from))~~ on the proposed modifications from any interested parties prior to November 1st of each year. Any final modifications to the conditions for approval, required assurances, approval criteria, and application forms will appear on the superintendent of public instruction's web site by January 1st of each year.

AMENDATORY SECTION (Amending WSR 12-15-025, filed 7/11/12, effective 8/11/12)

WAC 392-502-030 Approval assurances and criteria.

(1) This section sets forth the assurances and criteria that online providers must meet to be approved under this chapter.

(a) To be approved, online providers must provide the following assurances to the superintendent of public instruction:

(i) The online provider is accredited through an accrediting body as defined in WAC 392-502-010 and agrees to maintain accredited status for the duration of the approval period. Online providers may be candidates for accreditation at the time of application for approval provided that the provider earns full accreditation on the standard timeline.

(ii) Each course and program the online provider offers is aligned with at least eighty percent of the current applicable grade/subject area of Washington state standards. For courses with content that is not included in state standards, the online provider's courses are aligned with at least eighty percent of nationally accepted content standards set for the relevant subjects. Online providers must submit information to the superintendent regarding the standards alignment and the standards aligned.

(iii) All instruction delivered to Washington state students is delivered by Washington state certificated teachers who are assigned to instruct courses in a manner which meets the "highly qualified" definition under the No Child Left Behind Act and in a manner which meets the requirements set forth in chapter 181-82 WAC.

(iv) For online providers that offer high school courses, the courses offered by the online provider must be eligible for high school credit pursuant to WAC 180-51-050.

(v) All of the online provider's current and future courses in the applicable areas meet the credit/content requirements in chapter 392-410 WAC.

(vi) All advanced placement courses offered by the online provider have been approved in accordance with the college board advanced placement course audit. For advanced placement courses not yet offered at the time of application, the online provider must assure that those courses will be approved by the college board prior to offering those courses to students.

(vii) The online provider's data management systems ensure all student information remains confidential, as required by the Family Educational Rights and Privacy Act of 1974, as amended.

(viii) The online provider's web systems and content meet accessibility conformance levels specified in the list of approved provider assurances on the office of superintendent of public instruction's web site.

(ix) The online provider provides all information as directed or as requested by the office of superintendent of public instruction, the secretary for the department of education, and other federal officials for audit, program evaluation compliance, monitoring, and other purposes and to maintain all records for the current year and three previous years.

(x) The online provider informs the office of superintendent of public instruction in writing of any significant changes to the program including, but not limited to, changes in assurances, program description, fiscal status, or ownership.

(xi) The online provider upholds any pertinent federal or state laws, rules or regulations, in the delivery of the online courses or programs.

(xii) The online provider retains responsibility for the quality of courses and content offered, regardless of any third-party contractual arrangements, partnerships or

consortia, contributing to the content or delivery of the online courses or programs.

(xiii) The online provider complies with the state assessment requirements including, but not limited to, the requirements of chapter 28A.655 RCW and WAC 392-121-182, as applicable.

(xiv) All of the provider's current and future career and technical education (CTE) courses are aligned to Washington state CTE program standards and have been approved by the office of superintendent of public instruction's CTE office. CTE courses must be taught by a Washington certificated teacher who is also CTE-certificated in the subject area of the course.

(xv) The online provider agrees to abide by any additional assurances required by the superintendent of public instruction.

(xvi) The online provider agrees that all programs delivered as alternative learning experiences comply with the requirements of WAC 392-121-182. The online provider agrees to disclose to OSPI the manner in which it supports the requirements of WAC 392-121-182 for online courses delivered outside of an online school program.

(b) Multidistrict online providers must meet the following approval criteria by a preponderance of evidence submitted with the online provider's application:

(i) Course content and instructional design incorporating course goals and outcomes, materials and content organization, and student engagement.

(ii) Classroom management incorporating grading and privacy policies, internet etiquette, and expectations for communications.

(iii) Student assessment incorporating various types, frequent feedback, and appropriateness for the online learning environment.

(iv) Course evaluation and management incorporating strategies for obtaining feedback about the courses/programs and processes for quality assurance and updating content.

(v) Student support incorporating policies and systems to enhance the students' learning experience and their success.

(vi) School-based support incorporating strategies and systems to allow school-based staff to support student success.

(vii) Technology elements, requirements and support including descriptions and ease of navigation.

(viii) Staff development and support including training and online instructor performance reviews conducted on a planned and regularly scheduled basis.

(ix) Program management including timeliness and quality of teachers' responses to students, handling of fees, prompt distribution of materials and processing of enrollments, and handling fees and payments.

(x) The superintendent may require additional approval criteria pursuant to WAC 392-502-080.

(2) After review by the online learning advisory committee, the approval criteria with explanations and suggested supporting evidence will be posted on the superintendent of public instruction web site on or before the date the application is made available.

(3) Online provider's application will be reviewed by reviewers selected by the superintendent of public instruction

for their experience and expertise. The reviewers will be provided orientations and training to review and score the online provider applications using the approval criteria and scoring protocols.

(4) Single-district provider online programs must incorporate the approval criteria developed by the superintendent of public instruction into the program design.

AMENDATORY SECTION (Amending WSR 12-03-067, filed 1/12/12, effective 2/12/12)

WAC 392-502-050 Approval duration and conditions for continued approval. Approvals will be for the four subsequent consecutive full school years.

~~(1) ((Grandfathered multidistrict online providers are granted their initial approval only until August 31, 2012, and must be approved in a renewal process prior to that date in order to continue offering their courses/school programs for the 2012-13 school year.~~

~~(2))~~ Online providers that have been approved must annually provide the superintendent of public instruction information regarding the following:

(a) Online provider's overall instructional program;

(b) Content of individual online courses and online school programs;

(c) Direct link to the online provider's web site;

(d) Registration information for online learning programs and courses;

(e) Teacher qualifications;

(f) Student-to-teacher ratios as defined by the superintendent of public instruction;

(g) Course completion and pass rates as defined by the superintendent of public instruction; and

(h) Other evaluative and comparative information requested by the superintendent of public instruction.

~~((2))~~ (2) Online providers must carry out the program/courses described in the approval application, abide by the assurances listed in WAC 392-502-030 and certified in the application process and maintain the approval criteria listed in WAC 392-502-030.

AMENDATORY SECTION (Amending WSR 12-03-067, filed 1/12/12, effective 2/12/12)

WAC 392-502-080 Approval required for state funding. ~~(1) ((Beginning with the 2011-12 school year, school districts may claim state basic education funding, to the extent otherwise allowed by state law, for students enrolled in online courses or programs only if the online courses or programs are:~~

~~(a) Offered by a multidistrict))~~ School districts may claim state funding under ESSB 5946, section 503, to the extent otherwise allowed by state law, for students enrolled in online courses or programs only if the online courses or programs are offered by an online provider approved under RCW 28A.250.020 by the superintendent of public instruction((;

~~(b) Offered by a school district online learning program if the program serves students who reside within the geographic boundaries of the school district, including school district programs in which fewer than ten percent of the~~

~~program's students reside outside the school district's geographic boundaries; or~~

~~(e) Offered by a regional online learning program jointly developed and offered by two or more school districts or an educational service district through an interdistrict cooperative or consortium program agreement in which fewer than ten percent of the program's students reside outside the school districts' geographic boundaries).~~

(2) ~~((Beginning with the 2013-14 school year,))~~ School districts may claim state funding under RCW 28A.150.260, to the extent otherwise allowed by state law, for students enrolled in online courses or programs only if the online courses or programs are (a) offered by an online provider approved under RCW 28A.250.020 by the superintendent of public instruction(-

~~(3)), or (b) meet specific criteria ((shall be)) established by the superintendent of public instruction to allow online courses offered by providers that have not been approved by the superintendent of public instruction to be eligible for state funding if the course is in a subject matter in which no approved provider offers courses ((have been approved)) and, if it is a high school course, the course meets Washington high school graduation requirements. These criteria will be posted on the superintendent of public instruction web site by December 31, 2009, and any modifications to those will appear by July 1, 2010, and April 1st each subsequent year after review by the online learning advisory committee and the state board of education.~~

WSR 13-19-044

PROPOSED RULES

APPLE COMMISSION

[Filed September 13, 2013, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-086.

Title of Rule and Other Identifying Information: WAC 24-16-030 Rules for implementation of promotional hosting by the Washington apple commission.

Hearing Location(s): Natural Resource[s] Building, 1111 Washington Street S.E., 2nd Floor, Conference Room 205, Olympia, WA 98504, on October 24, 2013, at 1:30 p.m.

Date of Intended Adoption: November 6, 2013.

Submit Written Comments to: Kelly Frost, P.O. Box 42560, Olympia, WA 98504-2560, e-mail kfrost@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., October 25, 2013.

Assistance for Persons with Disabilities: Contact WSDA receptionist by October 16, 2013, TTY 1-800-833-6388 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules identify those authorized to make expenditures for the Washington apple commission with respect to promotional hosting and the objectives for those expenditures.

Reasons Supporting Proposal: The Washington apple commission is proposing rules on promotional hosting in accordance with RCW 15.04.200.

Statutory Authority for Adoption: RCW 15.04.200, chapters 15.24, 34.05 RCW.

Statute Being Implemented: RCW 15.04.200.

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

Name of Proponent: Washington apple commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Todd Fryhover, 2900 Euclid Avenue, Wenatchee, WA 98801, (509) 663-9600.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules relate to the internal operations of the commission and are in accordance with RCW 15.04.200.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington apple commission is not a listed agency under RCW 34.05.328 (5)(a)(i).

September 13, 2013

Todd Fryhover

President

Chapter 24-16 WAC

RULES OF THE WASHINGTON STATE APPLE COMMISSION

NEW SECTION

WAC 24-16-030 Rules for implementation of promotional hosting by the Washington apple commission. RCW 15.04.200 provides that agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents, or commissioners. "Promotional hosting" means the hosting of individuals or groups of individuals at meetings, meals, events, tours, or other gatherings for the purpose of agricultural development, trade promotion, cultivating trade relations, or in the aid of the marketing, advertising, or sale of Washington state apples. "Hosting" may include providing meals, refreshments, lodging, transportation, gifts of nominal value, reasonable and customary entertainment, and normal incidental expenses at meetings or gatherings.

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

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

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

- (a) Commissioners;
- (b) President;
- (c) Vice-president;
- (d) Export marketing staff;

(e) Contracted international representatives of the commission as defined within the scope of their contract with the commission.

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

(3) Payment and reimbursement. All payments and reimbursements shall be identified and supported by an expense report and promotional hosting form to which receipts are attached. These forms will be supplied by the commission, and shall require the following information:

(a) Name and company (if applicable) of each person hosted;

(b) General purpose of the hosting;

(c) Date of the hosting;

(d) Location of the hosting;

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

(f) Signature of person seeking payment or reimbursement.

(4) The commission chair, president/secretary, and vice-president/treasurer are authorized to approve direct payment or reimbursements submitted in accordance with these rules: Provided, That they are not authorized to approve their own invoices.

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

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

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

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

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

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

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

WSR 13-19-057

PROPOSED RULES

GAMBLING COMMISSION

[Filed September 16, 2013, 1:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-118.

Title of Rule and Other Identifying Information: WAC 230-15-040 Requirements for authorized card games.

Hearing Location(s): Comfort Inn Conference Center, 1620 74th Avenue S.W., Tumwater, WA 98501, (360) 352-0691, on November 14 or 15, 2013, at 9:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at www.wsgc.wa.gov and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: November 14 or 15, 2013.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan.Newer@wsgc.wa.gov, fax (360) 486-3625, by November 1, 2013.

Assistance for Persons with Disabilities: Contact Gail Grate by November 1, 2013, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioner, Ashford Gaming, LLC, is requesting in the game of mini-baccarat that a player be allowed to make an optional wager on either the player hand or banker hand winning the next three consecutive games. Under the current rule, a player's win or loss must be determined during a *single* card game. Mini-baccarat uses community cards where two shared hands are dealt to positions called the "bank" and the "player;" but, unlike other card games, players are not dealt their own individual hands. Players bet on one of the two shared hands dealt, rather than on their own hand.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0282.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Ashford Gaming, LLC., private.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because licensees are not required to operate mini-baccarat.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

September 16, 2013

Susan Newer

Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-15-044, filed 7/13/12, effective 8/13/12)

WAC 230-15-040 Requirements for authorized card games. (1) In order for a card game to be authorized, it must be approved by the director or the director's designee and must:

(a) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee; and

(b) Offer no more than four separate games with a single hand of cards. However, no more than three of the games may offer a wager that exceeds five dollars each. We consider bonus features and progressive jackpots separate games. If a player does not have to place a separate wager to participate, we do not consider it a separate game. An example of this is an "envy" or "share the wealth" pay out when another player achieves a specific hand; and

(c) Not allow side bets between players.

(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.

(3) Players must:

(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game; and

(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and

(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:

(i) An insurance wager placed in the game of Blackjack; or

(ii) An "envy" or "share the wealth" wager which allows a player to receive a prize if another player wins a jackpot or odds-based wager; or

(iii) A tip wager made on behalf of a dealer.

(4) Mini-Baccarat is authorized when operated in the manner explained for Baccarat in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Encyclopedia of Card Games*, or similar authoritative book on card games we have approved. However:

(a) Card game licensees may make immaterial modifications to the game; and

(b) Subsection (3) of this section does not apply; and

(c) The number of players is limited under WAC 230-15-055.

(5) A player's win or loss must be determined during the course of play of a single card game, except for:

(a) A carryover pot game. A carryover pot is an optional pot that accumulates as a dealer and participating players contribute to the pot. The winner of the pot is not necessarily determined after one game and the pot can be carried over to more than one game. Carryover pots must not carryover more than ten games. Participants must include at least one player and the dealer competing for the highest qualifying winning hand. Game rules must state how the pot is distributed. If the carryover pot has not been won by the tenth game, the dealer will divide it equally between the remaining players still

participating in the pot and the house or, if allowed by game rules, only the players still participating in the pot; and

(b) In the game of mini-baccarat, a player may make an optional wager on the player hand winning the next three consecutive games, or the banker hand winning the next three consecutive games.

WSR 13-19-061

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Behavioral Health and Service Integration Administration)

[Filed September 17, 2013, 8:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-112.

Title of Rule and Other Identifying Information: The department is repealing WAC 388-865-0217 Psychiatric indigent inpatient program.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on October 22, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 22, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 22, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 8, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is repealing WAC 388-865-0217 because individuals eligible for the psychiatric indigent inpatient (PII) program may be considered newly eligible under the Affordable Care Act (ACA) rules beginning January 1, 2014.

Reasons Supporting Proposal: The PII program has been repealed due to lack of legislative appropriation. Individuals eligible under the PII program will be covered under the federal ACA rules beginning January 1, 2014.

Statutory Authority for Adoption: RCW 71.05.560, 74.04.050, 74.04.057, 74.08.090, and 74.09.530.

Statute Being Implemented: RCW 71.05.560, 74.04.050, 74.04.057, 74.08.090, and 74.09.530.

Rule is necessary because of federal law, Patient Protection and Affordable Care Act.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1342; Implementation and Enforcement: Pete Marburger, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1513.

No small business economic impact statement has been prepared under chapter 19.85 RCW. State funding for the PII program was not legislatively appropriated beginning January 1, 2014. Individuals eligible under the PII program will be covered under the federal ACA rules beginning January 1, 2014. Under RCW 19.85.025(3), a small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The content of the rule is explicitly and specifically dictated by statute (RCW 74.04.057). Beginning January 1, 2014, an individual eligible for the PII program may be considered medicaid eligible under the new ACA rules. Under RCW 34.05.328 (5)(b)(v), a cost-benefit analysis is not required.

September 11, 2013
Katherine I. Vasquez
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-865-0217 Psychiatric indigent inpatient program.

WSR 13-19-062
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 17, 2013, 8:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-121.

Title of Rule and Other Identifying Information: The department is proposing to create WAC 388-478-0009 What are the monthly income limits for the aged, blind, or disabled (ABD) cash assistance and housing and essential needs (HEN) referral programs? and amending WAC 388-400-0060 Who is eligible for aged, blind, or disabled (ABD) cash assistance?, 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program?, 388-449-0035 How does the department assign severity ratings to my impairment?, 388-449-0060 Sequential evaluation process step II—How does the department review medical evidence to determine if I am eligible for benefits?, 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform past work?, and any other related rules as required by SHB 2069.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on October 22, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 23, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 22, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 8, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to create WAC 388-478-0009 and amend WAC 388-400-0060, 388-449-0001, 388-449-0035, 388-449-0060, and 388-449-0080 in order to create a single eligibility standard for HEN referrals and ABD cash assistance program, and create a less restrictive ABD disability standard in order to comply with SHB 2069, Laws of 2013.

Reasons Supporting Proposal: These changes are necessary to conform to SHB 2069, Laws of 2013, which establishes a single eligibility standard for HEN referrals and ABD cash assistance, reduces the minimum ABD disability duration from twelve to nine months, and reduces consideration of an individual's ability to perform past work from fifteen to ten years.

Statutory Authority for Adoption: SHB 2069, Laws of 2013, RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Shane Riddle, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4352.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments and proposed rules are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules [rules] concerning liability for care of dependents."

September 11, 2013
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-478-0009 What are the monthly income limits for the aged, blind, or disabled (ABD) cash assistance and housing and essential needs (HEN) referral program? You must have countable income, as defined in WAC 388-450-0162, at or below the monthly income limit in order to receive aged, blind, or disabled (ABD) cash assistance or a referral to the housing and essential needs (HEN) program.

(1) The ABD cash assistance and HEN referral monthly income limits for individuals with an obligation to pay shelter costs are:

Assistance Unit Size	Monthly Income Limit
1	\$339
2	\$428

(2) The ABD cash assistance and HEN referral monthly income limits for individuals with shelter provided at no cost are:

Assistance Unit Size	Monthly Income Limit
1	\$206
2	\$261

(3) The ABD cash assistance and HEN referral monthly income limits for individuals in medical institutions and group living facilities are:

Facility Type	Assistance Unit Size	Monthly Income Limit
Medical institutions (including nursing homes and hospitals)	1	\$41.62
Adult family homes	1	\$339.00
Boarding homes (including assisted living, enhanced residential centers (EARC), and adult residential centers (ARC))	1	\$38.84
Developmental disability administration (DDA) group homes	1	\$38.84
Mental health adult residential treatment facilities (ARTF)	1	\$38.84

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-400-0060 Who is eligible for aged, blind or disabled (ABD) cash assistance? (1) Effective November 1, 2011, you are eligible for aged, blind, or disabled (ABD) cash benefits if you:

- (a) Are:
 - (i) At least sixty-five years old;
 - (ii) Blind as defined by the Social Security Administration (SSA); or
 - (iii) Likely to be disabled as defined in WAC 388-449-0001 through 388-449-0100; and
- (b) Are at least eighteen years old or, if under eighteen, a member of a married couple;
- (c) Are in financial need according to ABD cash income and resource rules in chapters 388-450, 388-470 and 388-488

WAC. We determine who is in your assistance unit according to WAC 388-408-0060;

(d) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090.

(e) Meet the citizenship/alien status requirements under WAC 388-424-0015;

((e)) (f) Provide a Social Security number as required under WAC 388-476-0005;

((f)) (g) Reside in the state of Washington as required under WAC 388-468-0005;

((g)) (h) Sign an interim assistance reimbursement authorization agreeing to repay the monetary value of general assistance, disability lifeline, or aged blind or disabled benefits subsequently duplicated by supplemental security income benefits as described under WAC 388-449-0200, 388-449-0210 and 388-474-0020;

((h)) (i) Report changes of circumstances as required under WAC 388-418-0005; and

((i)) (j) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(2) You aren't eligible for aged, blind, or disabled cash benefits if you:

(a) Are eligible for temporary assistance for needy families (TANF) benefits;

(b) Are eligible for state family assistance (SFA) benefits;

(c) Refuse or fail to meet a TANF or SFA eligibility rule;

(d) Refuse or fail to pursue federal aid assistance, including but not limited to medicaid, without good cause.

(e) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220 without good cause;

((e)) (f) Refuse or fail to follow through with the SSI application as required in WAC 388-449-0200 without good cause;

((f)) (g) Refuse or fail to participate in vocational rehabilitation services as required in WAC 388-449-0225 without good cause;

((g)) (h) Are eligible for supplemental security income (SSI) benefits;

((h)) (i) Are an ineligible spouse of an SSI recipient; or

((i)) (j) Failed to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.

(3) If you reside in a public institution and meet all other requirements, your eligibility for ABD cash depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for ABD cash if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and:

(A) Sixty-five years of age or older; or

(B) Twenty years of age or younger.

(4) You aren't eligible for ABD cash when you are in the custody of or confined in a public institution such as a state penitentiary or county jail including placement:

- (a) In a work release program; or
- (b) Outside of the institution including home detention.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program? (1) For the purposes of this chapter, the following definitions apply:

- (a) "We" and "us" refer to the department of social and health services.
- (b) "You" means the applicant or recipient.
- (c) "Disabled" (~~is defined by the Social Security Administration for supplemental security income (SSI) as~~) means the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which (~~can be expected to result in death or which~~) has lasted or can be expected to last for a continuous period of not less than (~~twelve~~) nine months with available treatment or result in death.
- (d) "Physical impairment" means a diagnosable physical illness.
- (e) "Mental impairment" means a diagnosable mental disorder. We exclude any diagnosis of or related to alcohol or drug abuse or addiction.

(2) We determine if you are likely to be disabled when:

- (a) You apply for ABD cash benefits;
- (b) You become employed;
- (c) You obtain work skills by completing a training program; or
- (d) We receive new information that indicates you may be employable.

(3) We determine you are likely to be disabled if:

- (a) You are determined to meet SSA disability criteria by the Social Security Administration (SSA);
- (b) You are determined to meet SSA disability criteria by disability determination services (DDDS) based on the most recent DDDS determination;

(c) The Social Security Administration (SSA) stops your supplemental security income (SSI) payments solely because you are not a citizen;

(d) You are eligible for long-term care services from aging and (~~disability services~~) long-term support administration for a medical condition that is expected to last (~~twelve~~) nine months or more or result in death; or

(e) You are approved through the sequential evaluation process (SEP) defined in WAC 388-449-0005 through 388-449-0100. The SEP is the sequence of five steps. Step 1 considers whether you are currently working. Steps 2 and 3 consider medical evidence and whether you are likely to meet or equal a listed impairment under Social Security's rules. Steps 4 and 5 consider your residual functional capacity and vocational factors such as age, education, and work experience in order to determine your ability to do your past work or other work.

(4) If you have a physical or mental impairment and you are impaired by alcohol or drug addiction and do not meet the other disability criteria in subsection (2)(a) through (d) above, we decide if you are eligible for ABD cash by

applying the sequential evaluation process described in WAC 388-449-0005 through 388-449-0100. You aren't eligible for ABD cash benefits if you are disabled primarily because of alcoholism or drug addiction.

(5) In determining disability, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: sitting, standing, walking, lifting, carrying, handling, and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and coworkers, tolerating the pressures of a work setting, maintaining appropriate behavior, and adapting to changes in a routine work setting.

(6) We determine you are not likely to meet SSI disability criteria if SSA denied your application for SSI or Social Security Disability Insurance (SSDI) based on disability in the last twelve months unless:

- (a) You file a timely appeal with SSA;
- (b) SSA decides you have good cause for a late appeal;

or

(c) You give us medical evidence of a potentially disabling condition that SSA did not consider or medical evidence confirming your condition has deteriorated.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0035 How does the department assign severity ratings to my impairment? (1) "Severity rating" is a rating of the extent of your impairment and how it impacts your ability to perform basic work activities. The following chart provides a description of limitations on work activities and the severity ratings assigned to each.

Effect on Work Activities	Degree of Impairment	Numerical Value
(a) There is no effect on your performance of one or more basic work-related activities.	None	1
(b) There is no significant limit on your performance of one or more basic work-related activities.	Mild	2
(c) There are significant limits on your performance of one or more basic work-related activities.	Moderate	3
(d) There are very significant limits on your performance of one or more basic work-related activities.	Marked	4

Effect on Work Activities	Degree of Impairment	Numerical Value
(e) You are unable to perform basic work-related activities.	Severe	5

(2) We use the description of how your condition impairs your ability to perform work activities given by the acceptable medical source or your treating provider, and review other evidence you provide, to establish severity ratings when the impairments are supported by, and consistent with, the objective medical evidence.

(3) A contracted doctor reviews your medical evidence and the ratings assigned to your impairment when:

(a) The medical evidence indicates functional limitations consistent with at least a moderate physical or mental health impairment;

(b) Your impairment has lasted or is expected to last, (~~twelve~~) nine months or more with available medical treatment; and

(c) You are not an active ABD recipient previously determined likely to be disabled as defined in WAC 388-449-0010 through 388-449-0100.

(4) The contracted doctor reviews your medical evidence, severity rating, and functional assessment to determine whether:

(a) The Medical evidence is objective and sufficient to support the findings of the provider;

(b) The description of the impairment(s) is supported by the medical evidence; and

(c) The severity rating, duration, and assessment of functional limitations assigned by DSHS are consistent with the medical evidence.

(5) If the medical provider's description of your impairment(s) is not consistent with the objective evidence, we will:

(a) Assign a severity rating, duration, and functional limitations consistent with the objective medical evidence; and

(b) Clearly describe why we rejected the medical evidence provider's opinion; and

(c) Identify the medical evidence used to make the determination.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0060 Sequential evaluation process step II—How does the department review medical evidence to determine if I am eligible for benefits? When we receive your medical evidence, we review it to determine if it is sufficient to decide whether your circumstances meet disability requirements.

(1) We require written medical evidence to determine disability. The medical evidence must:

(a) Contain sufficient information as described under WAC 388-449-0015;

(b) Be written by an acceptable medical source or treating provider described in WAC 388-449-0010;

(c) Document the existence of a potentially disabling condition by an acceptable medical source described in WAC 388-449-0010; and

(d) Document the impairment has lasted or is expected to last (~~twelve~~) nine continuous months or more with available treatment, or result in death.

(2) If the information received isn't clear, we may require more information before we determine whether you meet ABD disability requirements. As examples, we may require you to get more medical tests or be examined by a medical specialist.

(3) We deny disability if:

(a) We don't have evidence that your impairment is of at least moderate severity as defined in WAC 388-449-0035, 388-449-0040, 388-449-0045, or 388-449-0050;

(b) Your impairment hasn't lasted or isn't expected to last (~~twelve~~) nine or more months with available treatment or result in death; or

(c) We have evidence drug or alcohol abuse or addiction is material to your impairment(s).

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work? (1) If we neither deny disability at Step 1 or 2 nor approve it at Step 3, we consider our assessment of your physical and/or mental functional capacity, per WAC 388-449-0020 and 388-449-0030, to determine if you can do work you have done in the past.

(2) We evaluate your work experience to determine if you have relevant past work and transferable skills. "Relevant past work" means work:

(a) Defined as substantial gainful activity per WAC 388-449-0005;

(b) You have performed in the past (~~fifteen~~) ten years; and

(c) You performed long enough to acquire the knowledge and skills necessary to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation, we compare:

(a) The exertional, nonexertional, and skill requirements of the job based on the Appendix C of the Dictionary of Occupational Titles; and

(b) Current cognitive, social, exertional, and nonexertional factors that significantly limit your ability to perform past work.

(4) We deny disability when we determine that you are able to perform any of your relevant past work.

(5) We approve disability when you are fifty-five years of age or older and don't have the physical, cognitive, or social ability to perform past work.

WSR 13-19-063
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 17, 2013, 9:02 a.m.]

September 11, 2013
Katherine I. Vasquez
Rules Coordinator

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-105.

Title of Rule and Other Identifying Information: WAC 388-478-0015 Need standards for cash assistance.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on October 22, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 23, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 22, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 8, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community services division, economic services administration, is proposing to amend WAC 388-478-0015 in order to revise the basic need standards for cash assistance as required by RCW 74.04.770. The CR-101 was filed on July 22, 2013, as WSR 13-15-105.

Reasons Supporting Proposal: The department of social and health services (DSHS) is required by RCW 74.04.770 to establish standards of need for cash assistance programs on an annual basis.

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

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jenny Grayum, 712 Pear Street S.E., Olympia, 98504, (360) 725-4583.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed changes do not have an economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328(5):

(b)(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernmental party;

(b)(vii) "[t]his section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

AMENDATORY SECTION (Amending WSR 12-24-034, filed 11/29/12, effective 1/1/13)

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

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

Table with 2 columns: Assistance Unit Size and Need Standard. Rows include sizes 1 through 10 or more with corresponding values like \$((1,192)) 1,189.

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

Table with 2 columns: Assistance Unit Size and Need Standard. Rows include sizes 1 through 10 or more with corresponding values like \$((621)) 609.

WSR 13-19-064
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 17, 2013, 9:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-14-036.

Title of Rule and Other Identifying Information: The community services division is proposing to amend WAC 388-478-0055 How much do I get from my state supple-

mental payments (SSP)? and 388-478-0057 Year-end adjustment to the SSI state supplement.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on October 22, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 23, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 22, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 8, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments will maintain the yearly total amount of state supplemental payment (SSP) expenditures at the same level each calendar year by decreasing the amount of monthly SSP payments from \$46.00 to \$40.00 to SSI recipients who have an ineligible spouse, are age sixty-five or older, or are blind. The proposed amendments also allow the state to maintain the total SSP expenditures at the same level each year, without an increase or decrease in total spending for the program.

Reasons Supporting Proposal: The proposed amendments are necessary to maintain SSP spending at the amount equal to what it was in the prior year. If the state exceeds the total SSP expenditures, the state will be obligated to pay at least the same increased amount for the life of the program.

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

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Olga Walker, 712 Pear Street S.E., Olympia, 98501, (360) 725-4641.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed changes do not have an economic impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328(5):

(b)(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernmental party;

(b)(vii) "[t]his section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

September 11, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-067, filed 7/31/08, effective 9/1/08)

WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)? (1) The SSP is a payment from the state ~~((for))~~ to certain SSI eligible people (see WAC 388-474-0012).

(2) If you converted to the federal SSI program from state assistance in January 1974, because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, the department calls you a grandfathered client. Social Security calls you a mandatory income level (MIL) client.

A change in living situation, cost-of-living adjustment (COLA) or federal payment level (FPL) can affect a grandfathered (MIL) client. A grandfathered (MIL) client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal cost-of-living adjustments (COLA) since then; or

(b) The current payment standard.

~~((2))~~ (3) The monthly SSP ~~((rates))~~ rate standards for eligible persons under WAC 388-474-0012 and individuals residing in an institution are:

	((Monthly SSP Rate))
SSP eligible persons	<u>Standard</u>
Individual (aged 65 and older)	\$ ((46.00)) <u>40.00</u>
Individual (blind as determined by SSA)	\$ ((46.00)) <u>40.00</u>
Individual with an ineligible spouse	\$ ((46.00)) <u>40.00</u>
Grandfathered (MIL)	Varies by individual based on federal requirements. Payments range between \$0.54 and \$199.77.

	Monthly SSP Rate
Medical institution	
Individual	\$27.28

(4) We may adjust the SSP rate standards at the end of the calendar year to comply with WAC 388-478-0057.

AMENDATORY SECTION (Amending WSR 01-22-088, filed 11/5/01, effective 12/6/01)

WAC 388-478-0057 ~~((Year-end adjustments))~~ Adjustments to the SSI state supplement payments (SSP). For the purposes of this rule, "we" refers to the department of social and health services. We are required by federal law to maintain the total SSI state supplement payments (SSP) at the same level each year, without an increase or decrease in total spending. ~~((This))~~ We may ~~((result in adjustment to))~~ adjust

your SSI state supplement (~~(benefits)~~) payment (~~(at the end of the year)~~) amount as necessary to comply with federal law.

(1) (~~(#)~~) When there are unexpended funds, you will receive a one-time (~~(bonus)~~) additional payment, usually at the end of the calendar year.

(2) When there is a shortage in available funds, we will decrease your (~~(state supplement)~~) SSP benefits (~~(will be decreased)~~) to maintain the total SSP payment spending at the same level each year (~~(The decrease will usually be spread out over multiple months to reduce the negative impact on you)~~).

WSR 13-19-065
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 17, 2013, 9:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-122.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-442-0010 How does being a fleeing felon impact my eligibility for benefits? and creating WAC 388-400-0065 Housing and essential needs (HEN), 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program?, 388-406-0056 When does my eligibility for referral to the housing and essential needs (HEN) program begin?, 388-408-0070 Who is included in my assistance unit when the department determines eligibility for referral to the housing and essential needs (HEN) program?, 388-447-0001 What are the incapacity requirements for referral to the housing and essential needs (HEN) program?, 388-447-0005 What evidence does the department consider to determine incapacity?, 388-447-0010 What medical evidence do I need to provide?, 388-447-0020 How does the department assign severity ratings to my impairments?, 388-447-0030 Progressive evaluation process step I—How does the department review the medical evidence required for an incapacity determination?, 388-447-0040 Progressive evaluation process step II—How does the department determine the severity of mental impairments?, 388-447-0050 Progressive evaluation process step III—How does the department determine the severity of physical impairments?, 388-447-0060 Progressive evaluation process step IV—How does the department determine the severity of multiple impairments?, 388-447-0070 Progressive evaluation process step V—How does the department determine the impact of a mental impairment on my ability to function in a work environment?, 388-447-0080 Progressive evaluation process step VI—How does the department determine the impact of a physical impairment on my ability to function in a work setting?, 388-447-0090 Progressive evaluation process step VII—How does the department determine ability to perform past work?, 388-447-0100 Progressive evaluation process step VIII—How does the department determine ability to

perform other work?, 388-447-0110 When does my eligibility for referral to the housing and essential needs (HEN) program end?, 388-447-0120 How does alcohol or drug dependence affect my eligibility for referral to the housing and essential needs (HEN) program?, 388-450-0113 Does the department allocate income of a HEN referral recipient to legal dependents?, 388-450-0138 Does the department allocate income of an ineligible spouse to a housing and essential needs (HEN) referral recipient?, and 388-450-0178 Does the department offer an income deduction for housing and essential needs (HEN) referral applicants and recipients as an incentive to work?, and any other related rules as required by SHB 2069.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on November 5, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 6, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m., November 5, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 22, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-442-0010 and create WAC 388-400-0065, 388-400-0070, 388-406-0056, 388-408-0070, 388-447-0001, 388-447-0005, 388-447-0010, 388-447-0020, 388-447-0030, 388-447-0040, 388-447-0050, 388-447-0060, 388-447-0070, 388-447-0080, 388-447-0090, 388-447-0100, 388-447-0110, 388-447-0120, 388-450-0113, 388-450-0138, and 388-450-0178 in order to comply with SHB 2069, Laws of 2013.

Reasons Supporting Proposal: These changes are necessary to conform to SHB 2069, Laws of 2013, which requires the department to determine eligibility for referral to the HEN program.

Statutory Authority for Adoption: SHB 2069, RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Shane Riddle, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4352.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments and proposed rules are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part "[t]his section does not apply to ... rules of the department of social and health services relating only to

client medical or financial eligibility and rules [rules] concerning liability for care of dependents."

September 11, 2013
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-20 issue of the Register.

WSR 13-19-066
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 17, 2013, 9:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-109.

Title of Rule and Other Identifying Information: WAC 388-482-0005 How does being a student of higher education impact my eligibility for the Washington Basic Food program?, 388-444-0010 Who is exempt from work registration while receiving Basic Food?, 388-444-0015 How can the Basic Food employment and training (BF E&T) program help me find work?, 388-450-0100 Allocating income—Definitions, 388-486-0010 Unmarried pregnant or parenting minors—Required school attendance, and 388-310-0900 WorkFirst—Basic Education.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on October 22, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 23, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 22, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 8, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community services division is proposing to amend the above WACs to remove the term "general educational development (GED) test[.]" and replace it with the term "high school equivalency certificate."

Reasons Supporting Proposal: The proposed amendments are necessary to conform with ESHB 1686, chapter 39, Laws of 2013, which creates a high school equivalency certificate as a certificate issued jointly by the state board of community and technical colleges and the office of superintendent of public instruction. A certificate will

indicate that the holder attained scores at or above the minimum proficiency level on a high school equivalency test.

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

Statute Being Implemented: ESHB 1686, chapter 39, Laws of 2013.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kerry Judge-Kemp, 712 Pear Street S.E., Olympia, 98501, (360) 725-4630.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed changes do not have an economic impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328(5):

(b)(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernmental party;

(b)(vii) "[t]his section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

September 12, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-14-019, filed 6/22/09, effective 7/23/09)

WAC 388-310-0900 WorkFirst—Basic education. (1)
What is basic education?

Basic education is high school completion, classes to prepare for (~~general equivalency diploma (GED))~~ high school equivalency, testing to acquire (~~GED certification~~) high school equivalency, adult basic education (ABE) or English as a second language (ESL) training. Basic education also includes approved homework and study activities associated with the educational activity.

(2) When do I participate in basic education as part of WorkFirst?

You may participate in basic education as part of WorkFirst under any of the following circumstances:

(a) You are twenty years of age or older and your comprehensive evaluation shows you need this education to become employed or get a better job and:

(i) You are participating the equivalent of twenty hours or more per week in job search, vocational education, issue resolution, paid work or unpaid work that meets the federal definition of core activities; or

(ii) You have limited-English proficiency and you lack language skills that are needed to qualify for entry level jobs.

(b) You may be required to participate if you are a mandatory participant, a parent eighteen or nineteen years of age, you do not have a high school diploma or (~~GED certificate~~) high school equivalency and you need this education in order to find employment.

(c) You will be required to be in high school or a (~~GED certification~~) high school equivalency program if you are a mandatory participant, sixteen or seventeen years old and you do not have a high school diploma or (~~GED~~) high school equivalency certificate.

(d) You are enrolled in the pregnancy to employment pathway and your comprehensive evaluation shows basic education would help you find and keep employment. (See WAC 388-310-1450.)

AMENDATORY SECTION (Amending WSR 10-18-048, filed 8/26/10, effective 10/1/10)

WAC 388-444-0010 Who is exempt from work registration while receiving Basic Food? If you receive Basic Food, you are exempt from work requirements in chapter 388-444 WAC if you meet any of the following conditions:

(1) You are age sixteen or seventeen, not the head of household, and:

(a) Attend school such as high school or (~~GED~~) high school equivalency programs; or

(b) Are enrolled at least half time (using the institutions definition) in an employment and training program under:

(i) The Workforce Investment Act (WIA);

(ii) Section 236 of the Trade Act of 1974; or

(iii) Another state or local employment and training program.

(2) You are a student age eighteen or older enrolled at least half time as defined by the institution in:

(a) Any accredited school;

(b) A training program; or

(c) An institution of higher education. If you are enrolled in higher education, you must meet the requirements under WAC 388-482-0005 to be eligible for Basic Food benefits.

(3) You are an employed or self-employed person working thirty hours or more per week, or receiving weekly earnings equal to the federal minimum wage multiplied by thirty;

(4) You are complying with the work requirements of an employment and training program under temporary assistance for needy families (TANF);

(5) You receive unemployment compensation (UC) benefits or have an application pending for UC benefits;

(6) You are responsible to care for:

(a) A dependent child under age six; or

(b) Someone who is incapacitated.

(7) We determine that you are physically or mentally unable to work; or

(8) You regularly participate in a drug addiction or alcoholic treatment and rehabilitation program.

AMENDATORY SECTION (Amending WSR 10-18-048, filed 8/26/10, effective 10/1/10)

WAC 388-444-0015 How can the Basic Food employment and training (BF E&T) program help me find work? The Basic Food employment and training (BF E&T) program is the name for Washington's voluntary supplemental nutrition assistance program (SNAP) employment and training program.

(1) If you receive federally-funded Basic Food benefits, you may choose to receive services through the BF E&T program in one or more of the following activities, if we currently provide the service in the county where you live:

(a) Job search;

(b) Paid or unpaid work;

(c) Training or work experience;

(d) (~~General education development (GED)~~) High school equivalency classes; or

(e) English as a second language (ESL) classes.

(2) If you are eligible to participate in a BF E&T activity, there is no limit to the number of hours you can participate.

(3) If you receive benefits under the state-funded food assistance program (FAP), you are not eligible to participate in BF E&T.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-450-0100 Allocating income—Definitions.

The following definitions apply to the allocation rules for TANF/SFA, RCA, PWA, and ABD cash programs:

(1) **"Dependent"** means a person who:

(a) Is or could be claimed for federal income tax purposes by the financially responsible person; or

(b) The financially responsible person is legally obligated to support.

(2) **"Financially responsible person"** means a parent, stepparent, adoptive parent, spouse or caretaker relative.

(3) A **"disqualified assistance unit member"** means a person who is:

(a) An unmarried pregnant or parenting minor under age eighteen who has not completed a high school education or (~~general education development (GED)~~) high school equivalency certification and is not participating in those educational activities which would lead to the attainment of a high school diploma or (~~GED~~) high school equivalency;

(b) An unmarried pregnant or parenting minor under age eighteen who is not living in a department-approved living situation;

(c) The financially responsible person who does not report to the department within five days of the date it becomes reasonably clear that the absence of a child will exceed ninety days;

(d) A person who has been convicted in federal or state court of having made a fraudulent statement or representation about their place of residence in order to receive assistance from two or more states at the same time as defined in WAC 388-446-0010; and

(e) A person who has been convicted of unlawfully receiving public assistance as defined under WAC 388-446-0005.

(4) **"Ineligible assistance unit member"** means an individual who is:

(a) Ineligible for cash assistance due to the citizenship/ alien status requirements in WAC 388-424-0010;

(b) Ineligible to receive assistance under WAC 388-442-0010 for having been convicted after August 21, 1996, under federal or state law, of possession, use or distribution of a controlled substance;

(c) Ineligible to receive assistance under WAC 388-442-0010 for fleeing to avoid prosecution or custody or confinement after conviction for a crime or attempt to commit a crime;

(d) Ineligible to receive assistance under WAC 388-442-0010 for violating a condition of probation or parole which was imposed under a federal or state law as determined by an administrative body or court of competent jurisdiction;

(e) The spouse of a woman who receives cash benefits from the PWA program; or

(f) The adult parent of a minor parent's child.

AMENDATORY SECTION (Amending WSR 13-13-004, filed 6/6/13, effective 7/7/13)

WAC 388-482-0005 How does being a student of higher education impact my eligibility for the Washington Basic Food program? (1) For Basic Food, we consider you a student of higher education if you are:

(a) Age eighteen through forty-nine;

(b) Physically and mentally able to work (we determine if you are unable to work);

(c) Enrolled in an institution of higher education at least half-time as defined by the institution; and

(d) Enrolled in coursework considered to be higher education.

(2) An institution of higher education is:

(a) Any educational institution that requires a high school diploma or (~~(general education development)~~) high school equivalency certificate (~~((GED))~~);

(b) A business, trade, or vocational school that requires a high school diploma or (~~(GED)~~) high school equivalency; or

(c) A two-year or four-year college or university that offers a degree but does not require a high school diploma or (~~((GED))~~) high school equivalency.

(3) If you are a student of higher education, you must also meet one of the following conditions to be eligible for Basic Food:

(a) You have paid employment of at least twenty hours per week.

(b) You are self-employed, work, and earn at least the amount you would earn working twenty hours at the federal minimum wage;

(c) You were participating in a state or federal work study program during the regular school year.

(i) To qualify under this condition, you must:

(A) Have approval for work study at the time of application for Basic Food;

(B) Have work study that is approved for the school term; and

(C) Anticipate actually working during that time.

(ii) The work study exemption begins:

(A) The month in which the school term starts; or

(B) The month work study is approved, whichever is later.

(iii) Once begun, the work study exemption shall continue until:

(A) The end of the month in which the school term ends;

or

(B) We find out you refused a work study assignment.

(d) You are responsible for more than half the care of a dependent person in your assistance unit (AU) who is age five or younger;

(e) You are responsible for more than half the care of a dependent person in your AU who is between age six and eleven, if we have determined that there is not adequate child care available during the school year to allow you to:

(i) Attend class and satisfy the twenty-hour work requirement; or

(ii) Take part in a work study program.

(f) You are a single parent responsible for the care of your natural, step, or adopted child who is eleven or younger;

(g) You are an adult who has the parental responsibility of a child who is age eleven or younger if none of the following people live in the home:

(i) The child's parents; or

(ii) Your spouse.

(h) You participate in the WorkFirst program under WAC 388-310-0200;

(i) You receive TANF or SFA benefits;

(j) You attend an institution of higher education through:

(i) The Workforce Investment Act (WIA);

(ii) The Basic Food employment and training (BF E&T) program under chapter 388-444 WAC;

(iii) An approved state or local employment and training program; or

(iv) Section 236 of the Trade Act of 1974.

(4) If you are a student of higher education and the only reason you are eligible for Basic Food is because you are participating in work study, you are only eligible while you work and receive money from work study. If your work study stops during the summer months, you must meet another condition to be an eligible student during this period.

(5) If you are a student of higher education, your status as a student:

(a) Begins the first day of the school term; and

(b) Continues through vacations. This includes the summer break if you plan to return to school for the next term.

(6) We do not consider you a student of higher education if you:

(a) Graduate;

(b) Are suspended or expelled;

(c) Drop out; or

(d) Do not intend to register for the next normal school term other than summer school.

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-486-0010 Unmarried pregnant or parenting minors—Required school attendance. (1) This rule affects only the minor's eligibility for cash assistance. It does not affect the eligibility of the minor parent's child for a cash grant.

(2) To be eligible for TANF or SFA, an unmarried pregnant or parenting minor who has not completed high school or a (~~(general education development (GED))~~) high school equivalency certificate program must participate in educational activities leading to the attainment of a high

school diploma or ((~~GED~~)) high school equivalency certificate.

(3) The minor must meet the standard for satisfactory attendance set by the school or program in which the minor is enrolled.

(4) An unmarried minor is exempt from this rule if the minor has:

- (a) Been emancipated by a court; or
- (b) A child who is less than twelve weeks old.

(5) The income of a minor parent found ineligible under this section is treated according to WAC 388-450-0100 and 388-450-0115 when determining the eligibility and benefit level of the minor parent's child.

WSR 13-19-072
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed September 17, 2013, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-062.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance and chapter 296-17B WAC, Retrospective rating for workers' compensation insurance.

Hearing Location(s): Tukwila Community Center, Banquet Room C, 12424 42nd Avenue South, Tukwila, WA 98168, on October 22, 2013, at 10:00 a.m.; at the Bellingham Central Library, Lecture Room, 210 Central Avenue, Bellingham, WA 98227, on October 23, 2013, at 10:00 a.m.; at the Spokane CenterPlace, 2426 North Discovery Place, Spokane Valley, WA 99216, on October 24, 2013, at 10:00 a.m.; at the Richland Community Center, Activity Room, 500 Amon Park Drive, Richland, WA 99352, on October 25, 2013, at 9:00 a.m.; at the Department of Labor and Industries, Auditorium, 7273 Linderson Way S.W., Tumwater, WA 98501, on October 28, 2013, at 10:00 a.m.; and at the Vancouver Northwest Regional Training Center, Rainier Auditorium, 11606 N.E. 66 Street, Suite 103, Vancouver, WA; 98662, on October 29, 2013, at 10:00 a.m.

Date of Intended Adoption: November 30, 2013.

Submit Written Comments to: Doug Stewart, P.O. Box 41440, Olympia, WA 98504-4140, e-mail doug.stewart@lni.wa.gov, fax (360) 902-4988, by 5 p.m. on November 1, 2013.

Assistance for Persons with Disabilities: Contact office of information and assistance by October 17, 2013, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule proposal will amend the tables of classification base premium rates, experience rating plan parameters, experience modification factor calculation limitations and retrospective rating plan size groupings for the workers' compensation insurance program for calendar year 2014. Classification base rates

were amended for updated loss and payroll experience. The department proposes a 2.7 percent overall average premium rate increase.

We are adding a new section describing the logger safety initiative supported by ESSB 5744 passed by the 2013 legislature and signed by the governor. This legislation directs the department to consider incentives, such as a rate reduction, for those in the logging industry who meet specific safety criteria. The law requires the department to report to the legislature on the development and implementation of the logger safety initiative by December 21, 2013.

Amending WAC 296-17-855 Experience modification, 296-17-875 Table I, 296-17-880 Table II, 296-17-885 Table III, 296-17-890 Table IV, 296-17-895 Industrial insurance accident fund base rates and medical aid base rates by class of industry, 296-17-89502 Industrial insurance accident fund, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications, 296-17-89507 Horse racing industry industrial insurance accident fund, medical aid fund, supplemental pension fund and composite rate by class, 296-17-901 Risk classification hazard group table, 296-17-920 Assessment for supplemental pension fund, 296-17B-540 Determining loss incurred for each claim and 296-17B-900 Retrospective rating plans standard premium size ranges; new section WAC 296-17-940 Logging safety initiative; and repealing WAC 296-17-89504 Horse racing rates.

Reasons Supporting Proposal: The department's decision to increase overall rates is intended to provide adequate premium income to cover expected losses for 2014 claims and to begin rebuilding the trust funds' contingency reserves. Washington law provides that rates should be adjusted annually to reflect the hazards of each industry and in accordance with recognized workers' compensation insurance principles.

Statutory Authority for Adoption: RCW 51.16.035 (base rates), 51.32.073 (supplemental pension), 51.18.010 (retrospective rating), and 51.04.020(1) (general authority).

Statute Being Implemented: RCW 51.16.035, 51.32.073, and 51.18.010.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Atwood, Tumwater, Washington, (360) 902-4777; Implementation: Doug Stewart, Tumwater, Washington, (360) 902-4826; and Enforcement: Victoria Kennedy, Tumwater, Washington, (360) 902-4777.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement is required as the proposed rules are adjusting rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are adjusting rates pursuant to legislative standards.

September 17, 2013
 Joel Sacks
 Director

AMENDATORY SECTION (Amending WSR 12-24-048, filed 11/30/12, effective 1/1/13)

WAC 296-17-855 Experience modification. The basis of the experience modification shall be a comparison of the actual losses charged to an employer during the experience period with the expected losses for an average employer reporting the same exposures in each classification. The comparison shall contain actuarial refinements designed to weigh the extent to which the actual experience is credible, due consideration being given to the volume of the employer's experience. Except for those employers who qualify for an adjusted experience modification as specified in WAC 296-17-860 or 296-17-865, the experience modification factor shall be calculated from the formula:

$$\begin{aligned} \text{EXPERIENCE MODIFICATION FACTOR} &= \frac{\text{Credible Actual Primary Loss} + \text{Credible Actual Excess Loss}}{\text{Expected Loss}} \\ \text{Where} & \\ \text{Credible Actual Primary Loss} &= \text{Actual Primary Loss} \times \text{Primary Credibility} \\ &+ \text{Expected Primary Loss} \times (100\% - \text{Primary Credibility}) \\ \text{Credible Actual Excess Loss} &= \text{Actual Excess Loss} \times \text{Excess Credibility} \\ &+ \text{Expected Excess Loss} \times (100\% - \text{Excess Credibility}) \end{aligned}$$

The meaning and function of each term in the formula is specified below.

For each claim, the actual primary loss is the first dollar portion of the claim costs, which has been shown in actuarial studies, to have the greater credibility in predicting future experience. These amounts are summed over all claims. For each claim in excess of \$20,112 the actual primary loss shall be determined from the formula:

$$\text{ACTUAL PRIMARY LOSS} = \frac{50,280}{(\text{Total loss} + 30,168)} \times \text{total loss}$$

For each claim, less than \$20,112 the full value of the claim shall be considered a primary loss.

For each claim, the excess actual loss is the remaining portion of the claim costs, which have been shown in actuarial studies to have less credibility in predicting future experience. The excess actual loss for each claim shall be determined by subtracting the primary loss from the total loss. These amounts are summed over all claims.

For any claim without disability benefits (time loss, partial permanent disability, total permanent disability or death) either actually paid or estimated to be paid, the total actual losses for calculating the primary loss and excess loss shall first be reduced by the lesser of $\$(2,460)$ 2,610 or the total cost of the claim. Here are some examples for these claims:

Total Loss	Type of Claim	Total Loss (after deduction)	Primary Loss	Excess Loss
((200)) <u>300</u>	Medical Only	0	0	0
((2,500)) <u>3,000</u>	Medical Only	((40)) <u>390</u>	((40)) <u>390</u>	0
((2,500)) <u>3,000</u>	Time Loss	((2,500)) <u>3,000</u>	((2,500)) <u>3,000</u>	0
((25,000)) <u>30,000</u>	Medical Only	((22,540)) <u>27,390</u>	((21,502)) <u>23,927</u>	((1,038)) <u>3,463</u>
((25,000)) <u>30,000</u>	Time Loss	((25,000)) <u>30,000</u>	((22,785)) <u>25,070</u>	((2,215)) <u>4,930</u>
((100,000)) <u>130,000</u>	PPD	((100,000)) <u>130,000</u>	((38,627)) <u>40,810</u>	((61,373)) <u>89,190</u>
2,000,000	TPD Pension	((266,241)) <u>270,128</u>	((45,163)) <u>45,229</u>	((221,078)) <u>224,899</u>

Note: The deduction, $\$(2,460)$ 2,610, is twice the average case incurred cost of these types of claims occurring during the three-year period used for experience rating. On average this results in reducing the average actual loss about seventy percent for these types of claims adjusted. This is done to help make the transition between the two different experience rating methods better by helping make the change in experience factor reasonable for small changes to the actual losses. The \$2,000,000 loss is limited by the Maximum Claim Value before the reduction of $\$(2,460)$ 2,610 is applied.

For each employer, the primary credibility and the excess credibility determines the percentage weight given to the corresponding actual primary losses and the actual excess losses, included in the calculation of the experience modification, based on the volume of expected losses. Primary credibility and excess credibility values are set forth in Table II.

An employer's expected losses shall be determined by summing the expected loss for each of the three years of the experience period, which are calculated by multiplying the reported exposure in each classification during the year by the corresponding classification expected loss rate and rounding the result to the nearest cent. Classification expected loss rates by year are set forth in Table III.

Expected losses in each classification shall be multiplied by the classification "Primary-Ratio" to obtain "expected primary losses" which shall be rounded to the nearest cent. Expected excess losses shall then be calculated by subtracting expected primary losses from expected total losses rounded to the nearest cent. Primary-Ratios are also set forth in Table III.

AMENDATORY SECTION (Amending WSR 12-24-048, filed 11/30/12, effective 1/1/13)

WAC 296-17-875 Table I.

**Primary Losses for Selected Claim Values
Effective January 1, (~~2013~~) 2014**

		Expected Losses		Primary Credibility	Excess Credibility
TOTAL LOSS AFTER		18,570	- 19,283	29%	7%
DEDUCTION	PRIMARY LOSS	19,284	- 20,013	30%	7%
5,000	5,000	20,014	- 20,757	31%	7%
10,000	10,000	20,758	- 21,513	32%	7%
15,000	15,000	21,514	- 22,287	33%	7%
20,112	20,112	22,288	- 23,075	34%	7%
29,834	25,000	23,076	- 23,881	35%	7%
44,627	30,000	23,882	- 24,708	36%	7%
69,102	35,000	24,709	- 25,554	37%	7%
100,000	38,627	25,555	- 26,424	38%	7%
117,385	40,000	26,425	- 27,314	39%	7%
200,000	43,690	27,315	- 28,233	40%	7%
((266,241)) **	((45,163))	28,234	- 29,178	41%	7%
<u>270,128</u>	<u>45,229</u>	29,179	- 30,155	42%	7%
		30,156	- 31,166	43%	7%
** Maximum claim value		31,167	- 32,214	44%	7%
		32,215	- 33,305	45%	7%

AMENDATORY SECTION (Amending WSR 12-24-048, filed 11/30/12, effective 1/1/13)

WAC 296-17-880 Table II.

**PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, (~~2013~~) 2014**

Maximum Claim Value = \$((~~266,241~~)) 270,128
Average Death Value = \$((~~266,241~~)) 270,128

Expected Losses	Primary Credibility	Excess Credibility					
((0 - 8,473	12%	7%	44,946	-	46,918	54%	8%
8,474 - 9,044	13%	7%	46,919	-	49,560	55%	8%
9,045 - 9,623	14%	7%	49,561	-	75,005	56%	8%
9,624 - 10,207	15%	7%	75,006	-	82,671	57%	8%
10,208 - 10,798	16%	7%	82,672	-	118,083	57%	9%
10,799 - 11,398	17%	7%	118,084	-	121,623	57%	10%
11,399 - 12,005	18%	7%	121,624	-	153,714	58%	10%
12,006 - 12,620	19%	7%	153,715	-	168,241	58%	11%
12,621 - 13,242	20%	7%	168,242	-	189,568	59%	11%
13,243 - 13,873	21%	7%	189,569	-	214,859	59%	12%
13,874 - 14,515	22%	7%	214,860	-	225,637	60%	12%
14,516 - 15,164	23%	7%	225,638	-	261,478	60%	13%
15,165 - 15,823	24%	7%	261,479	-	261,935	61%	13%
15,824 - 16,494	25%	7%	261,936	-	298,459	61%	14%
16,495 - 17,175	26%	7%	298,460	-	308,095	61%	15%
17,176 - 17,864	27%	7%	308,096	-	335,211	62%	15%
17,865 - 18,569	28%	7%					

Expected Losses		Primary Credibility	Excess Credibility	Expected Losses		Primary Credibility	Excess Credibility
335,212	- 354,713	62%	16%	1,240,455	- 1,248,850	82%	38%
354,714	- 372,193	63%	16%	1,248,851	- 1,287,072	82%	39%
372,194	- 401,332	63%	17%	1,287,073	- 1,291,797	83%	39%
401,333	- 409,408	64%	17%	1,291,798	- 1,333,691	83%	40%
409,409	- 446,857	64%	18%	1,333,692	- 1,335,035	84%	40%
446,858	- 447,948	64%	19%	1,335,036	- 1,378,565	84%	41%
447,949	- 484,547	65%	19%	1,378,566	- 1,380,305	84%	42%
484,548	- 494,567	65%	20%	1,380,306	- 1,422,393	85%	42%
494,568	- 522,473	66%	20%	1,422,394	- 1,426,925	85%	43%
522,474	- 541,185	66%	21%	1,426,926	- 1,466,524	86%	43%
541,186	- 560,641	67%	21%	1,466,525	- 1,473,545	86%	44%
560,642	- 587,804	67%	22%	1,473,546	- 1,510,956	87%	44%
587,805	- 599,054	68%	22%	1,510,957	- 1,520,163	87%	45%
599,055	- 634,419	68%	23%	1,520,164	- 1,555,696	88%	45%
634,420	- 637,712	69%	23%	1,555,697	- 1,566,780	88%	46%
637,713	- 676,620	69%	24%	1,566,781	- 1,600,745	89%	46%
676,621	- 681,037	69%	25%	1,600,746	- 1,613,397	89%	47%
681,038	- 715,777	70%	25%	1,613,398	- 1,646,108	90%	47%
715,778	- 727,657	70%	26%	1,646,109	- 1,660,017	90%	48%
727,658	- 755,190	71%	26%	1,660,018	- 1,691,786	91%	48%
755,191	- 774,275	71%	27%	1,691,787	- 1,706,632	91%	49%
774,276	- 794,859	72%	27%	1,706,633	- 1,737,784	92%	49%
794,860	- 820,892	72%	28%	1,737,785	- 1,753,253	92%	50%
820,893	- 834,785	73%	28%	1,753,254	- 1,784,106	93%	50%
834,786	- 867,511	73%	29%	1,784,107	- 1,799,870	93%	51%
867,512	- 874,972	74%	29%	1,799,871	- 1,830,754	94%	51%
874,973	- 914,128	74%	30%	1,830,755	- 1,846,487	94%	52%
914,129	- 915,425	75%	30%	1,846,488	- 1,877,732	95%	52%
915,426	- 956,143	75%	31%	1,877,733	- 1,893,104	95%	53%
956,144	- 960,747	75%	32%	1,893,105	- 1,925,043	96%	53%
960,748	- 997,130	76%	32%	1,925,044	- 1,939,723	96%	54%
997,131	- 1,007,364	76%	33%	1,939,724	- 1,972,691	97%	54%
1,007,365	- 1,038,388	77%	33%	1,972,692	- 1,986,340	97%	55%
1,038,389	- 1,053,983	77%	34%	1,986,341	- 2,020,678	98%	55%
1,053,984	- 1,079,922	78%	34%	2,020,679	- 2,032,959	98%	56%
1,079,923	- 1,100,601	78%	35%	2,032,960	- 2,069,011	99%	56%
1,100,602	- 1,121,731	79%	35%	2,069,012	- 2,079,576	99%	57%
1,121,732	- 1,147,219	79%	36%	2,079,577	- 2,117,692	100%	57%
1,147,220	- 1,163,820	80%	36%	2,117,693	- 2,166,725	100%	58%
1,163,821	- 1,193,834	80%	37%	2,166,726	- 2,216,112	100%	59%
1,193,835	- 1,206,192	81%	37%	2,216,113	- 2,265,859	100%	60%
1,206,193	- 1,240,454	81%	38%	2,265,860	- 2,315,970	100%	61%

Expected Losses		Primary Credibility	Excess Credibility	Expected Losses		Primary Credibility	Excess Credibility		
<u>2,315,971</u>	-	<u>2,366,447</u>	100%	62%	<u>17,827</u>	=	<u>18,512</u>	29%	7%
<u>2,366,448</u>	-	<u>2,417,297</u>	100%	63%	<u>18,513</u>	=	<u>19,212</u>	30%	7%
<u>2,417,298</u>	-	<u>2,468,521</u>	100%	64%	<u>19,213</u>	=	<u>19,927</u>	31%	7%
<u>2,468,522</u>	-	<u>2,520,125</u>	100%	65%	<u>19,928</u>	=	<u>20,652</u>	32%	7%
<u>2,520,126</u>	-	<u>2,572,114</u>	100%	66%	<u>20,653</u>	=	<u>21,395</u>	33%	7%
<u>2,572,115</u>	-	<u>2,624,491</u>	100%	67%	<u>21,396</u>	=	<u>22,152</u>	34%	7%
<u>2,624,492</u>	-	<u>2,677,260</u>	100%	68%	<u>22,153</u>	=	<u>22,926</u>	35%	7%
<u>2,677,261</u>	-	<u>2,730,427</u>	100%	69%	<u>22,927</u>	=	<u>23,720</u>	36%	7%
<u>2,730,428</u>	-	<u>2,783,994</u>	100%	70%	<u>23,721</u>	=	<u>24,532</u>	37%	7%
<u>2,783,995</u>	-	<u>2,837,968</u>	100%	71%	<u>24,533</u>	=	<u>25,367</u>	38%	7%
<u>2,837,969</u>	-	<u>2,892,354</u>	100%	72%	<u>25,368</u>	=	<u>26,221</u>	39%	7%
<u>2,892,355</u>	-	<u>2,947,153</u>	100%	73%	<u>26,222</u>	=	<u>27,104</u>	40%	7%
<u>2,947,154</u>	-	<u>3,002,374</u>	100%	74%	<u>27,105</u>	=	<u>28,011</u>	41%	7%
<u>3,002,375</u>	-	<u>3,058,017</u>	100%	75%	<u>28,012</u>	=	<u>28,949</u>	42%	7%
<u>3,058,018</u>	-	<u>3,114,093</u>	100%	76%	<u>28,950</u>	=	<u>29,919</u>	43%	7%
<u>3,114,094</u>	-	<u>3,170,602</u>	100%	77%	<u>29,920</u>	=	<u>30,925</u>	44%	7%
<u>3,170,603</u>	-	<u>3,227,553</u>	100%	78%	<u>30,926</u>	=	<u>31,973</u>	45%	7%
<u>3,227,554</u>	-	<u>3,284,948</u>	100%	79%	<u>31,974</u>	=	<u>33,066</u>	46%	7%
<u>3,284,949</u>	-	<u>3,342,794</u>	100%	80%	<u>33,067</u>	=	<u>34,211</u>	47%	7%
<u>3,342,795</u>	-	<u>3,401,098</u>	100%	81%	<u>34,212</u>	=	<u>35,420</u>	48%	7%
<u>3,401,099</u>	-	<u>3,459,859</u>	100%	82%	<u>35,421</u>	=	<u>36,702</u>	49%	7%
<u>3,459,860</u>	-	<u>3,519,089</u>	100%	83%	<u>36,703</u>	=	<u>38,070</u>	50%	7%
<u>3,519,090</u>	-	<u>3,578,790</u>	100%	84%	<u>38,071</u>	=	<u>39,545</u>	51%	7%
<u>3,578,791</u>	-	<u>3,638,971</u>	100%	85%	<u>39,546</u>	=	<u>41,162</u>	52%	7%
<u>3,638,972</u>	& over		100%	86%))	<u>41,163</u>	=	<u>42,964</u>	53%	7%
<u>1</u>	=	<u>8,134</u>	12%	7%	<u>42,965</u>	=	<u>43,147</u>	54%	7%
<u>8,135</u>	=	<u>8,682</u>	13%	7%	<u>43,148</u>	=	<u>45,041</u>	54%	8%
<u>8,683</u>	=	<u>9,238</u>	14%	7%	<u>45,042</u>	=	<u>47,578</u>	55%	8%
<u>9,239</u>	=	<u>9,799</u>	15%	7%	<u>47,579</u>	=	<u>72,005</u>	56%	8%
<u>9,800</u>	=	<u>10,366</u>	16%	7%	<u>72,006</u>	=	<u>79,364</u>	57%	8%
<u>10,367</u>	=	<u>10,942</u>	17%	7%	<u>79,365</u>	=	<u>113,360</u>	57%	9%
<u>10,943</u>	=	<u>11,525</u>	18%	7%	<u>113,361</u>	=	<u>116,758</u>	57%	10%
<u>11,526</u>	=	<u>12,115</u>	19%	7%	<u>116,759</u>	=	<u>147,565</u>	58%	10%
<u>12,116</u>	=	<u>12,712</u>	20%	7%	<u>147,566</u>	=	<u>161,511</u>	58%	11%
<u>12,713</u>	=	<u>13,318</u>	21%	7%	<u>161,512</u>	=	<u>181,985</u>	59%	11%
<u>13,319</u>	=	<u>13,934</u>	22%	7%	<u>181,986</u>	=	<u>206,265</u>	59%	12%
<u>13,935</u>	=	<u>14,557</u>	23%	7%	<u>206,266</u>	=	<u>216,611</u>	60%	12%
<u>14,558</u>	=	<u>15,190</u>	24%	7%	<u>216,612</u>	=	<u>251,019</u>	60%	13%
<u>15,191</u>	=	<u>15,834</u>	25%	7%	<u>251,020</u>	=	<u>251,458</u>	61%	13%
<u>15,835</u>	=	<u>16,488</u>	26%	7%	<u>251,459</u>	=	<u>286,521</u>	61%	14%
<u>16,489</u>	=	<u>17,149</u>	27%	7%	<u>286,522</u>	=	<u>295,771</u>	61%	15%
<u>17,150</u>	=	<u>17,826</u>	28%	7%	<u>295,772</u>	=	<u>321,803</u>	62%	15%

Expected Losses		Primary Credibility	Excess Credibility	Expected Losses		Primary Credibility	Excess Credibility		
<u>321,804</u>	=	<u>340,524</u>	<u>62%</u>	<u>16%</u>	<u>1,190,837</u>	=	<u>1,198,896</u>	<u>82%</u>	<u>38%</u>
<u>340,525</u>	=	<u>357,305</u>	<u>63%</u>	<u>16%</u>	<u>1,198,897</u>	=	<u>1,235,589</u>	<u>82%</u>	<u>39%</u>
<u>357,306</u>	=	<u>385,279</u>	<u>63%</u>	<u>17%</u>	<u>1,235,590</u>	=	<u>1,240,125</u>	<u>83%</u>	<u>39%</u>
<u>385,280</u>	=	<u>393,032</u>	<u>64%</u>	<u>17%</u>	<u>1,240,126</u>	=	<u>1,280,343</u>	<u>83%</u>	<u>40%</u>
<u>393,033</u>	=	<u>428,983</u>	<u>64%</u>	<u>18%</u>	<u>1,280,344</u>	=	<u>1,281,634</u>	<u>84%</u>	<u>40%</u>
<u>428,984</u>	=	<u>430,030</u>	<u>64%</u>	<u>19%</u>	<u>1,281,635</u>	=	<u>1,323,422</u>	<u>84%</u>	<u>41%</u>
<u>430,031</u>	=	<u>465,165</u>	<u>65%</u>	<u>19%</u>	<u>1,323,423</u>	=	<u>1,325,093</u>	<u>84%</u>	<u>42%</u>
<u>465,166</u>	=	<u>474,784</u>	<u>65%</u>	<u>20%</u>	<u>1,325,094</u>	=	<u>1,365,497</u>	<u>85%</u>	<u>42%</u>
<u>474,785</u>	=	<u>501,574</u>	<u>66%</u>	<u>20%</u>	<u>1,365,498</u>	=	<u>1,369,848</u>	<u>85%</u>	<u>43%</u>
<u>501,575</u>	=	<u>519,538</u>	<u>66%</u>	<u>21%</u>	<u>1,369,849</u>	=	<u>1,407,863</u>	<u>86%</u>	<u>43%</u>
<u>519,539</u>	=	<u>538,215</u>	<u>67%</u>	<u>21%</u>	<u>1,407,864</u>	=	<u>1,414,603</u>	<u>86%</u>	<u>44%</u>
<u>538,216</u>	=	<u>564,292</u>	<u>67%</u>	<u>22%</u>	<u>1,414,604</u>	=	<u>1,450,518</u>	<u>87%</u>	<u>44%</u>
<u>564,293</u>	=	<u>575,092</u>	<u>68%</u>	<u>22%</u>	<u>1,450,519</u>	=	<u>1,459,356</u>	<u>87%</u>	<u>45%</u>
<u>575,093</u>	=	<u>609,042</u>	<u>68%</u>	<u>23%</u>	<u>1,459,357</u>	=	<u>1,493,468</u>	<u>88%</u>	<u>45%</u>
<u>609,043</u>	=	<u>612,203</u>	<u>69%</u>	<u>23%</u>	<u>1,493,469</u>	=	<u>1,504,109</u>	<u>88%</u>	<u>46%</u>
<u>612,204</u>	=	<u>649,555</u>	<u>69%</u>	<u>24%</u>	<u>1,504,110</u>	=	<u>1,536,715</u>	<u>89%</u>	<u>46%</u>
<u>649,556</u>	=	<u>653,795</u>	<u>69%</u>	<u>25%</u>	<u>1,536,716</u>	=	<u>1,548,861</u>	<u>89%</u>	<u>47%</u>
<u>653,796</u>	=	<u>687,146</u>	<u>70%</u>	<u>25%</u>	<u>1,548,862</u>	=	<u>1,580,264</u>	<u>90%</u>	<u>47%</u>
<u>687,147</u>	=	<u>698,551</u>	<u>70%</u>	<u>26%</u>	<u>1,580,265</u>	=	<u>1,593,616</u>	<u>90%</u>	<u>48%</u>
<u>698,552</u>	=	<u>724,982</u>	<u>71%</u>	<u>26%</u>	<u>1,593,617</u>	=	<u>1,624,115</u>	<u>91%</u>	<u>48%</u>
<u>724,983</u>	=	<u>743,304</u>	<u>71%</u>	<u>27%</u>	<u>1,624,116</u>	=	<u>1,638,367</u>	<u>91%</u>	<u>49%</u>
<u>743,305</u>	=	<u>763,065</u>	<u>72%</u>	<u>27%</u>	<u>1,638,368</u>	=	<u>1,668,273</u>	<u>92%</u>	<u>49%</u>
<u>763,066</u>	=	<u>788,056</u>	<u>72%</u>	<u>28%</u>	<u>1,668,274</u>	=	<u>1,683,123</u>	<u>92%</u>	<u>50%</u>
<u>788,057</u>	=	<u>801,394</u>	<u>73%</u>	<u>28%</u>	<u>1,683,124</u>	=	<u>1,712,742</u>	<u>93%</u>	<u>50%</u>
<u>801,395</u>	=	<u>832,811</u>	<u>73%</u>	<u>29%</u>	<u>1,712,743</u>	=	<u>1,727,875</u>	<u>93%</u>	<u>51%</u>
<u>832,812</u>	=	<u>839,973</u>	<u>74%</u>	<u>29%</u>	<u>1,727,876</u>	=	<u>1,757,524</u>	<u>94%</u>	<u>51%</u>
<u>839,974</u>	=	<u>877,563</u>	<u>74%</u>	<u>30%</u>	<u>1,757,525</u>	=	<u>1,772,627</u>	<u>94%</u>	<u>52%</u>
<u>877,564</u>	=	<u>878,808</u>	<u>75%</u>	<u>30%</u>	<u>1,772,628</u>	=	<u>1,802,623</u>	<u>95%</u>	<u>52%</u>
<u>878,809</u>	=	<u>917,897</u>	<u>75%</u>	<u>31%</u>	<u>1,802,624</u>	=	<u>1,817,380</u>	<u>95%</u>	<u>53%</u>
<u>917,898</u>	=	<u>922,317</u>	<u>75%</u>	<u>32%</u>	<u>1,817,381</u>	=	<u>1,848,041</u>	<u>96%</u>	<u>53%</u>
<u>922,318</u>	=	<u>957,245</u>	<u>76%</u>	<u>32%</u>	<u>1,848,042</u>	=	<u>1,862,134</u>	<u>96%</u>	<u>54%</u>
<u>957,246</u>	=	<u>967,069</u>	<u>76%</u>	<u>33%</u>	<u>1,862,135</u>	=	<u>1,893,783</u>	<u>97%</u>	<u>54%</u>
<u>967,070</u>	=	<u>996,852</u>	<u>77%</u>	<u>33%</u>	<u>1,893,784</u>	=	<u>1,906,886</u>	<u>97%</u>	<u>55%</u>
<u>996,853</u>	=	<u>1,011,824</u>	<u>77%</u>	<u>34%</u>	<u>1,906,887</u>	=	<u>1,939,851</u>	<u>98%</u>	<u>55%</u>
<u>1,011,825</u>	=	<u>1,036,725</u>	<u>78%</u>	<u>34%</u>	<u>1,939,852</u>	=	<u>1,951,641</u>	<u>98%</u>	<u>56%</u>
<u>1,036,726</u>	=	<u>1,056,577</u>	<u>78%</u>	<u>35%</u>	<u>1,951,642</u>	=	<u>1,986,251</u>	<u>99%</u>	<u>56%</u>
<u>1,056,578</u>	=	<u>1,076,862</u>	<u>79%</u>	<u>35%</u>	<u>1,986,252</u>	=	<u>1,996,393</u>	<u>99%</u>	<u>57%</u>
<u>1,076,863</u>	=	<u>1,101,330</u>	<u>79%</u>	<u>36%</u>	<u>1,996,394</u>	=	<u>2,032,984</u>	<u>100%</u>	<u>57%</u>
<u>1,101,331</u>	=	<u>1,117,267</u>	<u>80%</u>	<u>36%</u>	<u>2,032,985</u>	=	<u>2,080,056</u>	<u>100%</u>	<u>58%</u>
<u>1,117,268</u>	=	<u>1,146,081</u>	<u>80%</u>	<u>37%</u>	<u>2,080,057</u>	=	<u>2,127,467</u>	<u>100%</u>	<u>59%</u>
<u>1,146,082</u>	=	<u>1,157,944</u>	<u>81%</u>	<u>37%</u>	<u>2,127,468</u>	=	<u>2,175,225</u>	<u>100%</u>	<u>60%</u>
<u>1,157,945</u>	=	<u>1,190,836</u>	<u>81%</u>	<u>38%</u>	<u>2,175,226</u>	=	<u>2,223,331</u>	<u>100%</u>	<u>61%</u>

Expected Losses	Primary Credibility	Excess Credibility	Class	((2009)) 2010	((2010)) 2011	((2011)) 2012	Primary Ratio
<u>2,223,332</u> = <u>2,271,789</u>	100%	62%	0202	3.5066	3.0617	2.4686	0.404
<u>2,271,790</u> = <u>2,320,605</u>	100%	63%	0210	1.1800	1.0268	0.8237	0.420
<u>2,320,606</u> = <u>2,369,780</u>	100%	64%	0212	1.4218	1.2367	0.9901	0.439
<u>2,369,781</u> = <u>2,419,320</u>	100%	65%	0214	1.5645	1.3635	1.0963	0.421
<u>2,419,321</u> = <u>2,469,229</u>	100%	66%	0217	1.2855	1.1212	0.9005	0.443
<u>2,469,230</u> = <u>2,519,511</u>	100%	67%	0219	1.3177	1.1473	0.9186	0.443
<u>2,519,512</u> = <u>2,570,170</u>	100%	68%	0301	0.8574	0.7530	0.6080	0.494
<u>2,570,171</u> = <u>2,621,210</u>	100%	69%	0302	2.4191	2.1006	1.6834	0.401
<u>2,621,211</u> = <u>2,672,634</u>	100%	70%	0303	1.9137	1.6685	1.3458	0.409
<u>2,672,635</u> = <u>2,724,449</u>	100%	71%	0306	1.1171	0.9712	0.7766	0.441
<u>2,724,450</u> = <u>2,776,660</u>	100%	72%	0307	0.9819	0.8540	0.6810	0.467
<u>2,776,661</u> = <u>2,829,267</u>	100%	73%	0308	0.6742	0.5939	0.4801	0.526
<u>2,829,268</u> = <u>2,882,279</u>	100%	74%	0403	2.0317	1.7655	1.4055	0.466
<u>2,882,280</u> = <u>2,935,696</u>	100%	75%	0502	1.4382	1.2508	1.0023	0.419
<u>2,935,697</u> = <u>2,989,529</u>	100%	76%	0504	1.9130	1.6879	1.3811	0.421
<u>2,989,530</u> = <u>3,043,778</u>	100%	77%	0507	3.5999	3.1719	2.5886	0.428
<u>3,043,779</u> = <u>3,098,451</u>	100%	78%	0508	1.9726	1.7135	1.3773	0.379
<u>3,098,452</u> = <u>3,153,550</u>	100%	79%	0509	1.7721	1.5464	1.2514	0.381
<u>3,153,551</u> = <u>3,209,082</u>	100%	80%	0510	2.1685	1.9021	1.5439	0.424
<u>3,209,083</u> = <u>3,265,054</u>	100%	81%	0511	1.7310	1.5011	1.1925	0.464
<u>3,265,055</u> = <u>3,321,465</u>	100%	82%	0512	1.6122	1.4092	1.1385	0.417
<u>3,321,466</u> = <u>3,378,325</u>	100%	83%	0513	0.9095	0.7923	0.6349	0.447
<u>3,378,326</u> = <u>3,435,638</u>	100%	84%	0514	2.0904	1.8168	1.4467	0.477
<u>3,435,639</u> = <u>3,493,412</u>	100%	85%	0516	1.7296	1.5121	1.2219	0.413
<u>3,493,413</u> and higher	100%	86%	0517	2.5877	2.2749	1.8552	0.407

AMENDATORY SECTION (Amending WSR 12-24-048, filed 11/30/12, effective 1/1/13)

WAC 296-17-885 Table III.

**Expected Loss Rates and Primary Ratios
by Risk Classification and Fiscal Year**

**Expected Loss Rates in Dollars Per Worker Hour
Effective January 1, ((2013)) 2014**

Class	((2009)) 2010	((2010)) 2011	((2011)) 2012	Primary Ratio
((0101)	1.6709	1.4606	1.1832	0.392
0103	1.9771	1.7366	1.4133	0.414
0104	1.0969	0.9583	0.7716	0.438
0105	1.6192	1.4106	1.1234	0.502
0107	1.2819	1.1160	0.8955	0.432
0108	1.0969	0.9583	0.7716	0.438
0112	0.7933	0.6939	0.5588	0.456
0201	2.4413	2.1188	1.7063	0.349

Class	<u>((2009)) 2010</u>	<u>((2010)) 2011</u>	<u>((2011)) 2012</u>	Primary Ratio	Class	<u>((2009)) 2010</u>	<u>((2010)) 2011</u>	<u>((2011)) 2012</u>	Primary Ratio
1007	0.4069	0.3527	0.2802	0.467	2905	0.8003	0.7030	0.5663	0.525
1101	0.9263	0.8075	0.6442	0.505	2906	0.4373	0.3862	0.3134	0.496
1102	1.6900	1.4714	1.1782	0.450	2907	0.6394	0.5607	0.4506	0.514
1103	1.4286	1.2497	1.0085	0.439	2908	1.3094	1.1513	0.9339	0.459
1104	0.7697	0.6736	0.5383	0.532	2909	0.4854	0.4267	0.3438	0.516
1105	0.9543	0.8316	0.6661	0.456	3101	0.8446	0.7391	0.5943	0.483
1106	0.3729	0.3310	0.2711	0.488	3102	0.3012	0.2646	0.2137	0.496
1108	0.7315	0.6406	0.5144	0.506	3103	0.6125	0.5378	0.4350	0.465
1109	1.7797	1.5572	1.2524	0.471	3104	0.7375	0.6454	0.5191	0.483
1301	0.6580	0.5684	0.4456	0.533	3105	0.8671	0.7629	0.6170	0.500
1303	0.2497	0.2177	0.1731	0.533	3303	0.5443	0.4751	0.3789	0.526
1304	0.0337	0.0294	0.0235	0.502	3304	0.6200	0.5476	0.4442	0.533
1305	0.5843	0.5105	0.4090	0.508	3309	0.4582	0.4026	0.3267	0.459
1401	0.2393	0.2133	0.1766	0.429	3402	0.5878	0.5158	0.4163	0.476
1404	1.1049	0.9653	0.7706	0.541	3403	0.2394	0.2104	0.1705	0.477
1405	0.9118	0.7904	0.6208	0.560	3404	0.5617	0.4922	0.3950	0.513
1407	0.6360	0.5610	0.4551	0.514	3405	0.3333	0.2926	0.2354	0.514
1501	0.7598	0.6588	0.5205	0.527	3406	0.3224	0.2824	0.2256	0.563
1507	0.7140	0.6236	0.4992	0.498	3407	0.9768	0.8509	0.6797	0.477
1701	0.9093	0.7970	0.6444	0.441	3408	0.2868	0.2483	0.1945	0.577
1702	1.9051	1.6575	1.3398	0.348	3409	0.1984	0.1732	0.1378	0.575
1703	1.0590	0.9131	0.7260	0.386	3410	0.2678	0.2369	0.1929	0.520
1704	0.9093	0.7970	0.6444	0.441	3411	0.6379	0.5571	0.4473	0.468
1801	0.5159	0.4559	0.3743	0.411	3412	0.7032	0.6130	0.4920	0.444
1802	0.8677	0.7579	0.6041	0.492	3414	0.7469	0.6551	0.5287	0.475
2002	0.9797	0.8616	0.6972	0.490	3415	0.9505	0.8390	0.6878	0.406
2004	0.8732	0.7663	0.6173	0.496	3501	1.2438	1.0889	0.8757	0.478
2007	0.6919	0.6096	0.4944	0.494	3503	0.3871	0.3438	0.2808	0.528
2008	0.4332	0.3813	0.3092	0.481	3506	1.0352	0.8948	0.7054	0.490
2009	0.4386	0.3864	0.3126	0.519	3509	0.4809	0.4226	0.3399	0.553
2101	0.9441	0.8303	0.6701	0.518	3510	0.4146	0.3634	0.2913	0.526
2102	0.7725	0.6754	0.5403	0.517	3511	0.6905	0.6085	0.4948	0.450
2104	0.3808	0.3388	0.2765	0.564	3512	0.4489	0.3951	0.3182	0.540
2105	0.6957	0.6082	0.4855	0.538	3513	0.6440	0.5729	0.4720	0.471
2106	0.5927	0.5210	0.4203	0.513	3602	0.1390	0.1220	0.0979	0.527
2201	0.3033	0.2676	0.2176	0.504	3603	0.5800	0.5093	0.4097	0.516
2202	0.9240	0.8074	0.6461	0.510	3604	0.8853	0.7903	0.6549	0.459
2203	0.5730	0.5040	0.4057	0.537	3605	0.6387	0.5563	0.4427	0.504
2204	0.3033	0.2676	0.2176	0.504	3701	0.3012	0.2646	0.2137	0.496
2401	0.5569	0.4815	0.3786	0.515	3702	0.5470	0.4772	0.3798	0.531
2903	0.8052	0.7073	0.5698	0.513	3708	0.7330	0.6383	0.5083	0.515
2904	0.8070	0.7081	0.5719	0.474	3802	0.2510	0.2203	0.1771	0.527

Class	<u>((2009))</u> <u>2010</u>	<u>((2010))</u> <u>2011</u>	<u>((2011))</u> <u>2012</u>	Primary Ratio	Class	<u>((2009))</u> <u>2010</u>	<u>((2010))</u> <u>2011</u>	<u>((2011))</u> <u>2012</u>	Primary Ratio
3808	0.4728	0.4132	0.3321	0.452	4905	0.4859	0.4310	0.3512	0.552
3901	0.1924	0.1703	0.1382	0.552	4906	0.1164	0.1013	0.0801	0.549
3902	0.5528	0.4878	0.3950	0.529	4907	0.0663	0.0584	0.0471	0.525
3903	1.3378	1.1874	0.9733	0.494	4908	0.1118	0.0992	0.0799	0.542
3905	0.1762	0.1561	0.1267	0.561	4909	0.0458	0.0415	0.0341	0.514
3906	0.5576	0.4929	0.4013	0.502	4910	0.5514	0.4843	0.3910	0.494
3909	0.4055	0.3569	0.2880	0.534	4911	0.0765	0.0672	0.0543	0.482
4002	1.4638	1.2732	1.0168	0.464	5001	9.5887	8.4028	6.8485	0.360
4101	0.4125	0.3609	0.2894	0.505	5002	0.7365	0.6404	0.5077	0.522
4103	0.6761	0.5910	0.4716	0.545	5003	2.4025	2.0829	1.6638	0.414
4107	0.1941	0.1703	0.1371	0.504	5004	0.9078	0.8040	0.6603	0.428
4108	0.2467	0.2158	0.1725	0.544	5005	0.8714	0.7622	0.6158	0.418
4109	0.2404	0.2113	0.1708	0.495	5006	1.5820	1.3830	1.1218	0.372
4201	0.8187	0.7082	0.5606	0.480	5101	1.0945	0.9517	0.7569	0.487
4301	0.8154	0.7191	0.5830	0.511	5103	1.0315	0.9076	0.7309	0.540
4302	0.8663	0.7563	0.6028	0.527	5106	1.0315	0.9076	0.7309	0.540
4304	1.1315	1.0029	0.8202	0.496	5108	1.0191	0.8952	0.7198	0.528
4305	1.3564	1.1758	0.9311	0.496	5109	0.6822	0.5915	0.4676	0.508
4401	0.4892	0.4341	0.3556	0.471	5201	0.4493	0.3926	0.3139	0.508
4402	1.0140	0.8856	0.7074	0.538	5204	1.2009	1.0502	0.8460	0.460
4404	0.6099	0.5385	0.4378	0.491	5206	0.4260	0.3740	0.3031	0.454
4501	0.2340	0.2057	0.1646	0.568	5207	0.1837	0.1629	0.1326	0.534
4502	0.0525	0.0463	0.0373	0.516	5208	0.9082	0.7983	0.6439	0.501
4504	0.1479	0.1296	0.1036	0.570	5209	0.8167	0.7161	0.5774	0.469
4601	0.9401	0.8231	0.6614	0.492	5300	0.1466	0.1275	0.1013	0.533
4801	3.5066	3.0617	2.4686	0.404	5301	0.0445	0.0389	0.0310	0.543
4802	0.3905	0.3457	0.2824	0.487	5302	0.0174	0.0152	0.0122	0.490
4803	0.3731	0.3311	0.2699	0.563	5305	0.0727	0.0636	0.0507	0.577
4804	0.6025	0.5313	0.4297	0.540	5306	0.0598	0.0527	0.0423	0.555
4805	0.3782	0.3335	0.2696	0.539	5307	0.8144	0.7079	0.5626	0.502
4806	0.0787	0.0698	0.0570	0.519	5308	0.1251	0.1096	0.0875	0.569
4808	0.5642	0.4986	0.4058	0.488	6103	0.1049	0.0927	0.0748	0.581
4809	0.3839	0.3403	0.2778	0.519	6104	0.4892	0.4287	0.3436	0.536
4810	0.1776	0.1576	0.1285	0.543	6105	0.4579	0.3994	0.3196	0.490
4811	0.4333	0.3838	0.3118	0.555	6107	0.1739	0.1547	0.1263	0.548
4812	0.4492	0.3956	0.3197	0.524	6108	0.5570	0.4904	0.3950	0.546
4813	0.2037	0.1802	0.1465	0.533	6109	0.1282	0.1120	0.0893	0.523
4900	0.1879	0.1644	0.1335	0.387	6110	0.7494	0.6560	0.5258	0.518
4901	0.0749	0.0653	0.0522	0.480	6120	0.3807	0.3305	0.2611	0.532
4902	0.1495	0.1303	0.1036	0.534	6121	0.4244	0.3714	0.2983	0.500
4903	0.1972	0.1716	0.1356	0.569	6201	0.3634	0.3191	0.2580	0.469
4904	0.0300	0.0264	0.0213	0.541	6202	0.8032	0.7047	0.5666	0.504

Class	((2009)) <u>2010</u>	((2010)) <u>2011</u>	((2011)) <u>2012</u>	Primary Ratio	Class	((2009)) <u>2010</u>	((2010)) <u>2011</u>	((2011)) <u>2012</u>	Primary Ratio
6203	0.1402	0.1239	0.0996	0.611	6705	1.1046	0.9736	0.7845	0.569
6204	0.1592	0.1401	0.1129	0.551	6706	0.3602	0.3209	0.2648	0.488
6205	0.2931	0.2585	0.2097	0.517	6707	6.5030	5.6892	4.4993	0.637
6206	0.2884	0.2535	0.2043	0.533	6708	9.9770	9.0973	7.7497	0.432
6207	1.6079	1.4334	1.1816	0.505	6709	0.3339	0.2942	0.2374	0.532
6208	0.3188	0.2825	0.2296	0.548	6801	0.8792	0.7586	0.5929	0.541
6209	0.3729	0.3292	0.2667	0.522	6802	0.7410	0.6476	0.5163	0.558
6301	0.1486	0.1290	0.1029	0.465	6803	0.8818	0.7716	0.6296	0.327
6303	0.0937	0.0822	0.0659	0.518	6804	0.4125	0.3627	0.2923	0.517
6304	0.4000	0.3548	0.2894	0.539	6809	6.1351	5.4152	4.3578	0.546
6305	0.1318	0.1159	0.0931	0.560	6901	0.0241	0.0237	0.0207	0.758
6306	0.3643	0.3190	0.2559	0.506	6902	1.1084	0.9660	0.7783	0.413
6308	0.0832	0.0727	0.0579	0.530	6903	7.4357	6.5965	5.5025	0.301
6309	0.2597	0.2283	0.1841	0.520	6904	0.7057	0.6050	0.4671	0.556
6402	0.3277	0.2878	0.2308	0.562	6905	0.5696	0.4916	0.3835	0.567
6403	0.2065	0.1828	0.1483	0.542	6906	0.2261	0.2138	0.1894	0.648
6404	0.3312	0.2923	0.2367	0.538	6907	1.4815	1.2972	1.0407	0.513
6405	0.6766	0.5907	0.4726	0.493	6908	0.5148	0.4514	0.3633	0.496
6406	0.1519	0.1338	0.1078	0.567	6909	0.1386	0.1220	0.0982	0.538
6407	0.3148	0.2766	0.2222	0.541	7100	0.0381	0.0338	0.0279	0.457
6408	0.5349	0.4672	0.3732	0.512	7101	0.0272	0.0241	0.0196	0.441
6409	0.8476	0.7395	0.5918	0.481	7102	5.1874	4.6799	3.9097	0.537
6410	0.3706	0.3245	0.2599	0.525	7103	0.8623	0.7458	0.5859	0.539
6501	0.1853	0.1626	0.1307	0.545	7104	0.0400	0.0351	0.0279	0.563
6502	0.0375	0.0330	0.0265	0.522	7105	0.0303	0.0266	0.0214	0.533
6503	0.0854	0.0742	0.0589	0.493	7106	0.3237	0.2840	0.2275	0.578
6504	0.4714	0.4168	0.3371	0.566	7107	0.2990	0.2653	0.2165	0.539
6505	0.1596	0.1414	0.1140	0.595	7108	0.2484	0.2202	0.1795	0.545
6506	0.1464	0.1286	0.1032	0.557	7109	0.1829	0.1607	0.1289	0.558
6509	0.4325	0.3821	0.3094	0.549	7110	0.3832	0.3347	0.2692	0.459
6510	0.5152	0.4504	0.3624	0.449	7111	0.5255	0.4571	0.3657	0.446
6511	0.4778	0.4205	0.3390	0.540	7112	0.8662	0.7624	0.6152	0.535
6512	0.1678	0.1474	0.1194	0.478	7113	0.4820	0.4256	0.3454	0.523
6601	0.2559	0.2253	0.1819	0.515	7114	0.7919	0.6985	0.5627	0.581
6602	0.6409	0.5655	0.4586	0.527	7115	0.6401	0.5669	0.4622	0.534
6603	0.3908	0.3434	0.2771	0.512	7116	0.7646	0.6721	0.5428	0.502
6604	0.1030	0.0904	0.0727	0.549	7117	1.4701	1.2919	1.0422	0.505
6605	0.4840	0.4230	0.3352	0.571	7118	1.7969	1.5823	1.2805	0.507
6607	0.1887	0.1662	0.1346	0.513	7119	1.7782	1.5533	1.2401	0.539
6608	0.6144	0.5319	0.4247	0.396	7120	7.3133	6.4231	5.1888	0.487
6620	4.0862	3.5191	2.7428	0.555	7121	6.8444	6.0116	4.8563	0.487
6704	0.1578	0.1387	0.1117	0.521	7122	0.5813	0.5121	0.4133	0.544

Class	((2009)) <u>2010</u>	((2010)) <u>2011</u>	((2011)) <u>2012</u>	Primary Ratio	Class	((2009)) <u>2010</u>	((2010)) <u>2011</u>	((2011)) <u>2012</u>	Primary Ratio
7200	1.7530	1.5132	1.1868	0.520	0514	1.9479	1.6904	1.3941	0.484
7201	2.0607	1.7864	1.4153	0.494	0516	1.6632	1.4562	1.2241	0.421
7202	0.0343	0.0299	0.0241	0.460	0517	2.5001	2.2034	1.8738	0.410
7203	0.1526	0.1371	0.1128	0.564	0518	1.4862	1.3001	1.0918	0.408
7204	0.0000	0.0000	0.0000	0.500	0519	1.9044	1.6647	1.3943	0.439
7205	0.0000	0.0000	0.0000	0.500	0521	0.5869	0.5134	0.4301	0.450
7301	0.5029	0.4434	0.3600	0.487	0601	0.6470	0.5622	0.4648	0.467
7302	1.1385	1.0070	0.8219	0.488	0602	0.7444	0.6449	0.5318	0.451
7307	0.5436	0.4811	0.3926	0.490	0603	0.9233	0.8067	0.6755	0.421
7308	0.4816	0.4249	0.3428	0.550	0604	1.3067	1.1437	0.9548	0.504
7309	0.3448	0.3053	0.2482	0.552	0606	0.6746	0.5838	0.4773	0.534
7400	2.0607	1.7864	1.4153	0.494))	0607	0.8160	0.7077	0.5823	0.507
0101	1.6300	1.4318	1.2118	0.394	0608	0.3601	0.3149	0.2630	0.472
0103	1.8412	1.6229	1.3794	0.408	0701	1.8594	1.6281	1.3750	0.344
0104	1.0651	0.9285	0.7739	0.445	0803	0.5878	0.5097	0.4183	0.527
0105	1.5554	1.3473	1.1053	0.515	0901	1.4862	1.3001	1.0918	0.408
0107	1.1063	0.9658	0.8063	0.439	1002	1.0020	0.8780	0.7370	0.456
0108	1.0651	0.9285	0.7739	0.445	1003	0.8789	0.7682	0.6411	0.479
0112	0.8228	0.7178	0.5981	0.464	1004	0.5927	0.5132	0.4219	0.483
0201	2.0439	1.7909	1.5124	0.363	1005	9.1304	7.9285	6.5802	0.434
0202	3.3845	2.9623	2.4892	0.412	1006	0.0840	0.0728	0.0595	0.518
0210	1.1124	0.9708	0.8121	0.418	1007	0.3687	0.3199	0.2638	0.463
0212	1.3624	1.1864	0.9874	0.445	1101	0.8843	0.7644	0.6248	0.520
0214	1.5043	1.3140	1.0997	0.431	1102	1.6131	1.4019	1.1618	0.465
0217	1.4061	1.2284	1.0281	0.438	1103	1.4012	1.2201	1.0142	0.462
0219	1.1735	1.0211	0.8484	0.447	1104	0.7176	0.6231	0.5123	0.531
0301	0.8653	0.7559	0.6296	0.497	1105	0.9185	0.7998	0.6642	0.465
0302	2.3884	2.0831	1.7424	0.407	1106	0.3454	0.3053	0.2588	0.491
0303	1.7992	1.5755	1.3252	0.418	1108	0.6626	0.5784	0.4803	0.507
0306	1.1101	0.9641	0.7982	0.449	1109	1.6733	1.4554	1.2057	0.487
0307	0.9641	0.8382	0.6940	0.466	1301	0.6239	0.5336	0.4275	0.545
0308	0.6757	0.5893	0.4877	0.539	1303	0.2524	0.2175	0.1760	0.553
0403	1.9658	1.7033	1.4028	0.478	1304	0.0329	0.0285	0.0233	0.517
0502	1.4122	1.2292	1.0231	0.433	1305	0.5509	0.4794	0.3961	0.513
0504	1.9101	1.6848	1.4326	0.426	1401	0.2476	0.2158	0.1787	0.524
0507	3.5127	3.1001	2.6385	0.427	1404	1.0206	0.8846	0.7255	0.544
0508	1.8984	1.6572	1.3893	0.392	1405	0.9251	0.7904	0.6306	0.575
0509	1.5904	1.3957	1.1794	0.390	1407	0.6178	0.5389	0.4468	0.524
0510	2.2050	1.9357	1.6336	0.428	1501	0.7387	0.6360	0.5159	0.538
0511	1.6710	1.4495	1.1962	0.465	1507	0.6805	0.5911	0.4874	0.506
0512	1.4698	1.2839	1.0727	0.447	1701	0.8506	0.7428	0.6206	0.456
0513	0.9173	0.7998	0.6667	0.447	1702	1.7499	1.5372	1.3043	0.354

Class	((2009)) <u>2010</u>	((2010)) <u>2011</u>	((2011)) <u>2012</u>	Primary Ratio	Class	((2009)) <u>2010</u>	((2010)) <u>2011</u>	((2011)) <u>2012</u>	Primary Ratio
<u>1703</u>	<u>1.0080</u>	<u>0.8755</u>	<u>0.7280</u>	<u>0.394</u>	<u>3410</u>	<u>0.2459</u>	<u>0.2151</u>	<u>0.1787</u>	<u>0.539</u>
<u>1704</u>	<u>0.8506</u>	<u>0.7428</u>	<u>0.6206</u>	<u>0.456</u>	<u>3411</u>	<u>0.5846</u>	<u>0.5090</u>	<u>0.4220</u>	<u>0.479</u>
<u>1801</u>	<u>0.4900</u>	<u>0.4340</u>	<u>0.3712</u>	<u>0.419</u>	<u>3412</u>	<u>0.6684</u>	<u>0.5829</u>	<u>0.4856</u>	<u>0.452</u>
<u>1802</u>	<u>0.8261</u>	<u>0.7171</u>	<u>0.5897</u>	<u>0.500</u>	<u>3414</u>	<u>0.7534</u>	<u>0.6582</u>	<u>0.5489</u>	<u>0.483</u>
<u>2002</u>	<u>0.9219</u>	<u>0.8062</u>	<u>0.6728</u>	<u>0.490</u>	<u>3415</u>	<u>0.8955</u>	<u>0.7919</u>	<u>0.6762</u>	<u>0.410</u>
<u>2004</u>	<u>0.8318</u>	<u>0.7243</u>	<u>0.5991</u>	<u>0.508</u>	<u>3501</u>	<u>1.1805</u>	<u>1.0280</u>	<u>0.8533</u>	<u>0.486</u>
<u>2007</u>	<u>0.6926</u>	<u>0.6075</u>	<u>0.5092</u>	<u>0.496</u>	<u>3503</u>	<u>0.3683</u>	<u>0.3238</u>	<u>0.2711</u>	<u>0.537</u>
<u>2008</u>	<u>0.4185</u>	<u>0.3667</u>	<u>0.3067</u>	<u>0.491</u>	<u>3506</u>	<u>0.9791</u>	<u>0.8437</u>	<u>0.6864</u>	<u>0.504</u>
<u>2009</u>	<u>0.4125</u>	<u>0.3601</u>	<u>0.2985</u>	<u>0.533</u>	<u>3509</u>	<u>0.4605</u>	<u>0.4002</u>	<u>0.3285</u>	<u>0.563</u>
<u>2101</u>	<u>0.8782</u>	<u>0.7672</u>	<u>0.6378</u>	<u>0.523</u>	<u>3510</u>	<u>0.3987</u>	<u>0.3467</u>	<u>0.2854</u>	<u>0.533</u>
<u>2102</u>	<u>0.7513</u>	<u>0.6514</u>	<u>0.5345</u>	<u>0.527</u>	<u>3511</u>	<u>0.6676</u>	<u>0.5866</u>	<u>0.4941</u>	<u>0.459</u>
<u>2104</u>	<u>0.3626</u>	<u>0.3186</u>	<u>0.2652</u>	<u>0.577</u>	<u>3512</u>	<u>0.4281</u>	<u>0.3729</u>	<u>0.3072</u>	<u>0.551</u>
<u>2105</u>	<u>0.6948</u>	<u>0.6005</u>	<u>0.4894</u>	<u>0.541</u>	<u>3513</u>	<u>0.6409</u>	<u>0.5662</u>	<u>0.4800</u>	<u>0.486</u>
<u>2106</u>	<u>0.5629</u>	<u>0.4926</u>	<u>0.4103</u>	<u>0.514</u>	<u>3602</u>	<u>0.1245</u>	<u>0.1086</u>	<u>0.0896</u>	<u>0.533</u>
<u>2201</u>	<u>0.3015</u>	<u>0.2635</u>	<u>0.2193</u>	<u>0.527</u>	<u>3603</u>	<u>0.5720</u>	<u>0.4987</u>	<u>0.4124</u>	<u>0.531</u>
<u>2202</u>	<u>0.8704</u>	<u>0.7543</u>	<u>0.6192</u>	<u>0.519</u>	<u>3604</u>	<u>0.8348</u>	<u>0.7430</u>	<u>0.6371</u>	<u>0.466</u>
<u>2203</u>	<u>0.5530</u>	<u>0.4815</u>	<u>0.3969</u>	<u>0.547</u>	<u>3605</u>	<u>0.6091</u>	<u>0.5271</u>	<u>0.4317</u>	<u>0.513</u>
<u>2204</u>	<u>0.3015</u>	<u>0.2635</u>	<u>0.2193</u>	<u>0.527</u>	<u>3701</u>	<u>0.2807</u>	<u>0.2456</u>	<u>0.2045</u>	<u>0.506</u>
<u>2401</u>	<u>0.5153</u>	<u>0.4445</u>	<u>0.3626</u>	<u>0.504</u>	<u>3702</u>	<u>0.5204</u>	<u>0.4506</u>	<u>0.3683</u>	<u>0.542</u>
<u>2903</u>	<u>0.7615</u>	<u>0.6665</u>	<u>0.5558</u>	<u>0.513</u>	<u>3708</u>	<u>0.7074</u>	<u>0.6121</u>	<u>0.5008</u>	<u>0.526</u>
<u>2904</u>	<u>0.7901</u>	<u>0.6891</u>	<u>0.5727</u>	<u>0.486</u>	<u>3802</u>	<u>0.2476</u>	<u>0.2158</u>	<u>0.1784</u>	<u>0.538</u>
<u>2905</u>	<u>0.7182</u>	<u>0.6269</u>	<u>0.5202</u>	<u>0.525</u>	<u>3808</u>	<u>0.4590</u>	<u>0.4000</u>	<u>0.3326</u>	<u>0.466</u>
<u>2906</u>	<u>0.4194</u>	<u>0.3688</u>	<u>0.3090</u>	<u>0.509</u>	<u>3901</u>	<u>0.1808</u>	<u>0.1584</u>	<u>0.1316</u>	<u>0.561</u>
<u>2907</u>	<u>0.5891</u>	<u>0.5136</u>	<u>0.4252</u>	<u>0.522</u>	<u>3902</u>	<u>0.5212</u>	<u>0.4548</u>	<u>0.3760</u>	<u>0.553</u>
<u>2908</u>	<u>1.2529</u>	<u>1.1008</u>	<u>0.9273</u>	<u>0.463</u>	<u>3903</u>	<u>1.2827</u>	<u>1.1309</u>	<u>0.9545</u>	<u>0.504</u>
<u>2909</u>	<u>0.4693</u>	<u>0.4089</u>	<u>0.3380</u>	<u>0.530</u>	<u>3905</u>	<u>0.1667</u>	<u>0.1459</u>	<u>0.1207</u>	<u>0.573</u>
<u>3101</u>	<u>0.8243</u>	<u>0.7190</u>	<u>0.5968</u>	<u>0.494</u>	<u>3906</u>	<u>0.5308</u>	<u>0.4660</u>	<u>0.3903</u>	<u>0.516</u>
<u>3102</u>	<u>0.2807</u>	<u>0.2456</u>	<u>0.2045</u>	<u>0.506</u>	<u>3909</u>	<u>0.3764</u>	<u>0.3290</u>	<u>0.2730</u>	<u>0.538</u>
<u>3103</u>	<u>0.5734</u>	<u>0.5017</u>	<u>0.4199</u>	<u>0.470</u>	<u>4002</u>	<u>0.5212</u>	<u>0.4548</u>	<u>0.3760</u>	<u>0.553</u>
<u>3104</u>	<u>0.7205</u>	<u>0.6284</u>	<u>0.5220</u>	<u>0.490</u>	<u>4101</u>	<u>0.3745</u>	<u>0.3255</u>	<u>0.2685</u>	<u>0.513</u>
<u>3105</u>	<u>0.8830</u>	<u>0.7697</u>	<u>0.6371</u>	<u>0.520</u>	<u>4103</u>	<u>0.6583</u>	<u>0.5695</u>	<u>0.4647</u>	<u>0.553</u>
<u>3303</u>	<u>0.5110</u>	<u>0.4425</u>	<u>0.3621</u>	<u>0.533</u>	<u>4107</u>	<u>0.1911</u>	<u>0.1667</u>	<u>0.1382</u>	<u>0.518</u>
<u>3304</u>	<u>0.5685</u>	<u>0.4987</u>	<u>0.4163</u>	<u>0.540</u>	<u>4108</u>	<u>0.2216</u>	<u>0.1927</u>	<u>0.1585</u>	<u>0.547</u>
<u>3309</u>	<u>0.4498</u>	<u>0.3943</u>	<u>0.3305</u>	<u>0.475</u>	<u>4109</u>	<u>0.2280</u>	<u>0.1994</u>	<u>0.1661</u>	<u>0.505</u>
<u>3402</u>	<u>0.5492</u>	<u>0.4800</u>	<u>0.3999</u>	<u>0.487</u>	<u>4201</u>	<u>0.7556</u>	<u>0.6523</u>	<u>0.5335</u>	<u>0.488</u>
<u>3403</u>	<u>0.2265</u>	<u>0.1987</u>	<u>0.1663</u>	<u>0.484</u>	<u>4301</u>	<u>0.7981</u>	<u>0.6971</u>	<u>0.5791</u>	<u>0.527</u>
<u>3404</u>	<u>0.5239</u>	<u>0.4548</u>	<u>0.3735</u>	<u>0.534</u>	<u>4302</u>	<u>0.8582</u>	<u>0.7424</u>	<u>0.6061</u>	<u>0.542</u>
<u>3405</u>	<u>0.3200</u>	<u>0.2782</u>	<u>0.2290</u>	<u>0.530</u>	<u>4304</u>	<u>1.0752</u>	<u>0.9476</u>	<u>0.7998</u>	<u>0.497</u>
<u>3406</u>	<u>0.3255</u>	<u>0.2813</u>	<u>0.2285</u>	<u>0.579</u>	<u>4305</u>	<u>1.2702</u>	<u>1.0956</u>	<u>0.8933</u>	<u>0.508</u>
<u>3407</u>	<u>0.8828</u>	<u>0.7659</u>	<u>0.6314</u>	<u>0.487</u>	<u>4401</u>	<u>0.4711</u>	<u>0.4159</u>	<u>0.3519</u>	<u>0.480</u>
<u>3408</u>	<u>0.2796</u>	<u>0.2388</u>	<u>0.1901</u>	<u>0.592</u>	<u>4402</u>	<u>0.9215</u>	<u>0.7985</u>	<u>0.6542</u>	<u>0.543</u>
<u>3409</u>	<u>0.1881</u>	<u>0.1623</u>	<u>0.1316</u>	<u>0.585</u>	<u>4404</u>	<u>0.5815</u>	<u>0.5104</u>	<u>0.4278</u>	<u>0.496</u>

Class	(2009) <u>2010</u>	(2010) <u>2011</u>	(2011) <u>2012</u>	Primary Ratio	Class	(2009) <u>2010</u>	(2010) <u>2011</u>	(2011) <u>2012</u>	Primary Ratio
4501	0.2277	0.1974	0.1611	0.577	5201	0.4263	0.3700	0.3042	0.517
4502	0.0529	0.0461	0.0381	0.532	5204	1.1495	1.0042	0.8389	0.460
4504	0.1429	0.1240	0.1011	0.580	5206	0.4152	0.3632	0.3035	0.470
4601	0.8930	0.7770	0.6434	0.499	5207	0.1744	0.1532	0.1279	0.544
4801	3.3845	2.9623	2.4892	0.412	5208	0.8716	0.7593	0.6283	0.513
4802	0.3676	0.3230	0.2709	0.511	5209	0.7904	0.6900	0.5744	0.477
4803	0.3600	0.3152	0.2614	0.582	5300	0.1451	0.1251	0.1015	0.555
4804	0.5853	0.5109	0.4227	0.554	5301	0.0402	0.0349	0.0286	0.549
4805	0.3868	0.3372	0.2786	0.546	5302	0.0159	0.0139	0.0114	0.502
4806	0.0783	0.0690	0.0578	0.539	5305	0.0655	0.0567	0.0462	0.583
4808	0.5279	0.4640	0.3902	0.492	5306	0.0552	0.0481	0.0395	0.566
4809	0.3731	0.3278	0.2742	0.536	5307	0.8131	0.7029	0.5754	0.506
4810	0.1764	0.1549	0.1293	0.560	5308	0.1171	0.1013	0.0825	0.575
4811	0.4145	0.3628	0.3010	0.565	6103	0.1042	0.0907	0.0742	0.595
4812	0.4352	0.3804	0.3155	0.537	6104	0.4884	0.4238	0.3477	0.542
4813	0.1988	0.1744	0.1456	0.542	6105	0.4421	0.3839	0.3163	0.502
4814	0.1410	0.1246	0.1051	0.555	6107	0.1626	0.1434	0.1198	0.560
4815	0.3308	0.2921	0.2456	0.577	6108	0.4966	0.4335	0.3581	0.557
4816	0.4881	0.4349	0.3728	0.509	6109	0.1192	0.1032	0.0843	0.536
4900	0.1829	0.1607	0.1358	0.400	6110	0.6945	0.6032	0.4963	0.532
4901	0.0631	0.0550	0.0456	0.481	6120	0.3655	0.3141	0.2538	0.546
4902	0.1452	0.1256	0.1023	0.544	6121	0.3981	0.3470	0.2876	0.503
4903	0.1941	0.1668	0.1342	0.579	6201	0.3489	0.3053	0.2549	0.481
4904	0.0271	0.0236	0.0194	0.561	6202	0.7749	0.6751	0.5588	0.511
4905	0.4623	0.4054	0.3374	0.568	6203	0.1322	0.1153	0.0945	0.620
4906	0.1185	0.1020	0.0825	0.559	6204	0.1593	0.1387	0.1141	0.564
4907	0.0658	0.0575	0.0476	0.540	6205	0.2667	0.2335	0.1945	0.526
4908	0.1133	0.0990	0.0814	0.560	6206	0.2671	0.2332	0.1931	0.537
4909	0.0448	0.0399	0.0337	0.521	6207	1.5246	1.3476	1.1420	0.509
4910	0.5171	0.4501	0.3721	0.514	6208	0.3066	0.2686	0.2232	0.561
4911	0.0771	0.0671	0.0557	0.496	6209	0.3343	0.2932	0.2447	0.521
5001	9.2063	8.1444	6.9919	0.354	6301	0.1430	0.1238	0.1018	0.480
5002	0.7012	0.6050	0.4922	0.532	6303	0.0853	0.0742	0.0613	0.524
5003	2.3002	1.9901	1.6412	0.437	6304	0.3566	0.3133	0.2618	0.546
5004	0.8928	0.7868	0.6665	0.454	6305	0.1273	0.1106	0.0906	0.576
5005	0.8625	0.7535	0.6315	0.436	6306	0.3642	0.3169	0.2615	0.513
5006	1.5030	1.3204	1.1201	0.378	6308	0.0760	0.0658	0.0541	0.532
5101	1.0446	0.9057	0.7459	0.482	6309	0.2367	0.2068	0.1715	0.527
5103	0.9797	0.8538	0.7041	0.548	6402	0.3059	0.2664	0.2190	0.565
5106	0.9797	0.8538	0.7041	0.548	6403	0.1961	0.1717	0.1427	0.552
5108	0.9545	0.8323	0.6883	0.533	6404	0.3222	0.2812	0.2325	0.556
5109	0.6675	0.5741	0.4657	0.516	6405	0.6218	0.5396	0.4439	0.507

Class	(2009) <u>2010</u>	(2010) <u>2011</u>	(2011) <u>2012</u>	Primary Ratio	Expected Loss Range	Maximum Experience Modification
0550	0.0264	0.0230	0.0187	0.399		
0551	0.0157	0.0136	0.0109	0.392))	41,299 - 44,836	0.63
0540	0.0283	0.0248	0.0209	0.426	44,837 - 48,925	0.62
0541	0.0132	0.0116	0.0097	0.421	48,926 - 56,877	0.61
0550	0.0278	0.0244	0.0206	0.420	56,878 - & Over	0.60))
0551	0.0151	0.0133	0.0112	0.407	1 = 7,365	0.90
					7,366 = 8,994	0.89
					8,995 = 9,963	0.88
					9,964 = 10,859	0.87
					10,860 = 11,806	0.86
					11,807 = 12,797	0.85
					12,798 = 13,669	0.84
					13,670 = 14,555	0.83
					14,556 = 15,476	0.82
					15,477 = 16,435	0.81
					16,436 = 17,432	0.80
					17,433 = 18,466	0.79
					18,467 = 19,542	0.78
					19,543 = 20,652	0.77
					20,653 = 21,805	0.76
					21,806 = 22,995	0.75
					22,996 = 24,227	0.74
					24,228 = 25,497	0.73
					25,498 = 26,811	0.72
					26,812 = 28,162	0.71
					28,163 = 29,557	0.70
					29,558 = 30,993	0.69
					30,994 = 32,468	0.68
					32,469 = 33,988	0.67
					33,989 = 35,546	0.66
					35,547 = 37,149	0.65
					37,150 = 39,646	0.64
					39,647 = 43,043	0.63
					43,044 = 46,968	0.62
					46,969 = 54,602	0.61
					54,603 and higher	0.60

AMENDATORY SECTION (Amending WSR 12-24-048, filed 11/30/12, effective 1/1/13)

WAC 296-17-890 Table IV.

Maximum experience modifications
for firms with no compensable accidents:
Effective January 1, (~~2013~~) 2014

Expected Loss Range	Maximum Experience Modification
((0 - 7,672	0.90
7,673 - 9,369	0.89
9,370 - 10,378	0.88
10,379 - 11,312	0.87
11,313 - 12,298	0.86
12,299 - 13,330	0.85
13,331 - 14,239	0.84
14,240 - 15,161	0.83
15,162 - 16,121	0.82
16,122 - 17,120	0.81
17,121 - 18,158	0.80
18,159 - 19,235	0.79
19,236 - 20,356	0.78
20,357 - 21,513	0.77
21,514 - 22,714	0.76
22,715 - 23,953	0.75
23,954 - 25,236	0.74
25,237 - 26,559	0.73
26,560 - 27,928	0.72
27,929 - 29,335	0.71
29,336 - 30,789	0.70
30,790 - 32,284	0.69
32,285 - 33,821	0.68
33,822 - 35,404	0.67
35,405 - 37,027	0.66
37,028 - 38,697	0.65
38,698 - 41,298	0.64

AMENDATORY SECTION (Amending WSR 13-10-080, filed 5/1/13, effective 7/1/13)

WAC 296-17-901 Risk classification hazard group table. Effective November 19, 2010.

Risk Classification	Hazard Group
101	9

Risk Classification	Hazard Group	Risk Classification	Hazard Group
103	8	606	4
104	8	607	6
105	5	608	7
107	9	701	9
108	8	803	5
112	7	901	8
201	9	1002	8
202	9	1003	7
210	8	1004	6
212	9	1005	8
214	8	1006	(6) 5
217	7	1007	7
219	7	1101	5
301	4	1102	8
302	9	1103	8
303	9	1104	3
306	8	1105	7
307	7	1106	5
308	3	1108	5
403	6	1109	6
502	8	1301	2
504	9	1303	3
507	8	1304	5
508	9	1305	4
509	9	1401	9
510	7	1404	3
511	7	1405	1
512	9	1407	4
513	6	1501	5
514	7	1507	5
516	8	1701	7
517	9	1702	9
518	9	1703	9
519	9	1704	7
521	7	1801	9
540	8	1802	5
541	9	2002	6
550	9	2004	4
551	9	2007	6
601	7	2008	6
602	7	2009	3
603	9	2101	5
604	7	2102	3

Risk Classification	Hazard Group	Risk Classification	Hazard Group
2104	2	3513	8
2105	2	3602	4
2106	4	3603	4
2201	6	3604	7
2202	5	3605	5
2203	2	3701	5
2204	6	3702	3
2401	1	3708	5
2903	4	3802	3
2904	6	3808	7
2905	3	3901	1
2906	4	3902	4
2907	3	3903	6
2908	7	3905	1
2909	4	3906	4
3101	6	3909	3
3102	6	4002	7
3103	6	4101	5
3104	6	4103	2
3105	5	4107	6
3303	3	4108	3
3304	3	4109	6
3309	6	4201	6
3402	6	4301	4
3403	6	4302	4
3404	5	4304	6
3405	3	4305	5
3406	1	4401	6
3407	6	4402	2
3408	1	4404	5
3409	1	4501	1
3410	2	4502	5
3411	6	4504	1
3412	8	4601	5
3414	6	4802	7
3415	9	4803	2
3501	6	4804	2
3503	3	4805	2
3506	7	4806	5
3509	1	4808	6
3510	2	4809	3
3511	6	4810	3
3512	3	4811	3

Risk Classification	Hazard Group	Risk Classification	Hazard Group
4812	2	6109	4
4813	3	6110	5
4900	9	6120	5
4901	6	6121	5
4902	3	6201	7
4903	1	6202	6
4904	3	6203	1
4905	2	6204	2
4906	2	6205	4
4907	4	6206	3
4908	2	6207	6
4909	3	6208	2
4910	6	6209	3
4911	6	6301	8
5001	9	6303	5
5002	3	6304	1
5003	9	6305	1
5004	8	6306	4
5005	9	6308	2
5006	9	6309	3
5101	4	6402	1
5103	3	6403	1
5106	2	6404	3
5108	3	6405	5
5109	6	6406	1
5201	4	6407	3
5204	8	6408	4
5206	6	6409	6
5207	2	6410	3
5208	4	6501	1
5209	6	6502	4
5300	2	6503	5
5301	3	6504	1
5302	5	6505	1
5305	1	6506	2
5306	1	6509	2
5307	4	6510	8
5308	1	6511	3
6103	1	6512	6
6104	2	6601	4
6105	6	6602	5
6107	1	6603	4
6108	1	6604	1

Risk Classification	Hazard Group	Risk Classification	Hazard Group
6605	1	7119	6
6607	4	7120	9
6608	9	7121	9
6620	1	7122	5
6704	2	7200	3
6705	2	7201	5
6706	6	7202	6
6707	1	7203	1
6708	8	7301	6
6709	2	7302	7
6801	3	7307	5
6802	2	7308	1
6803	9	7309	2
6804	3	7400	6
6809	2	The following classes have no hazard group assigned to them	
6901	1		
6902	9	6614	
6903	9	6615	
6904	1	6616	
6905	1	6617)	
6906	1	<u>6625</u>	
6907	4	<u>6626</u>	
6908	4	<u>6627</u>	
6909	2	6618	
7100	7	7204	
7101	8	7205	
7102	3		
7103	4		
7104	3		
7105	3		
7106	3		
7107	2		
7108	4		
7109	4		
7110	5		
7111	4		
7112	4		
7113	3		
7114	3		
7115	3		
7116	8		
7117	3		
7118	7		

AMENDATORY SECTION (Amending WSR 13-10-080, filed 5/1/13, effective 7/1/13)

WAC 296-17-895 Industrial insurance accident fund base rates, stay at work and medical aid base rates by class of industry. Industrial insurance accident fund, stay at work and medical aid fund base rates by class of industry shall be as set forth below.

Base Rates Effective January 1, (2013) 2014				
Class	Accident Fund	Stay at Work	Medical Aid Fund	
(0101	2.4521	0.0544	0.8672	
0103	2.6794	0.0592	1.1423	
0104	1.4858	0.0329	0.6091	
0105	1.9690	0.0434	0.9560	
0107	1.8473	0.0410	0.6658	
0108	1.4858	0.0329	0.6091	
0112	1.0337	0.0228	0.4616	

Base Rates Effective January 1, ((2013)) 2014				Base Rates Effective January 1, ((2013)) 2014			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
0201	4.0605	0.0907	1.0336	1003	1.1253	0.0247	0.5731
0202	5.0794	0.1126	1.8737	1004	0.8381	0.0185	0.3485
0210	1.6933	0.0376	0.5936	1005	13.3656	0.2965	4.8837
0212	1.9761	0.0438	0.7294	1006	0.0970	0.0021	0.0445
0214	2.2407	0.0497	0.8127	1007	0.5638	0.0125	0.2066
0217	1.7454	0.0386	0.6949	1101	1.1185	0.0246	0.5476
0219	1.8077	0.0400	0.6968	1102	2.2770	0.0504	0.8926
0301	0.9934	0.0218	0.5550	1103	1.8916	0.0418	0.8024
0302	3.6601	0.0815	1.1392	1104	0.8531	0.0187	0.5089
0303	2.7861	0.0619	0.9609	1105	1.2801	0.0283	0.5214
0306	1.5788	0.0350	0.5780	1106	0.4049	0.0088	0.2780
0307	1.3218	0.0292	0.5398	1108	0.8625	0.0189	0.4641
0308	0.6992	0.0152	0.4697	1109	2.1887	0.0482	1.0581
0403	2.7006	0.0598	1.0958	1301	0.8129	0.0180	0.3556
0502	2.0864	0.0463	0.7219	1303	0.2901	0.0064	0.1581
0504	2.4230	0.0533	1.1955	1304	0.0413	0.0009	0.0202
0507	4.5735	0.1007	2.2194	1305	0.6926	0.0152	0.3542
0508	3.1055	0.0692	0.8958	1401	0.2750	0.0060	0.1766
0509	2.7067	0.0602	0.8784	1404	1.1914	0.0261	0.6895
0510	2.9031	0.0642	1.2429	1405	1.0249	0.0225	0.5500
0511	2.3957	0.0531	0.8983	1407	0.6643	0.0145	0.4439
0512	2.2743	0.0504	0.8712	1501	0.9245	0.0204	0.4241
0513	1.2434	0.0275	0.4905	1507	0.8642	0.0190	0.4307
0514	2.7645	0.0612	1.1382	1701	1.1763	0.0260	0.5330
0516	2.4353	0.0540	0.9330	1702	3.1012	0.0692	0.8394
0517	3.4633	0.0765	1.4857	1703	1.7348	0.0388	0.4136
0518	2.3260	0.0517	0.7983	1704	1.1763	0.0260	0.5330
0519	2.7303	0.0604	1.1198	1801	0.6773	0.0149	0.3276
0521	0.8335	0.0184	0.3552	1802	1.1150	0.0245	0.5657
0601	0.9317	0.0206	0.3622	2002	1.1335	0.0248	0.6412
0602	1.1507	0.0256	0.3819	2004	1.0274	0.0225	0.5725
0603	1.4680	0.0326	0.4980	2007	0.7879	0.0172	0.4681
0604	1.5115	0.0331	0.8807	2008	0.5148	0.0113	0.2863
0606	0.7953	0.0175	0.4260	2009	0.4719	0.0103	0.3097
0607	1.0208	0.0225	0.4840	2101	1.0118	0.0221	0.6393
0608	0.4780	0.0105	0.2288	2102	0.8862	0.0194	0.4882
0701	3.4398	0.0770	0.7428	2104	0.3390	0.0073	0.3202
0803	0.7238	0.0159	0.3855	2105	0.7810	0.0171	0.4580
0901	2.3260	0.0517	0.7983	2106	0.6615	0.0145	0.4066
1002	1.3782	0.0304	0.6488	2201	0.3285	0.0072	0.2061

Base Rates Effective January 1, ((2013)) 2014				Base Rates Effective January 1, ((2013)) 2014			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
2202	1.0855	0.0239	0.5671	3602	0.1559	0.0034	0.0947
2203	0.6037	0.0131	0.4068	3603	0.6534	0.0143	0.3942
2204	0.3285	0.0072	0.2061	3604	0.9929	0.0216	0.6886
2401	0.7058	0.0156	0.3005	3605	0.7860	0.0173	0.3781
2903	0.8998	0.0197	0.5404	3701	0.3638	0.0080	0.2020
2904	0.9947	0.0219	0.5054	3702	0.6261	0.0137	0.3455
2905	0.8652	0.0189	0.5371	3708	0.8849	0.0195	0.4348
2906	0.5070	0.0111	0.3180	3802	0.2778	0.0061	0.1716
2907	0.7312	0.0160	0.4213	3808	0.6351	0.0140	0.2744
2908	1.6124	0.0355	0.8226	3901	0.1860	0.0040	0.1496
2909	0.5415	0.0118	0.3339	3902	0.5808	0.0126	0.4031
3101	1.0553	0.0232	0.5163	3903	1.4019	0.0305	0.9902
3102	0.3638	0.0080	0.2020	3905	0.1657	0.0036	0.1405
3103	0.7431	0.0163	0.3774	3906	0.5958	0.0130	0.3978
3104	0.9171	0.0202	0.4514	3909	0.4312	0.0094	0.2886
3105	1.0010	0.0219	0.5872	4002	1.9643	0.0435	0.7829
3303	0.6232	0.0137	0.3421	4101	0.4891	0.0107	0.2593
3304	0.6318	0.0137	0.4528	4103	0.7331	0.0160	0.4412
3309	0.5745	0.0126	0.2852	4107	0.2271	0.0050	0.1273
3402	0.7259	0.0160	0.3758	4108	0.2651	0.0058	0.1598
3403	0.2970	0.0065	0.1538	4109	0.2818	0.0062	0.1596
3404	0.6549	0.0144	0.3690	4201	1.1239	0.0249	0.4075
3405	0.3833	0.0084	0.2281	4301	0.8649	0.0188	0.5681
3406	0.3337	0.0073	0.2219	4302	0.9936	0.0218	0.5499
3407	1.2606	0.0278	0.5470	4304	1.1888	0.0258	0.8256
3408	0.3102	0.0068	0.1724	4305	1.7574	0.0389	0.7249
3409	0.2003	0.0044	0.1293	4401	0.5558	0.0121	0.3632
3410	0.2728	0.0059	0.1950	4402	1.1152	0.0244	0.6306
3411	0.8249	0.0182	0.3686	4404	0.6912	0.0151	0.4303
3412	0.9685	0.0214	0.3814	4501	0.2389	0.0052	0.1741
3414	0.9173	0.0202	0.4644	4502	0.0580	0.0013	0.0369
3415	1.2609	0.0278	0.5903	4504	0.1528	0.0033	0.1082
3501	1.5004	0.0330	0.7564	4601	1.1025	0.0242	0.5798
3503	0.3760	0.0081	0.3036	4802	0.4275	0.0093	0.2821
3506	1.4096	0.0312	0.5345	4803	0.3283	0.0070	0.2961
3509	0.4917	0.0107	0.3347	4804	0.6222	0.0135	0.4387
3510	0.4659	0.0102	0.2789	4805	0.3836	0.0083	0.2743
3511	0.8664	0.0190	0.4544	4806	0.0812	0.0018	0.0587
3512	0.4810	0.0105	0.3283	4808	0.6253	0.0136	0.3998
3513	0.6992	0.0152	0.4776	4809	0.3903	0.0085	0.2898

Base Rates Effective January 1, (2013) 2014				Base Rates Effective January 1, (2013) 2014			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
4810	0.1708	0.0037	0.1405	6103	0.0976	0.0021	0.0835
4811	0.4127	0.0089	0.3387	6104	0.5314	0.0116	0.3263
4812	0.4929	0.0107	0.3199	6105	0.5759	0.0127	0.2671
4813	0.2036	0.0044	0.1518	6107	0.1740	0.0037	0.1513
4900	0.2798	0.0062	0.1004	6108	0.5734	0.0125	0.4054
4901	0.0970	0.0021	0.0445	6109	0.1519	0.0033	0.0813
4902	0.1733	0.0038	0.0927	6110	0.8459	0.0185	0.4813
4903	0.2183	0.0048	0.1293	6120	0.4528	0.0100	0.2245
4904	0.0321	0.0007	0.0216	6121	0.5110	0.0112	0.2600
4905	0.4431	0.0095	0.3763	6201	0.4640	0.0102	0.2315
4906	0.1327	0.0029	0.0726	6202	0.9320	0.0204	0.5342
4907	0.0729	0.0016	0.0484	6203	0.1224	0.0026	0.1164
4908	0.1171	0.0025	0.1004	6204	0.1641	0.0036	0.1155
4909	0.0496	0.0010	0.0561	6205	0.3159	0.0069	0.2061
4910	0.6420	0.0141	0.3581	6206	0.3115	0.0068	0.2002
4911	0.0912	0.0020	0.0497	6207	1.5595	0.0337	1.2587
5001	14.2821	0.3172	4.9189	6208	0.3017	0.0065	0.2515
5002	0.8855	0.0195	0.4383	6209	0.3984	0.0087	0.2744
5003	3.5579	0.0792	1.1030	6301	0.2032	0.0045	0.0782
5004	1.1090	0.0243	0.6096	6303	0.1074	0.0024	0.0614
5005	1.1812	0.0261	0.4763	6304	0.3904	0.0084	0.3128
5006	2.3416	0.0520	0.7925	6305	0.1324	0.0029	0.0958
5101	1.4077	0.0311	0.6131	6306	0.4339	0.0095	0.2345
5103	1.0949	0.0238	0.7413	6308	0.0955	0.0021	0.0531
5106	1.0949	0.0238	0.7413	6309	0.2859	0.0062	0.1782
5108	1.1334	0.0248	0.7066	6402	0.3363	0.0073	0.2339
5109	0.8679	0.0192	0.3809	6403	0.2007	0.0043	0.1592
5201	0.5499	0.0121	0.2825	6404	0.3352	0.0073	0.2412
5204	1.5391	0.0340	0.6890	6405	0.8424	0.0186	0.4046
5206	0.5550	0.0122	0.2626	6406	0.1486	0.0032	0.1143
5207	0.1834	0.0040	0.1434	6407	0.3394	0.0074	0.2217
5208	1.0405	0.0228	0.6152	6408	0.6453	0.0142	0.3347
5209	1.0261	0.0226	0.5134	6409	1.0812	0.0239	0.4915
5300	0.1707	0.0038	0.0896	6410	0.4269	0.0094	0.2441
5301	0.0498	0.0011	0.0296	6501	0.1945	0.0042	0.1261
5302	0.0217	0.0005	0.0110	6502	0.0422	0.0009	0.0263
5305	0.0745	0.0016	0.0504	6503	0.1137	0.0025	0.0476
5306	0.0625	0.0014	0.0446	6504	0.4536	0.0098	0.3737
5307	1.0113	0.0223	0.4561	6505	0.1447	0.0031	0.1381
5308	0.1306	0.0028	0.0896	6506	0.1519	0.0033	0.1040

Base Rates Effective January 1, (2013) 2014				Base Rates Effective January 1, (2013) 2014			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
6509	0.4253	0.0092	0.3297	7108	0.2335	0.0050	0.1904
6510	0.6737	0.0149	0.2928	7109	0.1859	0.0040	0.1285
6511	0.4844	0.0105	0.3347	7110	0.4966	0.0110	0.2159
6512	0.1963	0.0043	0.1060	7111	0.7247	0.0161	0.2755
6601	0.2750	0.0060	0.1766	7112	0.9217	0.0201	0.6107
6602	0.6545	0.0142	0.4540	7113	0.4995	0.0109	0.3477
6603	0.4433	0.0097	0.2623	7114	0.7211	0.0155	0.6031
6604	0.1073	0.0023	0.0736	7115	0.6305	0.0137	0.4754
6605	0.5161	0.0112	0.3468	7116	0.8409	0.0184	0.5029
6607	0.2010	0.0044	0.1308	7117	1.7056	0.0373	0.9913
6608	0.9685	0.0216	0.2680	7118	1.9595	0.0428	1.2244
6620	4.9459	0.1092	2.1603	7119	1.9361	0.0424	1.1135
6704	0.1750	0.0038	0.1081	7120	8.6413	0.1896	4.7038
6705	1.0472	0.0226	0.8269	7121	8.0855	0.1774	4.4099
6706	0.3749	0.0081	0.2726	7122	0.5889	0.0128	0.4189
6707	5.7200	0.1231	4.9261	7200	2.1784	0.0482	0.9040
6708	9.2814	0.1975	9.6979	7201	2.6166	0.0579	1.0803
6709	0.3464	0.0075	0.2409	7202	0.0456	0.0010	0.0198
6801	1.1170	0.0247	0.4887	7203	0.1357	0.0029	0.1504
6802	0.7898	0.0173	0.4896	7204	0.0000	0.0000	0.0000
6803	1.4287	0.0318	0.4212	7205	0.0000	0.0000	0.0000
6804	0.4717	0.0103	0.2904	7301	0.5894	0.0129	0.3450
6809	6.4856	0.1405	4.9240	7302	1.2427	0.0271	0.7998
6901	0.0000	0.0000	0.0660	7307	0.5780	0.0126	0.3837
6902	1.5931	0.0354	0.5527	7308	0.4811	0.0104	0.3633
6903	11.3132	0.2508	4.2662	7309	0.3242	0.0070	0.2638
6904	0.8761	0.0194	0.3551	7400	2.6166	0.0579	1.0803))
6905	0.6698	0.0148	0.3244	0101	2.5160	0.0512	0.9653
6906	0.0000	0.0000	0.3244	0103	2.6537	0.0537	1.2190
6907	1.6832	0.0369	0.9362	0104	1.5406	0.0313	0.6588
6908	0.6082	0.0133	0.3311	0105	1.9466	0.0391	1.0944
6909	0.1499	0.0033	0.1009	0107	1.6638	0.0338	0.6732
7100	0.0442	0.0010	0.0270	0108	1.5406	0.0313	0.6588
7101	0.0347	0.0008	0.0184	0112	1.1221	0.0227	0.5474
7102	4.0666	0.0858	4.8031	0201	3.4771	0.0712	1.0282
7103	1.0239	0.0226	0.4723	0202	5.1068	0.1038	2.1108
7104	0.0422	0.0009	0.0279	0210	1.6836	0.0343	0.6491
7105	0.0333	0.0007	0.0210	0212	1.9705	0.0400	0.8217
7106	0.3079	0.0067	0.2269	0214	2.2228	0.0452	0.9140
7107	0.2901	0.0063	0.2355	0217	2.0189	0.0410	0.8814

Base Rates Effective January 1, (2013) 2014				Base Rates Effective January 1, (2013) 2014			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>0219</u>	<u>1.7000</u>	<u>0.0345</u>	<u>0.7103</u>	<u>1102</u>	<u>2.2314</u>	<u>0.0452</u>	<u>1.0086</u>
<u>0301</u>	<u>1.0633</u>	<u>0.0213</u>	<u>0.6428</u>	<u>1103</u>	<u>1.9275</u>	<u>0.0390</u>	<u>0.8963</u>
<u>0302</u>	<u>3.7635</u>	<u>0.0768</u>	<u>1.2981</u>	<u>1104</u>	<u>0.8477</u>	<u>0.0169</u>	<u>0.5522</u>
<u>0303</u>	<u>2.7078</u>	<u>0.0551</u>	<u>1.0562</u>	<u>1105</u>	<u>1.2791</u>	<u>0.0259</u>	<u>0.5944</u>
<u>0306</u>	<u>1.6610</u>	<u>0.0338</u>	<u>0.6444</u>	<u>1106</u>	<u>0.3924</u>	<u>0.0078</u>	<u>0.2991</u>
<u>0307</u>	<u>1.3739</u>	<u>0.0279</u>	<u>0.6074</u>	<u>1108</u>	<u>0.8223</u>	<u>0.0165</u>	<u>0.4960</u>
<u>0308</u>	<u>0.7346</u>	<u>0.0146</u>	<u>0.5447</u>	<u>1109</u>	<u>2.1338</u>	<u>0.0430</u>	<u>1.1538</u>
<u>0403</u>	<u>2.7136</u>	<u>0.0550</u>	<u>1.2414</u>	<u>1301</u>	<u>0.8131</u>	<u>0.0164</u>	<u>0.3885</u>
<u>0502</u>	<u>2.1155</u>	<u>0.0431</u>	<u>0.8228</u>	<u>1303</u>	<u>0.3063</u>	<u>0.0061</u>	<u>0.1824</u>
<u>0504</u>	<u>2.5371</u>	<u>0.0511</u>	<u>1.3703</u>	<u>1304</u>	<u>0.0419</u>	<u>0.0008</u>	<u>0.0226</u>
<u>0507</u>	<u>4.6451</u>	<u>0.0935</u>	<u>2.5360</u>	<u>1305</u>	<u>0.6850</u>	<u>0.0138</u>	<u>0.3925</u>
<u>0508</u>	<u>3.0958</u>	<u>0.0633</u>	<u>0.9843</u>	<u>1401</u>	<u>0.2814</u>	<u>0.0056</u>	<u>0.1946</u>
<u>0509</u>	<u>2.5238</u>	<u>0.0515</u>	<u>0.9018</u>	<u>1404</u>	<u>1.1580</u>	<u>0.0232</u>	<u>0.7470</u>
<u>0510</u>	<u>3.1006</u>	<u>0.0628</u>	<u>1.4513</u>	<u>1405</u>	<u>1.0982</u>	<u>0.0221</u>	<u>0.6374</u>
<u>0511</u>	<u>2.4281</u>	<u>0.0493</u>	<u>1.0119</u>	<u>1407</u>	<u>0.6936</u>	<u>0.0138</u>	<u>0.4849</u>
<u>0512</u>	<u>2.1104</u>	<u>0.0428</u>	<u>0.9271</u>	<u>1501</u>	<u>0.9353</u>	<u>0.0189</u>	<u>0.4866</u>
<u>0513</u>	<u>1.3242</u>	<u>0.0269</u>	<u>0.5702</u>	<u>1507</u>	<u>0.8614</u>	<u>0.0173</u>	<u>0.4777</u>
<u>0514</u>	<u>2.6781</u>	<u>0.0542</u>	<u>1.2503</u>	<u>1701</u>	<u>1.1500</u>	<u>0.0232</u>	<u>0.5702</u>
<u>0516</u>	<u>2.4545</u>	<u>0.0499</u>	<u>1.0260</u>	<u>1702</u>	<u>2.9554</u>	<u>0.0605</u>	<u>0.8915</u>
<u>0517</u>	<u>3.5093</u>	<u>0.0710</u>	<u>1.6603</u>	<u>1703</u>	<u>1.7179</u>	<u>0.0353</u>	<u>0.4576</u>
<u>0518</u>	<u>2.3252</u>	<u>0.0474</u>	<u>0.8569</u>	<u>1704</u>	<u>1.1500</u>	<u>0.0232</u>	<u>0.5702</u>
<u>0519</u>	<u>2.7010</u>	<u>0.0547</u>	<u>1.2122</u>	<u>1801</u>	<u>0.6669</u>	<u>0.0134</u>	<u>0.3608</u>
<u>0521</u>	<u>0.8098</u>	<u>0.0164</u>	<u>0.3855</u>	<u>1802</u>	<u>1.1100</u>	<u>0.0223</u>	<u>0.6158</u>
<u>0601</u>	<u>0.9362</u>	<u>0.0190</u>	<u>0.4024</u>	<u>2002</u>	<u>1.1457</u>	<u>0.0230</u>	<u>0.6835</u>
<u>0602</u>	<u>1.1364</u>	<u>0.0232</u>	<u>0.4097</u>	<u>2004</u>	<u>1.0350</u>	<u>0.0208</u>	<u>0.6224</u>
<u>0603</u>	<u>1.4098</u>	<u>0.0287</u>	<u>0.5388</u>	<u>2007</u>	<u>0.8196</u>	<u>0.0164</u>	<u>0.5402</u>
<u>0604</u>	<u>1.5514</u>	<u>0.0310</u>	<u>0.9982</u>	<u>2008</u>	<u>0.5205</u>	<u>0.0104</u>	<u>0.3181</u>
<u>0606</u>	<u>0.8128</u>	<u>0.0163</u>	<u>0.4906</u>	<u>2009</u>	<u>0.4622</u>	<u>0.0092</u>	<u>0.3358</u>
<u>0607</u>	<u>1.0441</u>	<u>0.0211</u>	<u>0.5483</u>	<u>2101</u>	<u>0.9819</u>	<u>0.0195</u>	<u>0.6996</u>
<u>0608</u>	<u>0.4790</u>	<u>0.0097</u>	<u>0.2573</u>	<u>2102</u>	<u>0.9035</u>	<u>0.0181</u>	<u>0.5491</u>
<u>0701</u>	<u>3.3517</u>	<u>0.0689</u>	<u>0.8033</u>	<u>2104</u>	<u>0.3347</u>	<u>0.0065</u>	<u>0.3539</u>
<u>0803</u>	<u>0.7215</u>	<u>0.0145</u>	<u>0.4245</u>	<u>2105</u>	<u>0.8410</u>	<u>0.0169</u>	<u>0.5045</u>
<u>0901</u>	<u>2.3252</u>	<u>0.0474</u>	<u>0.8569</u>	<u>2106</u>	<u>0.6622</u>	<u>0.0132</u>	<u>0.4523</u>
<u>1002</u>	<u>1.3484</u>	<u>0.0272</u>	<u>0.6925</u>	<u>2201</u>	<u>0.3370</u>	<u>0.0067</u>	<u>0.2356</u>
<u>1003</u>	<u>1.1278</u>	<u>0.0227</u>	<u>0.6311</u>	<u>2202</u>	<u>1.0871</u>	<u>0.0219</u>	<u>0.6089</u>
<u>1004</u>	<u>0.8163</u>	<u>0.0165</u>	<u>0.3779</u>	<u>2203</u>	<u>0.6118</u>	<u>0.0122</u>	<u>0.4524</u>
<u>1005</u>	<u>13.3280</u>	<u>0.2709</u>	<u>5.4060</u>	<u>2204</u>	<u>0.3370</u>	<u>0.0067</u>	<u>0.2356</u>
<u>1006</u>	<u>0.1211</u>	<u>0.0024</u>	<u>0.0681</u>	<u>2401</u>	<u>0.6956</u>	<u>0.0141</u>	<u>0.3265</u>
<u>1007</u>	<u>0.5445</u>	<u>0.0111</u>	<u>0.2145</u>	<u>2903</u>	<u>0.8876</u>	<u>0.0177</u>	<u>0.6086</u>
<u>1101</u>	<u>1.1219</u>	<u>0.0226</u>	<u>0.5984</u>	<u>2904</u>	<u>1.0262</u>	<u>0.0207</u>	<u>0.5561</u>

Base Rates Effective January 1, (2013) 2014				Base Rates Effective January 1, (2013) 2014			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
<u>2905</u>	<u>0.8222</u>	<u>0.0164</u>	<u>0.5611</u>	<u>3708</u>	<u>0.8950</u>	<u>0.0180</u>	<u>0.4915</u>
<u>2906</u>	<u>0.5028</u>	<u>0.0100</u>	<u>0.3652</u>	<u>3802</u>	<u>0.2828</u>	<u>0.0056</u>	<u>0.1985</u>
<u>2907</u>	<u>0.7015</u>	<u>0.0140</u>	<u>0.4514</u>	<u>3808</u>	<u>0.6388</u>	<u>0.0129</u>	<u>0.3060</u>
<u>2908</u>	<u>1.6050</u>	<u>0.0322</u>	<u>0.9257</u>	<u>3901</u>	<u>0.1827</u>	<u>0.0036</u>	<u>0.1630</u>
<u>2909</u>	<u>0.5464</u>	<u>0.0109</u>	<u>0.3732</u>	<u>3902</u>	<u>0.5603</u>	<u>0.0111</u>	<u>0.4399</u>
<u>3101</u>	<u>1.0672</u>	<u>0.0215</u>	<u>0.5903</u>	<u>3903</u>	<u>1.4053</u>	<u>0.0278</u>	<u>1.0962</u>
<u>3102</u>	<u>0.3517</u>	<u>0.0070</u>	<u>0.2195</u>	<u>3905</u>	<u>0.1645</u>	<u>0.0032</u>	<u>0.1526</u>
<u>3103</u>	<u>0.7289</u>	<u>0.0147</u>	<u>0.4103</u>	<u>3906</u>	<u>0.5854</u>	<u>0.0116</u>	<u>0.4437</u>
<u>3104</u>	<u>0.9393</u>	<u>0.0189</u>	<u>0.5083</u>	<u>3909</u>	<u>0.4201</u>	<u>0.0083</u>	<u>0.3124</u>
<u>3105</u>	<u>1.0613</u>	<u>0.0212</u>	<u>0.6762</u>	<u>4002</u>	<u>0.5603</u>	<u>0.0111</u>	<u>0.4399</u>
<u>3303</u>	<u>0.6164</u>	<u>0.0124</u>	<u>0.3735</u>	<u>4101</u>	<u>0.4673</u>	<u>0.0094</u>	<u>0.2728</u>
<u>3304</u>	<u>0.6002</u>	<u>0.0119</u>	<u>0.4902</u>	<u>4103</u>	<u>0.7569</u>	<u>0.0151</u>	<u>0.4933</u>
<u>3309</u>	<u>0.5822</u>	<u>0.0117</u>	<u>0.3264</u>	<u>4107</u>	<u>0.2301</u>	<u>0.0046</u>	<u>0.1473</u>
<u>3402</u>	<u>0.7060</u>	<u>0.0142</u>	<u>0.4063</u>	<u>4108</u>	<u>0.2491</u>	<u>0.0050</u>	<u>0.1707</u>
<u>3403</u>	<u>0.2940</u>	<u>0.0059</u>	<u>0.1668</u>	<u>4109</u>	<u>0.2789</u>	<u>0.0056</u>	<u>0.1759</u>
<u>3404</u>	<u>0.6308</u>	<u>0.0126</u>	<u>0.3981</u>	<u>4201</u>	<u>1.0875</u>	<u>0.0221</u>	<u>0.4357</u>
<u>3405</u>	<u>0.3859</u>	<u>0.0077</u>	<u>0.2490</u>	<u>4301</u>	<u>0.8846</u>	<u>0.0176</u>	<u>0.6407</u>
<u>3406</u>	<u>0.3530</u>	<u>0.0070</u>	<u>0.2569</u>	<u>4302</u>	<u>1.0199</u>	<u>0.0204</u>	<u>0.6382</u>
<u>3407</u>	<u>1.1910</u>	<u>0.0241</u>	<u>0.5743</u>	<u>4304</u>	<u>1.1942</u>	<u>0.0237</u>	<u>0.9105</u>
<u>3408</u>	<u>0.3157</u>	<u>0.0063</u>	<u>0.1983</u>	<u>4305</u>	<u>1.7172</u>	<u>0.0348</u>	<u>0.7899</u>
<u>3409</u>	<u>0.1988</u>	<u>0.0040</u>	<u>0.1434</u>	<u>4401</u>	<u>0.5574</u>	<u>0.0111</u>	<u>0.4007</u>
<u>3410</u>	<u>0.2609</u>	<u>0.0052</u>	<u>0.2046</u>	<u>4402</u>	<u>1.0729</u>	<u>0.0215</u>	<u>0.6672</u>
<u>3411</u>	<u>0.7872</u>	<u>0.0159</u>	<u>0.3922</u>	<u>4404</u>	<u>0.6934</u>	<u>0.0138</u>	<u>0.4712</u>
<u>3412</u>	<u>0.9529</u>	<u>0.0193</u>	<u>0.4240</u>	<u>4501</u>	<u>0.2442</u>	<u>0.0048</u>	<u>0.1892</u>
<u>3414</u>	<u>0.9630</u>	<u>0.0194</u>	<u>0.5448</u>	<u>4502</u>	<u>0.0613</u>	<u>0.0012</u>	<u>0.0421</u>
<u>3415</u>	<u>1.2417</u>	<u>0.0251</u>	<u>0.6348</u>	<u>4504</u>	<u>0.1539</u>	<u>0.0030</u>	<u>0.1217</u>
<u>3501</u>	<u>1.4921</u>	<u>0.0300</u>	<u>0.8325</u>	<u>4601</u>	<u>1.1005</u>	<u>0.0221</u>	<u>0.6385</u>
<u>3503</u>	<u>0.3778</u>	<u>0.0074</u>	<u>0.3345</u>	<u>4802</u>	<u>0.4103</u>	<u>0.0081</u>	<u>0.3122</u>
<u>3506</u>	<u>1.3798</u>	<u>0.0280</u>	<u>0.6016</u>	<u>4803</u>	<u>0.3295</u>	<u>0.0064</u>	<u>0.3319</u>
<u>3509</u>	<u>0.4967</u>	<u>0.0099</u>	<u>0.3690</u>	<u>4804</u>	<u>0.6267</u>	<u>0.0124</u>	<u>0.4881</u>
<u>3510</u>	<u>0.4674</u>	<u>0.0093</u>	<u>0.3122</u>	<u>4805</u>	<u>0.4199</u>	<u>0.0083</u>	<u>0.3176</u>
<u>3511</u>	<u>0.8729</u>	<u>0.0175</u>	<u>0.5023</u>	<u>4806</u>	<u>0.0825</u>	<u>0.0016</u>	<u>0.0698</u>
<u>3512</u>	<u>0.4800</u>	<u>0.0095</u>	<u>0.3566</u>	<u>4808</u>	<u>0.6149</u>	<u>0.0122</u>	<u>0.4342</u>
<u>3513</u>	<u>0.7272</u>	<u>0.0144</u>	<u>0.5412</u>	<u>4809</u>	<u>0.3918</u>	<u>0.0077</u>	<u>0.3287</u>
<u>3602</u>	<u>0.1454</u>	<u>0.0029</u>	<u>0.0991</u>	<u>4810</u>	<u>0.1735</u>	<u>0.0034</u>	<u>0.1636</u>
<u>3603</u>	<u>0.6609</u>	<u>0.0132</u>	<u>0.4586</u>	<u>4811</u>	<u>0.4159</u>	<u>0.0082</u>	<u>0.3709</u>
<u>3604</u>	<u>0.9778</u>	<u>0.0194</u>	<u>0.7411</u>	<u>4812</u>	<u>0.4957</u>	<u>0.0099</u>	<u>0.3623</u>
<u>3605</u>	<u>0.7853</u>	<u>0.0158</u>	<u>0.4186</u>	<u>4813</u>	<u>0.2069</u>	<u>0.0041</u>	<u>0.1743</u>
<u>3701</u>	<u>0.3517</u>	<u>0.0070</u>	<u>0.2195</u>	<u>4900</u>	<u>0.2835</u>	<u>0.0058</u>	<u>0.1105</u>
<u>3702</u>	<u>0.6186</u>	<u>0.0124</u>	<u>0.3910</u>	<u>4901</u>	<u>0.0812</u>	<u>0.0016</u>	<u>0.0413</u>

Base Rates Effective January 1, (2013) 2014				Base Rates Effective January 1, (2013) 2014			
Class	Accident Fund	Stay at Work	Medical Aid Fund	Class	Accident Fund	Stay at Work	Medical Aid Fund
4902	0.1764	0.0035	0.1046	6110	0.8120	0.0162	0.5247
4903	0.2258	0.0045	0.1452	6120	0.4555	0.0092	0.2484
4904	0.0301	0.0006	0.0225	6121	0.5056	0.0102	0.2819
4905	0.4349	0.0085	0.4195	6201	0.4613	0.0093	0.2542
4906	0.1421	0.0029	0.0850	6202	0.9436	0.0189	0.5905
4907	0.0745	0.0015	0.0543	6203	0.1194	0.0023	0.1302
4908	0.1224	0.0024	0.1153	6204	0.1714	0.0034	0.1327
4909	0.0502	0.0010	0.0609	6205	0.3009	0.0060	0.2176
4910	0.6268	0.0126	0.3855	6206	0.3032	0.0060	0.2169
4911	0.0971	0.0020	0.0562	6207	1.5734	0.0310	1.3563
5001	14.1627	0.2880	5.6421	6208	0.3017	0.0059	0.2813
5002	0.8845	0.0178	0.4848	6209	0.3792	0.0075	0.2876
5003	3.5476	0.0725	1.1903	6301	0.2039	0.0041	0.0867
5004	1.1179	0.0224	0.6835	6303	0.1026	0.0021	0.0650
5005	1.1930	0.0241	0.5578	6304	0.3691	0.0073	0.3253
5006	2.3140	0.0471	0.8722	6305	0.1328	0.0026	0.1071
5101	1.4358	0.0291	0.6756	6306	0.4539	0.0091	0.2685
5103	1.0976	0.0218	0.8128	6308	0.0930	0.0019	0.0558
5106	1.0976	0.0218	0.8128	6309	0.2739	0.0055	0.1895
5108	1.1114	0.0222	0.7586	6402	0.3285	0.0065	0.2576
5109	0.9009	0.0182	0.4222	6403	0.1999	0.0039	0.1744
5201	0.5477	0.0110	0.3078	6404	0.3368	0.0067	0.2728
5204	1.5637	0.0316	0.7566	6405	0.8067	0.0163	0.4299
5206	0.5589	0.0113	0.2920	6406	0.1455	0.0029	0.1249
5207	0.1818	0.0036	0.1583	6407	0.3177	0.0063	0.2328
5208	1.0571	0.0212	0.6662	6408	0.6481	0.0130	0.3821
5209	1.0494	0.0211	0.5637	6409	1.0402	0.0210	0.5375
5300	0.1726	0.0035	0.1046	6410	0.4375	0.0088	0.2696
5301	0.0469	0.0009	0.0316	6501	0.1921	0.0038	0.1342
5302	0.0207	0.0004	0.0116	6502	0.0423	0.0008	0.0305
5305	0.0700	0.0014	0.0537	6503	0.1123	0.0023	0.0524
5306	0.0604	0.0012	0.0476	6504	0.4364	0.0086	0.3942
5307	1.0722	0.0217	0.5232	6505	0.1517	0.0030	0.1570
5308	0.1305	0.0026	0.0943	6506	0.1542	0.0031	0.1165
6103	0.1023	0.0020	0.0944	6509	0.4089	0.0080	0.3582
6104	0.5688	0.0114	0.3721	6510	0.6555	0.0133	0.3087
6105	0.5781	0.0117	0.3006	6511	0.4952	0.0098	0.3764
6107	0.1687	0.0033	0.1648	6512	0.1823	0.0037	0.1092
6108	0.5333	0.0105	0.4264	6601	0.2814	0.0056	0.1946
6109	0.1477	0.0030	0.0875	6602	0.6671	0.0132	0.5235

**Base Rates Effective
January 1, ((2013)) 2014**

Class	Accident Fund	Stay at Work	Medical Aid Fund
6603	0.4257	0.0085	0.2775
6604	0.1080	0.0021	0.0820
6605	0.4900	0.0098	0.3447
6607	0.1978	0.0039	0.1427
6608	0.9967	0.0204	0.3099
6620	4.8693	0.0985	2.3591
6704	0.1717	0.0034	0.1189
6705	1.0291	0.0202	0.9075
6706	0.3753	0.0074	0.3039
6707	6.2118	0.1220	5.6365
6708	9.3895	0.1812	10.7590
6709	0.3303	0.0065	0.2604
6801	1.1332	0.0229	0.5535
6802	0.7739	0.0154	0.5505
6803	1.3385	0.0274	0.4338
6804	0.4405	0.0088	0.3136
6809	6.6659	0.1314	5.6394
6901	0.0000	0.0000	0.0715
6902	1.5510	0.0316	0.5937
6903	11.2069	0.2276	4.6804
6904	0.9478	0.0192	0.4243
6905	0.7348	0.0148	0.3845
6906	0.0000	0.0000	0.3845
6907	1.6013	0.0320	1.0158
6908	0.5802	0.0116	0.3583
6909	0.1563	0.0031	0.1133
7100	0.0446	0.0009	0.0299
7101	0.0356	0.0007	0.0203
7102	4.1060	0.0784	5.3172
7103	1.0344	0.0209	0.5231
7104	0.0420	0.0008	0.0302
7105	0.0318	0.0006	0.0213
7106	0.3189	0.0063	0.2633
7107	0.2947	0.0058	0.2641
7108	0.2253	0.0044	0.1987
7109	0.1843	0.0037	0.1385
7110	0.4910	0.0099	0.2336
7111	0.7209	0.0146	0.2959
7112	0.9462	0.0188	0.6905
7113	0.4988	0.0099	0.3889

**Base Rates Effective
January 1, ((2013)) 2014**

Class	Accident Fund	Stay at Work	Medical Aid Fund
7114	0.7568	0.0149	0.6845
7115	0.6045	0.0119	0.5018
7116	0.8402	0.0168	0.5598
7117	1.5862	0.0317	1.0506
7118	1.9574	0.0390	1.3524
7119	1.9981	0.0401	1.2182
7120	8.6409	0.1733	5.2071
7121	8.0849	0.1621	4.8937
7122	0.5576	0.0110	0.4325
7200	2.3056	0.0467	1.0691
7201	2.7191	0.0551	1.2646
7202	0.0454	0.0009	0.0226
7203	0.1350	0.0026	0.1666
7204	0.0000	0.0000	0.0000
7205	0.0000	0.0000	0.0000
7301	0.5946	0.0119	0.3970
7302	1.2396	0.0247	0.8614
7307	0.5697	0.0113	0.4225
7308	0.4624	0.0091	0.3893
7309	0.3321	0.0065	0.2948
7400	2.7191	0.0551	1.2646

AMENDATORY SECTION (Amending WSR 12-24-048, filed 11/30/12, effective 1/1/13)

WAC 296-17-89502 Industrial insurance accident fund, stay at work, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications. The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

**Base Rates Effective
January 1, ((2013)) 2014**

Class	Accident Fund	Stay at Work	Medical Aid Fund	Supplemental Pension Fund
((0540	0.0364	0.0008	0.0147	0.0007
0541	0.0188	0.0004	0.0065	0.0007
0550	0.0377	0.0008	0.0138	0.0007
0551	0.0236	0.0005	0.0075	0.0007))
0540	0.0410	0.0008	0.0180	0.0007
0541	0.0198	0.0004	0.0078	0.0007
0550	0.0406	0.0008	0.0170	0.0007
0551	0.0232	0.0005	0.0086	0.0007

AMENDATORY SECTION (Amending WSR 12-24-067, filed 12/4/12, effective 1/4/13)

WAC 296-17-89507 Horse racing rates. Horse racing industry industrial insurance accident fund, stay at work fund, medical aid fund, supplemental pension fund and composite rate by class.

Base Rates Effective January (~~(4, 2013)~~) 1, 2014

Class	Accident Fund	Stay at Work Fund	Medical Aid Fund	Supplemental Pension Fund	Composite Rate
((6618*	80.000	2.0000	67.0000	1.0000	150.00
6625**	80.5000	1.8800	56.5900	0.1600	139.1300
6626***	0.6800	0.0200	0.6000	0.0100	1.3100
6627****	9.0200	0.2600	7.8200	0.0900	17.1900))
<u>6618*</u>	<u>80</u>	<u>2</u>	<u>67</u>	<u>1</u>	<u>150</u>
<u>6625**</u>	<u>78.26</u>	<u>1.72</u>	<u>63.86</u>	<u>0.16</u>	<u>144.00</u>
<u>6626***</u>	<u>0.7200</u>	<u>0.0123</u>	<u>0.6605</u>	<u>0.0072</u>	<u>1.40</u>
<u>6627****</u>	<u>9.4300</u>	<u>0.1840</u>	<u>8.6720</u>	<u>0.0940</u>	<u>18.38</u>

*This rate is calculated on a percentage of ownership in a horse or horses.

**This rate is calculated per month.

***This rate is calculated per horse per day.

****This rate is calculated per day.

Note: These rates are not subject to experience rating or retrospective rating.

AMENDATORY SECTION (Amending WSR 12-24-048, filed 11/30/12, effective 1/1/13)

WAC 296-17-920 Assessment for supplemental pension fund. The amount of (~~(46.4)~~) 45.5 mils (~~(((\$0.0464))~~) (\$0.0455) shall be retained by each employer from the earnings of each worker for each hour or fraction thereof the worker is employed. The amount of money so retained from the employee shall be matched in an equal amount by each employer, except as otherwise provided in these rules, all such moneys shall be remitted to the department on or before the last day of January, April, July, and October of each year for the preceding calendar quarter, provided self-insured employers shall remit to the department as provided under WAC 296-15-229. All such moneys shall be deposited in the supplemental pension fund.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17-89504 Horse racing industry industrial insurance, accident fund, medical aid fund, stay at work and supplemental pension by class.

NEW SECTION

WAC 296-17-940 Logger safety initiative. The logger safety initiative is a loss control initiative as authorized by WAC 296-17-900. The goal of the logger safety initiative is to reduce the frequency and severity of injuries in the logging industry. The department and industry participants, including private land owners, timber industry employers, and the

department of natural resources, have formed a logger safety task force to develop and implement the logger safety initiative. The logger safety initiative will establish sector-wide standards for worker training and supervision; establish a certification process for individual company safety programs; and review the progress of logging operations through mandatory performance-based audits. Logging employers with workers involved in manual logging who participate in the logger safety initiative may be eligible for a premium discount as determined by the department.

AMENDATORY SECTION (Amending WSR 12-24-048, filed 11/30/12, effective 1/1/13)

WAC 296-17B-540 Determining loss incurred for each claim. (1) Calculating the initial loss incurred:

For each of your claims, we will multiply the case incurred loss by the appropriate discounted loss development factors to determine the initial loss incurred.

If you have a fatality, we will use (~~((two hundred eighty-five thousand))~~) two hundred seventy-eight thousand six hundred dollars as the claim's initial incurred loss for the claim, with (~~((two hundred fifty-seven thousand one hundred))~~) two hundred forty-nine thousand one hundred dollars for accident fund incurred loss and (~~((twenty-seven thousand nine hundred))~~) twenty-nine thousand five hundred dollars for the medical aid incurred loss, regardless of the case incurred loss, and before recovery factors if applicable.

(2) Applying the single loss occurrence limit:

The initial loss incurred for a claim will be the amount we use as the loss incurred unless the single loss occurrence limit applies.

The single loss occurrence limit applies when the sum of all initial losses incurred for your claims arising out of a single event is greater than your selected single loss

occurrence limit. In that case, each claim's initial loss incurred will be its proportionate share of your single loss occurrence limit.

(3) Applying the expected loss ratio factors:

The preliminary loss incurred for a claim will be the amount of the initial loss incurred, after application of the single loss limit, multiplied by the appropriate expected loss ratio factor. The accident fund and medical aid fund portions of each claim will have separate expected loss ratio factors applied.

AMENDATORY SECTION (Amending WSR 12-24-048, filed 11/30/12, effective 1/1/13)

WAC 296-17B-900 Retrospective rating plans standard premium size ranges.

RETROSPECTIVE RATING STANDARD PREMIUM SIZE RANGES

Effective January 1, (~~2013~~) 2014

Size Group Number	Standard Premium Range	
	From:	To:
1	5,690	6,649
2	6,650	7,529
3	7,530	8,469
4	8,470	9,489
5	9,490	10,579
6	10,580	11,739
7	11,740	12,979
8	12,980	14,299
9	14,300	15,699
10	15,700	17,169
11	17,170	18,749
12	18,750	20,419
13	20,420	22,189
14	22,190	24,069
15	24,070	26,049
16	26,050	28,159
17	28,160	30,379
18	30,380	32,739
19	32,740	35,229
20	35,230	37,869
21	37,870	40,679
22	40,680	43,669
23	43,670	46,829
24	46,830	50,199
25	50,200	53,769
26	53,770	57,569
27	57,570	61,619
28	61,620	65,929

Size Group Number	Standard Premium Range	
	From:	To:
29	65,930	70,519
30	70,520	75,419
31	75,420	80,669
32	80,670	86,289
33	86,290	92,309
34	92,310	98,769
35	98,770	105,699
36	105,700	113,199
37	113,200	121,399
38	121,400	129,999
39	130,000	139,499
40	139,500	149,599
41	149,600	160,499
42	160,500	172,199
43	172,200	184,799
44	184,800	198,599
45	198,600	213,399
46	213,400	229,499
47	229,500	247,099
48	247,100	266,299
49	266,300	287,399
50	287,400	310,399
51	310,400	335,899
52	335,900	364,299
53	364,300	395,899
54	395,900	431,099
55	431,100	470,799
56	470,800	515,899
57	515,900	566,899
58	566,900	625,699
59	625,700	693,499
60	693,500	772,599
61	772,600	865,699
62	865,700	976,799
63	976,800	1,110,999
64	1,111,000	1,275,999
65	1,276,000	1,481,999
66	1,482,000	1,748,999
67	1,749,000	2,100,999
68	2,101,000	2,591,999
69	2,592,000	3,315,999
70	3,316,000	4,510,999

Size Group Number	Standard Premium Range		Size Group Number	Standard Premium Range	
	From:	To:		From:	To:
71	<u>4,511,000</u>	- <u>6,759,999</u>	39	<u>134,800</u>	- <u>144,699</u>
72	<u>6,760,000</u>	- <u>12,369,999</u>	40	<u>144,700</u>	- <u>155,099</u>
73	<u>12,370,000</u>	- <u>31,659,999</u>	41	<u>155,100</u>	- <u>166,399</u>
74	<u>31,660,000</u>	- <u>and over</u>)	42	<u>166,400</u>	- <u>178,599</u>
1	<u>5,900</u>	- <u>6,899</u>	43	<u>178,600</u>	- <u>191,599</u>
2	<u>6,900</u>	- <u>7,809</u>	44	<u>191,600</u>	- <u>205,999</u>
3	<u>7,810</u>	- <u>8,779</u>	45	<u>206,000</u>	- <u>221,299</u>
4	<u>8,780</u>	- <u>9,839</u>	46	<u>221,300</u>	- <u>237,999</u>
5	<u>9,840</u>	- <u>10,969</u>	47	<u>238,000</u>	- <u>256,199</u>
6	<u>10,970</u>	- <u>12,169</u>	48	<u>256,200</u>	- <u>276,199</u>
7	<u>12,170</u>	- <u>13,459</u>	49	<u>276,200</u>	- <u>297,999</u>
8	<u>13,460</u>	- <u>14,829</u>	50	<u>298,000</u>	- <u>321,899</u>
9	<u>14,830</u>	- <u>16,279</u>	51	<u>321,900</u>	- <u>348,299</u>
10	<u>16,280</u>	- <u>17,809</u>	52	<u>348,300</u>	- <u>377,799</u>
11	<u>17,810</u>	- <u>19,439</u>	53	<u>377,800</u>	- <u>410,599</u>
12	<u>19,440</u>	- <u>21,179</u>	54	<u>410,600</u>	- <u>447,099</u>
13	<u>21,180</u>	- <u>23,009</u>	55	<u>447,100</u>	- <u>488,199</u>
14	<u>23,010</u>	- <u>24,959</u>	56	<u>488,200</u>	- <u>534,999</u>
15	<u>24,960</u>	- <u>27,009</u>	57	<u>535,000</u>	- <u>587,899</u>
16	<u>27,010</u>	- <u>29,199</u>	58	<u>587,900</u>	- <u>648,899</u>
17	<u>29,200</u>	- <u>31,499</u>	59	<u>648,900</u>	- <u>719,199</u>
18	<u>31,500</u>	- <u>33,949</u>	60	<u>719,200</u>	- <u>801,199</u>
19	<u>33,950</u>	- <u>36,529</u>	61	<u>801,200</u>	- <u>897,699</u>
20	<u>36,530</u>	- <u>39,269</u>	62	<u>897,700</u>	- <u>1,012,999</u>
21	<u>39,270</u>	- <u>42,189</u>	63	<u>1,013,000</u>	- <u>1,151,999</u>
22	<u>42,190</u>	- <u>45,289</u>	64	<u>1,152,000</u>	- <u>1,322,999</u>
23	<u>45,290</u>	- <u>48,559</u>	65	<u>1,323,000</u>	- <u>1,536,999</u>
24	<u>48,560</u>	- <u>52,059</u>	66	<u>1,537,000</u>	- <u>1,813,999</u>
25	<u>52,060</u>	- <u>55,759</u>	67	<u>1,814,000</u>	- <u>2,178,999</u>
26	<u>55,760</u>	- <u>59,699</u>	68	<u>2,179,000</u>	- <u>2,687,999</u>
27	<u>59,700</u>	- <u>63,899</u>	69	<u>2,688,000</u>	- <u>3,438,999</u>
28	<u>63,900</u>	- <u>68,369</u>	70	<u>3,439,000</u>	- <u>4,677,999</u>
29	<u>68,370</u>	- <u>73,129</u>	71	<u>4,678,000</u>	- <u>7,009,999</u>
30	<u>73,130</u>	- <u>78,209</u>	72	<u>7,010,000</u>	- <u>12,829,999</u>
31	<u>78,210</u>	- <u>83,659</u>	73	<u>12,830,000</u>	- <u>32,829,999</u>
32	<u>83,660</u>	- <u>89,479</u>	74	<u>32,830,000</u>	- <u>and over</u>
33	<u>89,480</u>	- <u>95,729</u>			
34	<u>95,730</u>	- <u>102,399</u>			
35	<u>102,400</u>	- <u>109,599</u>			
36	<u>109,600</u>	- <u>117,399</u>			
37	<u>117,400</u>	- <u>125,899</u>			
38	<u>125,900</u>	- <u>134,799</u>			

WSR 13-19-076
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
 [Filed September 17, 2013, 12:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-045.

Title of Rule and Other Identifying Information: Amending WAC 192-310-030 to clarify that the \$25.00 penalty for employers who file late tax reports also applies to employers who file late wage reports.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 212 Maple Park, Olympia, WA, on October 31, 2013, at 10:00 a.m.

Date of Intended Adoption: November 4, 2013.

Submit Written Comments to: Pamela Ames, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-9799, by October 30, 2013.

Assistance for Persons with Disabilities: Contact Kintu Nnambi by October 30, 2013, TTY (800) 833-6384 or (360) 725-9454.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 192-310-030 currently provides for a \$25.00 penalty for employers who file late tax reports. The proposed rule applies the penalty to employers who file late wage reports.

Reasons Supporting Proposal: The amendment to WAC 192-310-030 encourages employers to file timely wage reports, as well as timely tax reports.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: RCW 50.20.190 and chapter 192-12 WAC.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; and Enforcement: Neil Gorrell, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not have a disproportionate impact on small business.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

September 17, 2013
Nan Thomas
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 10-23-064, filed 11/12/10, effective 12/13/10)

WAC 192-310-030 What are the report and tax payment penalties and charges? (RCW 50.12.220.) (1) Penalty for late tax and wage reports. An employer who does not file a tax or wage report within the time frame required by WAC 192-310-010 (3)(d) must pay a penalty of twenty-five dollars for each violation, unless the penalty is waived by the department.

(2) Definition of incomplete or incorrect format tax or wage report. An employer must file ((#)) tax and wage

reports that ((is)) are complete and in the format required by the commissioner.

(a) An "incomplete report" is any report filed by any employer or their agent where:

(i) The entire wage report is not filed on time; or

(ii) A required element is not reported (Social Security number, name, hours worked, or wages paid); or

(iii) A significant number of employees are not reported; or

(iv) A significant number of any given element is not reported, for example, missing Social Security numbers, names, hours, or wages; or

(v) Either the ((~~employer reference~~)) employment security department number or Unified Business Identifier (UBI) number is not included with the tax or wage report; or

(vi) The report includes duplicate Social Security numbers, or impossible Social Security numbers as shown by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.).

(b) An "incorrect format" means any report that is not filed in the format required by the commissioner under WAC 192-310-010 (3)(c). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(c) For purposes of this section, the term "significant" means an employer who has:

(i) One employee and reports incomplete wage elements for the one employee; or

(ii) Two to nineteen employees and reports incomplete wage elements for two or more employees; or

(iii) Twenty to forty-nine employees and reports incomplete wage elements for three or more employees; or

(iv) Fifty or more employees and reports incomplete wage elements for four or more employees.

(3) Penalty for filing an incomplete or ((~~incorrect format~~)) incorrectly formatted tax or wage report. An employer who files an incomplete or incorrectly formatted tax and wage report will receive a warning letter for the first occurrence. For subsequent occurrences of either an incomplete or incorrectly formatted report within five years of the date of the last occurrence (whether or not the last occurrence was before the effective date of this amendatory section), the employer must pay a penalty as follows:

(a) When quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter: Ten percent of the quarterly contributions for each occurrence, up to a maximum of \$250.00, but not less than:

(i)	2nd occurrence	\$75.00
(ii)	3rd occurrence	\$150.00
(iii)	4th and subsequent occurrences	\$250.00

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter:

(i)	2nd occurrence	\$75.00
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- (ii) 3rd occurrence \$150.00
- (iii) 4th and subsequent occurrences \$250.00

(c) After five years without an occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

(4) **Penalty for knowingly misrepresenting amount of payroll.** If an employer knowingly (on purpose) misrepresents to the department the amount of his or her payroll that is subject to unemployment taxes, the penalty is up to ten times, in the discretion of the department, the difference between the taxes paid, if any, and the amount of taxes the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer must also pay the department for the reasonable expenses of auditing his or her books and collecting taxes and penalties due as provided in WAC 192-340-100.

(5) **Late tax payments.** All employers must file a tax and wage report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on time, it will be charged a late fee of \$25.00 for each report. If the payment is late, the employer will be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:

(a) First month: Five percent of the total taxes due or \$10.00, whichever is greater;

(b) Second month: An additional five percent of total taxes due or \$10.00, whichever is greater; and

(c) Third month: An additional ten percent of total taxes due or \$10.00, whichever is greater.

(6) **Nonsufficient funds (NSF).** The department shall charge \$25.00 for checks dishonored by nonacceptance or nonpayment. This is considered a commercial charge under the Uniform Commercial Code (RCW 62A.3-515).

(7) **Waivers of late filing and late payment penalties.** The department may, for good cause, waive penalties for late filing of a report and late payment of taxes that are due with a report. The commissioner must decide if the failure to file reports or pay taxes on time was not the employer's fault.

(a) The department may waive late penalties when there are circumstances beyond the control of the employer. These circumstances include, but may not be limited to, the following:

(i) The return was filed on time with payment but inadvertently mailed to another agency;

(ii) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;

(iii) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family;

(iv) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

(v) The delinquency was caused by the accidental destruction of the employer's place of business or business records;

(vi) The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place; or

(vii) The employer, before the filing deadline, requested proper forms from the department's central office or a district tax office, and the forms were not supplied in enough time to allow the completed report to be filed and paid before the due date. The request must have been timely, which means at least three days before the filing deadline.

(b) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department decides the employer made a good faith effort to comply with all applicable laws and rules;

(c) The department may waive late penalties for failure to file a "no payroll" report for one quarter if a new business initially registered that it would have employees that quarter, but then delayed hiring its first employees until after that quarter; and

(d) The department will not waive late penalties if the employer has been late with filing or with payment in any of the last eight consecutive quarters immediately preceding the quarter for which a waiver is requested. If an employer has been in business for fewer than the eight preceding quarters, then all preceding quarters must have been filed and paid on time and a one-time only waiver may be granted.

(8) **Incomplete reports or incorrect format penalty waivers.** For good cause, the department may waive penalties or not count occurrences for incomplete reports or reports in an incorrect format when the employer can demonstrate that the incomplete or incorrectly formatted report was not due to the fault of the employer.

(9) **Missing and impossible Social Security numbers.** When a Social Security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

(a) The report was incomplete because it included impossible Social Security numbers, but the employer can show that the impossible Social Security numbers were provided to the employer by the employees; or

(b) The report was incomplete because of missing Social Security numbers, but the employer can show that the employee did not work for the employer after failing to provide a valid Social Security card or application for Social Security number within seven days of employment.

(10) **Penalty waiver requests.**

(a) An employer must request a waiver of penalties in writing, include all relevant facts, attach available proof, and file the request with a tax office. In all cases the burden of proving the facts is on the employer.

(b) At its discretion, the department may waive penalties on its own motion without requiring a request from the employer if it finds that the penalty was caused by the department's own error or for other good cause.

(11) **Extensions.** The department, for good cause, may extend the due date for filing a report. If granted, the employer must make a deposit with the department in an amount equal to the estimated tax due for the reporting period or periods. This deposit will be applied to the employer's debt. The amount of the deposit must be approved by the department.

WSR 13-19-077
PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed September 17, 2013, 12:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-050.

Title of Rule and Other Identifying Information: Amending WAC 192-320-085, to clarify when an employer's account will be credited for unemployment benefits overpayments; and WAC 192-310-010, to establish a penalty for employers who omit required ownership on their registration form.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 212 Maple Park, Olympia, WA, on October 31, 2013, at 10:30 a.m.

Date of Intended Adoption: November 4, 2013.

Submit Written Comments to: Pamela Ames, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-9799, by October 30, 2013.

Assistance for Persons with Disabilities: Contact Kintu Nnambi by October 30, 2013, TTY (800) 833-6384 or (360) 725-9454.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 192-320-085 currently provides that an employer's account is to be credited, based on a benefit overpayment determination, in the quarter the eligibility decision is made. The proposed amendment would instead apply the credit in the quarter in which the benefits were originally charged to the employer.

WAC 192-310-010 establishes a \$25.00 penalty for employers who fail to provide required ownership information when registering with the department.

Reasons Supporting Proposal: The amendment to WAC 192-320-085 is more equitable because it reduces the chance an employer will pay a higher tax rate in a previous quarter when it is later determined they deserved a credit.

The amendment to WAC 192-310-010 will provide an incentive for employers to provide complete information with the application, reducing processing time.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: RCW 50.20.190 and chapter 192-12 WAC.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Juanita Myers, 212 Maple Park,

Olympia, (360) 902-9665; and Enforcement: Neil Gorrell, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not have a disproportionate impact on small business.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

September 17, 2013

Nan Thomas

Deputy Commissioner

AMENDATORY SECTION (Amending WSR 11-21-015, filed 10/7/11, effective 11/7/11)

WAC 192-310-010 What reports are required from an employer? (~~RCW 50.12.070~~) (1) Business license application.

Every person or unit with one or more individuals performing services for it in the state of Washington must file a business license application with the department of revenue.

(2) Employer registration:

(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers, and the effective dates in that role of natural persons who are spouses or domestic partners of owners and owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than ten percent, or ten percent or more, and the family relationship of corporate officers to other corporate officers who own ten percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) An employer who omits required information when registering with the department, or fails to provide the department with the required information within thirty days of registration, must pay a penalty of twenty-five dollars for each violation unless the penalty is waived by the department.

(d) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a

limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incorporation of an employer organized as a for-profit or nonprofit corporation.

(3) Quarterly tax and wage reports:

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

(b) Report of employees' wages. Each calendar quarter, every employer must file a report of employees' wages with the commissioner. This report must list each employee by full name, Social Security number, and total hours worked and wages paid during that quarter.

(i) Social Security numbers are required for persons working in the United States;

(ii) If an individual has a Social Security card, he or she must present the card to the employer at the time of hire or shortly after that. This does not apply to agricultural workers who, under federal rules, may show their Social Security card on the first day they are paid;

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for the employer. The individual must give the employer a document showing he or she has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for his or her records; and

(iv) If the employee does not show his or her Social Security card or application for a card within seven days and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section. The department will not allow waiver of the incomplete report penalty (see WAC 192-310-030).

(c) Format. Employers must file the quarterly tax and wage reports in one of the following formats:

(i) Electronically, using the current version of employer account management services (EAMS), *UIFastTax*, *UIWebTax*, or ICESA Washington; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(d) Due dates. The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March 31, June 30, September 30 and December 31 of each year. So, reports are due by April 30, July 31, October 31, and January

31, in that order. If these dates fall on a Saturday, Sunday, or a legal holiday, the reports will be due on the next business day. Reports submitted by mail will be considered filed on the postmarked date. The commissioner must approve exceptions to the time and method of filing in advance.

(e) Termination of business. Each employer who stops doing business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due on the date the account is closed; and

(ii) A report of employees' wages for the current calendar quarter which includes all wages paid as of the date the account is closed.

AMENDATORY SECTION (Amending WSR 10-23-064, filed 11/12/10, effective 12/13/10)

WAC 192-320-085 When is an overpayment of benefits credited to an employer's account? Benefits paid shall be recoverable to the extent allowable pursuant to RCW 50.20.190 in the event that the decision allowing benefits is ultimately modified or reversed. ~~((Reversal or modification shall not affect previous benefit charges ultimately modified or reversed; however,))~~ Benefit credits in an amount equal to the erroneous charges shall be applied to the employer's account for the quarter in the calendar year in which ~~((the decision is ultimately modified or reversed))~~ benefits were originally charged.

WSR 13-19-079
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
 (Consumer Services Division)
 [Filed September 17, 2013, 2:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-143.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-660 WAC) that implement the Mortgage Broker Practices Act (chapter 19.146 RCW).

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700, on October 22, 2013, at 10-11 a.m.

Date of Intended Adoption: November 19, 2013.

Submit Written Comments to: Sara Rietcheck, 150 Israel Road S.W., P.O. Box 41200, Olympia, WA 98504-1200, e-mail sara.rietcheck@dfi.wa.gov, fax (360) 586-5068, by October 25, 2013.

Assistance for Persons with Disabilities: Contact Sara Rietcheck by October 15, 2013, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of amending the rules is to implement changes to the law, to aid the regulated industries by having consistent rules within the

mortgage marketplace, and to make technical changes for clarity and consistency.

Recent amendments to the law become effective July 28, 2013.

Reasons Supporting Proposal: Specific information provided in the rules is necessary to guide the regulated industries in complying with the laws.

The rules are being amended under the authority of OFM Guidelines 3.a. and e. dated October 12, 2011.

Statutory Authority for Adoption: Chapter 43.320 RCW, RCW 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, consumer services, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy Fazio, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8800; Implementation and Enforcement: Deborah Bortner, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-0511.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendments will not impose more than minor costs on the businesses impacted by the proposed rules.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to the proposed rules.

September 17, 2013

Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

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

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

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

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

"Annual loan origination volume" means the aggregate of the principal loan amounts brokered by the licensee.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be in writing or electronically submitted,

including a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

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

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

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

"Business day" means Monday through Friday excluding federally recognized bank holidays.

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

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

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

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

"Computer loan information systems" or "CLI system" means a real estate mortgage financing information system

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

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

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

"Consumer Protection Act" means chapter 19.86 RCW.

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

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

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

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

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

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

"Director" means the director of financial institutions.

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

"Division of consumer services" means the division of consumer services within the department of financial

institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

" Dwelling " means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. 1026.2.

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

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

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, (~~Director of the Office of Thrift Supervision,~~) National Credit Union Administration, (~~and~~) Federal Deposit Insurance Corporation and Consumer Financial Protection Bureau.

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. 41-58.
- "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 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.
- "S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008.

• "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 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?))~~

"License number" means the NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

"Licensee" means:

- A mortgage broker licensed by the director; or
- The principal(s) or designated broker of a mortgage broker; or
- A loan originator licensed by the director; or
- Any person subject to licensing under RCW 19.146.-200; or
- Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

"Loan originator or mortgage loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain:

- Takes a residential mortgage loan application for a mortgage broker; or
- Offers or negotiates terms of a mortgage loan, including short sale transactions.

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

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

"Loan originator" also includes a natural person who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan modification services.

"Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. An individual who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

"Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

- (a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;
- (d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(e) Offering to engage in any activity, or act in any capacity, described in (a) through (d) of this ~~((subsection))~~ definition.

"Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

The definition of loan originator does not apply to employees of a housing counseling agency approved by the United States department of Housing and Urban Development unless the employees of a housing counseling agency are required under federal law to be licensed individually as loan originators.

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

~~"Loan processor," ((means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 19.146 RCW. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms)) See WAC 208-660-106.~~

"Material litigation" means any litigation that would be relevant to the director's ruling on an application for a license including, but not limited to, criminal or civil action involving dishonesty or financial misconduct.

"Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan. A mortgage broker either prepares a residential mortgage loan for funding by another entity or table-funds the residential mortgage loan. See the definition of "table funding." (These are the two activities allowed under the MBPA.)

For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 24 C.F.R. Part 3500, Section 3500 (2)(b).

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

"Mortgage broker" also includes any person who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan modification services or holds

himself or herself out as being able to perform residential mortgage loan modification services.

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

"Mortgage Broker Practices Act" means chapter 19.146 RCW.

"Mortgage loan originator" means the same as "loan originator."

"NMLS" means a multistate licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators and other license types.

"Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage. This definition is limited to implementation of the S.A.F.E. Act.

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

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

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

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

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

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

"Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of:

(a) A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and

(b) Is registered with, and maintains a unique identifier through, the NMLS.

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

For purposes of this definition, a loan "primarily for personal, family, or household use" includes loan applications for a finance or refinance of a primary residence for any purpose, loan applications on second homes, and loan

applications on nonowner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are intended to be used primarily for personal, family or household use.

"Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms (length), or loan types; capitalizations of arrearages; or principal reductions.

"Residential mortgage loan modification services." See WAC 208-660-105.

"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; 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; or
 - A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, or Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008; and Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

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

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

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

"Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

"Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's

evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

"Unique identifier" means a number or other identifier assigned by protocols established by the NMLS.

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-007 Good standing. (1) **What does good standing mean?** For the purposes of the act and these rules, good standing means that the applicant, licensee, or other person subject to the act demonstrates financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the act and these rules. In determining good standing the director will consider the following factors, and any other evidence relevant to good standing as defined in this rule:

(a) Whether the applicant or licensee has paid all fees due to the director or the NMLS.

(b) Whether the mortgage broker licensee has filed quarterly ((~~or~~)) and annual reports as prescribed by the director.

(c) Whether the mortgage broker licensee has filed and maintained the required surety bond or had its surety bond canceled or revoked for cause.

(d) Whether the mortgage broker licensee has maintained a designated broker in compliance with the act and these rules.

(e) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization or ability to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years.

(f) Whether the applicant, licensee, or other person subject to the act has been convicted of, or pled guilty or nolo contendere to, in a domestic, foreign, or military court to:

(i) A gross misdemeanor involving dishonesty or financial misconduct within the prior seven years;

(ii) A felony within the prior seven years; or

(iii) A felony that involved an act of fraud, dishonesty, breach of trust, or money laundering at any time preceding the date of application.

(g) Whether the licensee or other person subject to the act, is, or 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.

(h) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(i) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

(j) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(k) Whether the licensee, or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(l) Whether the licensee or other person subject to the act has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(2) Under what circumstances may the department conduct a good standing review of an applicant, mortgage broker licensee, designated broker, or exempt mortgage broker? The department may conduct a good standing review when:

(a) Processing an application for a new mortgage broker branch office license.

(b) Processing an application for appointment of a different designated broker (both the licensed mortgage broker, including those individuals to whom the license was granted, and the proposed designated broker must meet good standing).

(c) Processing a request for recognition as an exempt mortgage broker under RCW 19.146.020.

(3) When will an applicant, licensee, or other person subject to the act receive notice from the department of their failure to meet a determination of good standing? If the department conducts a good standing review, the department will notify the applicant, licensee, or other person subject to the act that they have failed to meet the department's good standing requirement within ten business days of the department's receipt of any application or request that requires a determination of good standing. See subsection (2) of this section. For purposes of the notice required by this section, a statement of charges filed and served on the licensee is sufficient notice of a lack of good standing.

(4) What recourse does an applicant, licensee, or other person subject to the act have when the department has determined that they are not in good standing? The applicant, licensee, or other person subject to the act may request a brief adjudicative proceeding under the Administrative Procedure Act, chapter 34.05 RCW, to challenge the department's determination. See WAC 208-660-009.

NEW SECTION

WAC 208-660-106 How does the department interpret the definition of loan processor in RCW 19.146.010(12)? "Loan processor" or "underwriter" means an individual who performs clerical or support duties as an employee (not as an independent contractor) of a person licensed or exempt from licensing and at the direction of and subject to the supervision and instruction of an individual licensed, or exempt from licensing, under this chapter. 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. A loan processor or underwriter engaged as an independent contractor by a licensee must hold a mortgage loan originator license.

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-195 Mortgage brokers—Branch offices. (1) May I open branch offices under my mortgage broker license? Yes. A licensed mortgage broker may submit license application(s) to the department through the NMLS to establish branch office(s) under the existing mortgage broker license. Each branch office must be licensed and must pay an annual license fee. See WAC 208-660-550, Department fees and costs.

(2) If my branch offices are under separate ownership, does that limit my liability for their activities? No. Licensed mortgage brokers are responsible for the activity and violations at their branch offices regardless of the structure or label given the branch offices. Licensure of a branch office creates a direct line of responsibility from the main office to the branch.

(3) If my branch offices are under separate ownership, what level of supervision must I maintain? Because branch offices, regardless of their business structure, are not independent from your license and surety bond, you are responsible for the conduct of anyone conducting business under your license. You must have a written supervisory plan. The details of the plan, and how you implement the plan for your branch offices, must take into account the number of branch offices, their location, and the number of individuals working at the branch offices. You must maintain your written supervisory plan as part of your business books and records.

(4) How do I apply for a mortgage broker branch office license? As the licensed mortgage broker, you must apply for a branch office license through the NMLS and receive approval from the department before operating from any location other than your licensed location. You must be in good standing. You will have to pay application and annual assessment fees for the branch office(s). See WAC 208-660-550, Department fees and costs.

(5) **What does the department consider when reviewing an application for a branch office license?** The department considers:

(a) Whether the mortgage broker is in good standing. See WAC 208-660-007.

(b) Whether the physical address listed in the application can be verified as a branch office location.

(6) **If I am an internet company, how do I display my license?** You must display your license information, as it appears on your license, including any or all business names, and the license number, on your web site. The information must also include a list of the states in which you are licensed.

(7) **How do I change information on my mortgage broker branch office license?** You must file a license amendment through the NMLS.

(8) **Does my branch office license expire?** The license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(9) **How do I renew my mortgage broker branch office license?**

(a) Before the expiration date, the licensed mortgage broker must submit an online renewal and pay the branch office annual assessment fee through the NMLS.

(b) The renewed mortgage broker branch office license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(10) **If my mortgage broker branch office license expires, must I apply for a new license?** If you complete all the requirements for renewal by the last day of February each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your branch office license, you must pay an additional fifty percent of your annual assessment for that branch. See subsection (9) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

If you fail to comply with the renewal request requirements by February 28th, each year, you must apply for a new license.

(11) **If my mortgage broker branch office license has expired, may I still conduct my mortgage broker business from that location?** No. Once the mortgage broker branch office license has expired, you must not conduct any business under the act that requires a license until you renew your license.

(12) **If my mortgage broker main office license expires, may I still conduct my mortgage broker business from a branch office?** No. Once the mortgage broker main office license expires, you must not conduct any business under the act that requires a license from any location until you renew the main office license.

(13) **May I add a trade name (or "DBA") to my mortgage broker branch office license?** Yes. You may add a trade name, or "DBA" name, to the mortgage broker branch office license if you first apply to the department, in a form prescribed by the director, and receive department approval. The branch office trade name must at all times be identified

as connected with the mortgage broker's license name as it appears on the mortgage broker license. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the branch office trade name; or

(b) Use the branch office trade name and mortgage broker (~~(branch)~~) main office license number together.

(c) See WAC 208-660-180(10).

(14) **How must I identify my mortgage broker branch office(s)?** The branch office must be prominently identified as a branch or division of the licensed mortgage broker so as not to appear to be an independent enterprise.

(15) **Does my branch office have to be a physical location?** Yes. The physical location may be at a commercial or residential address but does not have to be in Washington. See WAC 208-660-420, Out-of-state mortgage brokers and loan originators.

(16) **Must I have a branch manager?** No. Although you may appoint one, the act does not require a branch manager. You and the designated broker are responsible for the business conducted at all locations.

(17) **If I appoint a branch manager, must he or she be licensed?** If the branch manager performs any of the functions of a mortgage broker or loan originator, he or she must be licensed. If they do not perform those functions, they must not be paid a commission or salary based upon the number of transactions closed.

(18) **Must I have a designated broker at each branch?** No. You may have only one designated broker who is responsible for the mortgage broker business at all locations.

(19) **If I want to move my licensed company under the sponsorship of another mortgage broker, what must be completed before the licensed loan originators can start transacting business under the sponsorship of the other mortgage broker?** The loan originators may begin doing business when the other mortgage broker has filed for approval of a new branch office with the NMLS, has sponsored each of the licensed loan originators through the NMLS and you have filed the trust account paperwork with the department, you may transact business under the new mortgage broker for up to thirty days without a new license.

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-250 Designated brokers—General. (1) How do I become a designated broker?

(a) Be eighteen years or older.

(b) Have a high school diploma, an equivalent to a high school diploma, or two years experience in the industry in addition to the experience required in (e) of this subsection. The experience must meet the criteria in (e) of this subsection.

(c) You must pass the Washington designated broker test. See WAC 208-660-260, Designated brokers—Testing. If you will originate loans, you must also take and pass the loan originator (~~((national and Washington specific))~~) test(s) and apply for and receive a loan originator license.

(d) You must be appointed to the designated broker position by the licensed mortgage broker through an application and approval process with the department and the NMLS.

(e) You must have a minimum of two years experience lending or originating residential mortgage loans.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company; or

(f) In addition to supplying the application information, both you and the licensed mortgage broker must be in good standing with the department; or

(g) Demonstrate financial responsibility, character and general fitness.

(2) How do I demonstrate financial responsibility? The department will review your credit history to determine if you have outstanding judgments (except judgments involving medical expenses); current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years.

Specifically, you are not eligible to become a designated broker if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(3) May I work as the designated broker for more than one company? Yes. You may be the designated broker for more than one licensee after receiving approval from the director.

(4) As the designated broker, must I hold a loan originator's license? Yes. If you perform any of the functions of a loan originator, you must apply for and receive a loan originator license.

(5) May I work as the designated broker for one licensee and a licensed loan originator for another licensee? Yes. If you want to originate loans for a mortgage broker different from the mortgage broker for whom you are the designated broker, you must amend your license information through the NMLS to reflect the new relationship and the second company must sponsor you. Federal law may prohibit a mortgagee from hiring employees who work for more than one mortgage broker or who have multiple employers.

(6) May a designated broker hire employees or independent contractors apart from the employees or independent contractors working for the mortgage broker licensee? No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against a designated broker having employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

(7) As a designated broker, what reporting requirements must I comply with? See WAC 208-660-400, Reporting requirements.

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-350 Loan originators—Licensing. (1) **How do I apply for a loan originator license? Your application consists of an online filing through the NMLS and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLS system. You also must:**

(a) **Be eighteen years or older.**

(b) ~~((Have a high school diploma, an equivalent to a high school diploma, or three years experience in the industry. The experience must meet the criteria in WAC 208-660-250 (1)(c)(i) and (ii).~~

(c) ~~Pass a licensing test.~~ You must take and pass the ((national and state components of the)) NMLS test(s). See WAC 208-660-360, Loan originators—Testing.

(d) ~~Submit an application.~~ You must submit an online application through the NMLS.

(e) ~~Prove your identity.~~ You must provide information to prove your identity.

(f) ~~Pay the application fee.~~ You must pay an application fee for your application, as well as an administrative fee to the NMLS. See WAC 208-660-550, Department fees and costs.

(g) ~~Complete prelicensing education.~~ You must complete prelicensing education before submitting the license application. See WAC 208-660-355.

(2) In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include

a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction. This investigation may also include a review of whether you have had a license issued under the act or any similar state statute suspended.

(b) License suspensions or revocations.

(i) You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules.

(ii) You are not eligible for a loan originator license if you have ever had a license issued under the Mortgage Broker Practices Act or the Consumer Loan Act or any similar state statute revoked.

(iii) For purposes of (b) and (c) of this subsection, a "similar statute" may include statutes involving other financial services, such as insurance, securities, escrow or banking.

(c) Criminal history.

(i) You are not eligible for a loan originator license if you have ever been convicted of a felony involving an act of fraud, dishonesty, breach of trust, or money laundering.

(ii) You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony not involving fraud, dishonesty, breach of trust, or money laundering, within seven years of the filing of the present application.

(d) Financial background.

(i) The department will investigate your financial background including a review of your credit report to determine if you have demonstrated financial responsibility including, but not limited to, an assessment of your current outstanding judgments (except judgments solely as a result of medical expenses); current outstanding tax liens or judgments or other government liens or filings; foreclosure within the last three years; or a pattern of seriously delinquent accounts within the past three years.

(ii) Specifically, you are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(3) What will happen if my loan originator license application is incomplete? After submitting your online application through the NMLS, the department will notify you of any application deficiencies.

(4) How do I withdraw my application for a loan originator license? Once you have submitted the online application through NMLS you may withdraw the application through NMLS. You will not receive a refund of the NMLS application fee but you may receive a partial refund of your licensing fee if the fee exceeds the department's actual cost to investigate the license application. The withdrawal of your license application will not affect any license suspension or revocation proceedings in progress at the time you withdraw your application through the NMLS.

(5) When will the department consider my loan originator license application to be abandoned? If you do not respond as directed by the department's request for information and within fifteen business days, your loan originator license application is considered abandoned and

you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

(6) What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied? Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request a hearing. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied. **See also WAC 208-660-009.**

~~(7) ((How will the department provide me with my loan originator license?))~~ The department may use any of the following methods to provide you with your loan originator license:

~~(a) A license sent to you electronically that you may print.~~

~~(b) A license verification available on the department's web site and accessible for viewing by the public.~~

~~(8))~~ **May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

~~((9))~~ **(8) How do I change information on my loan originator license?** You must submit an amendment to your license through the NMLS. You may be charged a fee.

~~((10))~~ **(9) What is an inactive loan originator license?** When a licensed loan originator is not sponsored by a licensed or exempt company, the license is inactive. When an individual holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator.

~~((11))~~ **(10) When my loan originator license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

~~((12))~~ **(11) May I originate loans from a web site when my license is inactive?** No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive.

~~((13))~~ **(12) When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

~~((14))~~ **(13) How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the NMLS. The department will notify you and all the companies you are working with of the new working relationship if approved.

~~((15))~~ **(14) When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license. In

no case shall these requirements be less than the minimum requirements to obtain a license under the S.A.F.E. Act.

~~((16))~~ **(15) When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

~~((17))~~ **(16) How do I renew my loan originator license?**

(a) You must continue to meet the minimum standards for license issuance. See RCW 19.146.310.

(b) Before the license expiration date you must renew your license through the NMLS. Renewal consists of:

(i) Pay the annual assessment fee; and

(ii) Meet the continuing education requirement. You will not have a continuing education requirement in the year in which you complete the core twenty hours of prelicensing education. See WAC 208-660-370.

(c) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

~~((18))~~ **(17) If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal on or before the last day of February each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection ~~((17))~~ **(16)** of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp prior to March 1st each year. If you fail to comply with the renewal request requirements prior to March 1st, you must apply for a new license.

~~((19))~~ **(18) If I let my loan originator license expire and then apply for a new loan originator license (~~within one year of the expiration~~), must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

~~((20))~~ **(19) May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

~~((21))~~ **(20) What happens to the loan applications I originated before my loan originator license expired?** Because loan files belong to the licensed mortgage broker, existing loan applications must be processed by the licensed mortgage broker (~~or another licensed loan originator working for the mortgage broker~~), unless the borrower makes a written demand that the loan file be transferred to another licensed entity. See WAC 208-660-300 (5) and (6).

~~((22))~~ **(21) May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires through the NMLS.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

~~((23))~~ **(22) Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

~~((24))~~ **~~If I operate as a loan originator on the internet, must I display my license number on my web site?~~** Yes. You must display your license number, and the license number and name as it appears on the license of the licensed mortgage broker you represent, on the web site.

~~((25))~~ **(23) Must I include my license number on any documents?** You must include your license number ~~(immediately)~~ closely following your name on solicitations, including correspondence, business cards, advertisements, and residential mortgage loan applications. An example of closely following includes your name followed by your title followed by your license number.

~~((26))~~ **(24) When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

(a) When asked by any party to a loan transaction, including third party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

~~((27))~~ **(25) May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

~~((28))~~ **(26) Will I have to obtain an individual bond if the company I work for is exempt from licensing?** Reserved.

~~((29))~~ **(27) Will I have to file quarterly call reports if I have an individual bond?** Reserved.

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-400 Reporting requirements and notices to the department. (1) What are my quarterly filing requirements? ~~(Reserved.)~~ You are required to file accurate and complete call reports through the NMLS on the dates and in a form prescribed by the director or NMLS.

(2) As a licensed mortgage broker what are my reporting responsibilities when something of significance happens to my business?

(a) **Notification required.** You must notify the director through amendment to the NMLS to a change of:

- (i) Principal place of business or any branch offices;
- (ii) Sponsorship status of a mortgage loan originator;
- (iii) Answers to the NMLS generated disclosure questions.

(b) **Prior notification required.** You must notify the director in writing twenty days prior to a change of:

(i) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(ii) Legal or trade name; or

(iii) A change of ownership control of twenty percent or more. The department will consider the qualifications of the new people and notify you whether or not the proposed change is acceptable. You may have to submit fingerprint cards for new controlling people directly to DFI.

(c) **Post notification within ten business days.** You must notify the director through the NMLS or in writing to the director within ten days after an occurrence of any of the following:

(i) Change in mailing address, telephone number, fax number, or e-mail address;

(ii) Cancellation or expiration of its Washington state business license;

(iii) Change in standing with the Washington secretary of state, including the resignation or change of the registered agent;

(iv) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340;

(v) Receipt of notification of cancellation of your surety bond;

(vi) Receipt of notification of license revocation proceedings against you in any state;

(vii) If you, or any officer, director, or principal is convicted of a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(viii) Name and mailing address of your registered agent if you are out-of-state.

(d) **Post notification within twenty days.** You must notify the director in writing within twenty days after the occurrence of any of the following developments:

(i) The filing of a felony indictment or information related to lending or brokering activities against you, or any officer, board director, or principal, or an indictment or information involving dishonesty against you, or any officer, board director, or principal;

(ii) The receipt of service of notice of the filing of any material litigation against you; or

(iii) The change in your residential address or telephone number.

(3) As a licensed mortgage loan originator, what are my reporting responsibilities? You must notify the director through amendment to the NMLS within ten business days to a change of:

~~((+))~~ (a) Answers to the NMLS generated disclosure questions;

~~((+))~~ (b) Sponsorship status with a licensed mortgage broker;

~~((+))~~ (c) Residence address; or

~~((+))~~ (d) Any change in the information supplied to the director in your original application.

(4) Must I notify the department of the physical address of my mortgage broker books and records? Yes. You must provide the physical address of your mortgage broker books and records in your initial license application through NMLS. If the location of your books and records changes, you must provide the department, through the NMLS, with the new physical address within five business days of the change.

(5) Must I notify the department if my designated broker leaves, or is no longer my designated broker? Yes. You must notify the department, through NMLS, within five business days of the loss of or change of status of your designated broker. See WAC 208-660-180(3).

(6) If I am a registered agent under the act, must I notify the department if I resign? Yes. You must provide the department with your statement of resignation letter at least thirty-one days prior to the intended effective date. You must also provide a copy of the resignation letter to the licensed mortgage broker. The department will terminate your appointment thirty-one days after receiving your resignation letter.

(7) What are my responsibilities when I sell my business?

(a) At least thirty days prior to the effective date of sale, you must notify the department of the pending sale by completing the following: Notify the department in writing and provide requested information. At the effective date of sale, update and file all required information through the NMLS for your main and any branch offices, including updating information about the location of your books and records.

(b) You must give written notice to borrowers whose applications or loans are in process, advising them of the change in ownership.

(c) You must give written notice to third party providers that have or will provide services on loans in process, and all third-party providers you owe money to, bringing accounts payable current.

(d) You must reconcile the trust account and return any funds to the borrowers or others to whom they belong, or transfer funds into a new trust account at the borrower's direction. If excess funds still remain and are unclaimed, follow the procedures provided by the department of revenue's unclaimed property division.

(8) Must I notify the department if I cease doing business in this state? Yes. You must notify the department within twenty days after you cease doing business in the state by updating your MU1 record through the NMLS.

(9) Must I notify the department of changes to my trust account? Yes. You must notify the department within five business days of any change in the status, location, account number, or other particulars of your trust account, made by you or the federally insured financial institution where the trust account is maintained. A change in your trust account includes the addition of a trust account.

(10) What must I do if my licensed mortgage broker company files for bankruptcy?

(a) Notify the director within ten business days after filing the bankruptcy.

(b) Respond to the department's request for information about the bankruptcy.

(11) If I am a designated broker and file for personal bankruptcy, what are my reporting responsibilities? A designated broker must notify the department in writing within ten business days of filing for bankruptcy protection.

(12) If I am a designated broker and file for personal bankruptcy, what action may the department take? The director may require the licensed mortgage broker to replace you with another designated broker.

(13) If I am a loan originator and file for personal bankruptcy, what are my reporting responsibilities? A licensed loan originator must notify the director in writing within ten business days of filing for bankruptcy protection.

(14) If I am a loan originator and file for personal bankruptcy, what action may the department take? Depending on the circumstances, the director may revoke or condition your license.

(15) When may I apply for a license after surrendering one due to my personal bankruptcy filing? If you surrendered your license, you may apply for a license at any time. However, the department may deny your license application for three years after the bankruptcy has been discharged provided that no new bankruptcies have occurred or are in progress.

(16) Who in the mortgage broker company must notify the department if they are charged with or convicted of a crime? Licensees, whether on active or inactive license status, must notify the department in writing within ten business days of being:

(a) Charged by indictment or information with any felony, or a gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(b) Convicted of any felony, or any gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(c) Convicted of any felony involving fraud, dishonesty, breach of trust, or money laundering in any jurisdiction.

(d) Convicted outside of Washington for any crime that if charged in Washington would constitute a felony, or gross misdemeanor for dishonesty or financial misconduct.

(17) Who in the mortgage broker company must notify the department if they are the subject of an administrative enforcement action? Licensees, whether holding active or inactive licenses, must notify the department in writing within ten business days of the occurrence if:

(a) Charged with any violations by an administrative authority in any jurisdiction; or

(b) The subject of any administrative action, including a license revocation action, in any jurisdiction.

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-430 Disclosure requirements. (1) What disclosures must I make to borrowers and when?

(a) Within three business days of receiving a borrower's loan application, or receiving money from a borrower for third-party provider services, you, as a mortgage broker or loan originator on behalf of a mortgage broker, must make all disclosures required by RCW 19.146.030 (1), (2), (3), and 19.144.020. The one page disclosure summary required by RCW 19.144.020 must be dated when provided to the borrower. The disclosures must be in a form acceptable to the director.

(b) If a lender is providing disclosures to the borrower, you must maintain copies of those disclosures; failure to do so would result in a violation.

(2) What is the disclosure required under RCW 19.146.030(1)? A full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not determinable. This subsection does not require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

The specific content of the disclosure required under RCW 19.146.030(1) is identified in RCW 19.146.030(2).

(3) What is the disclosure required under RCW 19.146.030(2)? Mortgage brokers must disclose the following content:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.

Disclosure in compliance with the requirements of the Truth-in-Lending Act and Regulation Z, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of RESPA and Regulation X, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

~~(c) ((If the rate is locked, the cost, terms, duration, and conditions of the rate lock agreement, whether and under what conditions any lock-in fees are refundable to the borrower, and whether the lock-in agreement is guaranteed by the mortgage broker or lender (see subsection (7) of this section);~~

~~(d)) If a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, if guaranteed by a company other than your company, you must provide the name of that company, whether and under what conditions any rate lock fees are refundable to the borrower; and:~~

~~(i) The number of days in the rate lock period;~~

~~(ii) The expiration date of the rate lock;~~

~~(iii) The rate of interest locked;~~

~~(iv) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and~~

~~(v) Any other terms of the rate lock agreement.~~

~~(d) If the borrower wants to lock the rate after the initial disclosure, you must provide a new rate lock agreement within three business days of the rate lock date that includes the items from (b) of this subsection.~~

~~(e) You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209.~~

~~(f) See subsection (7) of this section if the borrower initially chooses to float rather than lock the interest rate.~~

~~(g) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower, to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent; and~~

~~((e)) (h) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded. If the mortgage broker does not collect trust funds of any kind, the disclosure is not required.~~

(4) What is the disclosure required under RCW 19.144.020?

(a) You must provide the borrower with a clear, brief, one page summary to help borrowers understand their loan terms. The disclosure summary must be provided on one page separate from any other documents and must use clear, simple, plain language terms that are reasonably understandable to the average person.

(b) Disclosure in compliance with the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601, and Regulation X, 12 C.F.R. 1024.7 (formerly 24 C.F.R. Sec. 3500.7) is considered compliance with this disclosure requirement.

(5) How do I disclose the ~~((yield spread premium (YSP) from the lender))~~ lender's credit or charge for the interest rate?

(a) You must disclose the ~~((YSP))~~ credit or charge for the interest rate as a dollar amount credited to the borrower on the GFE.

(b) You must direct the settlement service provider to disclose the ~~((YSP))~~ credit or charge for the interest rate on line 802 on the HUD-1 or equivalent settlement statement. The ~~((YSP))~~ amount must be expressed as a dollar amount.

(c) Failure to properly disclose the ~~((yield spread premium (YSP)))~~ credit or charge for the interest rate is a violation of RCW 19.146.0201 (6) and (11), and RESPA.

(6) Are there additional disclosure requirements related to interest rate locks? Yes. ~~((Pursuant to RCW 19.146.030(3), if subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a rate lock agreement with a borrower or represents to the borrower that the borrower has entered into a rate lock agreement, then within three business days the mortgage broker or loan originator must deliver or send by first class mail to the borrower the rate lock agreement described in subsection (3)(e) of this section.))~~ You must provide the borrower a new rate lock agreement within three business days of a change in the locked interest rate. The new rate lock agreement must include all the terms required under subsection (3)(c) of this section. Changes to a locked interest rate can only occur for valid reasons such as changes in loan to value, credit scores or other loan factors directly affecting pricing. Lock extensions and relocks are also valid reasons for changes to a previously locked interest rate.

(7) What must I disclose to the borrower if they do not choose to enter into a rate lock agreement? If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the good faith estimate required by RESPA is deemed compliance with this subsection.

(8) Will a rate lock agreement always guarantee the interest rate and terms? No. A rate lock agreement may or may not be guaranteed by the mortgage broker or lender. The rate lock agreement must clearly state whether the rate lock agreement is guaranteed by the mortgage broker or lender.

(9) How do I disclose the payment of a rate lock fee? In a table funded transaction, you must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209 ((with "P.O.C. (borrower)" recorded to the left of the borrower column)).

(10) Are there any model forms that suffice for the disclosure content under RCW 19.146.030(2)? Yes. The following model forms are acceptable forms of disclosure:

(a) For RCW 19.146.030 (2)(a), mortgage brokers are encouraged to use the federal truth-in-lending disclosure form for mortgage loan transactions provided under the Truth-in-Lending Act and Regulation Z, as now or hereafter amended. However, the federal truth-in-lending disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(a). The delivery of disclosures is governed by RCW 19.146.030(1).

(b) For RCW 19.146.030 (2)(b), mortgage brokers are encouraged to use the federal good faith estimate disclosure form provided under the Real Estate Settlement Procedures

Act and Regulation X, as now or hereafter amended. However, the federal good faith estimate disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(b). The delivery of disclosures is governed by RCW 19.146.030(1).

(c) For RCW 19.146.030 (2)(c), (d), (e), (f) and (3), the department encourages mortgage brokers to use the department published model disclosure forms that can be found on the department's web site.

(11) May my mortgage broker fees increase following the disclosures required under RCW 19.146.030(1)? Pursuant to RCW 19.146.030(4), a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written good faith estimate disclosure required in RCW 19.146.030 (1) and (2)(b), unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

(12) Are there any situations in which fees that benefit the mortgage broker can increase without additional disclosure? Yes, there are two possible situations where an increase in the fees benefiting the mortgage broker may increase without the requirement to provide additional disclosures. These situations are:

(a) The additional disclosure is not required if the borrower's closing costs, excluding prepaid escrowed costs of ownership, on the final settlement statement do not exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower. For purposes of this section "prepaid escrowed costs of ownership" mean any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan; or

(b) The fee or set of fees that benefit the mortgage broker are disclosed as a percentage of the loan amount and the increase in fees results from an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower; and

(ii) The fee or set of fees that are calculated as a percentage of the loan amount have been disclosed on the initial written disclosure as both a percentage of the loan amount and as a dollar amount based upon the assumed loan amount used in the initial written disclosure; and

(iii) The total aggregate increase in the fee or set of fees that benefit the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

This section does not apply to the disclosure required in RCW 19.144.020.

(13) What action may the department take if I improperly disclose my mortgage broker fees on the good faith estimate and HUD-1/1A statement? If you fail to disclose your mortgage broker fees as required, the

department may request, direct, or order you to refund those fees to the borrower if the result of that disclosure resulted in confusion or deception to the borrower.

(14) May the department take action against a mortgage broker when mortgage broker fees are disclosed incorrectly on the HUD-1/1A and the incorrect disclosure was made by an independent escrow agent, title company, or lender? If the mortgage broker can show the department that they disclosed their fees correctly on the good faith estimate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the HUD-1/1A, and the independent escrow agent, title company, or lender has not followed the instructions, the department may not take action against the mortgage broker.

(15) What action may the department take if I fail to provide additional disclosures as required under RCW 19.146.030(4)? Generally, the department may request, direct, or order you to refund fees.

(16) How will the department determine whether to request, direct or order me to refund fees to the borrowers? Generally, the department will make its determination by answering the following questions:

(a) Has an initial good faith estimate disclosure of costs been provided to the borrower in accordance with RCW 19.146.030 (1) and (2)(b)?

(b) Were any subsequent good faith estimate disclosures of costs provided to the borrower no less than three business days prior to the signing of the loan closing documents? Additionally, was the subsequent disclosure accompanied by a clear written explanation of the change? Was the change due to a valid change of circumstance as allowed under RESPA?

(c) How were the costs disclosed in each good faith estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the final settlement statement exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower no less than three business days prior to the signing of the loan closing documents?

(e) If the costs at closing did exceed the most recent disclosure of costs was the need to charge the fee reasonably foreseeable at the time the written disclosure was provided?

(f) If the costs at closing did exceed the most recent disclosure of costs did the mortgage broker provide a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed, no less than three business days prior to the signing of the loan closing documents?

(17) If I failed to provide the initial good faith estimate or TILA disclosure under RCW 19.146.030 (1) and (2)(a) and (b) what action may the department take? If you have not provided the initial good faith estimate or TILA disclosure as required, including both delivery and content requirements, the department may request, direct or order you to refund to the borrower fees that inured to your benefit.

(18) If I received trust funds from a borrower, but failed to provide the disclosures as required in RCW

19.146.030 (1) and (2), what action may the department take? If you did not provide the disclosures as required, including both delivery and content requirements, the department may request, direct, or order you to refund to the borrower any trust funds they have paid regardless of whether you have already expended those trust funds on third-party providers.

(19) **Under what circumstances must I redisclose the initial disclosures required under the act?** Generally, any loan terms or conditions that change must be redisclosed to the borrower no less than three business days prior to the signing of the loan closing documents. Some examples are:

- (a) Adjustable rate loan terms, including index, margin, and any changes to the fixed period.
- (b) The initial fixed period.
- (c) Any balloon payment requirements.
- (d) Interest only options and any changes to the options.
- (e) Lien position of the loan.
- (f) Terms and the number of months or years for amortization purposes.

(g) Prepayment penalty terms and conditions.

(h) Any other term or condition that may be specific to a certain loan product.

(20) **If a loan application is canceled or denied within three days of application must I provide the disclosures required under RCW 19.146.030?** If you have not used any borrower trust funds and those funds have been returned to the borrower in conformance with these rules, the disclosures pursuant to RCW 19.146.030 are not required.

(21) **Is a mortgage broker that table funds a loan exempt from disclosures?** No. A mortgage broker must provide all disclosures required by the act, and disclose all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

(22) **What must I provide to the borrower if I am unable to complete a loan for them and they have paid for services from third-party providers?** If you are unable to complete a loan for the borrower for any reason, and if the borrower has paid you for third-party provider services, and the borrower makes a written request to you, you must provide the borrower with copies of the product from any third-party provider, including, but not limited to, an appraisal, title report, or credit report. You must provide the copies within five business days of the borrower's request.

The borrower may also request that you provide the originals of the documents to another mortgage broker or lender of the borrower's choice. By furnishing the originals to another mortgage broker or lender, you are conveying the right to use the documents to the other broker or lender. You must, upon request by the other broker or lender, provide written evidence of the conveyance. You must provide the originals to the mortgage broker or lender within five business days of the borrower's request.

(23) **Must I provide a written fee agreement when I provide residential mortgage loan modification services?** Yes. You must provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. You must provide a copy of the signed fee agreement to the consumer and you must keep a copy as part of your books and records.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-440 Advertising. (1) **Am I responsible for ensuring that my advertising material is accurate, reliable, and in compliance with the act?** Yes. Each mortgage broker is responsible for ensuring the accuracy and reliability of the advertising material.

(2) **A licensee is prohibited from advertising with envelopes (~~(or)~~), stationery, or internet pages that contain an official-looking emblem designed to resemble a government (~~(mailing)~~) agency or that suggest an affiliation that does not exist. What are some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws?** Some examples include, but are not limited to:

(a) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(b) Envelopes or internet pages designed to resemble official government mailings or internet locations, such as IRS or U.S. Treasury (~~(envelopes)~~), or other government (~~(mailers)~~) agencies.

(c) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(d) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(e) Any suggestion or representation that the solicitor is affiliated with any agency, bank, or other entity that it does not actually represent.

(3) **Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. This is a violation of RCW 19.146.0201 (2), (7), and (11). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations* (16 C.F.R. §251.1(g) (2003)) available at <http://www.ftc.gov/bcp/guides/free.htm>.

(4) **When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** The required disclosures in your advertisements must be reasonably understandable. Consumers must be able to read or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. The disclosure of the APR must be as prominent or more prominent than any other rates disclosed in the advertisement, regardless of the form of the advertisement.

(5) **The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised**

interest rate was "actually available" at the time it was advertised? Whenever a specific interest rate is advertised, the mortgage broker must retain a copy of the lender's "rate sheet," or other supporting rate information, and the APR calculation for the advertised interest rate.

(6) Must I quote the annual percentage rate when discussing rates with a borrower? Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 C.F.R., Part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(7) May a mortgage broker or loan originator advertise rates or fees as the "lowest" or "best"? No. Rates or fees described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 19.146.0201 (7).

(8) When I (~~advertise, or~~) present a business card to a potential borrower, must I make the disclosures required under (~~the act and these rules~~) RCW 19.146.-030? No. You are not required to make those disclosures until you accept a residential mortgage loan application, or until you assist a borrower in preparing an application.

(9) May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am? No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

(10) If I advertise using a borrower's current loan information, what must I disclose about that information? When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with:

- (a) The name of the source of the information;
- (b) A statement that you are not affiliated with the borrower's lender; and
- (c) The information disclosed in (a) and (b) of this subsection must be in the same size type font as the rest of the information in the advertisement.

AMENDATORY SECTION (Amending WSR 10-20-125, filed 10/5/10, effective 11/5/10)

WAC 208-660-446 When I advertise using the internet or any electronic form (including, but not limited to, text messages), is there specific content advertisements must contain? Yes. You must provide the following language, in addition to any other, on your web pages or in any medium where you hold yourself out as being able to provide the services:

(1) Main or home page.

(a) The company's license name and (~~(NMLS unique identifier)~~) license number must be displayed on the licensee's main or home web page.

(b) If loan originators are named, their (~~(NMLS)~~) license numbers must closely follow the names.

(c) The main or home page must also contain a link to the NMLS consumer access web site page for the company.

(2)(a) Branch office web page - No DBA. Comply with subsection (1) of this section.

(b) Main office, or branch office web page - DBA. If the company uses a DBA on a web page the web page must contain the main office license name, and the information in subsection (1)(b) of this section, and the web page must contain a link to the NMLS consumer access web site page for the company.

(3) Loan originator web page. If a loan originator maintains a separate home or main page, (~~(the URL address to the site must be a DBA of the licensee and)~~) the licensee's name and license number must appear on the web page. The web page must also contain the loan originator's (~~(NMLS)~~) license number and a link to the NMLS consumer access web page for the company.

(4) Compliance with other laws. Web site content used to solicit Washington consumers must comply with all relevant Washington state and federal statutes for specific services and products advertised on the web site.

(5) Oversight. The company is responsible for web site content displayed on all web pages used to solicit Washington consumers including main, branch, and loan originators' web pages.

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-450 Recordkeeping requirements. (1) What business books and records must I keep to comply with the act? The following books and records for your business must be available to the department.

(a) **Mortgage transaction documents.**

(i) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(ii) The initial rate sheet or other supporting rate information. The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(iii) (~~(The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;))~~ Correspondence with third parties requesting documents necessary to the transaction (and copies of the documents received as a result of that correspondence) including, but not limited to, credit, appraisal, title, verifications of employment and notes, automated underwriting results, and any other notes or documents used to collect borrower and loan information to originate the loan;

(iv) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures are: The good faith estimate, truth in lending disclosures, Equal Credit Opportunity Act disclosures,

affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

(v) Documents and records of compensation paid to employees and independent contractors;

(vi) An accounting of all funds received in connection with loans, including a trust account statement with supporting data;

(vii) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(viii) Settlement statements (the final HUD-1 or HUD-1A);

(ix) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, ~~((yield-spread premium))~~ credit or charge for the interest rate, loan type and terms;

(x) Records of any fees refunded to applicants for loans that did not close;

(xi) All file correspondence and logs; ~~((and))~~

(xii) All mortgage broker contracts with lenders and all other correspondence with the lenders; and

(xiii) The clear written explanation required under WAC 208-660-430 (11)(b).

(b) **Advertisements.** All advertisements placed by or at the request of the mortgage broker that mention rates or fees, and the corresponding rate sheets for the advertised rates. The copies must include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile, or computer network. The record of each advertisement must include the date or dates of publication, the name of the publisher if advertised by newsprint, radio, television or telephone information line, or in the case of a flyer, the dates, methods and areas of distribution.

(c) **Trust accounting records.** See WAC 208-660-410, Trust accounting.

(d) **Other.** All other books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation. Examples include, but are not limited to, personnel files, company policy and procedure documents, training materials, records evidencing compliance with applicable federal laws and regulations, and complaint correspondence and supporting documents. ~~((See also the department's Mortgage Broker Examination Manual, available on the department web site.))~~

(2) **What books and records must I keep for my trust account?** See WAC 208-660-410, Trust accounting.

(3) **How long must I keep my books and records to comply with the act?**

(a) You must keep the books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation for a minimum of ~~((twenty-five months))~~ three years.

(b) You must keep the mortgage transaction documents described in subsection (1)(a) of this section for a minimum of three years. It may be a prudent business practice to keep your books and records longer. For example, if a consumer's loan becomes an adjustable rate mortgage, the consumer may become unhappy that the terms of their mortgage have

changed and file a complaint against you. The department must begin an investigation into the complaint. If you do not have the records to show proof of proper disclosures and all other compliance with state and federal laws, the department may rely solely on the consumer's records as evidence in the case.

(4) **Where must I keep my business records?**

(a) You must keep all books and records in a location that is on file with and readily available to the department during normal business hours. In the event of a department examination, the location must have the work space and resources that are conducive to business operations. A readily available location may include places of business, personal residences, computers, safes, or vaults. See WAC 208-660-400(8) for the reporting requirements if the address changes.

(b) If your usual business location is outside of Washington, you may either maintain the books and records at a readily available location in Washington, or pay the department's expenses to travel to the location to examine the books and records stored out-of-state. Travel costs may include, but are not limited to, transportation costs, meals, and lodging.

(5) **May I keep my books and records electronically?** Yes. You may keep the required records described in subsection (1) of this section by electronic display equipment if you can meet all of the following requirements:

(a) The equipment must be made available to the department for the purposes of an examination or investigation;

(b) The records must be stored exclusively in a nonrewritable and nonerasable format;

(c) The hardware or software needed to display the records must be maintained during the required retention period under subsection (3) of this section.

If the department requests the books and records in hard copy, you must provide it in that form and within the time frame requested or directed by the department.

(6) **Abandoned records.** If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, and proper destruction of the records.

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-500 Prohibited practices. (1) **What may I request of an appraiser?** You may request an area or market survey. While there are no strict definitions of these terms, generally they refer to general information regarding a region, area, or plat. The information usually includes the high, low and average sales price, numbers of properties available for sale or that have been sold within a set period, marketing times, days on market, absorption rate or the mixture of different property types in the specified area, among other possible components. An area survey does not contain sufficient information or is not so defining as to allow an appraiser or reader to determine the value of a specified property or property type.

(2) **How may I discuss property values with an appraiser, prior to the appraisal, without the discussion**

constituting improperly influencing the appraiser? You may inform the appraiser of your opinion of value, the borrower's opinion of value, or the list or sales price of the property. You are prohibited from telling the appraiser the value you need or that is required for your loan to be successful.

(3) **What business practices are prohibited?** The following business practices are prohibited:

(a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engaging in any unfair or deceptive practice toward any person.

(c) Obtaining property by fraud or misrepresentation.

(d) Soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(e) Charging discount points on a loan which does not result in a reduction of the interest rate. Some examples of discount point misrepresentations are:

(i) A mortgage broker or lender charging discount points on the good faith estimate or settlement statement payable to the mortgage broker or any party that is not the actual lender on the resident mortgage loan.

(ii) Charging loan fees or mortgage broker fees that are represented to the borrower as discount points when such fees do not actually reduce the rate on the loan, or reflecting loan origination fees or mortgage broker fees as discount points.

(iii) Charging discount points that are not mathematically determinable as the same direct reduction of the rate available to any two borrowers with the same program and underwriting characteristics on the same date of disclosure.

(f) Failing to clearly and conspicuously disclose whether a payment advertised or offered for a residential mortgage loan includes amounts for taxes, insurance, or other products sold to the borrower. This prohibition includes the practice of misrepresenting, either orally, in writing, or in any advertising materials, a loan payment that includes only principal and interest as a loan payment that includes principal, interest, tax, and insurance.

(g) Making or funding a loan by any means other than table funding.

(h) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department. This includes leaving blanks on a document that is signed by the borrower or providing the borrower with documents with blanks.

(i) Willfully filing a lien on property without a legal basis to do so.

(j) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction.

(k) Failing to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law.

(l) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan. An example is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted.

(m) Engage in bait and switch advertising.

Bait and switch means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While bait and switch will be determined by the facts of a case, the following examples, alone or in combination, may exhibit a bait and switch practice:

(i) A deceptive change of loan program from fixed to variable rate.

(ii) A deceptive increase in interest rate.

(iii) The misrepresentation of discount points. This may include discount points that have a different rate buydown effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.

(iv) A deceptive increase in fees or other costs.

(v) A deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance or other reserved items, while leading the borrower to believe that such amounts are included.

(vi) Additional undisclosed terms such as prepayment penalties or balloon payments, or deceiving borrowers about the effect of disclosed terms.

(vii) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first and second mortgages to achieve the originally promised loan amount.

(viii) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.

(ix) Advertising or offering rates, programs, or terms that are not actually available at the time. See WAC 208-660-440(5).

(n) Engage in unfair or deceptive advertising practices. Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace.

(o) Negligently making any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department.

(p) Making any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(q) Advertising a rate of interest without clearly and conspicuously disclosing the annual percentage rate implied by the rate of interest.

(r) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).

(s) Failing to pay third-party providers within the applicable timelines.

(t) Collecting or charging, or attempting to collect or charge, or use or propose any agreement purporting to collect or charge any fees prohibited by the act.

(u) Acting as a loan originator and real estate broker or salesperson, or acting as a loan originator in a manner that violates RCW 19.146.0201(14).

(v) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

(w) Intentionally delay closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(x) Steering a borrower to less favorable terms in order to increase the compensation paid to the company or mortgage loan originator.

(y) Receiving compensation or any thing of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter.

(z) Abandoning records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, or proper destruction of the records.

(4) What additional practices are prohibited when providing residential mortgage loan modification services? You are prohibited from:

(a) Collecting an advance fee;

(b) Charging total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided when providing residential mortgage loan modification services;

(c) Failing to provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. See also WAC 208-660-430(23);

(d) As a condition to providing loan modification services requiring or encouraging a borrower to:

(i) Sign a waiver of his or her legal defenses, counter-claims, and other legal rights against the servicer for future acts;

(ii) Sign a waiver of his or her right to contest a future foreclosure;

(iii) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(iv) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan;

(v) Cease communication with the lender, investor, or loan servicer or stop or delay making regularly scheduled payments on an existing mortgage unless a mortgage loan

modification is completely negotiated and executed with the lender or investor and the modification agreement itself provides for a cessation or delay in making regularly scheduled payments; or

(e) Entering into any contract or agreement to purchase a borrower's property;

(f) Failing in a timely manner to:

(i) Communicate with or on behalf of the borrower;

(ii) Act on any reasonable request from or take any reasonable action on behalf of a borrower;

(g) Engaging in false or misleading advertising. In addition to WAC 208-620-630, examples of false or misleading advertising include:

(i) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower;

(ii) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists;

(h) Leading a borrower to believe that the borrower's credit record will not be negatively affected by a mortgage loan modification when the licensee has reason to believe that the borrower's credit record may be negatively affected by the mortgage loan modification.

(5) What federal guidance has the director adopted for use by the department in determining if a violation under subsection (3)(b) of this section has occurred? The director has adopted the following documents:

(a) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators "Guidance on Nontraditional Mortgage Product Risks" (released November 14, 2006); and

(b) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators "Statement on Subprime Mortgage Lending," effective July 10, 2007 (published in the Federal Register at Vol. 72, No. 131).

(6) What must I do to comply with the federal guidelines on nontraditional mortgage loan product risks and statement on subprime lending? You must adopt written policies and procedures implementing the federal guidelines that are applicable to your mortgage broker business. The policies and procedures must be maintained as a part of your books and records and must be made available to the department upon request.

(7) When I develop policies and procedures to implement the federal guidelines, what topics must be included? The policies and procedures must include, at a minimum, the following:

(a) **Consumer protection.**

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Promotional materials and other product descriptions must provide information about the costs, terms,

features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions. Specifically:

- Borrowers must be advised of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated. For example, loan products with low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin must be adequately described to the borrower. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments.

- Borrowers must be advised as to the maximum amount their monthly payment may be if the interest rate increases to its maximum rate under the terms of the loan.

- Borrowers must be advised as to the maximum interest rate that can occur under the terms of the loan.

- Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.

- Borrowers must be made aware of any pricing premium based on reduced documentation.

(b) **Control standards.** Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

(8) **May I charge a loan origination fee or discount points when I originate but do not make a loan?** No. You may not charge a loan origination fee or discount points as described in Regulation X, Part 3500, Appendix A.

(9) **What mortgage broker fees may I charge?** You may charge a mortgage broker fee that was agreed upon between you and the borrower as stated on a good faith estimate disclosure form or similar document provided that such fee is disclosed in compliance with the act and these rules.

(10) **How do I disclose my mortgage broker fees on the good faith estimate and settlement statement?** You must disclose or direct the disclosure of your fees on the good faith estimate and HUD-1/1A Settlement Statement or similar document.

(11) **May I charge the borrower a fee that exceeds the fee I initially disclosed to the borrower?** Pursuant to RCW 19.146.030(4), you may not charge any fee that benefits you if it exceeds the fee you initially disclosed unless there is a valid change of circumstance as allowed under RESPA and:

(a) The need to charge the fee was not reasonably foreseeable at the time the initial disclosure was provided; and

(b) You have provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. See WAC 208-660-430 for specific

details, disclosures, and exceptions implementing RCW 19.146.030(4).

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-510 Director and department powers—Examination authority. (1) **Why is the department authorized to examine my business?** The department is authorized to examine your business to determine your compliance with the act.

(2) **When may the department examine my business?** The department may examine your business at any time.

(3) **Will the department give me advance notice of an examination?**

(a) The department will generally give you advance notice of at least thirty days of a routine examination to allow you to compile the requested documents and prepare for the examiner's arrival. However, you and the department may agree on an earlier date for the examination. Extensions of time beyond that are at the director's discretion.

(b) The department will not give you advance notice of "for cause" examinations. "For cause" means the department may have reason to believe you have violated the act.

(4) **What are the protocols for an examination of my business?** (~~The examination protocols are detailed in the department's Mortgage Broker Examination Manual. A summary of the manual is available on the department's web site.~~) The basic protocols include, but are not limited to:

(a) **Frequency of examinations.** The department's examination frequency will be determined using appropriate measurements of risk and random selection.

The primary purpose for measuring risk to determine the examination schedule and frequency cycle is to help the department identify those mortgage brokers whose compliance practices display potential weaknesses requiring examination attention. These same measurements of risk assist the department in determining the need for expanding the scope of an examination or expanding the initial examination time period. The protocols for measuring risk may include, but are not limited to:

- (i) The history of licensing;
- (ii) Known enforcement issues or problems;
- (iii) The number and severity of complaints;
- (iv) The licensee's responsiveness to department inquiries;
- (v) The licensee's volume of loan activity;
- (vi) The number of licensed locations and staff size;
- (vii) Prior examination or investigation results; and
- (viii) The existence of internal and external systems and controls to ensure compliance.

(b) **Advance notice.** You will generally receive a department notice listing the documents the department will examine at your business. Your preparation before the arrival of the department examiners will help the examination proceed more efficiently. The department will make every effort to minimize the impact of the examination on your business. Information requirements may change to accommodate changes to state or federal law or as risk factors dictate. Any data point compiling system you use should

allow flexibility in reporting the data points to meet the changes.

(c) **A preexamination meeting at your business.** The department examiner(s) will meet with you upon arrival at your business location.

(d) **The on-site review at your business.** The department examiner will conduct the examination of your business.

(e) **An exit meeting after you have provided all the requested information, and the examiner has completed the preliminary analysis.** The examiner(s) may request additional information from you. After receiving that information and completing the preliminary analysis, the examiner may discuss the preliminary analysis with you.

(f) **Post examination work and report.** The department examiner will prepare an examination report and submit the report and examination file to the review examiner. After making any necessary changes, the department will deliver the report to you unless the violations are deemed serious and the file is delivered to enforcement.

(g) **Notification of violations and opportunity for response.** The department will document in the examination report any violations or deficiencies identified during the examination. You will have an opportunity to respond to the examination findings and any violations or deficiencies unless the violations are deemed serious or are repeat violations and the file is delivered to enforcement.

(h) **A possible referral to enforcement.** While any violation of the act or these rules may be referred to enforcement, it is usually the case that only serious or repeat violations are referred. An enforcement action may result in any, or all, or any combination of the following: A suspension or revocation of your license, the imposition of fines, the payment of restitution, ~~((⊕))~~ a ban from the mortgage broker industry.

(5) **What is the scope of the examination of my business?** In general, the scope of the examination will include, but is not limited to:

(a) Reviewing trust accounting compliance.

(b) Reviewing loan files.

(c) Conducting interviews to better understand the business, solicitation practices, transactional events, disclosure compliance, and complaint resolution.

(d) Reviewing the business books and records, including employee records.

(6) **When would the department expand the scope of an examination of my business?** If, during an examination, the department finds a clear need to expand the scope of the examination, it may do so. Two examples of a clear need to expand the scope of an examination are:

(a) When the department finds an apparent violation of trust accounting.

(b) When apparent violations of the prohibited practices section of the act are discovered. See RCW 19.146.0201 for prohibited practices.

(c) When there are clear systemic violations requiring greater review than is possible in a routine examination.

These examples are illustrative only and do not limit the circumstances under which the department may decide to expand the scope of an examination.

(7) **Will I receive notice if the department decides to expand the scope of the examination of my business?** Yes. The department will provide you with five business days' written notice if examination findings clearly identify the need to expand the scope of the examination. See subsection (6) of this section for examples of when the department may decide to expand the scope of the examination.

The expanded examination may include a different location and may go beyond the initial five-year time limit.

(8) **Will I have to pay for an examination of my business?**

(a) If you are located in Washington, you do not have to pay for the costs of the examination.

(b) If you are located outside of Washington, you will have to pay for the examiner's travel costs. Travel costs include, but are not limited to, transportation costs, meals, and lodging. Travel reimbursement rates are established by the Washington state office of financial management.

(c) If your examination was the result of a referral from enforcement, the department may charge an investigative fee. The department will not charge an investigation fee in ~~((⊕))~~ a complaint investigation or examination if it is determined that no violation occurred, or when the ~~((mortgage broker or loan originator))~~ licensee implements a remedy satisfactory to the complainant and the department, and no department order has been issued.

The department will send you an invoice and you will have thirty days to reimburse the department for the examination and the travel costs. See WAC 208-660-550, Department fees and costs.

(9) **May the department consider reports made by independent certified professionals instead of conducting their own examination of a mortgage broker business?**

Yes. Instead of examining a mortgage broker's business, the department may consider the reports of independent certified professionals who have examined the mortgage broker using the same standards used by the department (see the standards in the department's *Mortgage Broker Examination Manual*). The department may then prepare a report of examination that incorporates all or part of the independent certified professional's reports, or the examiner may expand the scope of the examination.

(10) **What are the pros and cons of hiring my own independent certified professional versus waiting for a department examination?**

The department's cost of examination will not be charged to you directly, although you may experience some minor business interruption. If you hire your own independent certified professional, you will incur the cost of that examination; however, you will control the time and manner in which the examination is conducted. The greatest benefits you may derive from hiring your own independent certified professional are:

(a) Early notice of problems you may encounter during an examination;

(b) The ability to correct deficiencies or problems at an early stage when the greatest benefit of correction may be derived;

(c) The early implementation of a sound compliance program; and

(d) The ability to control the timing for your convenience.

(11) If I want the department to consider an independent certified professional's report instead of examining my business, how must I make that request, and who submits the report to the department? When you receive notice from the department that your business is scheduled for an examination, you must notify the department that you wish the department to consider the report of an independent certified professional instead of the department examining your business. The independent certified professional must then submit their report directly to the department, in a form acceptable to the department.

(12) How may the department determine if the independent certified professional's report meets the standards of examination established by the department? The department will ~~((compare))~~ consider the sufficiency of the report submitted by the independent certified professional ~~((to the requirements in the department's examination manual. If the report is missing any of the requirements from the manual, the department))~~ and may require the licensee to provide ~~((the missing))~~ additional information.

(13) If the independent certified professional's report is missing information, how may the department obtain the missing information? The department may interview, obtain records from, or otherwise contact the licensee, or with the licensee's permission contact the independent certified professional, if additional information is required for the department's review of the report.

(14) What will the department do if the independent certified professional's report is not sufficient? If the department determines the report is not sufficient, the department will notify the licensee and schedule an examination of the business.

(15) What will the department do if the independent certified professional's report is sufficient? If the department determines the report is sufficient, the department will prepare a report of examination that incorporates all or part of the independent certified professional's report.

(16) May the department retain professionals or specialists to examine a licensee? Yes. The department, at its own expense, may retain attorneys, accountants, or other professionals or specialists as examiners, auditors, or investigators to examine a licensee.

(17) Do I receive any reports from the examination? Yes.

(a) When you have provided all the requested information, and the examiner has completed the preliminary analysis, the examiner will issue an exit report of examination containing preliminary examination findings.

(b) After additional department review, including the consideration of new information, if any, the department will issue a final report of examination.

(18) Must I do anything as a result of the examination? Yes. You will receive instructions from the department on the actions you must take. For example, if adverse findings or deficiencies were cited in the report of examination, you must respond to those findings.

(19) How do I respond to findings in a report of examination? You must respond in writing within thirty

days of the date the department issues the report of examination. Your response must address any deficiencies noted in the report and describe the corrective actions you have taken.

(20) What will happen if I do not respond to the report of examination? If you fail to respond to the report of examination, you may be referred to enforcement where further administrative actions may be taken against you.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-520 Director and department powers—Investigation authority. (1) **What is an investigation?** An investigation is an inquiry to determine compliance with the act and rules, to assess allegations of wrongdoing, or to evaluate the licensing qualifications of persons subject to the act. The inquiry may involve extensive research, fact gathering, the issuance of directives and subpoenas, witness interviews, and financial and legal analysis. Depending on the results of these efforts, an investigation may result in the pursuit of an enforcement action. An investigation may proceed at the same time as other matters and may continue during an enforcement action.

(2) **How often may the department investigate my mortgage broker or loan originator operations?** For the purpose of investigating violations or complaints, the department may investigate your business as often as necessary to carry out the purpose of the act.

(3) **Will the department give advance notice before requiring me to make my books and records available for its investigation?** The department is not required to give you advance notice before an investigation. However, the department may provide advance notice before an investigation if doing so would be in the best interests of all parties involved, including the department.

(4) **From whom may the department obtain information in an investigation?** The department may obtain information from any person whose testimony may be pertinent to the loans, business, or subject matter of an investigation.

(5) **How may the department obtain information during an investigation?** The department may direct, subpoena, or order a person to submit to a deposition, or produce written information.

(6) **What information may the department obtain during an investigation?** The department may obtain books, accounts, records, files, and any other documents the department deems relevant to the investigation.

(7) **What businesses may the department investigate?** The department may investigate the business of any person who is engaged in the business of mortgage brokering, whether the person is a licensee or whether the person acts or claims to act under, or without the authority of, the act.

(8) **May the director retain professionals or specialists to assist in an investigation, and if so, will I have to pay for those services?** Yes. The department may hire attorneys, accountants or other professionals as needed to conduct or assist in an investigation. The cost for these

services will be assessed in accordance with WAC 208-660-550(5), Investigations.

(9) **When may the department charge ~~((a mortgage broker or loan originator))~~ an investigation fee?** The department may charge an investigation fee when it investigates the books and records of any ~~((mortgage broker or loan originator subject to the act))~~ licensee.

(10) **Are there circumstances in which the department will investigate a ~~((mortgage broker or loan originator))~~ licensee but will not charge an investigation fee?** Yes. The department will not charge an investigation fee in a complaint investigation if it is determined that no violation occurred, or when the ~~((mortgage broker or loan originator))~~ licensee implements a remedy satisfactory to the complainant and the department, and no department order has been issued.

(11) **How is the amount of the investigation fee determined?** The amount of the investigation fee is the number of hours expended by the department related to the investigation multiplied by an hourly rate established by the department. See WAC 208-660-550, Department fees and costs.

WSR 13-19-081
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Consumer Services Division)
[Filed September 17, 2013, 3:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-142.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-620 WAC) that implement the Consumer Loan Act (chapter 31.04 RCW).

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700, on October 22, 2013, at 9-10 a.m.

Date of Intended Adoption: November 19, 2013.

Submit Written Comments to: Sara Rietcheck, 150 Israel Road S.W., P.O. Box 41200, Olympia, WA 98504-1200, e-mail sara.rietcheck@dfi.wa.gov, fax (360) 586-5068, by October 25, 2013.

Assistance for Persons with Disabilities: Contact Sara Rietcheck by October 15, 2013, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of amending the rules is to implement changes to the law, to aid the regulated industries by having consistent rules within the mortgage marketplace, and to make technical changes for clarity and consistency.

Recent amendments to the law become effective July 28, 2013.

Reasons Supporting Proposal: Specific information provided in the rules is necessary to guide the regulated industries in complying with the laws.

The rules are being amended under the authority of OFM Guidelines 3.a. and e. dated October 12, 2011.

Statutory Authority for Adoption: Chapter 43.320 RCW, RCW 31.04.165.

Statute Being Implemented: Chapter 31.04 RCW.

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

Name of Proponent: Department of financial institutions, consumer services, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy Fazio, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8800; Implementation and Enforcement: Deborah Bortner, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-0511.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendments will not impose more than minor costs on the businesses impacted by the proposed rules.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to the proposed rules.

September 17, 2013
Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter 31.04 RCW.

"Advertise, advertising, and advertising material" means any form of sales or promotional materials used in connection with the 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 controls, is controlled by, or is under common control with another.

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. 1026 (formerly 12 C.F.R. Section 226) et seq., implementing the Truth in Lending Act.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be submitted in writing or electronically and includes a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Section 103.

"Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

"Borrower," (~~means any natural person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan~~) See WAC 208-620-011.

"Commercial context" or "commercial purpose" means actions taken for the purpose of obtaining anything of value for oneself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes.

"Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

"Creditor" has the same meaning as in the Truth in Lending Act, 15 U.S.C. 1602(f) and Regulation Z, 12 C.F.R. 1026 (formerly 12 C.F.R. 226).

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. § 1735f-7a.

"Director" means the director of the department of financial institutions or his or her designated representative.

"Dwelling" means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. 1026.2.

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. section 1691 and Regulation B, 12 C.F.R. Part 1002 (formerly Part 202).

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

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. section 1692, 12 C.F.R. 1006.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, (~~Director of the Office of Thrift Supervision,~~) National Credit Union Administration, (~~and~~) Federal Deposit Insurance Corporation, and Consumer Financial Protection Bureau.

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

"Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or other documents, or transferring certificates of title to vehicles.

"Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-

6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

"Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. sections 2801 through 2810 and 12 C.F.R. Part 1003 (formerly Part 203).

"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

"Individual servicing a mortgage loan" means a person who on behalf of a lender or servicer licensed by this state, or a lender or servicer exempt from licensing, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

For purposes of this definition "on behalf of a lender or servicer" means that the individual person is employed by the lender or servicer and does not receive any compensation or gain directly or indirectly from the borrower for performing the described activities.

"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.

"Lender" means any person that extends money to a borrower with the expectation of being repaid.

"License" means a license issued under the authority of this chapter with respect to a single place of business.

"License number" means your NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

"Licensee" means a person who holds one or more current licenses.

"Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

"Loan" means a sum of money lent at interest or for a fee or other charges and includes both open-end and closed-end transactions.

"Loan originator" means the same as mortgage loan originator.

"~~Loan processor," (means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 31.04 RCW.~~

~~A loan processor engaged as an independent contractor for a licensee must hold a mortgage loan originator license)) See WAC 208-620-011.~~

"Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

"Making a loan" means advancing, offering to advance, or making a commitment to advance funds for a loan.

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

"Mortgage broker" means the same as in RCW 19.146.-010 (~~(except that for purposes of this chapter,)~~) A licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same transaction.

"Mortgage loan originator" or "loan originator" means an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain (1) takes a residential mortgage loan application; or (2) offers or negotiates terms of a residential mortgage loan, including short sale transactions.

Mortgage loan originator also includes an individual who for compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

Mortgage loan originator also includes an individual who holds himself or herself out as being able to perform any of the activities described in this definition. For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

Mortgage loan originator does not include any individual who performs purely administrative or clerical tasks and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan. An individual who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

Mortgage loan originator does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law to conduct those activities, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. See the definition of real estate brokerage activity in this subsection.

~~((This definition does not apply to an individual servicing a mortgage loan before July 1, 2011.))~~

This definition does not apply to employees of a housing counseling agency approved by the United States department of Housing and Urban Development unless the employees of a housing counseling agency are required under federal law to be individually licensed as mortgage loan originators.

"NMLS" means a nationwide multistate licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators and other license types.

"Out-of-state licensee" means a licensee that does not maintain a physical presence within the state, or a licensee that maintains headquarters or books and records outside Washington.

"Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

"Principal" means either (1) any person who controls, directly or indirectly through one or more intermediaries, a ten percent or greater interest in a partnership, company, association or corporation; or (2) the owner of a sole proprietorship.

"Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

"Principal balance" means the principal amount plus any allowable origination fee.

"RCW" means the *Revised Code of Washington*.

"Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (2) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction; (4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and (5) offering to engage in any activity, or act in any capacity, described in (1) through (4) of this definition.

"Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sections 2601 et seq., and Regulation X, 12 C.F.R. Part 1024 (formerly 24 C.F.R. Part 3500).

"Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

"Referring a delinquent loan to foreclosure" means taking any step in furtherance of foreclosure. Examples include, but are not limited to: Sending a referral to a foreclosure trustee or attorney inside or outside of the servicing entity requesting they begin the foreclosure process; making a record in written or electronic form that flags, comments, blocks, suspends or in any way indicates in the electronic record of a mortgage loan that foreclosure has begun; any such marking of an electronic record that impairs the record in a way that payments will not be applied or will be routed into a suspense account.

"Registered mortgage loan originator" means any individual who (1) meets the definition of mortgage loan originator and is an employee of: A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and (2) is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

"Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling ~~((as defined in section 103(v) of the Truth in Lending Act))~~ or residential real estate upon which is constructed or intended to be constructed a dwelling.

"Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms (length), or loan types; capitalizations of arrearages; or principal reductions.

"Residential mortgage loan modification services." See WAC 208-620-045.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law No. 110-289, effective July 30, 2008; and Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

"Senior officer" means an officer of a consumer loan company at the vice-president level or above.

"Service or servicing a loan." See WAC ~~((208-620-055))~~ 208-620-011.

"Simple interest method" means the method of computing interest payable on a loan by applying the rate of interest specified in the note, or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. For nonresidential mortgage loans, each payment must first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. In using such method, interest must not be payable in advance or compounded. For residential mortgage loans, each payment must be applied as directed in the loan documents.

"State" means the state of Washington.

"Subsidiary" means a person that is controlled by another.

"Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

"Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. § 6101 to 6108.

"Telephone Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

"Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

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

"Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sections 1601 et seq., and Regulation Z, 12 C.F.R. Part 1026 (formerly 12 C.F.R. Part 226).

"Unique identifier" means a number or other identifier assigned by protocols established by the NMLS.

NEW SECTION

WAC 208-620-011 How does the department interpret certain definitions in RCW 31.04.015(28)?

"Borrower" means an individual who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan or a residential mortgage loan modification, regardless of whether the individual actually obtains a loan or residential mortgage loan modification.

"Loan processor" or **"underwriter"** means an individual who performs clerical or support duties as an employee (not as an independent contractor) of a person licensed or exempt from licensing and at the direction of and subject to the supervision and instruction of an individual licensed, or exempt from licensing, under this chapter. A loan processor or underwriter engaged as an independent contractor by a licensee must hold a mortgage loan originator license.

"Residential mortgage loan modification services" means activities conducted for compensation or gain by individuals or entities not engaged in servicing the borrower's existing residential mortgage loan. The activities may include negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform residential mortgage loan modification services. The activities may also include the collection of data for submission to another entity performing mortgage loan modification services or to a residential mortgage loan servicer.

"Service" or **"servicing a loan"** means:

(a) Collecting or attempting to collect payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due;

(b) Collecting fees due to the servicer for the servicing activities;

(c) Working with the borrower to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently; or

(d) Otherwise finalizing collection through the foreclosure process.

"Simple interest method" means the method of computing interest payable on a loan by applying the rate of interest specified in the note or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Interest may not be compounded.

(a) For nonresidential mortgage loans, each payment must first be applied to any unpaid penalties, fees, or charges,

then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. Interest must not be payable in advance.

(b) For residential mortgage loans, each payment must be applied as directed in the loan documents. No more than forty-five days of prepaid interest may be collected at the time of the loan closing.

(c) The prohibition on compounding interest does not apply to reverse mortgage loans made in compliance with the Washington State Reverse Mortgage Act within this chapter.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-104 Who is exempt from licensing as a consumer loan company? (1) See RCW 31.04.025 ~~((1+))~~ (2)(a) ~~((through))~~, (b), (d) ~~((and))~~, (f) through (h), and (j) through (l).

(2) Under RCW 31.04.025 (2)(c), entities conducting transactions under chapter 63.14 RCW (Retail installment sales of goods and services); however, the entity is not exempt if the transactions are an extension of credit to purchase merchandise certificates, coupons, open or closed loop stored value, or any other item issued and redeemable by a retail seller other than the entity extending the credit.

(3) Under RCW 31.04.025 (2)(e), any person making a loan primarily for business, commercial, or agricultural purposes unless the loan is secured by a lien on the borrower's primary residence.

~~((3))~~ (4) Under RCW 31.04.025 (2)(i), a nonprofit housing organization seeking exemption must meet the following standards:

(a) Has the status of a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986;

(b) Promotes affordable housing or provides home ownership education, or similar services;

(c) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(d) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(e) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(f) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and

(g) Meets other standards as prescribed by the director.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-105 Who is exempt from licensing as a mortgage loan originator under this act? The following are exempt from licensing as a mortgage loan originator:

(1) Registered mortgage loan originators;

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;

(4) A Washington licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(5) Individuals who do not take residential mortgage loan applications or negotiate the terms of residential mortgage loans for compensation or gain or in the expectation of compensation or gain; and

(6)(a) An employee of a bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

(b) Terms favorable to the borrower are terms consistent with loan origination in a public or charitable context, rather than a commercial context.

(7) See also WAC 208-620-232.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-230 Do I need a consumer loan license ~~((if I am lending))~~ to lend money ~~((in the state of Washington))~~, extend credit or service or modify the terms of residential mortgage loans? ~~((If you are in the business of making secured or unsecured loans of money or credit and you do not qualify for an exception under RCW 31.04.025, you must hold a license under this act.))~~ (1) Yes. If you do not qualify for an exception under RCW 31.04.025, you must hold a license to:

(a) Be located in Washington and lend money, extend credit, or service or modify residential mortgage loans;

(b) Be located outside Washington and lend money or extend credit to Washington residents or service or modify residential mortgage loans on Washington real estate;

(c) From any location solicit or advertise by any means to Washington residents including but not limited to mail, brochure, telephone, print, radio, television, internet, or any other electronic means;

(d) From any location conduct business under the act with Washington residents by mail or internet;

(e) Hold yourself out as able to conduct any of the activities in (a) through (d) of this subsection.

(2) If you violate subsection (1) of this section, on nonresidential loans, you must refund to the borrower either the interest or the fees charged in the transaction. On residential mortgage loans, you must refund to the borrower nonthird-party fees charged in the transaction.

(3) See also WAC 208-620-245.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-231 Which companies must have a consumer loan license to service residential mortgage

loans secured by Washington residential real estate or obligating Washington residents? (1) Companies servicing loans they originated.

(2) Companies servicing loans purchased post closing.

(3) Companies servicing loans owned by other companies.

(4) You must comply with the annual assessment requirements for your residential mortgage loan servicing activity. See WAC 208-620-440.

(5) See also WAC 208-620-106.

NEW SECTION

WAC 208-620-232 Can I make a small number of residential mortgage loans without being licensed at the company level? Yes. You may make five or fewer residential mortgage loans a year without holding a company license if you comply with the following conditions:

(1) If you do not provide the borrower with a compliant federal disclosure of the loan terms and conditions and cost of financing you must provide the buyer with a page disclosure summary prescribed by the director.

(2) You must comply with the state's usury rate limit. See chapter 19.52 RCW.

NEW SECTION

WAC 208-620-234 Must a company that provides loan processing or underwriting services on residential mortgage loans be licensed under the Consumer Loan Act? Yes. The company must license at the company level and must employ at least one licensed mortgage loan originator. Loan processors and underwriters are subject to the individual licensing requirements of the S.A.F.E. Act, 12 C.F.R. 1008 (Regulation H) if not supervised by an individual licensed as a mortgage loan originator under S.A.F.E. A company level license is required to provide the sponsorship for the supervising licensed mortgage loan originator.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-240 Once I am licensed, does the act apply to all loans I make? Yes. All loans you make to Washington residents (~~((and loans secured by Washington residential real estate))~~), secured and unsecured, are subject to the authority and restrictions of the act including the provisions relating to the calculation of the annual assessment.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-250 If my out-of-state company applies for a license under the Consumer Loan Act do we have to have a branch in the state of Washington? (1) You are not required to maintain a physical presence in this state to hold a license but any location doing business under the act, wherever located, must be licensed. Your company's

main office (headquarters), wherever located, must have a license.

(2) If you employ mortgage loan originators, those licensed employees must work from a licensed location. A licensed location (~~((can be a))~~) is a main or branch office ((~~or~~)) and an individual loan originator's home can be licensed as a branch office.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-251 Are there any additional requirements for out-of-state licensees? (1) **All locations must be licensed.** Any person that conducts business under the act with Washington residents or Washington residential real estate must obtain a license for all locations from which such business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310. The main office (headquarters), wherever located, must be licensed.

(2) **Keeping records out-of-state.** The director may approve the maintenance of a licensee's records at an out-of-state location. The licensee must request approval in writing and must agree to provide the director access to the records and pay the hourly rate plus travel costs pursuant to WAC 208-620-590.

(3) **Service on out-of-state licensee.** An out-of-state licensee's registered agent in Washington is the licensee's agent for service of process, notice, or demand.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-260 If I am licensed under the Consumer Loan Act, can I broker residential mortgage loans in the state of Washington? Yes. You may broker residential mortgage loans under the Consumer Loan Act. Brokered loans are subject to the annual assessment (~~((under WAC 208-620-240))~~). See WAC 208-620-440.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-271 Do I need a license to assist a borrower with a residential mortgage loan modification? Yes. Persons providing third-party loan modification services for compensation or gain must be licensed under this chapter, or under chapter 19.146 RCW. See also WAC 208-620-550 (~~((and 208-620-551))~~).

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-280 How do I apply for a consumer loan license? (1) Your application consists of an online filing through the (~~((NMLS))~~) NMLS and Washington specific requirements provided directly to DFI. You must pay an application fee through the (~~((NMLS))~~) NMLS system.

(2) Upon application and periodically upon license renewal, each officer, director, and owner applicant must provide information concerning:

(a) Identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check;

(b) Personal history;

(c) Experience;

(d) Business record; and

(e) Other pertinent facts, as the director may reasonably require.

(3) Each principal, officer and director of the entity that is applying for a license is deemed responsible for the information submitted as part of the application.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-281 What will happen if my license application is incomplete? The department will only process complete applications. If your application is incomplete your file will be marked "pending-deficient" in the ((NMLSR)) NMLS. The department will either identify each deficiency or respond that there are multiple deficiencies and ask you to contact the department. You are responsible for reviewing your record and responding to each issue.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-282 How do I withdraw my application for a license? You may withdraw the application through the ((NMLSR)) NMLS. You will not receive a refund of the ((NMLSR)) NMLS application fee but you may receive a partial refund of your licensing fee if the fee exceeds the department's actual cost to investigate the license application.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-290 What fees must I pay for my application for a consumer loan license? (1) ((NMLSR)) NMLS fees. You must pay the ((NMLSR)) NMLS system fee when you submit your application.

(2) **DFI fees.** You must pay \$95.55 per hour for review and investigation of the following:

(a) New consumer loan company license;

(b) New branch office license;

(c) Notice of change of control; or

(d) Opinions rendered regarding interpretations of statutes and rules.

(3) **Licenses.** You must pay \$106.71 for issuance of the following licenses:

(a) New or replacement main office licenses; or

(b) New or replacement branch licenses.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-300 If I want to ((open)) operate my business from more than one office, do I have to ((file an application for)) license each location? Yes. You must submit a branch office application through the ((NMLSR)) NMLS for each ((consumer loan company)) branch office, residential mortgage loan servicing location, or direct solicitation location((, and)). You must provide evidence of surety bond coverage for each branch and meet all other license requirements. See also WAC 208-620-252.

NEW SECTION

WAC 208-620-301 If I make residential mortgage loans and employ managers, must they license individually as mortgage loan originators? Your managers, including branch managers, must license individually as mortgage loan originators if they conduct the following activities:

(1) Take residential mortgage loan applications, negotiate the terms or conditions of residential mortgage loans, or hold themselves out as being able to conduct these activities;

(2) Supervise your loan processor or underwriting employees; or

(3) Supervise your licensed mortgage loan originators.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-310 Is it necessary to license an office that is only providing underwriting and other back-office services? A location that is solely providing loan processing or underwriting ((and)) or other back-office services on Washington loans and has only incidental contact with the borrower, is not required to be licensed. Back office services do not include loan servicing. However, any location where a licensed mortgage loan originator works must be licensed. Also, your company's main office (headquarters), wherever located, must be licensed.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-320 What is the amount of the bond required for my consumer loan license? (1) Nonresidential loan origination. If you originate nonresidential loans the bond amount is based on the annual dollar amount of loans you originate. See the following chart:

1. Zero to twenty million in loans originated:	\$30,000
2. Twenty million to forty million:	\$50,000
3. Forty million to fifty million:	\$100,000
4. Fifty million and above:	\$150,000

(2) Residential mortgage loan origination.

(a) If you originate residential mortgage loans, the bond amount is based on the annual dollar amount of residential

mortgage loans you originate. Use the chart in subsection (1) of this section for the bond amount.

(b) If you only service residential mortgage loans, your bond amount at application is thirty thousand dollars. Thereafter and subject to annual adjustment, your bond amount is based on the annual dollar amount of the residential mortgage loans serviced pursuant to the following schedule (see RCW 31.04.045(6)):

1. Zero to fifty million in loan principal: \$30,000
2. Fifty million and above: \$50,000

(c) If you originate and service residential mortgage loans, your bond amount will be based on your origination activity volumes.

(d) If you broker residential mortgage loans, your bond amount will be based on the principal amount of the loans brokered.

(3) Third-party loan modification services. If you only offer third-party residential mortgage loan modification services, your bond amount is thirty thousand dollars.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-325 What will my bond amount be in the first year of licensing? (1) If you lend money, your initial bond amount will be based on either your prior year's loan origination volume in Washington or one hundred thousand dollars. See the bonding chart in WAC 208-620-320.

(2) If you only service residential mortgage loans your initial bond amount is thirty thousand dollars. For subsequent years see the bonding chart in WAC 208-620-320.

(3) If you only provide third-party residential mortgage loan modification services, your bond amount is thirty thousand dollars initially and thereafter.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-340 Do I have any alternative to maintaining a surety bond? With the director's approval, you may use a bond substitute, as defined in WAC 208-620-010, that meets the following requirements:

(1) ~~((The))~~ Your company must be a Washington business corporation.

(2) ~~((The company's))~~ Your company must maintain unimpaired capital ~~((must be maintained))~~ in an amount so that the aggregate sum of the company's debt, including outstanding promissory notes or other evidences of debt, does not at any time exceed three times the amount of its bond substitute.

(3) ~~((The company's))~~ You may exclude long-term subordinated debt, as defined in WAC 208-620-010, ~~((may be excluded from the company's debt))~~ for purposes of calculating the bond substitute only if any claim by the subordinate debtholder on the company's assets is junior to claims by the state or a consumer under the act. ~~((The licensee))~~ You must file with the director a subordination agreement in favor of the state.

(4) ~~((The company may))~~ You must not consider bad debts and uncollectible judgments as assets for purposes of calculating the bond substitute. A bad debt is any debt owed to ~~((the licensee))~~ you upon which any payment is six months or more past due. An uncollectible judgment is any judgment which is more than two years old and which has not been paid.

~~((5) The director may evaluate the documentation submitted by the licensee or other documentation requested by the director to determine whether the bond substitute meets the requirements of RCW 31.04.045(3).))~~

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-341 If I originate residential mortgage loans and my company relies on the bond substitute, must my licensed mortgage loan originators obtain an individual bond? Yes. They must each obtain individual bonds based on their mortgage loan origination volume. See WAC 208-620-710 (3) ~~((h))~~ (i).

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-370 What are the grounds for denying or conditioning my consumer loan company license application? The director may deny or condition approval of a license application if you or any principal, officer, or board director of the applicant:

(1) Fails to pay a fee due the department or the ~~((NMLSR))~~ NMLS;

(2) Fails to demonstrate financial responsibility, experience, character, and general fitness to operate a business honestly, fairly, and efficiently within the purposes of the Consumer Loan Act. The director may find that the person has failed to make the demonstration if, among other things:

(a) ~~((The person))~~ Is or has been subject to an injunction or an administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act, the Insurance Code, the Securities Act, or similar laws in this or another state; or

(b) Is reported to have a history of unpaid debts as reported by an independent credit report issued by a recognized credit reporting agency ~~((indicates that the person has a history of unpaid debts))~~; or

(c) ~~((The person))~~ Is the subject of a criminal felony indictment, or a criminal gross misdemeanor charge involving dishonesty or financial misconduct (RCW 31.04.-055 (1)(d)); or

(d) ~~((The person))~~ Is insolvent in the sense that the value of the applicant's or licensee's liabilities exceeds its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature; or

(e) ~~((The person))~~ Has had a license to conduct lending, residential mortgage loan servicing, or to provide settlement services associated with lending or residential mortgage loan servicing revoked or suspended by this state, another state, or by the federal government within five years of the date of

submittal of a complete application for a license (see RCW 31.04.093 (6)(c)).

(3) Has misrepresented, omitted or concealed a material fact from the department or has misrepresented a material fact to the department;

(4) Has been found to have committed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(5) Has failed to complete its application as defined in WAC 208-620-280, within a reasonable time after being notified that the department considers the file abandoned for failure to provide requested information or documentation;

(6) Fails to maintain a bond or bond alternative that is compliant with the act.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-371 May I employ someone to work with Washington residents or Washington property who has been convicted of a felony, or who has had a lending-related license revoked or suspended? No. (1) Pursuant to RCW 31.04.093(6), the director may prohibit any officer, principal, or employee from participating in the affairs of any licensee if that officer, principal, or employee has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(a) During the seven-year period preceding the date of the proposed employment; or

(b) At any time preceding the date of the proposed employment, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(2) For purposes of this section, "participation in the affairs of any licensee" means an officer, principal, or employee or independent contractor who will or does originate loans, supervise ~~((loan originators))~~ employees or independent contractors, or manage the loan production or other activities of the licensee.

(3) Additionally, the director may prohibit participation in the affairs of the licensee by any officer, principal, or employee or independent contractor, or person subject to the act, who has had a license to engage in lending, or performance of a settlement service related to lending, including loan modifications, revoked or suspended in this state or any state.

(4) The department considers it to be a deceptive practice in violation of RCW 31.04.027(2) for any licensee to employ an officer, principal, or employee ~~((to originate loans, supervise loan originators or manage the loan production activities of the licensee))~~ or independent contractor to conduct any of the activities described in subsection (3) of this section without first conducting a background check.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-373 What happens to residential mortgage loans in the pipeline if a mortgage loan originator leaves my company? Loan files belong to the company. Existing loan applications must be processed by another licensed loan originator in the company. At the

borrower's written request, the loan must be transferred to another licensed entity within five days of the borrower's request. You may pay the original loan originator for the work he or she performed prior to leaving.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-374 What action must I take in the ((NMLSR)) NMLS if I fire a residential mortgage loan originator or if a residential mortgage loan originator quits? You must file a relationship termination through the ~~((NMLSR))~~ NMLS within ten days of firing someone or the person quitting.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-420 May I transact my company business in a name other than the name on my company license? (1) You may only transact business using the name on the license or as further described in this section.

(2) You may apply to the department to add a trade or doing business as (DBA) name to your main office license but you may not use the DBA alone to transact business. DBA names will only be attached to the main office license. Branch offices cannot have DBAs attached to the branch office license. The director may deny an application for a proposed DBA name if the proposed DBA name is similar to a currently existing licensee name.

(3) If you transact business using a DBA you must use either the main office license number or main office license name with the DBA. See also WAC 208-620-620, 208-620-621 and 208-620-622.

(4) Reserved.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-425 May I transfer or assign my license? No. A license is given to a specific entity with specific individuals at a specific location. If twenty percent or more of the business is transferred or sold to another person, the licensee and the proposed new licensee(s) must apply to the department for a license. See also WAC 208-620-490.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-430 What are my annual filing requirements as a consumer loan licensee? Each year you are required to file two annual reports on forms provided by the department. You must also pay a fee (assessment) based on your activities during the reporting year. The reports and the assessment fee must be provided to the department on March 1st of each year or within thirty days of ceasing Washington operations (the due date).

(1) **Annual reports and assessment fee on activity.** You must provide the annual reports (annual assessment report and consolidated annual report) and the assessment fee by the due date.

(2) **Late penalties.** If you fail to submit the required annual reports and assessment fee by the due date you are subject to a penalty of fifty dollars for each item for each day of delay. For example, if the department receives the two annual reports and assessment fee on March 4th, you would have to pay an additional four hundred fifty dollars as a late penalty. If the items are filed with the department more than thirty days after ceasing Washington operations, the late penalty will accrue at the same rate. The maximum late penalty that will be assessed is five thousand dollars per reporting year. More penalties may be assessed if the department must make a bond claim to collect the amounts due. See subsection (3) of this section.

(3) **Failure to file.**

~~(a) If (a licensee) you fail((s)) to pay ((its)) the annual assessment fee or file the annual reports by the due date the director may file a claim against ((the licensee's)) your surety bond for failing to comply with the Consumer Loan Act. The department may make a claim for the late penalties under subsection (2) of this section and the greater of:~~

~~((a)) (i) The assessment fee paid the previous year;~~

~~((b)) (ii) The average annual assessment fee you paid in the previous two years; or~~

~~((c)) (iii) Fifteen hundred dollars.~~

~~((4) **Annual reporting of residential mortgage loan data.** On an annual basis the company licensee must provide information on the characteristics of residential mortgage loan originations in an electronic format prescribed by the director.) (b) Your license will expire if you fail to pay the annual assessment fee and file the annual reports by the due date. The department will provide you with notice of the pending expiration and you can stop the pending expiration by paying the assessment fee and providing the reports. If the department does not receive the assessment fee and reports within fifteen days from the date the department provides you with the notice, your license will expire. The notice warning you of the pending expiration is presumed received by you three days after the department mails it via first class mail to the last address of record with the department. You are responsible for updating your address of record with the department. Notice of the pending expiration is valid even if it is sent to an address of record that is incorrect due to your failure to provide an updated address.~~

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-431 What are my quarterly call report filing requirements if I make, broker, or service residential mortgage loans? ~~((When the NMLSR develops the call report functionality))~~ You ~~((will be))~~ are required to file accurate and complete call reports on the dates and in a form prescribed by ~~((NMLSR))~~ the NMLS (see RCW 31.04.277).

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-440 How do I calculate my annual assessment for activity in Washington? (1)(a) **Calculation of the annual assessment for loans made, brokered or**

purchased. The annual assessment is based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.

(b) **Calculation of the annual assessment for residential mortgage loans serviced.** The industry will be assessed the cost to DFI of regulating the industry. Costs include, but are not limited to, the cost of employee compensation, travel expenses, and goods and services expended in regulating the industry. Each licensee will pay a percentage of the regulatory cost based on the total annual volume of Washington residential mortgage loans serviced on January 1st. The minimum amount assessed will be five hundred dollars and the maximum amount assessed to any ((individual)) licensee will not exceed ((twenty-five)) one hundred thousand dollars.

(2) **All loans counted in assessment calculation.** The "adjusted total loan value" is the sum of:

(a) The principal loan balance on Washington loans in your loan portfolio on December 31 of the prior year; plus

(b) The total principal loan amount of all ~~((first and junior lien))~~ Washington loans ~~((both under and over twelve percent interest,))~~ you made, brokered, or purchased during the assessment year.

(3) **Reverse mortgages.** Each reporting year, you will report and be assessed on:

(a) The dollar amount of advances made; and

(b) The dollar amount of accrued interest.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-460 Must I file my annual reports even if I go out of business during the year? (1)~~((A licensee that ceases))~~ If you cease operation~~((s))~~ during the year, you must file the annual reports and pay the annual assessment required in WAC 208-620-430 within thirty days of closure.

(2) Failure to file within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action. See also WAC 208-620-499.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-490 What are my reporting responsibilities when something of significance happens to my business? (1) **Prior notification required.** You must amend your ~~((NMLSR))~~ NMLS record at least ten days prior to a change of your:

(a) Principal place of business or any of branch offices;

(b) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(c) Name and mailing address of your registered agent if you are located outside the state;

(d) Legal or trade name; or

(e) A change of ownership control of ten percent or more; or

(f) A closure or surrender of the license. See WAC 208-620-499.

(2) **Post notification within ten days.** You must amend your ((NMLSR)) NMLS record within ten days after an occurrence of any of the following:

(a) Change in mailing address, telephone number, fax number, or e-mail address;

(b) Cancellation or expiration of your Washington state master business license;

(c) Change in standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(d) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340. See WAC 208-620-360;

(e) Receipt of notification of cancellation of your surety bond;

(f) Termination of sponsorship of loan originator; or

(g) Receipt of notification of a claim against your bond.

(3) **Post notification within twenty days.** You must amend your ((NMLSR)) NMLS record within twenty days after the occurrence of any of the following developments:

(a) Receipt of notification of license revocation procedures against your license in any state;

(b) The filing of a felony indictment or information related to lending or brokering activities against you or any officer, board director, or principal or an indictment or information involving dishonesty against you or any officer, board director, or principal;

(c) Conviction of you or any officer, director, or principal for a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(d) The filing of any material litigation against the company.

(4) See WAC 208-620-499 for the requirements when you close your business.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-499 What are my reporting requirements if I want to close my company or surrender my license? If you cease doing business in Washington you must do the following:

(1) Submit a surrender request through the ((NMLSR)) NMLS within ten days of closing the company or surrendering the license; and

(2) File the final closure form, annual reports, worksheet, and submit any fees owed as required in WAC 208-620-430. Failure to file these reports within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action.

(3) If your license has expired or you are otherwise locked out of the NMLS data base, you must provide the documents described in subsection (2) of this section directly to the department.

Any Washington loans in your portfolio and activity under the act remain subject to the director's authority including investigation and examination, and the fees associated with those activities.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-500 What are my reporting requirements if I want to close one or more of my branch offices? If you close a branch office, you must submit a surrender request through the ((NMLSR)) NMLS at least ten days prior to the branch closing.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-510 What are my disclosure obligations to consumers? (1) Content requirements. In addition to complying with the applicable disclosure requirements in the federal and state statutes referred to in WAC 208-620-505 if the loan will be secured by a lien on real property, you must also provide the borrower or potential borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three business days of receipt of a loan application.

(2) **Proof of delivery.** The licensee must be able to prove that the disclosures under subsection (1) of this section were provided within the required time frames. For purposes of determining the timeliness of the required early disclosures, the department may use the date of the credit report or may use the date of an application received from a broker. In most cases, proof of mailing is sufficient evidence of delivery. If the licensee has an established system of disclosure tracking that includes a disclosure and correspondence log, checklists, and a reasonable system for determining if a borrower did receive the documents, the licensee will be presumed to be in compliance.

(3) **Residential mortgage loans—Rate locks.** Within three business days, including Saturdays, of receipt of a residential mortgage loan application you must provide the borrower with the following disclosure about the interest rate:

(a) If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the RESPA good faith estimate is considered compliance.

(b) If a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, if guaranteed by a company other than your company, you must provide the name of that company, whether and under what conditions any rate lock fees are refundable to the borrower, and:

(i) The number of days in the rate lock period;

(ii) The expiration date of the rate lock;

(iii) The rate of interest locked;

(iv) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and

(v) Any other terms of the rate lock agreement.

(c) If the borrower wants to lock the rate after the initial disclosure, you must provide a new rate lock agreement within three business days of the rate lock date that includes the items from (b) of this subsection.

(d) You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209 (~~with "P.O.C. (borrower)" recorded to the left of the borrower column~~).

(4) Residential mortgage loans—Loans brokered to other creditors. Within three business days following receipt of a residential mortgage loan application you must provide to each borrower:

(a) If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the RESPA good faith estimate is in compliance with subsection (3)(a) of this section~~((-))~~;

(b) An estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty;

(c) A good faith estimate that conforms with RESPA, Regulation X, 12 C.F.R. 1024;

(d) A truth in lending disclosure that conforms with TILA, Regulation Z, 12 C.F.R. 1026~~((-))~~;

(e) A rate lock disclosure containing the following:

(i) If a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, the name of the company providing the guarantee, whether and under what conditions any rate lock fees are refundable to the borrower, and:

(A) The number of days in the rate lock period;

(B) The expiration date of the rate lock;

(C) The rate of interest locked;

(D) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and

(E) Any other terms of the rate lock agreement.

(ii) If the borrower wants to lock the rate after the initial disclosure, you must provide a new rate lock agreement within three business days of the rate lock date. The rate lock agreement must include the items from ~~((this subsection (4))~~(e) of this subsection.

(f) You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209 (~~with "P.O.C. (borrower)" recorded to the left of the borrower column~~).

(5) Residential mortgage loans—Shared appreciation mortgages (SAM) or mortgages with shared appreciation provisions. Within three business days following receipt of a loan application for a shared appreciation mortgage, or a mortgage with a shared appreciation provision, in addition to the disclosures required by federal law or by this chapter, you must provide each borrower with a written disclosure containing at a minimum the following:

(a) The percentage of shared equity or shared appreciation you will receive (or a formula for determining it);

(b) The value the borrower will receive for sharing his or her equity or appreciation;

(c) The conditions that will trigger the borrower's duty to pay;

(d) The conditions that may cause the lender to terminate the mortgage or shared appreciation provision early;

(e) The procedure for including qualifying major home improvements in the home's basis (if any);

(f) Whether a prepayment penalty applies or other conditions applicable, if a borrower wishes to repay the loan early, including but not limited to, any date certain after which the borrower can repay the loan by paying back the lender's funds plus accrued equity; and

(g) The date on which the SAM terminates and the equity or appreciation becomes payable if no triggering event occurs.

(6) Loan modifications. You must immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

(7) Each licensee must maintain in its files sufficient information to show compliance with state and federal law.

NEW SECTION

WAC 208-620-513 In a residential mortgage loan transaction, what are my disclosure obligations to the company that brokered the loan to me? You must provide copies of any disclosures you provided to the borrower, following the initial disclosures, within ten business days of providing the disclosures to the borrower.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-520 How long must I maintain my records under the Consumer Loan Act? What are the records I must maintain?

(1) **General records.** Each licensee must maintain the books, accounts, records, papers, documents, files, and other information relevant to a loan or servicing of a loan for a minimum of ~~((twenty-five months))~~ **three years**, or the period of time required by federal law, whichever is longer, after making the final entry on that loan at a licensed location.

(2) **Advertising records.** These records include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile or computer network.

(3) **Other specific records.** The records required under subsection (1) of this section include, but are not limited to:

(a) All loan agreements or notes and all addendums, riders, or other documents that supplement the final loan agreements;

(b) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(c) The initial rate sheet or other supporting rate information;

(d) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(e) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(f) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures include, but are not limited to: The good faith

estimate, truth in lending disclosures, Equal Credit Opportunity Act disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

(g) Documents and records of compensation paid to employees and independent contractors;

(h) An accounting of all funds received in connection with loans with supporting data;

(i) Settlement statements (the final HUD-1 or HUD-1A);

(j) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(k) Records of any fees refunded to applicants for loans that did not close;

(l) All file correspondence and logs;

(m) All mortgage broker contracts with lenders and all other correspondence with the lenders; and

(n) All documents used to support the underwriting approval.

(4) Loan servicing documents. See subsection (1) of this section.

(5) Abandoned records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, or proper destruction of the records.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-530 Can I maintain my records electronically? Yes. (1) ~~((Records must be available. The records required to be maintained by RCW 31.04.145 may be maintained by means of))~~ You may maintain records electronically if you also maintain the electronic display equipment ((if such equipment is made)) and make it available upon request to the director or his or her representatives for purposes of examination or investigation.

(2) The hardware or software needed to display the record must also be maintained during the required retention period under WAC 208-620-520(1).

(3) ~~((Hard copy upon request.))~~ You must provide ~~((the))~~ records in hard copy upon request of the director.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-540 Do I need to account separately for payments from borrowers for third party service providers? ~~((A licensee))~~ Yes. You must separately account for all deposits and disbursements made by or for borrowers for third party service providers. ~~((The funds may not be used for the benefit of the licensee or))~~ You must not use those funds for your benefit or for the benefit of any person not entitled to such benefit.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-545 Must I provide a written ((fee)) agreement when I provide third-party residential mortgage loan modification services? Yes. You must

provide a written ~~((fee))~~ agreement as prescribed by the director when providing residential mortgage modification services. You must provide a copy of the signed ~~((fee))~~ agreement to the consumer and you must keep a copy as part of your books and records.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-550 What business practices are prohibited? In addition to RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:

(1) Failure to provide the exact pay-off amount as of a certain date within five business days after being requested in writing to do so by a borrower of record or their authorized representative;

(2) Failure to record a borrower's payment as received on the day it is delivered to any of the licensee's locations during its regular working hours;

(3) Collecting more than forty-five days of prepaid interest at the time of loan closing;

(4) Soliciting or entering into a contract with a borrower that provides in substance that the licensee may earn a fee or commission through its "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

~~((4))~~ (5) Engaging in unfair or deceptive advertising practices. Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace. See also WAC 208-620-630;

~~((5))~~ (6) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department;

~~((6))~~ (7) Making any payment, directly or indirectly, or withholding or threatening to withhold any payment, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

~~((7))~~ (8) Leaving blanks on a document that is signed by the borrower or providing the borrower with documents with blanks;

~~((8))~~ (9) Failing to clearly disclose to a borrower whether the payment advertised or offered for a real estate loan includes amounts for taxes, insurance or other products sold to the borrower;

~~((9))~~ (10) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower, unless mail has been previously returned as undeliverable from the address, in order to verify that the asset is not otherwise insured;

~~((10))~~ (11) Willfully filing a lien on property without a legal basis to do so;

~~((11))~~ (12) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;

~~((12))~~ (13) Failing to reconvey title to collateral, if any, within thirty business days when the loan is paid in full unless conditions exist that make compliance unreasonable;

~~((13))~~ (14) Intentionally delaying the closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower;

~~((14))~~ (15) Steering a borrower to a residential mortgage loan with less favorable terms than they qualify for in order to increase the compensation paid to the company or mortgage loan originator. An example is counseling, or directing a borrower to accept a residential mortgage loan product with a risk grade less favorable than the risk grade the borrower would qualify for based on the licensee or other regulated person's then current underwriting guidelines, prudently applied, considering the information available to the licensee or other regulated person, including the information provided by the borrower;

~~((15))~~ (16) Failing to indicate on all residential mortgage loan applications the company's unique identifier, the loan originator's unique identifier, and the date the application was taken;

~~((16))~~ (17) Receiving compensation or anything of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter;

~~((17))~~ (18) Receiving compensation for making the loan and for brokering the loan in the same transaction.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-551 Residential mortgage loan servicers—What business practices are prohibited? (1) In addition to being subject to RCW 31.04.027, you are prohibited from requiring or encouraging a borrower to:

(a) Waive his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(b) Waive his or her right to contest a future foreclosure;

(c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(e) Cease communication with the lender or investor.

(2) As to force placed insurance you are prohibited from:

(a) Purchasing insurance on a property secured by a loan you service without providing two prior written notices to the homeowner's last known address seeking verification of existing insurance coverage. The notices must state:

(i) How the homeowner provides proof there is insurance coverage in place;

(ii) That without proof of insurance the servicer may obtain coverage at the homeowner's expense, that such coverage may only protect the mortgage holder, and that the

cost of the coverage may be higher than that the homeowner may be able to obtain privately;

(iii) That the homeowner may request the servicer to set up an escrow account to advance insurance payments and that upon establishment of an escrow account the servicer may charge the borrower the amount of the insurance payments advanced on the borrower's behalf respecting the mortgaged property including a cushion amount (see WAC 208-620-900 (4)(b));

(iv) The second written notice must be sent thirty days after the first written notice.

(b) Failing to advance payments to a property insurer regardless of the homeowner making a payment to the servicer when the homeowner has an escrow account for the payment of insurance.

(c) Purchasing force placed insurance at a price that is not commercially reasonable.

~~((d) Collecting private mortgage insurance beyond the date for which private mortgage insurance is no longer required.))~~ You must terminate force placed insurance within thirty days of receiving evidence from the homeowner of the existence of coverage. You must refund to the homeowner all premiums for force placed insurance collected during any period of time for which the homeowner's private insurance was in place.

(3) You are additionally prohibited from:

(a) Knowingly misapplying or recklessly applying loan payments to the outstanding balance of a loan.

(b) Knowingly misapplying or recklessly applying payments to escrow accounts.

(c) Charging excessive or unreasonable fees to provide loan payoff information.

(d) Knowingly or recklessly providing inaccurate information to a credit bureau, thereby harming a borrower's creditworthiness.

(e) Knowingly or recklessly facilitating the illegal foreclosure of real property collateral.

(4) You are prohibited from referring a delinquent mortgage to foreclosure if you have received the homeowner's loan modification application and you have not evaluated the homeowner for all available loan modifications.

(5) You are prohibited from using any funds in a suspense account to pay your own fees for servicing.

(6) You are prohibited from pursuing any collection activities while a complete loan modification application is being reviewed or while the borrower is making payments pursuant to a trial or permanent modification. This prohibition includes activities conducted by others on your behalf.

(7) You are prohibited from collecting private mortgage insurance beyond the date for which private mortgage insurance is no longer required.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-552 Third-party residential loan modification service providers—What business practices

are prohibited? In addition to RCW 31.04.027, you are prohibited from:

- (1) Collecting an advance fee.
- (2) Charging total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided when providing residential mortgage loan modification services.
- (3) Failing to provide a written ((fee)) agreement as prescribed by the director when providing residential mortgage modification services. See also WAC 208-620-545.
- (4) As a condition to providing loan modification services requiring or encouraging a borrower to:
 - (a) Waive his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;
 - (b) Waive his or her right to contest a future foreclosure;
 - (c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;
 - (d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or
 - (e) Cease communication with the lender, investor, or loan servicer or stop or delay making regularly scheduled payments on an existing mortgage unless a mortgage loan modification is completely negotiated and executed with the lender or investor and the modification agreement itself provides for a cessation or delay in making regularly scheduled payments; or
 - (f) Enter into any contract or agreement to purchase a borrower's property.
- (5) You are further prohibited from failing in a timely manner to:
 - (a) Communicate with or on behalf of the borrower;
 - (b) Act on any reasonable request from or take any reasonable action on behalf of a borrower.
- (6) Engaging in false or misleading advertising. In addition to WAC 208-620-630, examples of false or misleading advertising include:
 - (a) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower.
 - (b) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists.
 - (7) Leading a borrower to believe that the borrower's credit record will not be negatively affected by a mortgage loan modification when the licensee has reason to believe that the borrower's credit record may be negatively affected by the mortgage loan modification.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-555 What fees are allowed and when must they be collected from the borrower when making loans under the Consumer Loan Act? (1) Residential mortgage loans. This subsection does not apply to first lien residential mortgage loans originated by lenders who are creditors as defined in the Truth in Lending Act, 15 U.S.C. 1601 and Regulation Z, 12 C.F.R. 1026.

(a) Origination fees. ((On first lien mortgage loans, licensees that are not "creditors" under Depository Institutions Deregulatory and Monetary Control Act may)) You may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan. ((On junior lien mortgage loans, all licensees may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.))

(b) Brokering fees. When agreed to in writing by the borrower, a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee.

(c) Third-party fees. The only third-party fee you may collect from the borrower before a loan is closed is the appraisal fee. You may collect from the borrower reimbursement for fees you actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender. You must provide a copy of the appraisal to the borrower even if you do not receive reimbursement for the cost of the appraisal.

(2) Nonmortgage loans ((origination fees. All licensees)). You may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(3) ((Mortgage broker fees. When agreed to in writing by the borrower, a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee.

(4)) Third-party fees. This subsection applies to residential and nonresidential lending.

(a) When agreed to in writing by the borrower, ((the payment of)) you may collect from the borrower reimbursement for fees you paid to ((third parties other than the licensee who provide)) third-party service providers who provided goods or services ((to the licensee)) in connection with the preparation of the borrower's loan((-including)). Such third-party service providers include, but are not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies((-when such fees are actually paid by the licensee to a third party for such services or purposes and)). The actual cost of such fees may ((include such fees)) be included in the amount of the loan.

~~(b) ((However, no charge may be collected unless a loan is made, except for reasonable fees actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender.~~

~~(e)) You must not charge or collect any fee to be paid to a third-party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid. ((You may charge the borrower for costs of allowable third-party services as provided by RCW 31.04.105(3) at the time of application for the loan or at any time thereafter except as prohibited.~~

~~(5) Rate lock fees. When agreed to in writing by the borrower.))~~

~~(c) You may use a borrower's credit card information for payment of the credit report.~~

~~(d) You may charge a nonrefundable rate lock fee when agreed to in writing by the borrower. The fee may be retained if the borrower breaks the rate lock agreement and you are making the loan, if you have paid a third party for the interest rate lock, or if you have otherwise made a financial commitment to protect the rate during the lock period. The fee may not be retained if the borrower rescinds the loan under Regulation Z, or if the borrower does not qualify for a loan. See also WAC 208-620-510(3).~~

~~((6) Underwriting fees. On first lien mortgages made by licensees that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act, an underwriting fee.~~

~~(7)) (4) Late payment penalties. Not more than ten percent of any installment payment delinquent ten days or more.~~

~~((8)) (5) Attorneys' fees. Reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee.~~

~~((9)) (6) The fees allowed in subsection((s(5) and (6))) (3)(d) of this section must be included in the loan origination fee calculations described in subsections (1) and (2) of this section.~~

NEW SECTION

WAC 208-620-556 What fees must I refund to the borrower if I provide services subject to the act but do not have a license? (1) With residential mortgage loans you must refund any nonthird-party fees (not interest) that inured to your benefit.

(2) With nonresidential mortgage loans you must refund interest and nonthird-party fees that inured to your benefit.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-560 What fees are not allowed when making loans under the Consumer Loan Act? This section does not apply to first lien residential mortgage loans originated by lenders who are creditors as defined in the

Truth in Lending Act, 15 U.S.C. 1601 and Regulation Z, 12 C.F.R. 1026.

(1) **Filing fees.** You must not charge or collect any funds from the borrower for the cost of filing, as defined in WAC 208-620-010, or for any other fees paid or to be paid to public officials, unless such charges are paid or are to be paid within one hundred eighty days by the licensee to public officials or other third parties for such filing. Any fee you collect for releasing or reconveying the security for the obligation must be paid to an unrelated third party unless you can demonstrate activities you conducted to facilitate the reconveyance.

(2) **Dishonored check fees.** You may charge or collect twenty-five dollars or the actual amount charged by the financial institution for a check, draft, ACH, or other transfer if returned unpaid or denied by the financial institution drawn upon. Only one fee may be collected with respect to a particular check, draft, ACH, or other transfer even if it has been returned or denied more than once.

(3) **Credit and noncredit insurance.**

(a) Except for the transaction described in (b) of this subsection, you may include the premiums for credit and noncredit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing and the borrower's confirmation is obtained by signature on the disclosure form.

(b) You must not sell single premium credit insurance to a borrower at the inception of coverage unless the sale is in compliance with chapter 48.18 RCW.

(4) **Fees on existing loans.** Unless otherwise preempted under the Depository Institutions Deregulatory and Monetary Control Act, if you make a new loan or increases a credit line within one hundred twenty days after originating a previous loan or credit line to the same borrower, the origination fee on the new loan or increased credit line must be limited as follows:

(a) You must only charge an origination fee on that part of the new loan not used to pay the amount due on the previous loan;

(b) You must only charge an origination fee on the difference between the amount of the existing credit line and the increased credit line;

(c) The limits in (a) and (b) of this subsection do not apply if you refund the origination fee on the existing loan or credit line;

(d) The limits in (a) and (b) of this subsection do not apply if you can demonstrate a net tangible benefit to the borrower for the new loan or credit line increase. For purposes of this subsection a net tangible benefit may be demonstrated by a lower monthly payment, or a decrease in the interest rate. Any net tangible benefit analysis must include the fees or charges for the new loan or credit line increase.

(5) **Discount points.**

(a) You must not collect a fee from the borrower for lowering the interest rate unless the interest rate is actually reduced.

(b) Any applicable program add-on fees must be disclosed as part of the discount points.

(6) **Administrative fees.** On nonmortgages, junior lien and first lien mortgages by licensees who are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act, you must not collect a document preparation fee, a processing fee, an administrative fee, an application fee, or a courier fee unless paid to an unrelated third party and agreed to in writing in advance by the borrower.

(7) **Underwriting fees.** ~~((On nonmortgage and junior lien mortgage loans))~~ You must not collect an underwriting fee.

(8) **Prepayment penalty.** You must not collect a prepayment penalty on the following loans:

- (a) Any nonmortgage loan;
- (b) Any adjustable rate residential mortgage loan, except as allowed by RCW 19.144.040;
- (c) Any junior lien mortgage loan; or
- (d) Any loan you made if you are not a "creditor" under DIDMCA.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-565 What fees am I allowed to charge or receive when acting as a residential mortgage loan broker under the act? (1) A broker's fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(2) ~~((A yield spread premium (YSP) if available. You must disclose the YSP as a dollar amount credited to the borrower on the good faith estimate and as applicable on the settlement statement.~~

~~((3))~~ A processing fee when paid to an independent third-party processor.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-567 What fees can I charge when servicing residential mortgage loans under the act? (1) You may charge servicing fees authorized by the loan documents, by ~~((law))~~ the act, or by the borrower. Examples include, but are not limited to, late fees as authorized by the loan documents, insufficient check fees as authorized by ~~((law))~~ the loan documents or as allowed under WAC 208-620-560(2), and wire transfer fees for wire transfers requested by the borrower.

(2) You may only charge a fee for a default related service that is usual and customary or reasonable in light of the service provided.

(3) You may not charge fees paid to third parties in excess of the fee charged by the third party.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-570 What are the grounds for suspending or revoking a consumer loan company license? The director may suspend or revoke a license if the

licensee, or any principal, officer, or board director of the licensee:

(1) **Failing to pay.** Fails to pay a fee due the department;

(2) **Injunction or administrative action.** Is or has been subject to an injunction or a civil or administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act or similar laws of this state or another state;

(3) **Substantial unpaid debt.** Has accumulated substantial unpaid debt;

(4) **Violation of lending laws.** Has been found in violation of another state's lending laws, securities laws, real estate laws or insurance laws resulting in substantial license limitations or significant fines, restitution, or both;

(5) **Criminal charges.** The person is the subject of a criminal felony charge, or a criminal misdemeanor charge involving dishonesty or financial misconduct;

(6) **Bond canceled.** Has had its surety bond canceled or revoked for cause;

(7) **Deterioration of business.** Has allowed the licensed consumer loan business to deteriorate into a condition which would result in denial of a new application for a license;

(8) **Aiding unlicensed practice.** Has aided or abetted an unlicensed person to practice in violation of the Consumer Loan Act or the Mortgage Broker Practices Act;

(9) **Incompetence resulting in injury.** Has demonstrated incompetence or negligence that results in financial harm to a person or that creates an unreasonable risk that a person may be harmed;

(10) **Insolvency.** Is insolvent in the sense that the value of the licensee's liabilities exceeds its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature;

(11) **Failure to comply.** Has failed to comply with an order, directive, subpoena, or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee;

(12) **Misrepresentation or fraud.** Has performed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(13) **Failure to cooperate.** Has failed to cooperate with the director, or his or her designee, including without limitation by:

(a) Not furnishing records requested by the director for purposes of conducting a lawful investigation for disciplinary actions or denial, suspension, or revocation of a license; or

(b) Not furnishing records requested by the director for purposes of conducting a lawful investigation into a complaint against the licensee filed with the department, or providing a full and complete written explanation of the circumstances of the complaint upon request by the director;

(14) **Interference with investigation.** Has interfered with a lawful investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action((-));

(15) Reserved.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-580 As a licensee, will my business be subject to periodic examinations? (~~Each consumer loan company~~) (1) You can expect to be visited periodically by the department's examiners. The director or designee may examine, wherever located, the records used in the business of every licensee and of every person who is engaged in the consumer loan business, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For that purpose the director or designee shall have free access, at reasonable times during business hours, to the offices and places of business and all books and records of the business.

(2) You must provide information on the characteristics of residential mortgage loan originations in an electronic format prescribed by the director, as directed.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-590 How much will I be charged for my periodic examinations and when will the payment be due? (1) (~~Hourly charge for examinations. A licensee~~) You will be charged \$69.01 per hour for regular and special examinations of (~~the licensee's~~) your records.

(2) (~~A licensee that makes loans pursuant to the act from out of state locations, maintains records outside the state or services loans pursuant to the act outside the state~~) If the examination occurs outside of Washington, you will be charged the hourly rate plus travel costs.

(3) (~~Billing for the examinations. The director will submit an invoice for the charges following the completion of any applicable examination. The charges must be paid~~) You must pay examination costs within thirty days after receiving the invoice (~~is submitted to the licensee~~).

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-610 What authority does the department have to investigate violations of the Consumer Loan Act? (1) The director may enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter.

(2) The director may impose fines of up to one hundred dollars per day, per violation, upon the licensee, its employees or loan originators, or other persons subject to this chapter for any violation of this chapter or for failure to comply with any order or subpoena issued by the director under this chapter.

(3) Each day's continuance of the violation is a separate and distinct offense.

(4) **Testimony.** The director or designees may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing.

(5) **Production of records or copies.** The director or designee may require the production of books, accounts,

papers, records, files, and any other information deemed relevant to the inquiry. The director may require the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, records, files, or other information.

(6) **Subpoena authority.** If a licensee or person does not attend and testify, or does not produce the requested books, accounts, papers, records, files, or other information, then the director or designated persons may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, records, files, or other information.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-620 How do I have to identify my business when I advertise? You must identify the business using your Washington consumer loan license name. You may also use an approved DBA name if you include the main office license name and license number (~~(((CLA-123456)))~~). For use of URL addresses and web pages, see WAC 208-620-621 and 208-620-622.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-621 May I advertise over the internet using a URL address that is not my licensed business name? Yes, provided that any URL address you advertise takes the user directly to your main or home web page. If you want the user to be directed to a different main or home web page, the URL address must contain your license name in addition to any other names or words in the URL address. URL addresses may be used as DBA names upon request to and approval from DFI. See also WAC 208-620-620 and 208-620-622.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-622 When I advertise using the internet or any electronic form (including, but not limited to, text messages), is there specific content my web pages must contain? Yes. You must provide the following language, in addition to any other, on your web pages or in any medium where you hold yourself out as being able to provide the services:

(1) Main or home page.

(a) The company's license name and NMLS unique identifier must be displayed on the licensee's main or home web page.

(b) If mortgage loan originators are named, their (~~NMLS~~) license numbers must closely follow the names.

(c) The main or home page must also contain a link to the NMLS consumer access web site page for the company.

(2) Branch office web page - No DBA. Comply with subsection (1) of this section.

(3) Main or branch office web page - DBA. If the company uses a DBA on a web page the web page must also contain the main office license name, license number, be in compliance with subsection (1)(b) of this section, and the web page must contain a link to the NMLS consumer access web site page for the company.

(4) Mortgage loan originator web page. If a loan originator maintains a separate home or main page, the sponsoring licensee's name and license number must also appear on the web page. The web page must also contain the loan originator's ((NMLS)) license number and a link to the NMLS consumer access web page for the company. See the definition of license number for examples of ways to display your license number.

(5) Compliance with other laws. Web site content used to solicit Washington consumers must comply with all relevant state and federal statutes for specific services and products advertised on the web site.

(6) Oversight. The company is responsible for web site content displayed on all company web pages used to solicit Washington consumers including main, branch, and mortgage loan originator web pages.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-630 What are some of the advertising restrictions I must comply with? (1) Licensees are prohibited from advertising with envelopes or stationery, or by using images in an electronic format that contain an official-looking emblem designed to resemble a government mailing or other method of communication that suggest an affiliation that does not exist. Some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws include, but are not limited to:

(a) Characterizing products as "government loan programs," "government-supported loans," or other words that may mislead a consumer into believing that the government is guaranteeing, endorsing, or supporting the advertised loan product. Using the words "FHA loan," "VA loan," or words for other products that are in fact endorsed or sponsored by a federal, state, or local government entity is allowed.

(b) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(c) Envelopes or electronic communications designed to resemble official government ((mailings)) communications, such as IRS or U.S. Treasury envelopes, or other government mailers or electronic communications.

(d) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the ((mailing)) communication.

(e) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(f) Any suggestion or representation that the licensee is, or is affiliated with, a state or federal agency, municipality,

bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent.

(2) **When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** The required disclosures in your advertisement must be reasonably understandable. Consumers must be able to see, read, or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. This requirement applies to all mandatory disclosures. The presentation of the disclosure of the APR must be at least equivalent to the presentation of any other rates disclosed in the advertisement.

(3) **The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?** Whenever a specific interest rate is advertised, the licensee must retain a copy of supporting rate information, and the APR calculation for the advertised interest rate.

(4) **Must I quote the annual percentage rate when discussing rates with a borrower?** Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 C.F.R., part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(5) **May a licensee advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 31.04.027.

(6) **May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

(7) **If I advertise using a borrower's current loan information, what must I disclose about that information?** When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with the name of the source of the information.

(8) **Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the

purportedly "free" item through the negotiation process. This is a violation of RCW 31.04.027 (2), (7), and (12). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations*, available at <http://www.ftc.gov/bcp/guides/free.htm>, 16 C.F.R. § 251.1(g) (2003).

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-700 Mortgage loan originator—General. (1) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location. The licensed location can be the main office, or any licensed branch.

(2) **May I transfer loan files to another licensed entity?** No. Loan files are the property and responsibility of the company named on the loan application. Only the borrower may submit a written request to the company to transmit the borrower's selected information to another entity. The company must transmit the information within five business days after receiving the borrower's written request.

(3) **May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING."

(4) **As a loan originator, may I be paid directly by the borrower for my services?** No. You may not be paid any compensation or fees directly by the borrower.

(5) **May I charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. You may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, or brokering of a residential mortgage loan.

(6) **May I bring a lawsuit against a borrower for the collection of compensation?** No. Only the company may bring collection actions against borrowers to collect compensation.

(7) **May I work as a licensed loan originator for a consumer loan company located out of the state?** Yes. You may originate loans for any company you are sponsored by as long as the out-of-state company licenses a branch in Washington for you to work from. See subsection (1) of this section.

(8) **May I hire employees or independent contractors to assist me?** No. Only the consumer loan company can hire employees or independent contractors to work for the company. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel and loan processors and underwriters whose work is related to the consumer loan company's activities.

(9) **Do loan processors and underwriters have to be licensed as loan originators?** W-2 employee loan processors and underwriters are not required to have a loan originator license provided they work under the supervision and instruction of ((~~an~~) an individual licensed or exempt ((~~consumer loan company~~)) from licensing and do not hold themselves out as able to conduct the activities of a loan originator.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-710 Mortgage loan originator—Licensing. (1) **Must I have a license to act as a mortgage loan originator for a consumer loan company?** Yes. You must not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this act. You must register with and maintain a valid unique identifier issued by the NMLS.

(2) **How do I apply for a mortgage loan originator license?** Your application consists of filing an online application through the NMLS and providing Washington specific requirements directly to DFI. You must pay an application fee and filing fee through the NMLS. In addition to supplying the application information, both you and the company intending to sponsor you must be in good standing with the department.

(3) **What are the eligibility requirements to become a licensed mortgage loan originator?**

(a) Be eighteen years or older.

(b) ((~~Have a high school diploma, an equivalent to a high school diploma, or three years work experience in the industry.~~

(i) ~~The work experience must be in one or more of the following, within the last five years:~~

(A) ~~As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or~~

(B) ~~As a mortgage banker, responsible individual, or manager of a mortgage banking business; or~~

(C) ~~As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or~~

(D) ~~As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or~~

(E) ~~As a manager or supervisor of mortgage loan originators; or~~

(F) ~~As a mortgage processor, underwriter, or quality control professional; or~~

(G) ~~As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of~~

mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) ~~W 2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or~~

(B) ~~1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or~~

(C) ~~Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company.~~

(iii) In addition to supplying the application information, both you and the company intending to sponsor you must be in good standing with the department.

(e)) **Demonstrate financial responsibility.** For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Your credit report, current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or judgments or other government liens or filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years. Specifically, you are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of application.

~~((d) Complete twenty hours of prelicensing education from an NMLS approved provider. See WAC 208-620-720.~~

(e)) (c) **Pass a licensing test.** You must take and pass the NMLS test((s)) that ((assess)) assesses your knowledge of the mortgage business and related regulations at the federal and state level. See WAC 208-620-725.

((f)) (d) **Complete prelicensing education.** You must complete prelicensing education before submitting an application. See WAC 208-620-720.

~~((g) **Submit an application.** You must complete an application through the NMLS and provide information directly to DFI. You must pay application and filing fees to the NMLS.~~

(h)) (e) **Prove your identity.** You must provide information to prove your identity.

((i)) (f) **Provide a bond.**

(i) If you are employed by a company that is exempt from licensing, or uses a bond substitute, you must obtain and maintain an individual bond based on the volume of your mortgage loan origination activity. By March 1st of each year, you must determine your required bond amount and provide DFI with proof of having an adequate bond. The bond must be in the following amount:

- 1. Zero to twenty million in loans originated: \$20,000
- 2. Twenty million to thirty million: \$30,000
- 3. Thirty million to forty million: \$40,000
- 4. Forty million and above: \$50,000

(ii) If you are employed by a company that is exempt and is a nonprofit housing organization making loans under housing programs that are funded in whole or in part by federal or state programs with the primary purpose of assisting low-income borrowers with purchasing or repairing housing or for the development of housing for low-income Washington state residents, the bond must be in the following amounts:

- 1. Zero to fifty million in loans originated: \$10,000
- 2. Fifty +: \$20,000

~~((j)) (g) File a quarterly call report. Reserved.~~

(4) **In addition to reviewing my application, what else will the department consider to determine if I qualify for a mortgage loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.** You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked.

(c) **Criminal history.** You are not eligible for a loan originator license if you have been convicted of, or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(i) During the seven-year period preceding the date of the application for licensing and registration; or

(ii) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(5) **What will happen if my loan originator license application is incomplete?** After submitting your online application through the NMLS and filing the required information and documentation with the department, the department will notify you of any application deficiencies.

(6) **How do I withdraw my application for a loan originator license?**

(a) Once you have submitted the online application through NMLS you may withdraw the application through NMLS. You will not receive a refund of the NMLS filing fee or the amount the department uses to investigate your license application.

(b) The withdrawal of your license application will not affect any license suspension or revocation proceedings in progress at the time you withdraw your application through the NMLS.

(7) **When will the department consider my loan originator license application to be abandoned?** If you do

not respond within fifteen days and as directed by the department, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

(8) **What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** See WAC 208-620-615.

(9) **May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

(10) **How do I change information on my loan originator license?** You must submit an amendment to your license through the NMLS. You may be charged a fee.

(11) **What is an inactive loan originator license?** When a licensed loan originator is not sponsored by a licensed or exempt entity, the license is inactive. When a person holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator.

(12) **When my loan originator license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

(13) **When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

(14) **May I originate loans from a web site when my license is inactive?** No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive.

(15) **How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the NMLS. The department will notify you and the sponsoring company if approved.

(16) **When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must meet the minimum requirements to obtain a license under the S.A.F.E. Act to receive an interim license.

(17) **When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

(18) **How do I renew my loan originator license?**

(a) Before the license expiration date you must renew your license through the NMLS. Renewal consists of:

(i) Paying the annual assessment fee; and

(ii) Meeting the continuing education requirement. You will not have a continuing education requirement in the year

in which you complete the core twenty hours of prelicensing education. See WAC 208-620-730.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

(19) **If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal on or before the last day of February each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (17) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp by March 1st. If you fail to comply with the renewal request requirements you must apply for a new license.

(20) **If I let my loan originator license expire and then apply for a new loan originator license (~~within one year of the expiration~~), must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

(21) **May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

(22) **May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires through the NMLS.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omissions occurring before the license surrender.

(23) **Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

(24) ~~(If I operate as a loan originator on the internet, must I display my license number on my web site? Yes. You must display your license number and license name. You must also display the license number and name as it appears on the license of the company you represent, on the web site.~~

~~(25))~~ **Must I include my loan originator license number on any documents?** You must include your license number (~~immediately~~) closely following your name on solicitations, correspondence, business cards, advertisements, and residential mortgage loan applications or as the application prescribes the location. An example of closely following includes your name, followed by your title, followed by your license number.

~~((26))~~ **(25) When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the company you are associated with:

(a) When asked by any party to a loan transaction, including third-party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

~~((27))~~ **(26) May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

~~((28))~~ **(27) As a licensed mortgage loan originator, what are my reporting responsibilities?** You must notify the director through amendment to the NMLS within ten business days to a change of:

(a) Answers to the NMLS generated disclosure questions;

(b) Sponsorship status;

(c) Residence address; or

(d) Any change in the information supplied to the director in your original application.

AMENDATORY SECTION (Amending WSR 13-06-012, filed 2/25/13, effective 4/1/13)

WAC 208-620-720 Loan originator—Prelicensing education. Must I complete prelicensing education in order to receive a loan originator license? Yes.

(1) You must complete at least twenty-two hours of prelicensing education approved by the ~~((NMLSR))~~ NMLS. The prelicensing education must include:

(a) Three hours of federal law and regulations;

(b) Three hours of ethics, which includes instruction on fraud, consumer protection, and fair lending issues;

(c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(d) At least four hours of training specifically related to Washington law.

(2) You will receive credit for having completed the SAFE required prelicensing education for every state once you have successfully completed the SAFE required prelicensing education requirements approved by the NMLS for any state.

(3) **Must I take continuing education in the year I complete the prelicensing education?** No. You will not have a continuing education requirement in the year in which you complete the core twenty hours of prelicensing education.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-900 What requirements must I comply with when servicing residential mortgage loans?

In addition to complying with all other provisions of this act you must:

(1) Other applicable laws, regulations, and programs. Comply with the following:

(a) Chapters 61.24 and 19.148 RCW and any other applicable state or federal law, regulation, and program. Any conflict that arises between this chapter and chapter 19.148 RCW will be resolved in favor of this chapter.

(b) Comply with the federal Servicemembers Civil Relief Act.

(c) A violation of an applicable state or federal law, regulation, or program is a violation of this act.

(2) Servicing and ownership transfers or sales.

(a) As to acquiring servicing rights from another servicer you must:

(i) Continue processing loan modification requests and honoring trial and permanent modifications;

(ii) Designate the homeowner as a third-party intended beneficiary in any subsequent contract for transfer or sale, unless doing so would violate another state law or federal HAMP or GSE modification programs requirements; and

(b) As to transferring or selling the servicing of loans with pending modification requests or trial or permanent modifications you must:

(i) Inform the successor servicer if a loan modification is pending;

(ii) Obligate the successor servicer to accept and continue processing loan modification requests and to honor trial and permanent loan modification agreements; and

(iii) Designate the homeowner as a third-party intended beneficiary in any contract for transfer or sale, unless doing so would violate state law or federal HAMP or GSE modification programs requirements.

(3) Payment processing and fees.

(a) You must accept and credit all amounts received within one business day of receipt when the borrower has made the payment to the address where instructed, provided, that the borrower has provided sufficient information to credit the account. If you use the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date. You must apply the payment as specified in the loan documents.

(b) You may enter into a written contract with the borrower whereby you hold funds of a certain type or sent by a certain method for a period of time until the funds are available before crediting them to the borrower's account.

(c) You must notify the borrower if a payment is received but not credited and instead placed in a suspense account. You must mail the notification to the borrower within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the residential mortgage loan current. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement. In the event of a conflict between this subsection (3)(c) or (d) of this section immediately following or both,

and the requirements of an applicable bankruptcy court order, compliance with the bankruptcy court requirements are considered compliance with the subsections.

(d) When the suspense account contains enough money to make a full payment, you must apply that payment to the mortgage as of the date the full amount became available in the suspense account.

(e) You must assess any incurred fees to a borrower's account within forty-five days of the date on which the fee was incurred. You must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement.

(f) If you provide monthly or more frequent statements that include the information required under this subsection, you have until January 1, 2013, to program ~~((theses)) these~~ changes. On and after January 1, 2013, you must be in compliance with this subsection.

(4) Maintenance of the escrow account.

(a)(i) If you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with respect to the property, you must collect and make all payments from the escrow account and, to the extent you have control, ensure that no late penalties are assessed or other negative consequences result for the borrower.

(ii) At least annually, or upon the borrower's request, you must inform the borrower in writing of the amount of reserve required in an escrow account. The notice must also advise the borrower of any fees the borrower will incur for not maintaining the reserve amount or fees the borrower will incur if you advance escrow amounts on the borrower's behalf and then collect the amounts from the borrower. You must comply with (a)(ii) of this subsection beginning on January 1, 2013.

(b) You may enter into a written agreement with the borrower whereby you are not required to make escrow payments unless funds are available in the escrow account. The agreement must include language that puts the borrower on notice that the borrower is responsible for the payment of the escrow amounts if a sufficient amount is not maintained in the escrow account.

(c) You must notify the borrower within ten business days of any change to the escrow account other than the changes brought about by the borrower's regularly scheduled payment. Examples of changes requiring notification include, but are not limited to, a reduction in the required reserve amount for the account, or a change in the property's tax assessment.

(5) Borrower requests for information.

(a) You must make a reasonable attempt to comply with a borrower's request for information about the residential mortgage loan account, including a request for information about loss mitigation, and to respond to any dispute initiated by the borrower about the loan account. A reasonable attempt includes, but is not limited to:

(i) Maintaining written or electronic records of each written request for information involving the borrower's

account until the residential mortgage loan is paid in full, sold, or otherwise satisfied;

(ii) Providing a written statement to the borrower within fifteen business days of receipt of a written request from the borrower, or by following the response timelines for any loss mitigation program. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply.

(b) You must provide at a minimum the following information to a borrower's request described in subsection (5) of this section:

(i) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(ii) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer;

(iii) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and

(iv) The telephone number and mailing address of an individual servicer representative with the information and authority to answer questions and resolve disputes and to act as a single point of contact for the homeowner. This individual servicer representative must have the authority and ability to perform the following duties:

(A) Explain loss mitigation options and requirements;

(B) Track documents submitted by the homeowner and documents provided to the homeowner;

(C) Inform the homeowner of the status of their loss mitigation process;

(D) Ensure the homeowner is considered for all loss mitigation options; and

(E) Access individuals with the authority to delay or stop foreclosure proceedings.

You must comply with (b)(iv) of this subsection beginning on January 1, 2013.

~~(c) ((You may charge a fee for preparing and furnishing the statement described in this subsection not exceeding thirty dollars per statement.~~

~~(d))~~ You must promptly correct any errors and refund any fees assessed to the borrower resulting from an error you made.

~~((e))~~ (d) If the content of your response meets the requirements under RESPA for a response to a qualified written request, you will be deemed in compliance with the content requirements of this subsection. You must still comply with ~~((d))~~ (c) of this subsection.

~~((f))~~ (e) In addition to the statement described in (a) of this subsection, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought

by the borrower. If requested by the borrower, this statement must also include:

(i) A copy of the original note, or if unavailable, an affidavit of lost note, with all endorsements; and

(ii) A statement that identifies and itemizes all fees and charges assessed under the loan servicing transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any.

(iii) The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year time period, the servicer must provide the information going back to the date on which the servicer began servicing the home loan and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the residential mortgage loan up to the date of the request for the information.

(iv) If the borrower requests this statement, you must provide it free of charge; but the borrower is only entitled to one free statement annually. If the borrower requests more than one statement annually, you may charge thirty dollars for the second and subsequent statements.

(6) Loss mitigation.

(a) You must comply with all timelines and requirements for the federal HAMP or GSE modification programs if applicable, including denials and dual tracking prohibitions. If not using a HAMP or GSE loan modification program, you must:

(i) Develop an electronic system, or add to an existing system, the ability for borrowers to check the status of their loan modification, at no cost. The system must also allow communication from housing counselors. The system must be updated every ten business days. You have until April 1, 2013, to develop the system described in (a)(i) of this subsection. On and after April 1, 2013, you must be in compliance with (a)(i) of this subsection.

(ii) Review and make a determination on a borrower's completed loan modification application within thirty days of receipt.

(iii) Provide in the loan modification denial notice the reasons for denial and an opportunity for the homeowner to rebut the denial within thirty days. If the denial is due to the terms of an agreement between you and an investor, you must provide the name of the investor and a summary of the reason for the denial. If the denial is based on a net present value (NPV) model, you must provide the data inputs used to determine the NPV. Any loan modification denials must be reviewed internally by an independent evaluation process within thirty days of the denial determination or the mailing of the notice of denial to the borrower, whichever occurs

earlier. See (b) of this subsection for additional requirements on borrower appeals.

(iv) Review and consider any complete loan modification application before referring a delinquent loan to foreclosure.

(v) Give a homeowner ten business days from your notice to them to correct any deficiencies in their loan modification application.

(vi) Stop the foreclosure from proceeding further if you receive a complete loan modification application. See (a)(viii) and (ix) of this subsection.

(vii) If the borrower accepts a loan modification verbally, in writing, or by making the first trial payment, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(viii) Review and consider a complete loan modification application if received prior to thirty-seven days before a scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(ix) Perform an expedited review of any complete loan modification application submitted between thirty-seven and fifteen days before the scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(b) As to borrower appeals of loan modification denials you must:

(i) Give the borrower thirty days from your written notice of denial to request an appeal unless the denial is due to:

- (A) An ineligible mortgage;
- (B) An ineligible property;
- (C) The borrower did not accept the offer; or
- (D) The loan was previously modified.

(ii) Give the borrower the opportunity to obtain a full appraisal for purposes of contesting appraisal data used in a denial based on NPV.

(iii) Respond to the borrower's appeal within thirty days of receipt.

(iv) Provide the borrower with a description of any other loss mitigation option available if you uphold the denial.

(c) When a loan modification is granted, you must provide the borrower with a copy of the fully executed loan modification agreement within thirty days of receipt of the signed agreement from the borrower. A loan modification granted orally must be reduced to a written document with a summary of all of the terms and must be provided to the borrower within thirty days of approval of the loan modification.

(d) You must maintain adequate staffing levels and systems to comply with this section, including staffing and systems to track and maintain loan modification documents submitted by homeowners.

(e) You must make public all necessary information to inform homeowners about and allow homeowners to apply for your proprietary first and second lien modifications.

(f) You must make public all necessary information to inform homeowners about your short sale requirements.

(g) You must allow a homeowner to apply for and receive a short sale determination before the homeowner puts a house on the market.

(7) Foreclosure.

(a) Before you refer a loan to foreclosure, you must document in the loan file evidence to substantiate the borrower's default and your right to foreclose. The file must also contain loan ownership information.

(b) If a borrower's property goes into foreclosure and the foreclosure sale occurs, you must notify the borrower within three business days of sale of the completion of the sale. You must mail the notification to the borrower's last known address provided to you.

(8) Contracting with other parties. You must adopt written policies and procedures for the oversight of third-party providers including, but not limited to, foreclosure trustees, foreclosure firms, subservicers, agents, subsidiaries, and affiliates. You must maintain the policies and procedures as part of your books and records and must provide them to the department when directed to do so.

(9) See also WAC 208-620-551.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 208-620-045 How does the department interpret the definition of residential mortgage loan modification services in RCW 31.04.015(23)?
- WAC 208-620-055 How does the department interpret the definition of service or servicing a loan in RCW 31.04.015(26)?
- WAC 208-620-245 Does the Consumer Loan Act allow me to make one or two loans without being licensed?
- WAC 208-620-252 If I am offering loans by mail or internet to Washington residents, do I have to license those locations?

WSR 13-19-082

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed September 17, 2013, 3:13 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-809-990 Licensed counselor and associate—Fees and renewal cycle, 246-824-990 Dispensing optician fees and renewal cycle, and 246-840-990 Fees and renewal cycle for registered nurses (RN) and licensed practical nurses (LPN). Amending rules to add retired active license renewal fees and retired active license renewal late fees to these professions pursuant to 2012 and 2013 legislation. Reducing LPN application fees and license renewal fees and adding a HEAL-WA fee for LPNs. Repealing outdated fiscal requirements for dispensing opticians.

Hearing Location(s): Department of Health, TC2 Building, Conference Room 145, 111 Israel Road S.E., Olympia, WA 98501, on October 22, 2013, at 11:00 a.m.

Date of Intended Adoption: October 23, 2013.

Submit Written Comments to: Maura Craig, Department of Health, P.O. Box 47850, 111 Israel Road S.E., Olympia, WA 98504-7850, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by October 22, 2013.

Assistance for Persons with Disabilities: Contact Maura Craig by October 18, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal establishes retired active license renewal fees and retired active license renewal late fees for licensed mental health counselors, licensed marriage and family therapists, licensed advanced social workers, licensed independent clinical social workers, RNs, LPNs, and dispensing opticians per statutory requirements. In addition, the proposal responds to ESB 5206 (chapter 249, Laws of 2013) that adds LPNs as a profession that must pay an annual credential surcharge to access the University of Washington's Health Sciences Online Library (HEAL-WA). Repeal of outdated fees-renewal cycle requirements for dispensing opticians is also proposed. Finally, LPN application fees are reduced and license renewal fees are reduced to offset required HEAL-WA fees for LPNs.

Reasons Supporting Proposal: These professions have been statutorily authorized to add retired active license renewal fees and retired active late fees. The department of health is also directed to add a surcharge annually to credentialing fees of practitioners in each of the professions listed in RCW 43.70.110 (3)(c) to support the HEAL-WA health sciences online library, including LPNs. Repeal of outdated fee-renewal cycle requirements is proposed for dispensing opticians. LPN application fees are reduced to be consistent with RN application fees and renewal fees are reduced to offset the mandatory HEAL-WA fees for LPNs.

Statutory Authority for Adoption: RCW 18.130.250, 18.225.170, 43.70.110 and [43.70.]280, 3ESSB 5034 (2013).

Statute Being Implemented: RCW 18.130.250, 18.225.-170, 43.70.110 and [43.70.]280, 3ESSB 5034 (2013).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Maura Craig, 111 Israel Road S.E., Tumwater, WA 98504, (360) 236-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

September 17, 2013
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) Associate licenses are valid for one year and must be renewed every year on the date of issuance. The associate license may be renewed no more than four times.

Title	Fee
(3) The following nonrefundable fees will be charged for licensed marriage and family therapist:	
Application	\$150.00
Initial license	75.00
Renewal	140.00
<u>Renewal retired active</u>	<u>70.00</u>
<u>Late renewal retired active</u>	<u>35.00</u>
Late renewal penalty	70.00
Expired license reissuance	85.00
Duplicate license	10.00
Certification of license	10.00
UW online access fee (HEAL-WA)	16.00
(4) The following nonrefundable fees will be charged for licensed mental health counselor:	
Application	140.00
Initial license	125.00
Renewal	138.00
<u>Renewal retired active</u>	<u>70.00</u>
<u>Late renewal retired active</u>	<u>35.00</u>
Late renewal penalty	60.00
Expired license reissuance	65.00
Duplicate license	10.00
Certification of license	10.00
UW online access fee (HEAL-WA)	16.00

Title	Fee
(5) The following nonrefundable fees will be charged for licensed advanced social worker and licensed independent clinical social worker:	
Application	125.00
Initial license	125.00
Renewal	126.00
<u>Renewal retired active</u>	<u>65.00</u>
<u>Late renewal retired active</u>	<u>30.00</u>
Late renewal penalty	63.00
Expired license reissuance	72.50
Duplicate license	10.00
Certification of license	10.00
UW online access fee (HEAL-WA)	16.00
(6) The following nonrefundable fees will be charged for licensed marriage and family therapy associates:	
Application	50.00
Renewal	40.00
Late renewal penalty	40.00
Expired license reissuance	40.00
Duplicate license	15.00
Certification of license	15.00
(7) The following nonrefundable fees will be charged for licensed mental health counselor associates:	
Application	50.00
Renewal	40.00
Late renewal penalty	40.00
Expired license reissuance	40.00
Duplicate license	15.00
Certification of license	15.00
(8) The following nonrefundable fees will be charged for licensed advanced social worker associates and licensed independent clinical social worker associates:	
Application	50.00
Renewal	40.00
<u>Independent clinical social worker renewal retired active</u>	<u>65.00</u>
<u>Independent clinical social worker late renewal retired active</u>	<u>30.00</u>
Late renewal penalty	40.00
Expired license reissuance	40.00
Duplicate license	15.00
Certification of license	15.00

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-824-990 Dispensing optician fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Optician:	
Full examination (or reexamination)	\$200.00
Reexamination—Practical only	50.00
Reexamination—Written (basic) only	25.00
Reexamination—Written (contact lens) only	25.00
Renewal	125.00
<u>Renewal retired active</u>	<u>50.00</u>
<u>Late renewal retired active</u>	<u>25.00</u>
Late renewal penalty	75.00
Expired license reissuance	62.50
Duplicate license	15.00
Certification of license	15.00
Apprentice registration	75.00
Endorsement application	100.00
Inactive license	35.00

AMENDATORY SECTION (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

WAC 246-840-990 Fees and renewal cycle. (1) Applicants for a practical nurse license must pay the application fee and the nursing center surcharge fee when applying for a license. Licenses for practical nurse must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Practical nurses must pay the renewal fee and the nursing center surcharge fee when renewing licenses.

(2) Applicants for a registered nurse license must pay the application fee, the RN UW online access fee (HEAL-WA), and the nursing center surcharge fee when applying for a license. Licenses for registered nurse must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. Registered nurses must pay the renewal fee, the HEAL-WA fee, and the nursing center surcharge fee when renewing licenses.

(3) Licenses for advanced registered nurse must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(4) Registrations for nursing technicians must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The renewal must be accompanied by an attestation as described in RCW 18.79.-370. This attestation will include the nursing technician's anticipated graduation date. If the anticipated graduation date is within one year, the registration will expire thirty days after the anticipated graduation date. The expiration date may be extended to sixty days after graduation if the nursing technician can show good cause as defined in WAC 246-840-010(15).

(5) The following nonrefundable fees shall be charged by the health professions quality assurance division of the department of health. Persons who hold an RN and an LPN license shall be charged separate fees for each license. Persons who are licensed as an advanced registered nurse practitioner in more than one specialty will be charged a fee for each specialty:

RN/LPN fees:

Title of Fee	Fee
RN application (initial or endorsement)	\$67.00
LPN application (initial or endorsement)	((87.00)) <u>67.00</u>
RN license renewal	76.00
<u>RN renewal retired active</u>	<u>45.00</u>
<u>RN late renewal retired active</u>	<u>23.00</u>
LPN license renewal	((91.00)) <u>75.00</u>
<u>LPN renewal retired active</u>	<u>45.00</u>
<u>LPN late renewal retired active</u>	<u>23.00</u>
<u>LPN HEAL-WA* surcharge - Initial license and renewal</u>	<u>16.00</u>
Late renewal penalty	50.00
Expired license reissuance	70.00
Inactive renewal	40.00
Expired inactive license reissuance	40.00
Inactive late renewal penalty	30.00
Duplicate license	20.00
Verification of licensure/education (written)	25.00
Nursing center surcharge	5.00
RN ((UW online access fee €)) HEAL-WA ((+)) * <u>surcharge - Initial license and renewal</u>	16.00

Advanced registered nurse fees:

Title of Fee	Fee
ARNP application with or without prescriptive authority (per specialty)	\$92.00

Title of Fee	Fee
ARNP renewal with or without prescriptive authority (per specialty)	96.00
ARNP late renewal penalty (per specialty)	50.00
ARNP duplicate license (per specialty)	20.00
ARNP written verification of license (per specialty)	25.00

Nurse technologist fees:

Title of Fee	Fee
Application fee registration	\$92.00
Renewal of registration	91.00
Duplicate registration	15.00
Registration late renewal penalty	50.00

* HEAL-WA is the University of Washington health sciences online library.
(See RCW 43.70.110.)

The rules are being amended under the authority of OFM Guidelines 3.a. and e. dated October 12, 2011.

Statutory Authority for Adoption: Chapter 43.320 RCW, RCW 19.230.310.

Statute Being Implemented: Chapter 19.230 RCW.

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

Name of Proponent: Department of financial institutions, consumer services, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy Fazio, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8800; Implementation and Enforcement: Deborah Bortner, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-0511.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendments will not impose more than minor costs on the businesses impacted by the proposed rules.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to the proposed rules.

September 17, 2013

Deborah Bortner, Director
Division of Consumer Services

WSR 13-19-085
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Consumer Services Division)
[Filed September 17, 2013, 3:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-158.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-690 WAC) that implement the Uniform Money Services Act (chapter 19.230 RCW).

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700, on October 23, 2013, at 9-10 a.m.

Date of Intended Adoption: November 19, 2013.

Submit Written Comments to: Sara Rietcheck, 150 Israel Road S.W., P.O. Box 41200, Olympia, WA 98504-1200, e-mail sara.rietcheck@dfi.wa.gov, fax (360) 586-5068, by October 25, 2013.

Assistance for Persons with Disabilities: Contact Sara Rietcheck by October 15, 2013, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of amending the rules is to implement changes to the law, to aid the regulated industries by having consistent rules within the mortgage marketplace, and to make technical changes for clarity and consistency.

Recent amendments to the law become effective July 28, 2013.

Reasons Supporting Proposal: Specific information provided in the rules is necessary to guide the regulated industries in complying with the laws.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-010 Definitions. What definitions are applicable to these rules? The definitions in RCW 19.230.010 and this section apply throughout this chapter unless the context clearly requires otherwise.

"Act" means the Uniform Money Services Act, chapter 19.230 RCW.

"AML compliance officer" means the individual(s) designated to implement the anti-money laundering (AML) program.

"Audited financial statement" means a statement prepared by an independent accountant according to generally accepted accounting principles.

"Authorized delegate" means a person a licensee designates to provide money services on behalf of the licensee. A person that is exempt from licensing under this chapter cannot have an authorized delegate. An authorized delegate must only perform the contractual duties as authorized by the licensee in the contract between the licensee and the authorized delegate.

"Bill payment" service means a type of money transmission when an intermediary accepts funds from a consumer for transmission to a merchant for payment on a consumer's account. The intermediary may or may not charge a fee for this service.

"Material litigation" means the same as in RCW 19.230.-010.

"Money transmission" means receiving money or its equivalent value to transmit, deliver, or instruct to be delivered the money or its equivalent value to another location, inside or outside the United States, by any means including, but not limited to, by wire, facsimile, or electronic transfer. Money transmission does not include the provision solely of connection services to the internet, telecommunica-

tions services, or network access. Money transmission includes selling, issuing, or acting as an intermediary for open-loop stored value devices and payment instruments, but not closed-loop stored value devices.

"Payment instrument" means a check, draft, money order, or traveler's check for the transmission or payment of money or its equivalent value, whether or not negotiable. Payment instrument does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

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

"RCW" means the *Revised Code of Washington*.

"Stored value" means the recognition of value or credit stored on a device. Stored value is either open loop, meaning the value is redeemable at multiple, unaffiliated merchants or service providers, or closed loop meaning the value is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the stored value, its affiliates, or others involved in transactions functionally related to the issuer or its affiliates.

"Stored value device" means a card or other device that electronically stores or provides access to funds and is available for transferring the funds or value to others.

"Subdelegate" means a person that provides money services on behalf of an authorized delegate without having a direct contractual relationship with a licensee.

"Tangible net worth" means the physical worth of a licensee, calculated by taking a licensee's assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property, and goodwill.

"Unsafe or unsound practice" means a practice or conduct by a person licensed or required to be licensed by the act to provide money services, or an authorized delegate of such a person, which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the financial condition of the licensee or the interests of its customers.

NEW SECTION

WAC 208-690-014 How does the department interpret the definitions in RCW 19.230.010? "Currency exchange." An investment in the money of a government is not exempt because the currency exchange is not incidental to the transaction.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-015 What are some activities that are exempt from the act? (1) The issuance, sale, use, redemption, or exchange of closed-loop stored value devices.

(2) The issuance, sale, use, redemption, or exchange of payment instruments by a person licensed under chapter 31.45 RCW.

(3) The ~~((selling or issuing))~~ issuance or sale of open-loop stored value devices when the value on the devices are

covered by federal deposit insurance immediately upon sale or issue. See the Federal Deposit Insurance Corporation (FDIC) Financial Institution Letter 129-2008 dated November 13, 2008, to determine if the underlying funds of stored value devices are covered by FDIC insurance immediately upon sale or issue.

(4) See also RCW 19.230.020.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-030 License application. What must I do to apply for a license? You must file:

(1) A completed application in a form and in a medium prescribed by the director. The application must contain:

(a) The legal name, business address, and residential address, if applicable, of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(b) The legal name, residential and business address, date of birth, Social Security number, employment history for the five-year period preceding the submission of the application of the applicant's proposed responsible individual, and documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States. In addition, the applicant must provide the fingerprints of the proposed responsible individual and a personal credit report from a recognized independent credit reporting agency on the proposed responsible individual;

(c) For the ten-year period preceding submission of the application, a list of any criminal convictions of the proposed responsible individual of the applicant, any material litigation in which the applicant has been involved, and any litigation involving the proposed responsible individual relating to the provision of money services;

(d) A description of any money services previously provided by the applicant and the money services the applicant seeks to provide in this state;

(e) A list of the applicant's authorized delegates including the business name and any additional names by which the business may be known, the business address and name of the primary contact person for each authorized delegate, and the locations in this state where the applicant and its authorized delegates propose to engage in the provision of money services;

(f) A list of other states in which the applicant is licensed to engage in money transmission, or provide other money services, and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state;

(g) A list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the proposed responsible individual;

(h) Information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the proposed responsible individual;

(i) A sample form of the contract for authorized delegates, if applicable;

(j) A description of the source of money and credit to be used by the applicant to provide money services; and

(k) A full description of the screening process used by the applicant in selecting authorized delegates, including a sample of any forms used, and the method used to screen for criminal history.

(2) If the applicant is a corporation, limited liability company, partnership, or other entity, the applicant must also provide:

(a) The date of the applicant's incorporation or formation and the state or country of incorporation or formation;

(b) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(c) A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(d) The legal name, any fictitious or trade name, all business and residential addresses, date of birth, Social Security number, and employment history in the ten-year period preceding the submission of the application for each executive officer, board director, AML compliance officer or other person that has control of the applicant;

(e) If the applicant or its corporate parent is not a publicly traded entity, the fingerprints of each executive officer, board director, AML compliance officer or other person that has control of the applicant;

(f) A list of any criminal convictions, material litigation, and any litigation related to the provision of money services, in the ten-year period preceding the submission of the application in which any executive officer, board director, AML compliance officer or other person in control of the applicant has been involved;

(g) A copy of the applicant's audited financial statements for the most recent fiscal year or, if the applicant is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the applicant's most recent audited consolidated annual financial statement, and in each case, if available, for the two-year period preceding the submission of the application;

(h) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period preceding the submission of the application;

(i) If the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m);

(j) If the applicant is a wholly owned subsidiary of:

(i) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m); or

(ii) A corporation publicly traded outside the United States, a copy of similar documentation filed with the

regulator of the parent corporation's domicile outside the United States;

(k) If the applicant has a registered agent in this state, the name and address of the applicant's registered agent in this state.

(3) If the application is for money transmission, a surety bond as required by WAC 208-690-040 or an assignment of a certificate of deposit, as required by WAC 208-690-045.

(4) An application fee as prescribed by WAC 208-690-130(1). The application fee is not refundable.

(5) An initial license fee as prescribed by WAC 208-690-130(2). The initial license fee will be refunded if the license application is denied.

(6) If the application is for money transmission, a certification that the applicant's investment portfolio includes only permissible investments under RCW 19.230.200 and 19.230.210.

The director may waive one or more requirements of subsection (1) or (2) of this section or permit an applicant to submit other information in lieu of the required information.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-035 Authorized delegates. What are the rules (~~for having~~) I must comply with when I have authorized delegates?

(1) Only a licensee may designate an authorized delegate. A person that is exempt or excluded from licensing under RCW 19.230.020 cannot have an authorized delegate. A person accepting consumers' funds for transmission through an exempt or excluded entity under RCW 19.230.020 is a money transmitter and must be licensed under the act.

(2) An authorized delegate, or any other person exempt or excluded from the licensing requirements of chapter 19.230 RCW, cannot have an authorized delegate.

(3) Any person (~~who is designated by a licensee~~) you designate to provide money services on your behalf (~~of the licensee~~) is an authorized delegate, regardless of whether that person would be exempt or excluded from the application of chapter 19.230 RCW if they provided money services on their own behalf.

(4) Your authorized delegates must be located in the state of Washington.

(5) A written contract between (~~a licensee~~) you and an authorized delegate must contain, among all the other contract provisions, provisions with language substantially similar to the following:

(a) The authorized delegate must operate in full compliance with chapter 19.230 RCW and the rules adopted under this chapter.

(b) The authorized delegate is prohibited from using subdelegates or conducting business from locations not authorized by the department.

(c) A description of the specific money services (~~the licensee has permitted the authorized~~) you authorize the delegate to perform on behalf of (the licensee) your behalf.

~~((5))~~ (6) The authorized delegate may only conduct activities authorized by ~~(the licensee)~~ you in the written agreement, unless the authorized delegate is also a licensee.

~~((6))~~ (7) You may contract with another licensee to use that other licensee's existing authorized delegates to load funds onto your existing open-loop stored value cards. If the shared authorized delegate sells new open-loop stored value cards for you, you must add the authorized delegate to your authorized delegate roster.

~~((7))~~ (8) You must maintain your authorized delegate agreements and contracts with other licensees to share existing authorized delegates as part of your books and records pursuant to RCW 19.230.170 and make them available to the department upon request.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-040 Surety bond. What are the bonding requirements?

(1) ~~(Each money transmitter licensee)~~ You must continuously maintain a surety bond as required by RCW 19.230.050, issued by a company authorized to do surety business in this state, as a surety. The surety may not be a wholly owned subsidiary or affiliate of the applicant or licensee.

(2) The penal sum of the bond must be calculated quarterly during the first year of licensing and thereafter annually. The calculation must be based on the previous twelve months' money transmission and payment instrument dollar volume. The bond amount must be calculated at ten thousand dollars for every one million dollars of money transmission and payment instrument dollar volume. The minimum surety bond amount is ten thousand dollars. The maximum surety bond amount is five hundred fifty thousand dollars.

(3) The initial bond amount will be ten thousand dollars and must be reevaluated based on the schedule set forth in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-050 Increase of security. Will DFI ever require me to increase the amount of security I hold? The director may increase the amount of security required, to a maximum of one million dollars, if the financial condition of a money transmitter licensee so requires. The director may consider, without limitation, the following criteria:

- (1) Significant reduction of net worth.
- (2) Financial losses.
- (3) Potential losses resulting from violations of chapter 19.230 RCW, or these rules~~((:))~~.
- (4) Licensee filing for bankruptcy.
- (5) The initiation of any proceedings against the licensee in any state or foreign country. This includes the filing of material litigation.
- (6) The filing of a state or federal criminal charge against the licensee, person in control, responsible individual, executive officer, board director, AML compliance officer,

employee, authorized delegate or principal, based on conduct related to providing money services or money laundering.

(7) A licensee, executive officer, board director, AML compliance officer, other person in control, responsible individual, principal or authorized delegate being convicted of a crime.

(8) Any unsafe or unsound practice.

(9) A judicial or administrative finding against a money transmitter licensee under chapter 19.86 RCW, or an examination report finding that the money transmitter licensee engaged in an unfair or deceptive act or practice in the conduct of its business.

(10) Other events and circumstances that, in the judgment of the director, impair the ability of the licensee to meet its obligations to its money services customers.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-060 Tangible net worth. What are the rules for my tangible net worth requirements?

(1) A money transmitter applicant or licensee must demonstrate and maintain a tangible net worth calculated at ten thousand dollars for every one million dollars of total company-wide money transmission and payment instrument dollar volume over the previous twelve months. The minimum tangible net worth is ten thousand dollars; the maximum required amount is three million dollars.

(2) Determinations of tangible net worth must be made according to generally accepted accounting principles.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-070 License denial. When may DFI deny my license application?

(1) Director may deny a money services license if the director determines that:

- (a) The application is incomplete;
- (b) The surety bond or net worth requirements of WAC 208-690-040 through 208-690-060 have not been met;
- (c) The general fitness and character requirements of RCW 19.230.070 or 19.230.100 have not been met as demonstrated by findings including, but not limited to, the following:

(i) The applicant, an executive officer, proposed responsible ~~((person))~~ individual, board director, AML compliance officer, other person in control or authorized delegate has been convicted of any felony within the past ten years;

(ii) The applicant, an executive officer, proposed responsible ~~((person))~~ individual, board director, AML compliance officer, other person in control or authorized delegate has been convicted of a crime involving a financial transaction within the past ten years;

(iii) The applicant, an executive officer, proposed responsible ~~((person))~~ individual, board director, AML compliance officer or other person in control has criminal, civil, or administrative charges issued against him/them in any jurisdiction for violations relating to a financial transaction(s) within the past ten years;

(iv) The applicant, an executive officer, proposed responsible (~~person~~) individual, board director, AML compliance officer or other person in control has falsified any information supplied in connection with the application;

(v) The applicant, or any proposed authorized delegate thereof, has had an adverse action taken against any business license related to providing financial services by a jurisdiction within the United States within the past five years;

(vi) The applicant has allowed a business under its control to deteriorate to a condition of insolvency determined by the fact that its liabilities exceed its assets or it cannot meet its liabilities as they mature;

(d) The applicant, or any authorized delegate thereof, fails to respond to a request for information from the director;

(e) The description of the screening process used by the applicant in selecting authorized delegates supplied by the applicant describes a process that is ineffective in determining the fitness of proposed authorized delegates;

(f) The applicant has failed to register with the United States Department of the Treasury as required by 31 U.S.C. Section 5330;

(g) The applicant, an executive officer, proposed responsible individual, board director, AML compliance officer or other person in control is listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

(2) In lieu of denying an application as authorized by any of the findings in subsection (1) of this section, the director may return the application or extend the review period if the director determines that the condition or circumstances that would likely lead to denial may be temporary and resolved satisfactorily within a reasonable period of time. The director may resume processing the application if the director determines that a favorable resolution of the disqualifying condition has occurred.

(3) The director may revoke or suspend a license and issue an order to cease and desist operations as a money services licensee if:

(a) Another jurisdiction initiates an adverse action against the money services license of the licensee; or

(b) Upon finding the existence of any condition or fact that would have led to denial of a license if known by the director during the processing of the application.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-075 Transaction records. Must I keep records (~~pursuant to~~) compliant with federal law in addition to keeping them for Washington law? Yes. In addition to the records required to be retained under RCW 19.230.170, you must maintain a record of money transmittals in accordance with applicable sections of Financial Recordkeeping and Reporting of Currency and Foreign Transactions, Title 31, Code of Federal Regulations, Part 103, as now appearing or hereafter amended.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-080 Audited annual financial statement. (~~Am I required to have audited financial statements? Yes.~~) When must I provide audited financial statements? You are required to have an audited financial statement prepared annually in accordance with generally accepted accounting principles. The financials must be submitted prior to or with the annual assessment. The financials may be submitted through the NMLS.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-085 Permissible investments. How do I structure permissible investments? You must maintain permissible investment levels pursuant to RCW 19.230.200 and 19.230.210. Monthly reports about permissible investments must include the monthly calculation of the average daily transmission liability.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-090 Annual report and annual assessment. What are the annual report and assessment requirements? Every licensee must submit a completed annual report and annual license assessment fee prescribed by WAC 208-690-140. The completed report and the fee must be received in the department office no later than 5:00 p.m. July 1, or 5:00 p.m. the next business day if July 1 is not a business day. A form for the preparation of the annual report and license assessment will be made available by the department by electronic transmission or mailed upon request. The report must include the following:

(1) If the licensee is a money transmitter, a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent company.

(2) A list of current authorized delegates in a form and in a medium prescribed by the director.

(3) If the licensee is a money transmitter, a certification that the licensee's investment portfolio includes only permissible investments under RCW 19.230.200 and 19.230.210.

(4) If the licensee is a money transmitter, proof that the licensee has an adequate surety bond or assignment of a certificate of deposit and net worth as required by WAC 208-690-040 through 208-690-060.

(5) A description of each material change, as defined by WAC 208-690-110, which has not been previously reported to the director.

(6) The annual report and assessment may be submitted through the NMLS.

AMENDATORY SECTION (Amending WSR 10-12-038, filed 5/25/10, effective 6/25/10)

WAC 208-690-100 Is there a penalty for not filing my annual report and annual assessment on time? (1) If you fail to submit the required annual report (~~(or)~~ and annual assessment fee by (~~August 2, 2010, or by~~) July 1, each year (~~(thereafter)~~), the director may suspend your license and assess a late fee. The late fee is ten percent of the annual assessment if paid thirty or fewer days late and twenty-five percent of the annual assessment if paid more than thirty days late. If your license has been suspended under this section and you submit a completed annual report, the annual assessment and the late fee to the department office no later than 5:00 p.m., thirty calendar days after the original due date, the license suspension may be removed. If the delay extends past thirty days, your license has expired effective thirty-one days after the original due date.

(2) The director may reinstate an expired license under this section if, within forty-five days after the original due date, you:

(a) File the complete annual report and pay both the annual license assessment and the late fee; and

(b) You or your delegates did not engage in providing money services during the period the license was expired.

(3) If any of the deadlines in this section occur on a day that is not a business day, the deadline shall be the next business day.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-110 Report of material change. What must I report to DFI if something about my business changes? Material changes described in this section must be reported to the director within thirty business days of the occurrence of the change. "Material change" means any change that is not trivial, and that, if not reported, would cause an investigation or examination to be misled or delayed. Such changes include, but are not limited to:

(1) A change of the physical and/or mailing address;

(2) A change of the responsible individual, AML compliance officer, (~~(or other)~~) executive officers or board members, or other person in control;

(3) A change of the licensee's name or DBA (doing business as);

(4) A change in the location where the records of the licensee that are required to be retained under RCW 19.230.-170 are kept;

(5) The obtaining, revocation or surrender of a money services license in any other jurisdiction;

(6) The conviction of the licensee, an executive officer, responsible individual, board director, AML compliance officer, principal, or other person in control of a misdemeanor or gross misdemeanor involving a financial transaction; and

(7) Other similar activities or events.

~~((The fee prescribed by WAC 208-690-150 must accompany each report.))~~

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-112 Other reports. What events about my business must I report to DFI? You must file a report with the director within one business day after you have reason to know of the occurrence of any of the following events:

(1) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, under the United States Bankruptcy Code (11 U.S.C. 101-110) for bankruptcy or reorganization;

(2) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of creditors;

(3) The commencement of a proceeding to revoke, suspend, restrict, or condition its license, or otherwise discipline or sanction the licensee, in a state or country in which the licensee engages in business or is licensed;

(4) The filing of any material litigation against the licensee or any authorized delegate of the licensee;

(5) The cancellation or other impairment of the licensee's bond or other security;

~~((5))~~ (6) A charge or conviction of the licensee or of an executive officer, responsible individual, board director (~~(of the licensee)~~), principal, AML compliance officer or other person in control of the licensee, for a felony; or

~~((6))~~ (7) A charge or conviction of an authorized delegate for a felony.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-115 Request for approval of change of control. What must I do to request approval for a change of control of my business? You must request approval of a change of control at least thirty days prior to the proposed change of control. The request for approval must include:

(1) A comprehensive description of the proposed change that sets forth:

(a) The identity of all persons acquiring control under the proposed change;

(b) The ownership interest and managerial authority of all persons in control under the proposed change.

(2) For each new person in control under the proposed change:

(a) Biographical information, including employment history for the immediate previous five years;

(b) A personal credit report issued by a recognized independent credit reporting agency;

(c) A signed authorization for a background investigation on a form prescribed by the director.

(3) A transaction fee as prescribed by WAC 208-690-150.

(4) The change of control may result in a requirement for the filing of a new application.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-120 Quarterly reports—Deletion of authorized delegates, locations—Address or name change. When must I notify DFI of certain changes to information about my business?

(1) ~~((You must file with the director))~~ Within forty-five days after the end of each fiscal quarter you must file with the director, in a form prescribed by the director:

(a) Any addition or deletion of ~~((licensee-owned))~~ locations where you provide money services ~~((are provided))~~, including mobile locations;

(b) Any change in the name or trade name (DBA or doing business as) or business address of an existing authorized delegate;

(c) Any additions or deletions from ~~((its))~~ your roster of authorized delegates; and

(d) The fee required by WAC 208-690-150.

(2) If there is no change in ~~((the))~~ your roster of authorized delegates or locations where money services are provided, or no changes in the name or trade name (DBA or doing business as) or business address of any authorized delegate during a fiscal quarter, no report is required.

AMENDATORY SECTION (Amending WSR 10-12-038, filed 5/25/10, effective 6/25/10)

WAC 208-690-140 How is the annual assessment calculated and when is the annual assessment due? (1) The annual assessment is calculated by multiplying 0.0004 by the previous year's adjusted Washington volume of money transmission, currency exchange, stored value sales, and payment instrument sales, with a minimum assessment of one thousand dollars and a maximum assessment of one hundred thousand dollars.

(a) For purposes of this section, "adjusted Washington volume" means:

(i) For money transmission, ninety-five percent of all funds transmitted;

(ii) For currency exchange, five percent of all currency exchanged;

(iii) For stored value sales, ninety-five percent of all funds loaded onto open-loop stored value devices; and

(iv) For payment instrument sales, seventy percent of the first ten million dollars of payment instrument sales, twenty percent of the volume over ten million through five hundred million dollars, and one percent of any amount over five hundred million dollars.

(b) For the assessment paid on the adjusted Washington volume for 2009 and 2010, any examination fees (excluding actual travel expenses) paid to the department during those years will be subtracted from the total amount owed.

(2) The annual assessment is due ~~((August 2, 2010, and))~~ no later than 5:00 p.m. July 1st each year ((thereafter)) or the next business day if July 1st is not a business day.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-150 Transaction fee. What fees must I pay to make changes to my license?

(1) You must pay fifty dollars to add an authorized delegate to your quarterly roster of authorized delegates. The fee for adding authorized delegates is capped at five thousand dollars per quarter.

(2) You must pay thirty dollars for the following changes to your license:

(a) Change of physical ~~((or mailing))~~ address, name or trade name (DBA or doing business as);

(b) Request for approval of a change in control;

(c) Change of the responsible individual or AML compliance officer;

~~((Change in the business/trade name, location of an existing authorized delegate, company owned location))~~ Addition of principal, executive officer, board member, or other person in control; or

~~((Material change. Material changes include, but are not limited to, the addition or deletion of executive officers or board directors.))~~ Change in registered agent.

(3) Transaction fees are separate, distinct from, and in addition to investigation and examination fees under WAC 208-690-170.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-180 Authority to conduct examinations and investigations. When may DFI examine or investigate my business?

(1) For the purposes of discovering violations of chapter 19.230 RCW or these rules, discovering unsafe and unsound practices, or securing information lawfully required under chapter 19.230 RCW, the director may at any time, either personally or by designee, investigate or examine ~~((the))~~ your business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in ~~((the))~~ your business ~~((of every licensee))~~ or ~~((its))~~ authorized delegates, and of every person who is engaged in the business of providing money services, whether the person acts or claims to act under or without the authority of chapter 19.230 RCW. For these purposes, the director or designated representative must have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons. The director may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, documents, records, files and any other information the director or designated person declares is relevant to the inquiry. The director may require the production of original books, accounts, papers, documents, records, files, and other information; may require that such original books, accounts, papers, documents, records, files, and other information be copied; or make copies himself or herself or by designee of such original books, accounts, papers, documents, records,

files, or other information. If the director determines that there is a danger that original records may be destroyed, altered, or removed to deny access, or hinder an examination or investigation, or that original documents are necessary for the preparation of a criminal referral, the director may take possession of originals of any items described in this section, regardless of the source of such items. Originals and copies taken by the director may be held, returned, or forwarded to other regulatory or law enforcement officials as determined necessary by the director. The director or designated person may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, documents, records, files, or other information.

(2) The licensee, applicant, or person subject to licensing under this chapter must pay the cost of examinations and investigations as specified in RCW 19.230.320 and WAC 208-690-170.

(3) Information obtained during an examination or investigation under these rules may be disclosed only as provided in RCW 19.230.190.

(4) The director may retain attorneys, accountants, or other professionals and specialists as examiners, auditors or investigators, to conduct or assist in the conduct or examinations or investigations. The cost of these services must be borne by the person who is the subject of the examination or investigation.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-200 What documentation must I provide to consumers to be in compliance with RCW 19.230.330(2)? (1) For general money transmission transactions, the receipt must include ~~((the))~~ your name, address, and phone number ~~((of the licensee))~~ in addition to the fee and exchange rate disclosure information as required by RCW 19.230.330(2).

(2) For stored value transactions the receipt may include the name, address, and telephone number of the authorized delegate, provided that ~~((the licensee's))~~ your contact information is provided in or on the stored value device packaging or on the stored value device itself.

(3) For bill payment transactions, the receipt may include the name, address, and telephone number of the authorized delegate; provided ~~((the licensee's))~~ your name accompanies the authorized delegate's information on the receipt.

WSR 13-19-086
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed September 18, 2013, 7:23 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information:
Occupational dose records: Chapter 246-220 WAC, Radiation protection—General provisions; chapter 246-221

WAC, Radiation protection standards; chapter 246-222 WAC, Radiation protection—Worker rights; and WAC 246-240-028 Exemptions regarding Type A specific licenses of broad scope. The department is proposing to adopt federal rule changes (RATS # 2008-1) to make Washington state rules consistent with the federal Nuclear Regulatory Commission's (NRC) rules and make editorial changes.

Hearing Location(s): Department of Health, Town Center 2, Room 530, 111 Israel Road S.E., Tumwater, WA 98513, on November 5, 2013, at 10:00 a.m.

Date of Intended Adoption: November 22, 2013.

Submit Written Comments to: Michelle K. Austin, P.O. Box 47827, Tumwater, WA 98504-7827, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2266, by November 5, 2013.

Assistance for Persons with Disabilities: Contact Michelle K. Austin by October 31, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to make state rules consistent with NRC rule changes titled "2008-1: Occupational dose records, labeling containers, and total effective dose equivalent." Changes affect reporting of annual dose to workers, the definition of total effective dose equivalent, labeling of certain containers holding licensed material, and the determination of cumulative occupational radiation dose. These revisions reduce the administrative and information collection burdens on licensees without affecting the level of protection for either the health and safety of workers and the public, or the environment. Under the formal state agreement between the governor and NRC, the office of radiation protection (the state radiation control program) is required to remain compatible with NRC rules. This is done through rule revision.

Reasons Supporting Proposal: This rule making is required to comply with RCW 70.98.050 (4)(d) and a formal agreement signed between the state of Washington and the Atomic Energy Commission under section 274 of the Atomic Energy Act of 1954 as amended (42 U.S.C. sec. 2021), the Energy Policy Act of 2005.

Statutory Authority for Adoption: RCW 70.98.050.

Statute Being Implemented: RCW 70.98.050.

Rule is necessary because of federal law, 72 F.R. 68043.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Curt DeMaris, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3223; Implementation and Enforcement: Jennifer N. Serne, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3269.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards; if the material

adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

September 18, 2013

Jessica Todorovich

Deputy Secretary

for John Wiesman, DrPH, MPH

Secretary

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-220-001 Authority. Rules ~~((and regulations))~~ set forth herein are adopted pursuant to the provisions of chapter 70.98 RCW.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-220-003 Scope. Except as otherwise specifically provided, these ~~((regulations))~~ rules apply to all persons who receive, possess, use, transfer, own or acquire any source of radiation, provided, however, that nothing in these ~~((regulations))~~ rules shall apply to any person to the extent such person is subject to regulation by the ~~((U.S. Nuclear Regulatory Commission))~~ NRC.*

Note: *Attention is directed to the fact that regulation by the ~~((state))~~ department of source material, by-product material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the ~~((U.S. Nuclear Regulatory Commission))~~ NRC and to ~~((Part 150 of the commission's regulations-))~~ 10 C.F.R. Part 150(3)).

AMENDATORY SECTION (Amending WSR 11-03-020, filed 1/7/11, effective 2/7/11)

WAC 246-220-010 Definitions, abbreviations, and acronyms. ~~((As used in chapters 246-220 through 246-254 WAC, these terms have the definitions set forth below.))~~ The definitions, abbreviations, and acronyms in this section apply throughout chapters 246-220 through 246-254 WAC unless the context clearly indicates otherwise. Additional definitions used only in a certain chapter will be found in that chapter.

(1) "**Absorbed dose**" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(2) "**Accelerator produced material**" means any material made radioactive by exposing it in a particle accelerator.

(3) "**Act**" means nuclear energy and radiation, chapter 70.98 RCW.

(4) "**Activity**" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

(5) "**Adult**" means an individual eighteen or more years of age.

(6) "**Agreement state**" means any state with which the ~~((United States Nuclear Regulatory Commission))~~ NRC has entered into an effective agreement under ~~((section 274 b-))~~ subsection 274b of the Atomic Energy Act of 1954, as amended ~~((73 Stat. 689))~~.

(7) "**Airborne radioactive material**" means any radioactive material dispersed in the air in the form of particulates, dusts, fumes, mists, vapors, or gases.

(8) "**Airborne radioactivity area**" means a room, enclosure, or operating area in which airborne radioactive material exists in concentrations (a) in excess of the derived air concentration (DAC) specified in WAC 246-221-290, Appendix A, or (b) to the degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or twelve DAC-hours.

(9) "**Air purifying respirator**" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(10) "**Alert**" means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by ~~((offsite))~~ off-site response organizations to protect persons ~~((offsite))~~ off-site.

(11) "**ALI (annual limit on intake)**" ~~((ALI))~~ means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in WAC 246-221-290.

(12) "**APF (assigned protection factor)**" ~~((APF))~~ means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(13) "**Atmosphere-supplying respirator**" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes ~~((supplied-air respirators-))~~ SARs(3)) and ~~((self-contained breathing apparatus-))~~ SCBA(3)) units.

(14) "**Background radiation**" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as

Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the department.

(15) "**Bq (becquerel)**" (~~((Bq))~~) means the SI unit of activity. One becquerel is equal to 1 disintegration or transformation per second (s^{-1}).

(16) "**Bioassay**" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these (~~((regulations))~~) rules, "radiobioassay" is an equivalent term.

(17) "**By-product material**" means:

(a) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "by-product material" within this definition;

(c)(i) Any discrete source of radium 226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that:

(A) Has been made radioactive by use of a (~~((particular))~~) particle accelerator; and

(B) Is produced, extracted, or converted after extraction, (~~((before, on, or after August 8, 2005,))~~) for use for a commercial, medical, or research activity; and

(d) Any discrete source of naturally occurring radioactive material, other than source material, that:

(i) The commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency determines would pose a threat similar to the threat posed by a discrete source of radium 226 to the public health and safety or the common defense and security; and

(ii) (~~((Before, on, or after August 8, 2005,))~~) Is extracted or converted after extraction for use for in a commercial, medical, or research activity.

(18) "**Calendar quarter**" means at least twelve but no more than fourteen consecutive weeks. The first calendar quarter of each year begins in January and subsequent calendar quarters shall be arranged so that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. A licensee or registrant may not change the method of determining calendar quarters for purposes of these (~~((regulations))~~) rules.

(19) "**Calibration**" means the determination of (a) the response or reading of an instrument relative to a series of

known radiation values over the range of the instrument, or (b) the strength of a source of radiation relative to a standard.

(20) "**C.F.R.**" means Code of Federal Regulations.

(21) "**Class**" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: For Class D, Days, of less than ten days, for Class W, Weeks, from ten to one hundred days, and for Class Y, Years, of greater than one hundred days. For purposes of these (~~((regulations))~~) rules, "lung class" and "inhalation class" are equivalent terms. For "class of waste" see WAC 246-249-040.

(22) "**Collective dose**" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(23) "**Committed dose equivalent**" ($H_{T,50}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the fifty-year period following the intake.

(24) "**Committed effective dose equivalent**" ($H_{E,50}$) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($H_{E,50} = (\sum w_T H_{T,50})$).

(25) "**Consortium**" means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a federal facility or a medical facility.

(26) "**Constraint**" or dose constraint means a value above which specified licensee actions are required.

(27) "**Controlled area.**" See "Restricted area."

(28) "**Curie**" means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} transformations per second (tps).

(29) "**Declared pregnant woman**" means a woman who has voluntarily informed the licensee or registrant, in writing, of her pregnancy, and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(30) "**Deep dose equivalent**" (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of 1 centimeter (1000 mg/cm^2).

(31) "**Demand respirator**" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(32) "**Department**" means the Washington state department of health, which has been designated as the state radiation control agency under chapter 70.98 RCW.

(33) "**Depleted uranium**" means the source material uranium in which the isotope Uranium-235 is less than 0.711

percent by weight of the total uranium present. Depleted uranium does not include special nuclear material.

(34) **"Derived air concentration"** (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of two thousand hours under conditions of light work, results in an intake of one ALI. For purposes of these ~~((regulations))~~ rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for two thousand hours in a year. DAC values are given in WAC 246-221-290.

(35) **"DAC-hour (derived air concentration-hour)"** ~~((DAC-hour))~~ means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take two thousand DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

(36) **"Discrete source"** means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical or research activities.

(37) **"Disposable respirator"** means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

(38) **"Dose"** is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

(39) **"Dose commitment"** means the total radiation dose to a part of the body that will result from retention in the body of radioactive material. For purposes of estimating the dose commitment, it is assumed that from the time of intake the period of exposure to retained material will not exceed fifty years.

(40) **"Dose equivalent"** (H_T) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

(41) **"Dose limits"** means the permissible upper bounds of radiation doses established in accordance with these ~~((regulations))~~ rules. For purposes of these ~~((regulations))~~ rules, "limits" is an equivalent term.

(42) **"Dosimetry processor"** means a person that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(43) **"dpm"** means disintegrations per minute. See also "curie."

(44) **"Effective dose equivalent"** (H_E) means the sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the

body organs or tissues that are irradiated ($H_E = \sum w_T H_T$).

(45) **"Embryo/fetus"** means the developing human organism from conception until the time of birth.

(46) **"Entrance or access point"** means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, without respect to their intended use.

(47) **"Exposure"** means (a) being exposed to ionizing radiation or to radioactive material, or (b) the quotient of ~~((AQ))~~ dQ by ~~((Am))~~ dm where "~~((AQ))~~ dQ " is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "~~((Am))~~ dm " are completely stopped in air. The special unit of exposure is the roentgen (R) and the SI equivalent is the coulomb per kilogram (C/kg). One roentgen is equal to 2.58×10^{-4} coulomb per kilogram of air.

(48) **"Exposure rate"** means the exposure per unit of time, such as roentgen per minute and milliroentgen per hour.

(49) **"External dose"** means that portion of the dose equivalent received from any source of radiation outside the body.

(50) **"Extremity"** means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

(51) **"Filtering facepiece"** (dust mask) means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(52) **"Fit factor"** means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(53) **"Fit test"** means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(54) **"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities"** means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(55) **"Generally applicable environmental radiation standards"** means standards issued by the United States Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(56) **"Gray"** (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule/kilogram (100 rad).

(57) **"Healing arts"** means the disciplines of medicine, dentistry, osteopathy, chiropractic, podiatry, and veterinary medicine.

(58) **"Helmet"** means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

(59) **"High radiation area"** means any area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in one hour at 30 centimeters from any source of radiation or 30 centimeters from any surface that the radiation penetrates. For purposes of these ~~((regulations))~~ **rules**, rooms or areas in which diagnostic X-ray systems are used for healing arts purposes are not considered high radiation areas.

(60) **"Hood"** means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(61) **"Human use"** means the intentional internal or external administration of radiation or radioactive material to human beings.

(62) **"Immediate"** or **"immediately"** means as soon as possible but no later than four hours after the initiating condition.

(63) **"IND"** means investigatory new drug for which an exemption has been claimed under the United States Food, Drug and Cosmetic Act (Title 21 C.F.R.).

(64) **"Individual"** means any human being.

(65) **"Individual monitoring"** means the assessment of:

(a) Dose equivalent (i) by the use of individual monitoring devices or (ii) by the use of survey data; or

(b) Committed effective dose equivalent (i) by bioassay or (ii) by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

(66) **"Individual monitoring devices"** (individual monitoring equipment) means devices designed to be worn by a single individual for the assessment of dose equivalent e.g., as film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(67) **"Inspection"** means an official examination or observation by the department including but not limited to, tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions of the department.

(68) **"Interlock"** means a device arranged or connected so that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(69) **"Internal dose"** means that portion of the dose equivalent received from radioactive material taken into the body.

(70) **"Irretrievable source"** means any sealed source containing licensed material which is pulled off or not connected to the wireline downhole and for which all reasonable effort at recovery, as determined by the department, has been expended.

(71) **"LDE (lens dose equivalent)"** ~~((LDE))~~ applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeters (300 mg/cm²).

(72) **"License"** means a license issued by the department.

(73) **"Licensed material"** means radioactive material received, possessed, used, transferred, or disposed under a general or specific license issued by the department.

(74) **"Licensee"** means any person who is licensed by the department under these rules and the act.

~~((75))~~ ~~((**"Licensing state"** means any state with regulations equivalent to the suggested state regulations for control of radiation relating to, and an effective program for, the regulatory control of NARM and which has been granted final designation by the Conference of Radiation Control Program Directors, Inc.~~

~~((76))~~ **"Loose-fitting facepiece"** means a respiratory inlet covering that is designed to form a partial seal with the face.

~~((77))~~ **(76) "Lost or missing licensed material"** means licensed material whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

~~((78))~~ **(77) "Member of the public"** means an individual except when the individual is receiving an occupational dose.

~~((79))~~ **(78) "Minor"** means an individual less than eighteen years of age.

~~((80))~~ **(79) "Monitoring"** means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these ~~((regulations))~~ **rules**, radiation monitoring and radiation protection monitoring are equivalent terms.

~~((81))~~ **(80) "NARM"** means any naturally occurring or accelerator-produced radioactive material. It does not include by-product, source, or special nuclear material. ~~((For the purpose of meeting the definition of a licensing state by the Conference of Radiation Control Program Directors, Inc. (CRCPD), NARM refers only to discrete sources of NARM. Diffuse sources of NARM are excluded from consideration by the CRCPD for Licensing State designation purposes.~~

~~((82))~~ **(81) "Nationally tracked source"** means a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in WAC 246-221-236. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

~~((83))~~ **(82) "Natural radioactivity"** means radioactivity of naturally occurring nuclides.

~~((84))~~ **(83) "NDA"** means a new drug application which has been submitted to the United States Food and Drug Administration.

~~((85))~~ (84) **"Negative pressure respirator"** (tight-fitting) means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

~~((86))~~ (85) **"Nonstochastic effect"** means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, a "deterministic effect" is an equivalent term.

~~((87) "Nuclear Regulatory Commission" (NRC))~~
 (86) **"NRC"** means the ~~((United States))~~ U.S. Nuclear Regulatory Commission ~~((or its duly authorized representatives))~~.

~~((88))~~ (87) **"Occupational dose"** means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose does not include dose received: From background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under chapter 246-240 WAC, from voluntary participation in medical research programs, or as a member of the public.

~~((89))~~ (88) **"Ore refineries"** means all processors of a radioactive material ore.

~~((90))~~ (89) **"Particle accelerator"** means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV. For purposes of this definition, "accelerator" is an equivalent term.

~~((91))~~ (90) **"Permittee"** means a person who has applied for, and received, a valid site use permit for use of the low-level waste disposal facility at Hanford, Washington.

~~((92))~~ (91) **"Person"** means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, ~~((agency, political subdivision of this state, any other state or political subdivision or agency thereof,))~~ and any legal successor, representative, agent or agency of the foregoing ~~((, but shall not include federal government agencies))~~.

~~((93))~~ (92) **"Personal supervision"** means supervision where the supervisor is physically present at the facility and in sufficient proximity that contact can be maintained and immediate assistance given as required.

~~((94))~~ (93) **"Personnel monitoring equipment."** See individual monitoring devices.

~~((95))~~ (94) **"PET"** means positron emission tomography.

~~((96))~~ (95) **"Pharmacist"** means an individual licensed by this state to compound and dispense drugs, and poisons.

~~((97))~~ (96) **"Physician"** means a medical doctor or doctor of osteopathy licensed by this state to prescribe and dispense drugs in the practice of medicine.

~~((98))~~ (97) **"Planned special exposure"** means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

~~((99))~~ (98) **"Positive pressure respirator"** means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

~~((100))~~ (99) **"PAPR (powered air-purifying respirator)"** ~~((PAPR))~~ means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

~~((101))~~ (100) **"Practitioner"** means an individual licensed by the state ~~((to))~~ for the practice of a healing art (i.e., physician, dentist, podiatrist, chiropractor, etc.).

~~((102))~~ (101) **"Pressure demand respirator"** means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

~~((103))~~ (102) **"Public dose"** means the dose received by a member of the public from exposure to sources of radiation under the licensee's or registrant's control or to radiation or radioactive material released by the licensee. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under chapter 246-240 WAC, or from voluntary participation in medical research programs.

~~((104))~~ (103) **"Qualified expert"** means an individual who has demonstrated to the satisfaction of the department ~~((he/she has))~~ the knowledge, training, and experience to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs. The department reserves the right to recognize the qualifications of an individual in specific areas of radiation protection.

~~((105))~~ (104) **"QLFT (qualitative fit test)"** ~~((QLFT))~~ means a pass/fail fit test to assess the adequacy of respirator fit ~~((that))~~ which relies on the individual's response to the test agent.

~~((106))~~ (105) **"Quality factor" (Q)** means the modifying factor, listed in Tables I and II, that is used to derive dose equivalent from absorbed dose.

TABLE I
 QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES

TYPE OF RADIATION	Quality Factor (Q)	Absorbed Dose Equal to A Unit Dose Equivalent ^a
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

^a Absorbed dose in rad equal to 1 rem or the absorbed dose in gray equal to 1 Sv.

If it is more convenient to measure the neutron fluence rate rather than to determine the neutron dose equivalent rate in sievert per hour or rem per hour as required for Table I, then 0.01 Sv (1 rem) of neutron radiation of unknown energies may, for purposes of these ~~((regulations))~~ rules, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from Table II to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE II

MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS

Neutron Energy (MeV)	Quality Factor ^a (Q)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² rem ⁻¹)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² Sv ⁻¹)
(thermal) 2.5 x 10 ⁻⁸	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻⁷	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻⁶	2	810 x 10 ⁶	810 x 10 ⁸
1 x 10 ⁻⁵	2	810 x 10 ⁶	810 x 10 ⁸
1 x 10 ⁻⁴	2	840 x 10 ⁶	840 x 10 ⁸
1 x 10 ⁻³	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻²	2.5	1010 x 10 ⁶	1010 x 10 ⁸
1 x 10 ⁻¹	7.5	170 x 10 ⁶	170 x 10 ⁸
5 x 10 ⁻¹	11	39 x 10 ⁶	39 x 10 ⁸
1	11	27 x 10 ⁶	27 x 10 ⁸
2.5	9	29 x 10 ⁶	29 x 10 ⁸
5	8	23 x 10 ⁶	23 x 10 ⁸
7	7	24 x 10 ⁶	24 x 10 ⁸
10	6.5	24 x 10 ⁶	24 x 10 ⁸
14	7.5	17 x 10 ⁶	17 x 10 ⁸
20	8	16 x 10 ⁶	16 x 10 ⁸
40	7	14 x 10 ⁶	14 x 10 ⁸
60	5.5	16 x 10 ⁶	16 x 10 ⁸
1 x 10 ²	4	20 x 10 ⁶	20 x 10 ⁸
2 x 10 ²	3.5	19 x 10 ⁶	19 x 10 ⁸
3 x 10 ²	3.5	16 x 10 ⁶	16 x 10 ⁸
4 x 10 ²	3.5	14 x 10 ⁶	14 x 10 ⁸

^a Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-cm diameter cylinder tissue-equivalent phantom.
^b Monoenergetic neutrons incident normally on a 30-cm diameter cylinder tissue-equivalent phantom.

~~((107))~~ (106) "ONFT (quantitative fit test)" ~~((QNFT))~~ means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

~~((108))~~ (107) "Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately thirteen consecutive weeks, providing that the beginning of the first quarter in a year coincides with the

starting date of the year and that no day is omitted or duplicated in consecutive quarters.

~~((109))~~ (108) "Rad" means the special unit of absorbed dose. One rad equals one-hundredth of a joule per kilogram of material; for example, if tissue is the material of interest, then 1 rad equals 100 ergs per gram of tissue. One rad is equal to an absorbed dose of 100 erg/gram or 0.01 joule/kilogram (0.01 gray).

~~((110))~~ (109) "Radiation" means alpha particles, beta particles, gamma rays, X rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of these ~~((regulations,))~~ rules: Radiation does not include magnetic fields or nonionizing radiation, such as radiowaves or microwaves, visible, infrared, or ultraviolet light; and ionizing radiation is an equivalent term. ((Radiation, as used in these regulations, does not include magnetic fields or nonionizing radiation, like radiowaves or microwaves, visible, infrared, or ultraviolet light.

~~((111))~~ (110) "Radiation area" means any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in one hour at thirty centimeters from the source of radiation or from any surface that the radiation penetrates.

~~((112))~~ (111) "Radiation machine" means any device capable of producing ionizing radiation except those devices with radioactive material(s) as the only source of radiation.

~~((113))~~ (112) "Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection ~~((regulations))~~ rules and has been assigned that responsibility by the licensee or registrant.

~~((114))~~ (113) "Radiation source." See "Source of radiation."

~~((115))~~ (114) "Radioactive material" means any material (solid, liquid, or gas) which emits radiation spontaneously.

~~((116))~~ (115) "Radioactive waste" means any radioactive material which is no longer of use and intended for disposal or treatment for the purposes of disposal.

~~((117))~~ (116) "Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

~~((118))~~ (117) "Reference man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

~~((119))~~ (118) "Registrable item" means any ~~((radiation))~~ radiation-producing machine except those exempted by RCW 70.98.180 or exempted by the department under the authority of RCW 70.98.080.

~~((120))~~ (119) "Registrant" means any person who is registered by the department or is legally obligated to register with the department in accordance with these rules and the act.

~~((121))~~ (120) "Registration" means registration with the department in accordance with the ~~((regulations))~~ rules adopted by the department.

~~((122))~~ (121) "**Regulations of the United States Department of Transportation**" means the regulations in 49 C.F.R. Parts 170-189, 14 C.F.R. Part 103, and 46 C.F.R. Part 146.

~~((123))~~ (122) "**Rem**" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 Sv).

~~((124))~~ (123) "**Research and development**" means: (a) Theoretical analysis, exploration, or experimentation; or (b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

~~((125))~~ (124) "**Respiratory protective equipment**" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

~~((126))~~ (125) "**Restricted area**" means any area to which access is limited by the licensee or registrant for purposes of protecting individuals against undue risks from exposure to radiation and radioactive material. "Restricted area" does not include any areas used for residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

~~((127))~~ (126) "**Roentgen**" (R) means the special unit of exposure. One roentgen equals 2.58×10^{-4} coulombs/kilogram of air.

~~((128))~~ (127) "**Sanitary sewerage**" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

~~((129))~~ (128) "**Sealed source**" means any radioactive material that is encased in a capsule designed to prevent leakage or the escape of the radioactive material.

~~((130))~~ (129) "**SCBA (self-contained breathing apparatus)**" ~~((SCBA))~~ means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

~~((131))~~ (130) "**Shallow dose equivalent**" (H_s), which applies to the external exposure of the skin of the whole body or the skin of an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm²).

~~((132))~~ (131) "**SI**" means an abbreviation of the International System of Units.

~~((133))~~ (132) "**Sievert**" means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

~~((134))~~ (133) "**Site area emergency**" means events which may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by ~~((offsite))~~ off-site response organizations to protect persons ~~((offsite))~~ off-site.

~~((135))~~ (134) "**Site boundary**" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

~~((136))~~ (135) "**Source container**" means a device in which radioactive material is transported or stored.

~~((137))~~ (136) "**Source material**" means: (a) Uranium or thorium, or any combination thereof, in any physical or chemical form, or (b) ores which contain by weight one-twentieth of one percent (0.05 percent) or more of ~~((+))~~ uranium, ~~((+))~~ thorium, or ~~((+))~~ any combination thereof. Source material does not include special nuclear material.

~~((138))~~ (137) "**Source material milling**" means the extraction or concentration of uranium or thorium from any ore processing primarily for its source material content.

~~((139))~~ (138) "**Source of radiation**" means any radioactive material, or any device or equipment emitting or capable of producing ionizing radiation.

~~((140))~~ (139) "**Special nuclear material**" means:

(a) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the ~~(United States Nuclear Regulatory Commission)~~ NRC, under the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) Any material artificially enriched in any of the foregoing, but does not include source material.

~~((141))~~ (140) "**Special nuclear material in quantities not sufficient to form a critical mass**" means uranium enriched in the isotope U-235 in quantities not exceeding three hundred fifty grams of contained U-235; uranium-233 in quantities not exceeding two hundred grams; plutonium in quantities not exceeding two hundred grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of the ratios for all of the kinds of special nuclear material in combination shall not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\begin{array}{r}
 175 \text{ (grams contained U-235)} \\
 \hline
 350 \\
 + \\
 50 \text{ (grams U-233)} \\
 \hline
 200 \\
 + \\
 50 \text{ (grams Pu)} \\
 \hline
 200 < 1
 \end{array}$$

~~((142))~~ (141) "**Stochastic effect**" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these ~~((regulations))~~ rules, probabilistic effect is an equivalent term.

~~((143))~~ (142) "**SAR (supplied-air respirator)**" ~~((SAR))~~ or "airline respirator" means an atmosphere-

supplying respirator for which the source of breathing air is not designed to be carried by the user.

~~((144))~~ (143) **"Survey"** means an evaluation of the radiological conditions and potential hazards incident to the production, use, release, disposal, or presence of sources of radiation. When appropriate, the evaluation includes, but is not limited to, tests, physical examinations, calculations and measurements of levels of radiation or concentration of radioactive material present.

~~((145))~~ (144) **"Test"** means (a) the process of verifying compliance with an applicable ~~((regulation))~~ rule, or (b) a method for determining the characteristics or condition of sources of radiation or components thereof.

~~((146))~~ (145) **"These rules"** mean all parts of the rules for radiation protection of the state of Washington.

~~((147))~~ (146) **"Tight-fitting facepiece"** means a respiratory inlet covering that forms a complete seal with the face.

~~((148))~~ (147) **"TEDE (total effective dose equivalent)"** ~~((TEDE))~~ means the sum of the ~~((deep))~~ effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

~~((149))~~ (148) **"TODE (total organ dose equivalent)"** ~~((TODE))~~ means the sum of the deep dose equivalent and the committed dose equivalent to the organ or tissue receiving the highest dose.

~~((150))~~ (149) **"United States Department of Energy"** means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the department exercises functions formerly vested in the United States Atomic Energy Commission, its chairman, members, officers and components and transferred to the United States Energy Research and Development Administration and to the administrator thereof under sections 104 (b), (c) and (d) of the Energy Reorganization Act of 1974 (Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, 42 U.S.C. 5814 effective January 19, 1975) and retransferred to the Secretary of Energy under section 301(a) of the Department of Energy Organization Act (Public Law 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977).

~~((151))~~ (150) **"Unrefined and unprocessed ore"** means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

~~((152))~~ (151) **"Unrestricted area"** (uncontrolled area) means any area which is not a restricted area. Areas where the external dose exceeds 2 mrem in any one hour or where the public dose, taking into account occupancy factors, will exceed 100 mrem total effective dose equivalent in any one year must be restricted.

~~((153))~~ (152) **"User seal check"** (fit check) means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

~~((154))~~ (153) **"Very high radiation area"** means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 5 Gy (500

rad) in one hour at one meter from a source of radiation or one meter from any surface that the radiation penetrates.

~~((155))~~ (154) **"Waste"** means those low-level radioactive wastes containing source, special nuclear or by-product material that are acceptable for disposal in a land disposal facility. For purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in subsection (17)(b), (c), and (d) of the definition of by-product material in this section.

~~((156))~~ (155) **"Waste handling licensees"** mean persons licensed to receive and store radioactive wastes prior to disposal ~~((and))~~ or persons licensed to dispose of radioactive waste.

~~((157))~~ (156) **"Week"** means seven consecutive days starting on Sunday.

~~((158))~~ (157) **"Weighting factor"** w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

ORGAN DOSE WEIGHTING FACTORS	
Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 ^a
Whole Body	1.00 ^b

a 0.30 results form 0.06 for each of 5 "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

b For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T = 1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

~~((159))~~ (158) **"Whole body"** means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

~~((160))~~ (159) **"Worker"** means an individual engaged in activities under a license or registration issued by the department and controlled by a licensee or registrant but does not include the licensee or registrant. Where the licensee or registrant is an individual rather than one of the other legal entities defined under "person," the radiation exposure limits for the worker also apply to the individual who is the licensee or registrant. If students of age eighteen years or older are subjected routinely to work involving radiation, then the students are considered to be workers. Individuals of less than eighteen years of age shall meet the requirements of WAC 246-221-050.

~~((161))~~ (160) "**WL (working level)**" (~~((WL))~~) means any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are — for radon-222: Polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: Polonium-216, lead-212, bismuth-212, and polonium-212.

~~((162))~~ (161) "**WLM (working level month)**" (~~((WLM))~~) means an exposure to one working level for one hundred seventy hours — two thousand working hours per year divided by twelve months per year is approximately equal to one hundred seventy hours per month.

~~((163))~~ (162) "**Year**" means the period of time beginning in January used to determine compliance with the provisions of these (~~(regulations)~~) rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-220-020 Records. (1) Each licensee or registrant shall maintain records relating to the receipt, use, storage, transfer, or disposal of radiation sources, and such other records as the department may require which will permit the determination of the extent of occupational and public exposure from such radiation sources. Copies of these records shall be submitted to the department on request. These requirements are subject to such exemptions as may be provided by department rules.

(2) In accordance with the Public Disclosure Act, the department shall make available to each licensee (~~(and)~~) or registrant departmental records pertaining to that licensee or registrant, (~~(at his/her)~~) upon written request.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-220-030 Inspections. (1) Each licensee (~~(and)~~) or registrant shall afford the department at all reasonable times opportunity to inspect sources of radiation and the premises and facilities wherein such sources of radiation are used or stored.

(2) Each licensee (~~(and)~~) or registrant shall make available to the department for inspection, upon reasonable notice, records maintained pursuant to these (~~(regulations)~~) rules.

(3) In accordance with the Public Disclosure Act, the department shall make available to each licensee (~~(and)~~) or registrant a copy of every inspection report written which covers any inspection of the licensee's (~~(and)~~) or registrant's source of radiation, records, premises, or facilities. Copies of these inspection records shall be submitted to the licensee or registrant by the department upon (~~(the)~~) receipt of the written request of the licensee (~~(and)~~) or registrant.

(4) Any person who resists, impedes, or in any manner interferes with(~~(s))~~) any individual who performs inspections which are related to any activity or facility registration/license issued by the department is subject to immediate

license (~~(and)~~) or registration certificate revocation as well as applicable civil and criminal penalties.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-220-040 Tests and surveys. (1) Each licensee and registrant shall perform upon instructions from the department, or shall permit the department to perform, such reasonable tests and surveys as the department deems appropriate or necessary including, but not limited to, tests and surveys of:

- (a) Sources of radiation;
- (b) Facilities wherein sources of radiation are used or stored;
- (c) Radiation detection and monitoring instruments; and
- (d) Other equipment and devices used in connection with utilization or storage of licensed or registered sources of radiation.

(2) In accordance with the Public Disclosure Act, the department shall provide to the licensee (~~(and)~~) or registrant copies of all tests and surveys conducted on the licensee's (~~(and)~~) or registrant's sources of radiation, upon written request of the licensee (~~(and)~~) or registrant. The department shall acknowledge the receipt of the request in a timely manner by telephone or letter.

AMENDATORY SECTION (Amending Order 184, filed 7/24/91, effective 8/24/91)

WAC 246-220-050 Exemptions. (1) The department may, upon application (~~(therefor)~~) or upon its own initiative, grant such exemptions or exceptions from the requirements of these (~~(regulations)~~) rules as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

(2) Any U.S. Department of Energy contractor or subcontractor and any (~~(U.S. Nuclear Regulatory Commission)~~) NRC contractor or subcontractor of the following categories operating within this state is exempt from these (~~(regulations)~~) rules to the extent that such contractor or subcontractor under the applicable contract receives, possesses, uses, transfers or acquires sources of radiation:

(a) Prime contractors performing work for the Department of Energy at U.S. government-owned or controlled sites, including the transportation of sources of radiation to or from such sites and the performance of contract services during temporary interruptions of such transportation;

(b) Prime contractors of the Department of Energy performing research in, or development, manufacture, storage, testing or transportation of, atomic weapons or components thereof;

(c) Prime contractors of the Department of Energy using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(d) Any other prime contractor or subcontractor of the Department of Energy or (~~(of)~~) the (~~(Nuclear Regulatory Commission)~~) NRC when the state and the (~~(Nuclear Regulatory Commission)~~) NRC jointly determine (i) that the

exemption of the prime contractor or subcontractor is authorized by law, and (ii) that under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-220-090 Communications. All communications and reports concerning these (~~(regulations)~~) rules, and applications filed thereunder, should be addressed to the Department of Health, (~~(Division)~~) Office of Radiation Protection, P.O. Box 47827, Olympia, Washington 98504-7827. The emergency telephone number (~~(in Seattle)~~) is 206-682-5327 or 206 (NUCLEAR).

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-220-100 Additional requirements. The department may, by rule(~~(, regulation,)~~) or order, impose upon any licensee or registrant such requirements in addition to those established in these (~~(regulations)~~) rules as it deems appropriate or necessary to minimize danger to public health and safety or property.

AMENDATORY SECTION (Amending WSR 04-23-093, filed 11/17/04, effective 12/18/04)

WAC 246-221-010 Occupational dose limits for adults. (1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to WAC 246-221-030, to the following dose limits:

- (a) An annual limit, which is the more limiting of:
 - (i) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or
 - (ii) The sum of the (~~(deep)~~) effective dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).
- (b) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities which are:
 - (i) A lens dose equivalent of 0.15 Sv (15 rem); and
 - (ii) A shallow dose equivalent of 0.50 Sv (50 rem) to the skin of the whole body or to the skin of any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, must be subtracted from the limits specified in WAC 246-221-030 for planned special exposures that the individual may receive during the current year and during the individual's lifetime.

(3) (~~(The assigned deep dose equivalent shall be for the portion))~~ When the external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the NRC or the department. The assigned deep-dose equivalent must be for the part of the body receiving the

highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous ten square centimeters of skin receiving the highest exposure. The deep dose equivalent, lens dose equivalent, and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of the individual monitoring are unavailable.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in WAC 246-221-290 and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits.

(5) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity.

(6) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person during the current year as determined in accordance with WAC 246-221-020.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-040 Determination of internal exposure of individuals to concentrations of radioactive materials in restricted areas. (1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee shall, when required under WAC 246-221-100, take suitable and timely measurements of:

- (a) Concentrations of radioactive materials in air in work areas; or
 - (b) Quantities of radionuclides in the body; or
 - (c) Quantities of radionuclides excreted from the body;
- or
- (d) Combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in WAC 246-221-117, or the assessment of intake is based on bioassays, the licensee shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior or the material in an individual is known, the licensee may:

(a) Use that information to calculate the committed effective dose equivalent, and, if used, the licensee shall document that information in the individual's record; and

(b) Upon prior approval of the department, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See WAC 246-221-290.

(4) If the licensee chooses to assess intakes of Class Y material using the measurements given in subsection (1)(b) or (c) of this section, the licensee may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required by WAC 246-221-250 or 246-221-260. This delay permits the licensee to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(a) The sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from WAC 246-221-290 for each radionuclide in the mixture; or

(b) The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, a licensee may disregard certain radionuclides in the mixture if:

(a) The licensee uses the total activity of the mixture in demonstrating compliance with the dose limits in WAC 246-221-010 and in complying with the monitoring requirements in WAC 246-221-100; and

(b) The concentration of any radionuclide disregarded is less than ten percent of its DAC; and

(c) The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed thirty percent.

(8) When determining the committed effective dose equivalent, the following information may be considered:

(a) In order to calculate the committed effective dose equivalent, the licensee may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(b) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.50 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), that is, the stochastic ALI, is listed in parentheses in Table I of WAC 246-221-290. The licensee may, as a simplifying assumption, use the stochastic ALIs to determine committed effective dose equivalent. However, if the licensee uses the stochastic ALIs, the licensee shall also demonstrate that the limit in WAC 246-221-010 (1)(a)(ii) is met.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-221-060 Dose limits for individual members of the public. (1) Each licensee or registrant shall conduct operations so that:

(a) The total effective dose equivalent to individual members of the public from the licensed or registered

operation does not exceed 1 mSv (0.1 rem) in a year, exclusive of the dose contributions from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under chapter 246-240 WAC, from voluntary participation in medical research programs, and from the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with WAC 246-221-190; and

(b) The dose in any unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released under chapter 246-240 WAC, does not exceed 0.02 mSv (0.002 rem) in any one hour.

(2) If the licensee or registrant permits members of the public to have access to restricted areas, they shall be escorted and the limits for members of the public continue to apply to those individuals.

(3) Notwithstanding subsection (1) of this section, a licensee or registrant may continue to operate a facility constructed and put into operation prior to January 1, 1994, where the annual dose limit for an individual member of the public is more than 1 mSv (0.1 rem) and less than 5 mSv (0.5 rem) total effective dose equivalent, if:

(a) The facility's approved operating conditions for each radiation source remain the same. Any increase in the following operating conditions shall require reevaluation by the department and ~~((/or))~~ modification of the facility shielding applicable to the source of radiation to meet the 1 mSv (0.1 rem) total effective dose equivalent limit for individual members of the public: Size of the radiation source, workload, or occupancy factors associated with the source of radiation; and

(b) Any change in the permanent shielding of the facility due to remodeling, repair or replacement requires the facility to meet the 1 mSv (0.1 rem) total effective dose equivalent limit for individual members of the public for areas affected by that portion of the shielding.

(4) Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-080 Leak tests. (1) Each sealed radioactive source possessed under the provisions of a specific license, other than hydrogen-3 (tritium), with a half-life greater than thirty days and in any form other than gas, shall be tested and results obtained for leakage ~~((and))~~ or contamination prior to initial use and at six-month intervals or as specified by the license, except that each source designed for the purpose of emitting alpha particles shall be tested at intervals not to exceed three months. If at any other time there is reason to suspect that a sealed source might have been damaged, it shall be tested for leakage and results obtained before further use. In the absence of a certificate from a transferor indicating that a test for leakage has been made within six months prior to the transfer (three months for

a source designed to emit alpha particles), the sealed source shall not be put into use until tested and the results received.

(2) Leak tests shall be capable of detecting the presence of 185 Bq (0.005 microcurie) of removable contamination. The results of leak tests made pursuant to subsection (1) of this section shall be recorded in units of becquerel or microcuries and shall be maintained for inspection by the department. Any test conducted pursuant to subsection (1) of this section which reveals the presence of 185 Bq (0.005 microcurie) or more of removable contamination shall be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the source from use shall take action to prevent the spread of contamination and shall cause it to be decontaminated and repaired or to be disposed in accordance with WAC 246-232-080. If a sealed source shows evidence of leaking, a report shall be filed with the department within five days of the test, describing the equipment involved, the test results, and the corrective action taken.

(3) Test samples shall be taken from the sealed source or from the internal surfaces or the opening of the container in which the sealed source is stored or from surfaces of devices or equipment in which the sealed source is permanently mounted. Tests for contamination and leakage may be made by wiping appropriate accessible surfaces on which one might expect contamination to accumulate and measuring these wipes for transferred contamination. Test samples shall also be taken from the interior surfaces of the container in which a sealed source of radium is stored.

(4) Leak tests are required for sealed radioactive sources that are greater than 3.7 MBq (100 microcuries) for beta and gamma emitting sources and greater than 370 KBq (10 microcuries) for sources designed to emit alpha particles.

(5) Tests for leakage or contamination shall be performed by persons specifically authorized by the department, an agreement state, ~~((a licensing state,))~~ or the ~~((United States Nuclear Regulatory Commission))~~ NRC to perform such services.

AMENDATORY SECTION (Amending WSR 01-05-110, filed 2/21/01, effective 3/24/01)

WAC 246-221-110 Surveys. (1) Each licensee or registrant shall make or cause to be made such surveys, as defined in WAC 246-220-010, as may be necessary for the licensee or registrant to establish compliance with these regulations and are reasonable under the circumstances to evaluate the magnitude and extent of radiation levels, concentrations or quantities of radioactive material, and potential radiation hazards. Records of such surveys shall be preserved as specified in WAC 246-221-230. Information on performing surveys may be found in the ~~((United States Nuclear Regulatory Commission's))~~ NRC's Regulatory Guide 8.23 "Radiation Safety Surveys at Medical Institutions."

(2) The licensee shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated annually at intervals not to exceed thirteen months for the radiation measured.

AMENDATORY SECTION (Amending WSR 99-15-105, filed 7/21/99, effective 8/21/99)

WAC 246-221-160 Procedures for picking up, receiving, and opening packages. (1)~~((a))~~ Each licensee who expects to receive a package containing quantities of radioactive material in excess of the Type A₁ or A₂ quantities specified in WAC 246-231-200 shall make arrangements to receive:

~~((b))~~ (a) The package when it is offered for delivery by the carrier; or

~~((c))~~ (b) Immediate notification from the carrier of the arrival of the package at the carrier's terminal.

~~((d))~~ (2) Each licensee who picks up a package of radioactive material from a carrier's terminal shall pick up the package expeditiously upon receipt of notification from the carrier of its arrival.

~~((e))~~ (3) Each licensee shall:

(a) Monitor for radioactive contamination the external surfaces of any package labeled with a Radioactive White I, Yellow II or Yellow III label unless the package contains only radioactive material in the form of gas or in special form as defined in WAC 246-231-010; and

(b) Monitor the radiation levels of the external surfaces of any package labeled with a Radioactive White I, Yellow II or Yellow III label unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in WAC 246-231-200; and

(c) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if the package has evidence of potential contamination, such as packages that are crushed, wet, or damaged.

~~((f))~~ (4) Monitoring shall be performed:

(a) Immediately upon receipt if there is evidence of package degradation or any other evidence of potential contamination or excessive radiation levels; or

(b) As soon as practicable after receipt, but no later than three hours after the package is received at the licensee's facility if received during the licensee's normal working hours, or no later than three hours from the beginning of the next working day if received after normal working hours.

~~((g))~~ (5) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the department when:

(a) For normal shipments, removable radioactive surface contamination exceeds either 22 dpm/~~((em2))~~ cm² for beta-gamma emitting radionuclides, all radionuclides with half-lives less than ten days, natural uranium, natural thorium, uranium-235, uranium-238, thorium-232, and thorium-228 and thorium 230 when contained in ores or concentrates; or 2.2 dpm/~~((em2))~~ cm² for all other alpha emitting radionuclides; or

(b) For exclusive use shipments, removable radioactive surface contamination exceeds either 220 dpm/~~((em2))~~ cm² for beta-gamma emitting radionuclides, all radionuclides with half-lives less than ten days, natural uranium, natural thorium, uranium-235, uranium-238, thorium-232, and thorium-228 and thorium 230 when contained in ores or concentrates; or 22 dpm/~~((em2))~~ cm² for all other alpha emitting radionuclides; or

(c) For normal or exclusive use shipments, external radiation levels exceed two mSv/hour (200 millirem per hour) at any point on the external surface of the package; or

(d) For exclusive use shipments where the shipment is made in a closed transport vehicle, packages are secured in a fixed position, and no loading or unloading occurs between the beginning and end of transportation, external radiation levels exceed ten mSv/hour (1000 millirem per hour) at any point on the external surface of the package.

~~((5))~~ (6) Each licensee shall establish and maintain procedures for safely opening packages in which radioactive material is received, and shall assure that such procedures are followed and that due consideration is given to instructions for the type of package being opened and the monitoring of potentially contaminated packaging material (including packages containing radioactive material in gaseous form) to assure that only background levels of radiation are present prior to disposal of such material as nonradioactive waste.

~~((6))~~ (7) Licensees transferring special form sources to and from a work site in vehicles owned or operated by the licensee are exempt from the contamination monitoring requirements of subsection ~~((2))~~ (3)(a) of this section but are not exempt from the monitoring requirement in subsection ~~((2))~~ (3)(b) of this section for measuring radiation levels to ensure that the source is still properly lodged in its shield.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-220 Disposal of specific wastes. (1) Any licensee may dispose of the following licensed material without regard to its radioactivity:

(a) 1.85 KBq (0.05 microcurie~~((s)))~~ or less of hydrogen-3 or carbon-14, per gram of medium, used for liquid scintillation counting; and

(b) 1.85 KBq (0.05 microcurie~~((s)))~~ or less of hydrogen-3 or carbon-14, per gram of animal tissue averaged over the weight of the entire animal.

(2) The licensee shall not dispose of tissue under this section in a manner that would permit its use either as food for humans or as animal feed; and

(3) Nothing in this section, however, relieves the licensee of maintaining records showing the receipt, transfer and disposal of such ~~((byproduct))~~ radioactive material as specified in WAC 246-220-020; and

(4) Nothing in this section relieves the licensee from complying with other applicable federal, state and local regulations governing any other toxic or hazardous property of these materials.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-240 Reports of stolen, lost or missing radiation sources. (1) Each licensee and~~((or))~~ registrant shall report by telephone (206~~((+))~~-682-5327) and confirm promptly by letter, telegram, mailgram, or facsimile to the State Department of Health, ~~((Division))~~ Office of Radiation Protection, P.O. Box 47827, Olympia, Washington 98504-7827.

(a) Immediately after its occurrence becomes known to the licensee, stolen, lost, or missing radioactive material in an aggregate quantity equal to or greater than one thousand times the quantity specified in WAC 246-221-300, Appendix B; or

(b) Within thirty days after its occurrence becomes known to the licensee, lost, stolen, or missing radioactive material in an aggregate quantity greater than ten times the quantity specified in ~~((Appendix C))~~ WAC 246-221-300, Appendix B that is still missing or any item not exempted in chapter 246-232 WAC; or

(c) Immediately after its occurrence becomes known to the registrant, a stolen, lost, or missing radiation machine.

(2) Each licensee or registrant required to make a report pursuant to subsection (1) of this section shall, within thirty days after making the telephone report, make a written report to the department setting forth the following information:

(a) A description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model and serial number, type and maximum energy of radiation emitted; and

(b) A description of the circumstances under which the loss or theft occurred; and

(c) A statement of disposition, or probable disposition, of the licensed or registered source of radiation involved; and

(d) Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and

(e) Actions that have been taken, or will be taken, to recover the source of radiation; and

(f) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

(3) Subsequent to filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within thirty days after the licensee or registrant learns of such information.

(4) The licensee or registrant shall prepare any report filed with the department pursuant to this section so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

AMENDATORY SECTION (Amending WSR 01-05-110, filed 2/21/01, effective 3/24/01)

WAC 246-221-250 Notification of incidents. (1) **Immediate notification.** Notwithstanding other requirements for notification, each licensee and~~((or))~~ registrant shall immediately (as soon as possible but no later than four hours after discovery of an incident) notify the State Department of Health, ~~((Division))~~ Office of Radiation Protection, P.O. Box 47827, Olympia, Washington 98504-7827, by telephone (206~~((+))~~-682-5327) and confirming letter, telegram, mailgram, or facsimile of any incident involving any radiation source which may have caused or threatens to cause:

(a) An individual to receive:

(i) A total effective dose equivalent of 0.25 Sv (25 rem) or more;

(ii) A lens dose equivalent of 0.75 Sv (75 rem) or more; or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 2.5 Sv (250 rem) or more;

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for twenty-four hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures; or

(c) The loss of ability to take immediate protective actions necessary to avoid exposure to sources of radiation or releases of radioactive material that could exceed regulatory limits. Events which could cause such a loss of ability include fires, explosions, toxic gas releases, etc.

(2) **Twenty-four hour notification.** Each licensee and ~~((#))~~ registrant shall within twenty-four hours of discovery of the event, notify the State Department of Health, ~~((Division))~~ Office of Radiation Protection, P.O. Box 47827, Olympia, Washington 98504-7827, by telephone (206~~((#))~~)_682-5327) and confirming letter, telegram, mailgram, or facsimile of any incident involving any radiation source possessed which may have caused or threatens to cause:

(a) An individual to receive, in a period of twenty-four hours:

(i) A total effective dose equivalent exceeding 0.05 Sv (5 rem);

(ii) A lens dose equivalent exceeding 0.15 Sv (15 rem); or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 0.5 Sv (50 rem);

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for twenty-four hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures;

(c) An unplanned contamination incident that:

(i) Requires access to the contaminated area, by workers or the general public, to be restricted for more than twenty-four hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) Involves a quantity of material greater than five times the lowest annual limit on intake specified in WAC 246-221-290; and

(iii) Has access to the area restricted for a reason other than to allow radionuclides with a half-life of less than twenty-four hours to decay prior to decontamination;

(d) Equipment failure or inability to function as designed when:

(i) The equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive material exceeding regulatory limits or to mitigate the consequences of an accident;

(ii) The equipment is required to be available and operable at the time it becomes disabled or fails to function; and

(iii) No redundant equipment is available and operable to perform the required safety functions;

(e) An unplanned medical treatment at a medical facility of an individual with ~~((spreadable))~~ removable radioactive contamination on the individual's clothing or body; or

(f) An unplanned fire or explosion damaging any radioactive material or any device, container or equipment containing radioactive material when:

(i) The quantity of radioactive material involved is greater than five times the lowest annual limit on intake specified in WAC 246-221-290; and

(ii) The damage affects the integrity of the radioactive material or its container.

(3) For each occurrence requiring notification pursuant to this section, a prompt investigation of the situation shall be initiated by the licensee/registrant. A written report of the findings of the investigation shall be sent to the department within thirty days.

(4) The licensee or registrant shall prepare each report filed with the department under this section so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

Any report filed with the department under this section shall contain the information described in WAC 246-221-260 (2) and (3).

(5) The provisions of this section do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to WAC 246-221-265.

(6) Telephone notifications that do not involve immediate or twenty-four hour notification should be made to the ~~((Olympia))~~ Tumwater office (360-236-3300).

(7) Telephone notification required under this section shall include, to the extent that the information is available at the time of notification:

(a) The caller's name and call-back telephone number;

(b) A description of the incident including date and time;

(c) The exact location of the incident;

(d) The radionuclides, quantities, and chemical and physical forms of the radioactive materials involved; and

(e) Any personnel radiation exposure data available.

AMENDATORY SECTION (Amending WSR 99-05-012, filed 2/5/99, effective 3/8/99)

WAC 246-222-030 Instructions to workers. (1) All individuals likely to receive in a year an occupational dose in excess of 1 mSv (100 mrem):

(a) Shall be kept informed of the storage, transfer, or use of sources of radiation in the licensee's or registrant's facility;

(b) Shall be instructed in the health protection considerations for the individual and potential offspring associated with exposure to radiation or radioactive material, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;

(c) Shall be instructed in, and instructed to observe, to the extent within the worker's control, the applicable provisions of these regulations, department form RHF-3 "Notice to employees," and license conditions for the protection of personnel from exposure((s)) to radiation or radioactive material;

(d) Shall be instructed that any worker or representative of workers who believes that a violation of the regulations, license conditions, or unnecessary exposure to radiation exists or occurred, may request an inspection by the department by oral or written notification. The notification shall set forth specific grounds for the complaint. Any such notification to the department is confidential;

(e) Shall be instructed of their right to notify the department if the individual suspects improper actions by a licensee/registrant, or conditions which may lead to a violation of these regulations, the license/registration, or unnecessary exposure to radiation or radioactive materials;

(f) Shall be instructed that employment discrimination by a licensee/registrant against an employee because of actions described in this chapter is prohibited;

(g) Shall be instructed as to their responsibility to report promptly to the licensee or registrant any condition which may constitute, lead to, or cause a violation of the act, these regulations, and licenses or unnecessary exposure to radiation or radioactive material;

(h) Shall be instructed in the appropriate response to warnings made in the event of any unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(i) Shall be advised as to the radiation exposure reports which workers shall be furnished pursuant to WAC 246-222-040.

(2) Records of these instructions described in subsection (1) of this section for all individuals working in, or frequenting any portion of, a restricted area shall be maintained for inspection by the department until further notice. These records shall include a copy of this section, or all the information contained in this section, along with a dated verification signature by the employee stating that the individual has received an explanation of the instructions contained in this section.

(3) In determining those individuals subject to the requirements of subsection (1) of this section, licensees and registrants shall take into consideration assigned activities during normal and abnormal situations involving exposure to sources of radiation which can reasonably be expected to occur during the life of a licensed or registered facility. The extent of these instructions shall be commensurate with potential radiological health protection considerations present in the workplace.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-222-040 Notifications and reports to individuals. (1) Radiation exposure data for an individual and the results of any measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as

specified in this section. The information reported shall include data and results obtained pursuant to these regulations, orders, and license conditions, as shown in records maintained by the licensee or registrant pursuant to these regulations. Each notification and report shall:

(a) Be in writing;

(b) Include appropriate identifying data such as the name of the licensee or registrant, the name of the individual, and the individual's identification number, preferably Social Security number;

(c) Include the individual's exposure information; and

(d) Contain the following statement:

"This report is furnished to you under the provisions of the Washington state department of health, (~~division~~) office of radiation protection, rules (~~and regulations~~) for radiation protection. You should preserve this report for further reference."

(2) Each licensee or registrant shall advise each worker annually of the worker's dose as shown in records maintained by the licensee or registrant pursuant to WAC 246-221-090, 246-221-100, and 246-221-230.

(3) At the request of a worker formerly engaged in work controlled by the licensee or the registrant, each licensee or registrant shall furnish to each worker or former worker a report of the worker's dose due to exposure to radiation or radioactive material upon termination. For the purposes of this section, termination means the end of employment with the licensee or the end of a work assignment in the licensee's restricted area(s) in a given calendar quarter without expectation, or specific scheduling, of reentry into such restricted area(s) during the remainder of that calendar quarter. Such report shall be furnished within thirty days from the time the request is made, or within thirty days after the exposure of the individual has been determined by the licensee or registrant, whichever is later; shall cover, within the period of time specified in the request, the dose record for each year in which the worker's activities involved exposure to radiation from radioactive material licensed by, or radiation machines registered with the department; and shall include the dates and locations of work under the license or registration in which the worker participated during this period.

(4) In addition to the requirements of subsection (3) of this section, at the request of a worker who is terminating employment with the licensee or registrant in work involving radiation exposure, during the current year, each licensee or registrant shall provide at termination to each such worker, or to the worker's designee a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year. If the most recent individual monitoring results are not available at that time, a written estimate of the dose shall be provided together with a clear indication that this is an estimate.

(5) When a licensee or registrant is required pursuant to WAC 246-221-250, 246-221-260, or 246-221-265 to report to the department any exposure of an identified occupationally exposed individual, or an identified member of the public, to radiation or radioactive material, the licensee or the registrant shall also provide the individual a written

report on the individual's exposure data included therein. Such reports shall be transmitted at a time not later than the transmittal to the department.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-222-070 Requests by workers for inspections. (1) Any worker or representative of workers who believes that a violation of the act, of these regulations, or of license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Washington state department of health, ~~((division))~~ office of radiation protection. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by the office of radiation protection no later than at the time of inspection except that, upon the request of the worker giving such notice, his or her name and the name of individuals referred to therein shall not appear in such copy or on any record published, released, or made available by the department, except for good cause shown.

(2) If, upon receipt of such notice, the inspector for the ~~((division))~~ office of radiation protection determines that the complaint meets the requirements set forth in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, the inspector shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists or has occurred. Inspections pursuant to this section need not be limited to matters referred to in the complaint.

(3) No licensee or registrant shall discharge or in any manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under these regulations or has testified or is about to testify in any such proceeding or because of the exercise by such worker on behalf of the worker or other workers of any option afforded by this chapter.

AMENDATORY SECTION (Amending WSR 98-13-037, filed 6/8/98, effective 7/9/98)

WAC 246-222-080 Inspections not warranted—Informal review. (1) If the department of health, ~~((division))~~ office of radiation protection determines, with respect to a complaint under WAC 246-222-070 that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the ~~((division))~~ office of radiation protection shall notify the complainant in writing of such determination.

(a) If the complaint resulted from activities concerning naturally occurring or accelerator produced radioactive materials ~~((and))~~ or radiation producing machines: The complainant may obtain review of such determination by submitting a written statement of position to the Assistant Director, Division of Industrial Safety and Health, P.O. Box 4600, Olympia, Washington 98504-4600. Such request for informal review will be processed according to the provisions

of WAC 296-350-460 and the provisions of the interagency agreement between the department of labor and industries and the department of health, ~~((division))~~ office of radiation protection, if any.

(b) If the complaint resulted from activities concerning ~~((byproduct))~~ radioactive material ~~((source material, and/or special nuclear material))~~: The complainant may obtain review of such determination by submitting a written statement of position with the Department of Health, ~~((Division))~~ Office of Radiation Protection, P.O. Box 47827, Olympia, Washington 98504-7827 (360-236-3300), who will provide the licensee or registrant with a copy of such statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the department of health, ~~((division))~~ office of radiation protection, who will provide the complainant with a copy of such statement by certified mail. Upon the request of the complainant, the department of health may hold an informal conference in which the complainant and the licensee or registrant may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant will be made only following receipt of written authorization from the complainant. After considering all written or oral views presented, the department of health shall affirm, modify, or reverse the determination of the ~~((division))~~ office of radiation protection and furnish the complainant and the licensee or registrant a written notification of the decision and the reason(s) ~~((therefor))~~ therefore.

(2) If the ~~((division))~~ office of radiation protection determines that an inspection is not warranted because the requirements of WAC 246-222-070(1) have not been met, it shall notify the complainant in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of WAC 246-222-070(1).

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-028 Exemptions regarding Type A specific licenses of broad scope. A licensee possessing a Type A specific license of broad scope for medical use, issued under WAC 246-235-090, is exempt from the provisions of:

(1) WAC 246-240-019 regarding the need to file an amendment to the license for medical use of radioactive material, as described in WAC 246-240-501;

(2) WAC 246-240-022~~(2)~~;

(3) WAC 246-240-022~~(5)~~ regarding additions to or changes in the areas of use at the addresses identified in the application or on the license;

(4) WAC 246-240-025 ~~(1)(a))~~;

~~(5) WAC 246-240-025))~~ for an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist;

~~((6))~~ ~~(5)~~ WAC 246-240-025 ~~(1)(d)~~ regarding additions to or changes in the areas of use identified in the application

or on the license where radioactive material is used in accordance with either WAC 246-240-151 or 246-240-157; ~~((7))~~ (6) WAC ~~((246-240-122))~~ 246-240-066.

WSR 13-19-088
PROPOSED RULES

OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-16—Filed September 18, 2013, 7:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-165.

Title of Rule and Other Identifying Information: Long-term care prompt payment requirements.

Hearing Location(s): Office of the Insurance Commissioner, Training Room (T-120), 5000 Capitol Way South, Tumwater, WA, on October 23, 2013, at 11:00 a.m.

Date of Intended Adoption: October 28, 2013.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by October 22, 2013.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by October 22, 2013, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules implement prompt payment requirements for long-term care insurance as required by RCW 48.83.170 (SB 5216) enacted during the 2013 legislative session. The legislation also amended RCW 48.83.090 requiring issuers to make long-term care denials within thirty days instead of sixty days.

Reasons Supporting Proposal: RCW 48.83.170, enacted during the 2013 legislative session, requires the commissioner to adopt by rule prompt payment requirements for long-term care insurance. As required by the legislation, the commissioner considered prompt payment requirements developed by the National Association of Insurance Commissioners (NAIC) in developing these proposed rules.

Statutory Authority for Adoption: RCW 48.02.060 and 48.83.170(3).

Statute Being Implemented: RCW 48.83.090 and 48.83.170.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Kacy Scott, P.O. Box 40254, Olympia, WA 98504-0254, (360) 725-7041; Implementation: John Hamje, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7262; and Enforcement: AnnaLisa Gellermann, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not require a small business economic impact statement under the provisions of RCW 19.85.025(3).

The proposed rule is adopting prompt payment requirements using the exact language found in long-term care insurance model regulation put forth by the NAIC; this model language is specifically referenced in section 2 of SB 5216.

The only change in NAIC model language is the deletion of adjective "business" to describe the number of days for response; this change was required by SB 5126, section 1.

SB 5216 became effective July 28, 2013.

A cost-benefit analysis is not required under RCW 34.05.328. This proposed rule does not require a cost-benefit analysis under the provisions of RCW 34.05.328 (5)(b)(iii).

The rule is adopting prompt payment requirements using the exact language found in long-term care insurance model regulation put forth by NAIC; this model language is specifically referenced in section 2 of SB 5216.

The only change in this NAIC model language is the deletion of adjective "business" to describe the number of days for response; this change was required by SB 5126, section 1.

SB 5216 became effective July 28, 2013.

September 18, 2013

Mike Kreidler

Insurance Commissioner

NEW SECTION

WAC 284-83-325 Prompt payment of clean claims.

(1) The purpose of this section is to effectuate RCW 48.83.090 and 48.83.170 by establishing prompt payment requirements for long-term care insurance.

(2) For purposes of this section, the following definitions apply:

(a) "Claim" means a request for payment of benefits under an in-force policy, regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met.

(b) "Clean claim" means a claim that has no defect or impropriety, including any lack of required substantiating documentation, such as satisfactory evidence of expenses incurred, or particular circumstance requiring special treatment that prevents timely payment from being made on the claim.

(3) Within thirty days after receipt of a claim for benefits under a long-term care insurance policy or certificate, an insurer must pay such a claim if it is a clean claim, or send a written notice acknowledging the date of receipt of the claim and one of the following:

(a) The insurer is declining to pay all or part of the claim and the specific reason(s) for the denial; or

(b) That additional information is necessary to determine if all or any part of the claim is payable and the specific additional information that is necessary.

(4) Within thirty days after receipt of all the requested additional information, an insurer must pay a claim for benefits under a long-term care insurance policy or certificate if it is a clean claim, or send a written notice that the insurer is declining to pay all or part of the claim, and the specific reason or reasons for denial.

(5) If an insurer fails to comply with subsection (3) or (4) of this section, such insurer must pay interest at the rate of one percent per month on the amount of the claim that should have been paid but that remains unpaid for forty-five days after the receipt of the claim with respect to subsection (3) of this section or all requested additional information with respect to subsection (4) of this section. The interest payable pursuant to this subsection must be included in any late reimbursement without requiring the person who filed the original claim to make any additional claim for such interest.

(6) The provisions of this section do not apply where the insurer has a reasonable basis supported by specific information that such claim was fraudulently submitted.

WSR 13-19-089
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed September 18, 2013, 8:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-07-051.

Title of Rule and Other Identifying Information: WAC 170-290-0190 WCCC authorized and additional payments—Determining units of care. Authorizing full-time child care when the consumer participates in one hundred ten hours or more of approved work or related activities per calendar month.

Hearing Location(s): Department of Early Learning (DEL), State Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on October 24, 2013, at 12:00 p.m.

Date of Intended Adoption: October 31, 2013.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by October 24, 2013.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by October 17, 2013, (360) 407-1962.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 170-290-0190 regarding WCCC authorized and additional payments—Determining units of care, to comply with section 3 (2)(c) of recently enacted 2SSB 5595, enrolled as chapter 337, Laws of 2013, effective date July 28, 2013, such that, effective December 1, 2013, parents who receive working connections child care benefits and participate in one hundred ten hours or more of approved work or related activities are eligible for full-time child care services.

Reasons Supporting Proposal: These changes are needed to comply with section 3 (2)(c) of recently enacted 2SSB 5595, enrolled as chapter 337, Laws of 2013, effective date July 28, 2013.

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

Statute Being Implemented: Chapter 43.215 RCW as amended by chapter 337, Laws of 2013.

Name of Proponent: Department of early learning, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Admin., DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

September 18, 2013

Elizabeth M. Hyde

Director

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0190 WCCC authorized and additional payments—Determining units of care. (1) DSHS may authorize and pay for the following child care hours:

(a) Full-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care between five and ten hours per day, or when the consumer participates in one hundred ten hours or more of approved work or related activities per calendar month;

(b) Half-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care for less than five hours per day;

(c) Hourly child care for in-home/relative child care;

(d) A registration fee (under WAC 170-290-0245);

(e) A field trip fee (under WAC 170-290-0247);

(f) Special needs care when the child has a documented need for a higher level of care (under WAC 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235); and

(g) A nonstandard hours bonus under WAC 170-290-0249.

(2) DSHS may authorize up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the home or work (activity) site.

"Appropriate" means licensed or certified child care under WAC 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130.

"Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.

(3) DSHS authorizes an additional amount of care if:

(a) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day); and

(b) The provider's written policy is to charge all families for these hours of care in excess of ten hours per day.

WSR 13-19-090
PROPOSED RULES
OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-02—Filed September 18,
2013, 8:25 a.m.]

Supplemental Notice to WSR 13-11-149.

Preproposal statement of inquiry was filed as WSR 13-03-140.

Title of Rule and Other Identifying Information: Open and special enrollment periods—Health plans.

Hearing Location(s): Office of the Insurance Commissioner, Training Room (T-120), 5000 Capitol Way South, Tumwater, WA, on October 23, 2013, at 1:00 p.m.

Date of Intended Adoption: October 25, 2013.

Submit Written Comments to: Meg Jones, 5000 Capitol Way South, Tumwater, WA, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by October 23, 2013.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by October 22, 2013, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules are designed to align the exchange and off-exchange marketplaces to address the risk of adverse selection, and ensure that each issuer administers open and special enrollment periods for the individual and small group markets consistently.

Reasons Supporting Proposal: Beginning January 1, 2014, absent open enrollment requirements, health plan issuers must enroll all applicants at any time during the benefit year. Beginning October 1, 2013, and each October 1 thereafter, the health benefit exchange will conduct open enrollment for individual health plans offered on the exchange. The first year, open enrollment closes in March 2014; subsequently it will end in December of each year. This creates a risk of adverse selection for the off-exchange markets because without the limitation of open enrollment, someone with a specific health care need can enroll, receive the service, and disenroll, unless open enrollment periods are established that parallel the exchange's time frames. The proposed rules address this risk for the individual market.

For small group plans, the option of conducting open enrollment is not available to issuers in any marketplace under federal law, which means the risk of adverse selection based on guaranteed issue does not exist.

Special enrollment periods are required in both the small group and individual markets if a qualifying event occurs. Some of these requirements are identical for qualified health plans offered on the health benefit exchange and commercial plans offered off the exchange; some are unique to qualified health plans. The proposed rules also explain these special enrollment triggers for issuers.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.120(2), 48.20.450, 48.43.0211, 48.43.720(3), 48.44.-050, and 48.46.200.

Statute Being Implemented: RCW 48.18.120, 48.20.450, 48.20.500, 48.43.012, 48.43.0122, 48.43.015, 48.43.008, 48.43.035, 48.43.700, and 43.71.040.

Rule is necessary because of federal law, 45 C.F.R. 147.104; 45 C.F.R. 147.106; 45 C.F.R. 155.420; 45 C.F.R. 155.725.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: For the 2014 benefit year, issuers filed forms for approval with the commissioner prior to the issue of this rule. For plans already filed and open for review with the commissioner's rates and forms division, the commissioner proposes that he will not require plans to refile forms to comply with the requirements of this rule. The commissioner further proposes that plan form filings must be brought into compliance with on [within] the issuer's next form filing date after the effective date of the permanent rule. During the interim period, the commissioner proposes enforcing these proposed rules, and expects issuers to administer their enrollment processes in compliance with the rules.

Name of Proponent: Office of the insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Meg Jones, P.O. Box 40528, Olympia, WA, (360) 725-7170; Implementation: Molly Nollette, P.O. Box 40528, Olympia, WA, (360) 725-7117; and Enforcement: Leslie Krier, P.O. Box 40528, Olympia, WA, (360) 725-7216.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The entities affected by the rule are not small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Meg Jones, P.O. Box 40528, Olympia, WA 98504, phone (360) 725-7170, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

September 18, 2013

Mike Kreidler

Insurance Commissioner

NEW SECTION

WAC 284-170-400 Preexisting condition limitations.

For health plans offered, issued or renewed on or after January 1, 2014, issuers must not condition or otherwise limit enrollment based on preexisting health conditions.

NEW SECTION

WAC 284-170-410 Special enrollment requirements for small group plans.

(1) A "special enrollment period" means a period of time outside the initial or annual group renewal period during which an individual applicant may enroll if the individual has experienced a qualifying event. An issuer must make periods for special enrollment in its small group plans available to an otherwise eligible applicant if the applicant has experienced one of the qualifying events identified in this section.

(2) A qualifying event for special enrollment in small group plans offered on or off the health benefit exchange is one of the following:

(a) The loss of minimum essential benefits, including loss of employer sponsored insurance coverage, or of the coverage of a person under whose policy they were enrolled,

unless the loss is based on the individual's voluntary termination of employer sponsored coverage, the misrepresentation of a material fact affecting coverage or for fraud related to the terminated health coverage;

(b) The loss of eligibility for medicaid or a public program providing health benefits;

(c) The loss of coverage as the result of dissolution of marriage or termination of a domestic partnership;

(d) A permanent change in residence, work, or living situation, whether or not within the choice of the individual, where the health plan under which they were covered does not provide coverage in that person's new service area;

(e) The birth, placement for adoption or adoption of the applicant for whom coverage is sought;

(f) A situation in which a plan no longer offers benefits to the class of similarly situated individuals that includes the applicant;

(g) Loss of individual or group coverage purchased on the health benefit exchange due to an error on the part of the exchange, the issuer or the U.S. Department of Health and Human Services;

(h) Marriage or entering into a domestic partnership, including eligibility as a dependent of an individual marrying or entering into a domestic partnership.

(3) Nothing in this rule is intended to alter or affect the requirements of RCW 48.43.517.

(4) An issuer may require reasonable proof or documentation that an individual seeking special enrollment has experienced a qualifying event.

(5) An issuer must offer a special enrollee each benefit package available to members of the group who enrolled when first eligible. A special enrollee cannot be required to pay more for coverage than other members of the group who enrolled in the same coverage when first eligible. Any difference in benefits or cost-sharing requirements constitutes a different benefit package.

(6) An issuer must include detailed information about special enrollment options and rights in its health plan documents provided pursuant to WAC 284-43-820, and in any policy or certificate of coverage provided to an employer, plan sponsor, or enrollee. The notice must be substantially similar to the model notice provided by the U.S. Department of Labor or the U.S. Department of Health and Human Services.

(7) For children who experience a qualifying event, if the selected plan is not the plan on which the parent is then enrolled, or if the parent does not have coverage, the issuer must permit the parent to enroll when the child seeks enrollment for dependent coverage. An enrolling child must have access to any benefit package offered to employees, even if that requires the issuer to permit the parent to switch benefit packages.

NEW SECTION

WAC 284-170-412 Special enrollment periods for small group qualified health plans. (1) Issuers of small group qualified health plans must comply with the additional special enrollment period requirements set forth in 45 C.F.R. 155.420 (b)(2) and 45 C.F.R. 155.725.

(2) In addition to meeting the requirements set forth in WAC 284-170-410, issuers must include in qualified health plan contract forms and required disclosure documents an explanation of special enrollment rights if one of the following triggering events occurs:

(a) In addition to the requirements for adopted, placed for adoption, and newborn children, the same special enrollment right accrues for foster children and children placed in foster care;

(b) The individual demonstrates to the health benefit exchange that the qualified health plan in which they are enrolled violated a material provision of the coverage contract in relation to the individual;

(c) An individual's enrollment in or nonenrollment in a qualified health plan is unintentional, inadvertent or erroneous, and is the result of the error, misinterpretation or inaction of an officer, employee or agent of the health benefit exchange of the U.S. Department of Health and Human Services, as determined by the health benefit exchange upon evaluation;

(d) In addition to the special enrollment event in WAC 284-170-410 (2)(d), a change in the individual's residence as the result of a permanent move results in new eligibility for previously unavailable qualified health plans;

(e) For qualified individuals who are an Indian, as defined by Section 4 of the Indian Health Care Improvement Act, enrollment in a qualified health plan or change from one qualified health plan to another must be permitted one time per month, without requiring an additional special enrollment triggering event.

(3) If the health benefit exchange establishes earlier effective dates for special enrollment periods, pursuant to 45 C.F.R. 155.420, an issuer must include in its plan documents and required disclosures an explanation of the effective date for special enrollment periods.

NEW SECTION

WAC 284-170-415 Duration and effective dates of small group special enrollment periods. (1) This section applies to nongrandfathered small group plans offered on or off the health benefit exchange.

(2) Special enrollment periods must not be shorter than sixty days from the date of the qualifying event.

(3) The effective date of coverage for those enrolling in a small group plan through a special enrollment period is the first date of the next month after the application for coverage is received, unless one of the following exceptions applies:

(a) For special enrollment of newborn, adopted or placed for adoption children, the date of birth, date of adoption or date of placement for adoption becomes the first effective date of coverage;

(b) For applicants enrolling after the fifteenth of the month, the issuer must begin coverage not later than the first date of the second month after the application is received, unless the applicant is enrolling due to marriage or the commencement of a domestic partnership. An issuer may establish an earlier effective date at their discretion. An issuer may establish an earlier effective date at their discretion;

(c) For applicants enrolling because of marriage or the commencement of a domestic partnership, when notice of the marriage or domestic partnership is received within sixty days of the marriage or commencement of the domestic partnership, either as spouse, domestic partner or as a dependent child, coverage must begin no later than the first date of the month immediately following the date of marriage or domestic partnership.

(4) An issuer must not refuse to enroll an applicant who applies within sixty days of the qualifying event, if the applicant would be eligible had the application been received during open enrollment.

NEW SECTION

WAC 284-170-420 Individual market open enrollment requirements. (1) For purposes of this section, "open enrollment" means a specific period of time each year during which enrollment in a health benefit plan is permitted. This section applies to plans offered in the individual market.

(2) An issuer must limit the dates for enrollment in plans offered on the individual market off the health benefit exchange to the same time period for open enrollment established by the health benefit exchange.

(3) In addition to the open enrollment period established by the exchange, an issuer participating in the off-exchange individual market must hold an open enrollment period between March 15th and April 30th each year, making its child-only policies available to those under age nineteen.

(4) An issuer must prominently display information on its web site about open enrollment periods and special enrollment periods applicable to its plans offered either on or off the health benefit exchange.

(a) The web site information about enrollment periods must provide a consumer with the ability to access or request and receive an application packet for enrollment at any time.

(b) The displayed information must include details written in plain language explaining what constitutes a qualifying event for special enrollment.

(5) Written notice of open enrollment must be provided to enrolled persons at some point between September 1st and September 30th of each year.

NEW SECTION

WAC 284-170-425 Individual market special enrollment requirements. (1) For a nongrandfathered individual health plan offered on or off the health benefit exchange, an issuer must make a special enrollment period of not less than sixty days available to any person who experiences a qualifying event, permitting enrollment in an individual health benefit plan outside the open enrollment period. This requirement applies to plans offered on the health benefit exchange that cover pediatric oral benefits offered as essential health benefits necessary to satisfy minimum essential coverage requirements.

(2) A qualifying event means the occurrence of one of the following:

(a) The loss of minimum essential coverage, including employer sponsored insurance coverage due to action by either the employer or the issuer or due to the individual's loss

of eligibility for the employer sponsored coverage, or the loss of the individual or group coverage of a person under whose policy they were enrolled, unless the loss is based on the individual's misrepresentation of a material fact affecting coverage or for fraud related to the discontinued health coverage;

(b) The loss of eligibility for medicaid or a public program providing health benefits;

(c) The loss of coverage as the result of dissolution of marriage or termination of a domestic partnership;

(d) A permanent change in residence, work, or living situation, whether or not within the choice of the individual, where the health plan under which they were covered does not provide coverage in that person's new service area;

(e) The birth, placement for or adoption of the person for whom coverage is sought. For newborns, coverage must be effective from the moment of birth; for those adopted or placed for adoption, coverage must be effective from the date of adoption or placement for adoption, whichever occurs first;

(f) A situation in which a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual;

(g) Coverage is discontinued in a qualified health plan by the health benefit exchange pursuant to 45 C.F.R. 155.430 and the three month grace period for continuation of coverage has expired;

(h) Exhaustion of COBRA coverage due to failure of the employer to remit premium;

(i) Loss of COBRA coverage where the individual has exceeded the lifetime limit in the plan and no other COBRA coverage is available;

(j) If the person discontinues coverage under a health plan offered pursuant to chapter 48.41 RCW;

(k) Loss of coverage as a dependent on a group plan due to age;

(l) Marriage or entering into a domestic partnership, including eligibility as a dependent of an individual marrying or entering into a domestic partnership.

(3) If the special enrollee had prior coverage, an issuer must offer a special enrollee each of the benefit packages available to individuals who enrolled during the open enrollment period within the same metal tier or level at which the person was previously enrolled. Any difference in benefits or cost-sharing requirements for different individuals constitutes a different benefit package.

(a) A special enrollee cannot be required to pay more for coverage than a similarly situated individual who enrolls during open enrollment.

(b) An issuer may limit a special enrollee who was enrolled in a catastrophic plan as defined in RCW 48.43.005(8) to the plans available during open enrollment at either the bronze or silver level.

(c) An issuer may restrict a special enrollee whose eligibility is based on their status as a dependent to the same metal tier for the plan on which the primary subscriber is enrolled.

(4) An issuer may require reasonable proof or documentation that an individual seeking special enrollment has experienced a qualifying event.

NEW SECTION

WAC 284-170-430 Individual market special enrollment period requirements for qualified health plans. (1) An issuer offering individual qualified health plans on the health benefit exchange must make special enrollment opportunities, subject to the same terms and conditions specified in WAC 284-170-425, available to applicants who experience a qualifying event.

(2) In addition to the special enrollment qualifying events set forth in WAC 284-170-425, the following special enrollment opportunities must be made available for individual plans offered on the health benefit exchange:

(a) For qualified individuals who are an Indian, as defined by Section 4 of the Indian Health Care Improvement Act, enrollment in a qualified health plan or change from one qualified health plan to another must be permitted one time per month, without requiring an additional special enrollment triggering event;

(b) The applicant demonstrates to the health benefit exchange that the qualified health plan in which they are enrolled violated a material provision of the coverage contract in relation to the individual;

(c) If applicant lost prior coverage due to errors by the health benefit exchange staff or the U.S. Department of Health and Human Services;

(d) The applicant, or his or her dependent, not previously a citizen, national or lawfully present individual, gains such status. For purposes of this subsection, "dependent" means a dependent as defined in RCW 48.43.005;

(e) The individual becomes newly eligible or newly ineligible for advance payment of premium tax credits, has a change in eligibility for cost-sharing reductions, or the individual's dependent becomes newly eligible. For purposes of (e) and (f) of this subsection, "dependent" means dependent as defined in 26 C.F.R. 54.9801-2;

(f) The individual or their dependent who is currently enrolled in employer sponsored coverage is determined newly eligible for advance payment of premium tax credit pursuant to the criteria established in 45 C.F.R. 155.420 (d)(6)(iii);

(g) In addition to the special enrollment event in WAC 284-170-425 (2)(d), a change in the individual's residence as the result of a permanent move results in new eligibility for previously unavailable qualified health plans.

(3) An individual who experiences a qualifying event and whose prior coverage was on a catastrophic health plan as defined in RCW 48.43.005 (8)(c)(i) may be limited by the exchange to enrollment in a bronze or silver level plan.

(4) This section must not be interpreted or applied to preclude or limit the health benefit exchange's rights to automatically enroll qualified individuals based on good cause, exceptional circumstances as defined by the health benefit exchange or as required by the U.S. Department of Health and Human Services.

(5) Issuers must comply with the special enrollment event requirements established for qualified health plans offered on the health benefit exchange in 45 C.F.R. 155.420. If the health benefit exchange establishes earlier effective dates for special enrollment periods, pursuant to 45 C.F.R. 155.420, an issuer must include in its plan documents and

required disclosures an explanation of the effective date for special enrollment periods.

NEW SECTION

WAC 284-170-435 Duration, notice requirements and effective dates of coverage for individual market special enrollment periods. (1) Special enrollment periods must not be shorter than sixty days from the date of the qualifying event.

(2) The effective date of coverage for those enrolling in an individual health plan through a special enrollment period is the first date of the next month after the premium is received by the issuer, unless one of the following exceptions applies:

(a) For those enrolling after the twentieth of the month, the issuer must begin coverage not later than the first date of the second month after the application is received. Issuers may establish an earlier effective date at their discretion;

(b) For special enrollment of newborn, adopted or placed for adoption children, the date of birth, date of adoption or date of placement for adoption, as applicable, becomes the first effective date of coverage. The same requirement applies to foster children or children placed for foster care on qualified health plans;

(c) For special enrollment based on marriage or the beginning of a domestic partnership, and for special enrollment based on loss of minimum essential coverage, coverage must begin on the first day of the next month.

(3) For individual plans offered either on or off the health benefit exchange, an issuer must include detailed information about special enrollment options and rights in its health plan documents provided pursuant to WAC 284-43-820, and in the policy, contract or certificate of coverage provided to an employer, plan sponsor or enrollee. The notice must be substantially similar to the model notice provided by the U.S. Department of Health and Human Services.

WSR 13-19-091**PROPOSED RULES****EASTERN WASHINGTON UNIVERSITY**

[Filed September 18, 2013, 8:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-067.

Title of Rule and Other Identifying Information: Amending chapter 172-118 WAC, Restrictions and regulations for recreational equipment.

Hearing Location(s): Eastern Washington University, Main Campus, Showalter Hall, Room 201, Cheney, WA 99004, on October 23, 2013, at 11:00 a.m.

Date of Intended Adoption: November 22, 2013.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by October 22, 2013.

Assistance for Persons with Disabilities: Contact Trent Lutey by October 22, 2013, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed revisions narrow the focus of the existing chapter to recreational equipment that is of primary concern, i.e., skateboards, roller skates, inline skates, skate shoes, scooters and similar equipment. The proposed revision restricts the use of such equipment on the university campus in order to reduce physical damage and unnecessary wear to campus property.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Trent Lutey, 214 Showalter, Cheney, WA 99004, (509) 359-6322; Implementation and Enforcement: Laurie Connelly, 214 Showalter, Cheney, WA 99004, (509) 359-2371.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC revision does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-118 WAC is not considered a significant legislative rule by Eastern Washington University.

September 18, 2013

Trent Lutey
University Policy Administrator

AMENDATORY SECTION (Amending WSR 92-22-028, filed 10/26/92, effective 11/26/92)

WAC 172-118-010 Purpose. ((The primary objectives of the rules and regulations set forth in this chapter are:

(1) To provide safety, traffic, and parking controls for the use of skateboards, roller skates, bicycles, motorcycles, and motor scooters upon all state lands devoted to the educational, recreational, research, and living activities of Eastern Washington University; and

(2) To protect, from physical damage and unnecessary wear, wooden and concrete benches, brick and paved walkways, stairs, steps, loading ramps, plazas, and ramps for the disabled, caused by the use of recreational equipment as included in subsection (1) of this section. Equipment for the disabled and equipment owned and operated by the university are exempt from this chapter.)) These rules govern the use of recreational equipment on Eastern Washington University's campus. The purpose of this chapter is to protect campus property from physical damage and unnecessary wear and to facilitate safety and access.

AMENDATORY SECTION (Amending WSR 92-22-028, filed 10/26/92, effective 11/26/92)

WAC 172-118-020 Definitions. For the purposes of this chapter ((the following definitions apply:

(1) A bicycle is any vehicle with three or less wheels and containing a saddle seat, and which is not motor driven.

(2) A motorcycle or motor scooter is any vehicle with three or less wheels and containing a saddle seat, and which is motor driven.

(3) A skateboard is a toy consisting of an oblong or rectangular board, made of wood, plastic, metal, or components thereof, with a pair of small wheels at each end, ridden as down an incline, usually in a standing position. It may be motorized.

(4) Roller skates are shoes with a set of wheels attached for skating over a flat surface, or a metal frame with wheels attached that can be fitted to the sole of the shoe. For the purposes of this chapter, roller blades are considered roller skates.

(5) A scooter is a foot-operated vehicle consisting of a narrow board mounted between two wheels, tandem with an upright steering handle attached to the front wheel.

Subsections (1) through (5) of this section are considered recreational equipment)), recreational equipment includes, but is not limited to, skateboards, longboards, roller skates, inline skates, skate shoes, foot scooters, and similar equipment.

AMENDATORY SECTION (Amending WSR 92-22-028, filed 10/26/92, effective 11/26/92)

WAC 172-118-040 Use of recreational equipment. ((1) No recreational equipment may be operated on sidewalks, walkways, lawns, or other property on the Eastern Washington University campus, except as provided in this chapter.

(2) Bicycles, motorcycles, and motor scooters may be operated any place where automobiles or other motor vehicles are permitted.

(3) Bicycles may be operated on university walkways in the mall area and the area surrounding Showalter Hall and between Science Hall and Parking Lot #3: Provided, That the bicycle is operated in a safe manner and in compliance with these regulations.

(4) Bicycle locks may be broken to facilitate impounding of a bicycle or other recreational equipment without liability to Eastern Washington University or its authorized personnel.)) Recreational equipment may only be used on asphalt or concrete campus walkways and sidewalks, and only in a way that does not interfere with pedestrian traffic or other campus activities.

(1) Recreational equipment is prohibited on grass, benches, stairways, steps, sculpture, art work, hand rails, inside buildings, plazas, walls, barriers, brick walkways, and any other campus property other than paved walkways and sidewalks.

(2) Speeds in excess of five miles per hour are prohibited.

(3) Performing stunts or tricks is prohibited.

(4) Any use of recreational equipment that may cause property damage and/or endanger the user or others is prohibited.

(5) Recreational equipment users shall yield the right of way to pedestrians at all times.

AMENDATORY SECTION (Amending WSR 92-22-028, filed 10/26/92, effective 11/26/92)

WAC 172-118-090 Enforcement. ~~(1) ((Enforcement of this chapter is the responsibility of the president, or the executive vice president, or their designees.)) Any student who violates these regulations may be asked to refrain from using recreational equipment on campus. Any student who refuses to comply with such a request and/or repeatedly violates these regulations will be subject to disciplinary action under the student conduct code, chapter 172-121 WAC.~~

(2) A user of recreational equipment, other than an Eastern Washington University (EWU) student, who ~~((refuses to abide by))~~ violates these regulations ~~((will))~~ may be asked to leave the campus. ~~((Refusal to obey will subject the person to being cited for))~~ A person who fails to comply with a request to leave campus may be charged with criminal trespass under the provisions of chapter 9A.52 RCW.

~~((3) If the user is a student, the student will be asked to refrain from using the equipment on campus. If the student refuses, a proceeding may be initiated under the Student conduct code, chapter 172-120 WAC.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 172-118-030 Applicable rules and regulations.

WAC 172-118-050 Parking regulations.

WAC 172-118-080 Registration of bicycles.

WSR 13-19-093 PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed September 18, 2013, 8:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-065.

Title of Rule and Other Identifying Information: Repealing chapter 172-116 WAC, Traffic and parking regulations, and adopting chapter 172-100 WAC, Traffic and parking rules, to revise rules related to traffic and parking on the campus of Eastern Washington University. These rules constitute a significant revision that is more easily implemented by repealing the existing chapter and adopting a new chapter.

Hearing Location(s): Eastern Washington University, Main Campus, Showalter Hall, Room 201, Cheney, WA 99004, on October 23, 2013, at 11:00 a.m.

Date of Intended Adoption: November 22, 2013.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by October 22, 2013.

Assistance for Persons with Disabilities: Contact Trent Lutey by October 22, 2013, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rule changes are needed to better facilitate campus safety and access for pedestrians and vehicular traffic and to more accurately reflect current organizational operations and practices.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Trent Lutey, 214 Showalter, Cheney, WA 99004, (509) 359-6322; Implementation and Enforcement: Laurie Connelly, 214 Showalter, Cheney, WA 99004, (509) 359-2371.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC revision does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-100 WAC is not considered a significant legislative rule by Eastern Washington University.

September 18, 2013

Trent Lutey

University Policy Administrator

Chapter 172-100 WAC

TRAFFIC AND PARKING RULES

NEW SECTION

WAC 172-100-010 Purpose. These rules govern pedestrian, bicycle, and motor vehicle traffic and parking at Eastern Washington University (EWU). The purpose of these rules is to facilitate campus safety and access. Specifically, these rules are intended to:

- (1) Control parking on campus and in off-campus parking lots that are owned or leased by the university;
- (2) Assure access at all times for emergency equipment;
- (3) Expedite EWU business, protect state property, and provide maximum safety and convenience;
- (4) Provide funds to obtain and maintain suitable campus parking and traffic facilities;
- (5) Regulate motor vehicles and minimize traffic disturbances on campus; and
- (6) Protect pedestrians and bicyclists.

NEW SECTION

WAC 172-100-020 Applicability. (1) All rules in this chapter and all motor vehicle and traffic laws of the state of Washington apply on campus.

- (2) The traffic code of the city of Cheney applies on city streets located on campus.
- (3) The traffic and parking rules are effective at all times.
- (4) It is the responsibility of all individuals who operate bicycles or motor vehicles on campus to read and fully understand these rules. A lack of knowledge of these rules

will not constitute a defense for violation of these rules nor will it limit a violator's responsibility for any citations.

NEW SECTION

WAC 172-100-030 Liability of university. The university assumes no liability for bicycles or motor vehicles or their contents when such bicycles or motor vehicles are on campus. The university offers parking permits to those desiring to park on campus. A parking permit licenses the holder (licensee) to park one motor vehicle in the lot designated on the permit. The university is not responsible for fire, theft, damage, or loss of vehicle or any article left in such vehicle. A parking permit is a license to park and no bailment is created.

NEW SECTION

WAC 172-100-040 Authorities. (1) The board of trustees of EWU is granted statutory authority under RCW 28B.10.560 to establish rules to govern pedestrian and vehicular traffic and parking on the campus of the university.

(2) The officers of the EWU police department are fully commissioned peace officers of the state of Washington and have police powers as are vested in sheriffs and peace officers generally under the laws of the state of Washington.

(3) Designated employees of EWU parking services have authority to enforce traffic and parking rules on the campuses and property of Eastern Washington University. All actions and decisions of parking services personnel in the enforcement of traffic and parking rules are subject to administrative review and approval.

NEW SECTION

WAC 172-100-100 General traffic and vehicle rules.

(1) Bicycle riders and motor vehicle operators shall operate such equipment in a careful and prudent manner at all times and must comply with posted speed limits.

(2) Bicycle riders and motor vehicle operators shall obey all regulatory signs and comply with directions given by parking services personnel and public safety officers and their designees.

(3) Bicycle riders and motor vehicle operators shall yield the right of way to pedestrians. This includes, but is not limited to, yielding to pedestrians crossing streets, roadways, and parking areas within the campus. Riders and drivers shall also yield to pedestrians at intersections, clearly marked crosswalks, or city streets on campus.

(4) Vehicles on university property must be kept in operating condition, except those in a garage, research facility, or automotive shop. Vehicle repairs or maintenance are prohibited on campus unless preauthorized by parking services.

(5) Bicycles may be operated any place where motor vehicles are permitted. Bicycles may also be operated on university walkways, so long as the bicycle is operated in a safe manner and does not interfere with pedestrian traffic or other campus activities.

NEW SECTION

WAC 172-100-110 Special rules and restrictions.

During emergencies, special events, or extenuating circumstances, the university police department may impose additional traffic and parking rules or modify existing rules.

NEW SECTION

WAC 172-100-120 Parking rules. (1) Emergency access areas: Parking is prohibited in:

- (a) Emergency access areas;
- (b) Fire lanes;
- (c) Within fifteen feet of a fire hydrant.

(2) No parking/restricted parking areas: Parking is prohibited in any area that is not specifically designated for parking, unless explicitly authorized by parking services or university police. No parking and restricted parking areas include, but are not limited to:

- (a) Yellow curb areas;
- (b) Bus zones;
- (c) Driveways;
- (d) Sidewalks; and
- (e) Any grassy area.

(3) Loading zones: Parking is permitted in loading zones according to the restrictions and time limits posted for the zone. If no restrictions are posted, users shall:

(a) Display a department permit issued under WAC 172-100-230; or

(b) Obtain and display a permit from parking services.

(4) Service drives/areas: Driving or parking in a service drive without displaying a department or service permit is prohibited.

(5) Visitor spaces: Campus visitors may park in any visitor parking space on campus subject to any posted restrictions.

(6) Reserved spaces: Parking in a reserved parking space, without proper authorization, is prohibited.

(7) Permit-required lots: Except as provided herein, parking is prohibited in any campus parking lot that requires a parking permit unless the vehicle displays a valid parking permit for that lot. To be considered valid, parking permits must be issued by the university's parking services office, be current, and be properly displayed.

(a) All permit-required lots have designated days and times during which a permit is required.

(b) Motorcycles parked in a permit-required lot in any space other than a designated motorcycle free-parking area must display a valid parking permit.

(8) Disabled parking spaces: Any vehicle that is parked in a disabled parking space in a university owned or leased parking lot must display a valid, state-issued disabled parking permit, license plate, or year tab. The vehicle must also display a valid EWU disabled parking permit if parking in a permit-required parking lot during the designated days and times that a permit is required for parking.

(9) Metered parking: A person who parks a vehicle in a metered parking space must pay for time used during posted times of operation.

(10) Vehicle size limits: Vehicles longer than twenty feet, campers, trailers, buses, and pickup trucks with a

camper may not be parked on university property without prior authorization from parking services.

(11) Bicycles: Bicycles must be parked in bicycle racks.

(12) Parking space violation: Vehicles may only occupy one parking space or stall as designated within a parking area.

(13) Disabled, and inoperative vehicles: A disabled or inoperative vehicle may not be parked on the university campus for more than twenty-four hours without prior authorization from parking services.

NEW SECTION

WAC 172-100-130 Citations and fines. Any violation of these rules is subject to citation. Each offense may result in a separate citation.

(1) Payment: Citation fines must be paid to EWU parking services and may be paid in person, by mail, or by phone.

(2) Amounts:

(a) Citations: When a citation is issued, fines are determined in accordance with a fine schedule. The fine schedule is approved by the vice-president for business and finance.

(b) Adjustments: When mitigating circumstances exist, authorized parking services personnel may reduce or dismiss fines.

(3) Appeals: Citations may be appealed by submitting a written appeal to parking services within fourteen calendar days of the date the citation was issued. Appeals must be submitted to parking services in person or by mail. If a timely appeal is not filed, the citation becomes final. Appeals will be reviewed by a board consisting of voting members from the following groups: Associated students, classified staff, faculty, and administrative exempt staff. A parking services representative will act as a consultant to the board and vote only to break a tie. The board may uphold or dismiss the citation. If the board upholds the citation, it may reduce the fine amount. In no event may the board impose a fine exceeding the amount set forth in the fine schedule. Within five calendar days following the board's review, parking services shall notify the appellant, by mail or by e-mail, of the board's determination. The board will meet every two weeks, with additional meetings as necessary. Additional appeal rights are governed by RCW 28B.10.560.

(4) Nonpayment: Unpaid fines are subject to collection through the university's established collection methods.

(5) Disposition of fees and fines: Proceeds from fees and fines collected under this chapter are to be deposited in the university's parking fund and applied to the costs of operating, maintaining, and patrolling the campus parking lots and administering these rules.

NEW SECTION

WAC 172-100-140 Impoundment of vehicles and bicycles. (1) The vice-president for business and finance or designee may order the impoundment and storage of any vehicle:

(a) That is parked, in violation of these rules:

(i) In an emergency access area, no parking area, or restricted parking area;

(ii) In a loading zone or service drive or area;

(iii) In a parking space designated for another person or vehicle; or

(iv) In a disabled parking space;

(b) That is disabled or inoperative; or

(c) That is parked on university property and has more than four unpaid citations, after the university has made reasonable attempts to contact the owner.

(2) The owner of an impounded vehicle is responsible for all impoundment and storage costs and may not recover the vehicle until arrangements have been made with parking services. The university and its employees or representatives are not liable for loss or damage of any kind resulting from impoundment or storage.

(3) Bicycles may be impounded for violations of the above parking rules. The university is authorized to break any bicycle lock to facilitate impoundment. The university and parking services are not responsible for any damage resulting from the impoundment of a bicycle, including removal of a lock.

NEW SECTION

WAC 172-100-200 Parking permits—Issuance and responsibility. (1) Parking permits may be obtained through parking services. Permits are issued upon payment of established fees, subject to availability. Permits may not be transferred, assigned, or sold.

(2) Prorated refunds: Refunds of parking permit fees will be issued according to parking office guidelines.

(3) The university reserves the right to refuse parking privileges to anyone who has:

(a) Had a permit revoked;

(b) Falsified a parking application or registration;

(c) Counterfeited or altered an area designator or permit;

(d) Failed to pay outstanding traffic or parking citations;

(e) Possessed or used a lost, altered, or stolen parking permit;

(f) Been given notice against trespass from campus;

(g) Failed to comply with parking services directions; or

(h) Damaged university property while driving or parking on campus.

(4) Responsibility: The person to whom a parking permit is issued is responsible for all violations of these rules involving the vehicle for which the permit was issued regardless of whether the person was operating the vehicle at the time of the violation.

(5) Lost or stolen permits: If a permit is lost or stolen, the permit holder must report the loss to parking services. A replacement permit will be provided to the individual. A fee may be charged for a lost permit.

NEW SECTION

WAC 172-100-210 Parking permits—Limitations on use. Parking permits entitle users to park in specific campus parking lots during specific dates and times.

(1) All campus parking lots that require a parking permit have designated times during which a permit is required.

(2) Parking permits do not entitle permit holders to any parking right or privilege beyond the dates and times

specifically designated for the campus parking lot(s) for which they hold a permit.

(3) During special events, parking services personnel may modify existing parking rules for any campus parking lot. Special event parking modifications include, but are not limited to:

- (a) Designating a lot as free parking;
- (b) Designating a lot as paid parking and charging users a fee for parking, including those holding a regular permit for the lot; or
- (c) Closing a parking lot.

NEW SECTION

WAC 172-100-220 Parking permits for permit-required lots. (1) Standard permits: Standard permits consist of a decal denoting the assigned parking lot and the academic year or term for which the permit is valid. Priority for issuance of standard permits will be given to university employees and students.

(2) EWU disabled parking permits: These permits are issued to university employees and students who are authorized to park in disabled parking areas and possess a current, state issued, disabled parking placard, license plate, and/or year tab.

(3) Retiree permits: Individuals who have retired from EWU are entitled to a retiree parking permit at no cost. Retiree permits entitle the retiree to park in university parking lots, where space is available, subject to the following:

- (a) Retiree permits may not be used to park in residence hall lots.
- (b) Retiree permits do not entitle the retiree to free parking during special events.
- (c) Retiree permits may only be used by the retiree.
- (d) Retiree permits may not be used by a retiree who is employed by the university.
- (e) If a retiree permit is used in violation of the above conditions, the university may revoke the retiree's permit.

(4) Special ('S') permits: The 'S' permit may be issued to university employees whose duties require frequent visits or deliveries to other campus locations. The permit allows employees to park their vehicles in undesignated lots for official campus duties. Issuance and use of 'S' permits is subject to the following:

(a) Requests: University employees may request an 'S' permit through parking services. Requests for an 'S' permit must describe the employee's duties that justify the 'S' permit, including detailed information regarding the frequency and nature of the employee's intra-campus business activities and why a departmental permit is inadequate to support those activities. Requests must be endorsed by the president or appropriate vice-president. The vice-president for business and finance, or designee, is the approval authority for 'S' permits.

(b) Issuance. The parking services office shall provide an 'S' permit to an employee who has been authorized by their department's vice-president to obtain an 'S' permit and has purchased a core lot permit and paid the additional 'S' permit fee.

(c) Use: 'S' permits may only be used for the purpose of conducting official university business. 'S' permits may be used to park in any campus parking lot, loading zone, or service area, on a space-available basis, limited to the time needed to conduct university business. They may not be used for personal use or convenience.

(d) Restrictions: 'S' permits do not authorize parking in disabled parking spaces unless the person is authorized to park in disabled parking spaces under these rules. 'S' permits are not valid at meters, fire lanes, safety zones, yellow curbs or zones, designated "no parking" areas, or other areas not designated for parking.

(e) Availability: The vice-president for business and finance may limit the number of 'S' permits that are available for issuance throughout the university, and/or to departments or units.

(5) Guest permits: Campus guests and persons doing business with the university may be issued a guest permit allowing them to park in designated lots on campus, subject to the following:

- (a) Guest permits are valid for the dates and locations specified at the time of issuance.
 - (b) A fee may be charged for a guest permit.
 - (c) A guest permit will not be issued to persons intending to make personal solicitations from or personal sales to university employees or students.
 - (d) Guest permits do not authorize parking in spaces that are reserved.
 - (e) Guests may park in disabled parking spaces so long as their vehicle displays the guest permit along with a current, state-issued disabled parking placard, license plate, and/or year tab.
- (6) Duplicate permits and car pool permits:
- (a) Permit holders may purchase duplicate decals for additional vehicles.
 - (b) Duplicate permits may also be purchased for each vehicle in a car pool, up to a maximum of five permits per pool.
 - (c) A fee is charged for each duplicate permit.
 - (d) Duplicate and car pool permits must be purchased and signed for by the purchaser of the original permit.
 - (e) Only one vehicle bearing the duplicate permit number may park in the designated parking lot at a time. Violation of this section will subject each vehicle involved to a fine.

NEW SECTION

WAC 172-100-230 Parking permits for loading zones and service drives. (1) Department permits: These permits are issued to departments or units to facilitate the movement of equipment and materials by allowing for limited parking in parking lots, service drives, and loading/unloading zones. Department permits may not be used by persons for their own benefit or convenience. They may only be used for official university business. A regular permit is not required when a person uses a department permit.

(a) Issuance and control. Department permits are issued on an annual basis for temporary, short-term use, and must be

returned to the department after use. Permit use must be monitored and controlled by a designated person.

(b) Restrictions. Department permits are not valid at meters, reserved spaces, disabled parking spaces, fire lanes, safety zones, yellow curbs or zones, "no parking" areas, or other areas not designated for parking. Departments are assigned a primary lot and are limited to thirty minutes parking in the primary lot.

(c) Loss. If a department permit is lost, the department it is issued to must file a report with parking services. Parking services will determine if a fee is assessed for the lost permit.

(2) Service permits: Service permits are issued to service providers, contractors, repairmen, and vendors to support their access requirements. Parking services shall specify terms of use when a service permit is issued.

NEW SECTION

WAC 172-100-240 Parking permits—Recall, suspension or revocation. Parking permits are the property of the university and may be recalled, revoked, or suspended.

(1) Recall: Parking permits may be recalled when the purpose for which the permit was issued changes or no longer exists.

(2) Suspension/revocation: Parking permits may be revoked or suspended in response to the following violations:

(a) Use of a permit on an unregistered vehicle or by an unauthorized individual. The vehicle and/or permit holder may also be cited.

(b) Falsification of a parking permit application.

(c) Continued violations of parking rules; or

(d) Counterfeiting or altering of parking permits. The offender may also be cited.

(3) Appeals: Suspension or revocation of a parking permit under this section may be appealed within fourteen calendar days of issuance. Appeals must be submitted in writing to parking services in person or by mail.

NEW SECTION

WAC 172-100-250 Severability. If any provision of this chapter or its application to any person or circumstances is determined to be invalid, the remainder of the chapter and its application to other persons or circumstances is unaffected.

WSR 13-19-094

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed September 18, 2013, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-14-080.

Title of Rule and Other Identifying Information: Amending chapter 172-06 WAC, Organization and operation.

Hearing Location(s): Eastern Washington University, Main Campus, Showalter Hall, Room 201, Cheney, WA 99004, on October 23, 2013, at 11:00 a.m.

Date of Intended Adoption: November 22, 2013.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by October 22, 2013.

Assistance for Persons with Disabilities: Contact Trent Lutey by October 22, 2013, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This revision is needed to update university contact information and better reflect current practices.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Trent Lutey, 214 Showalter, Cheney, WA 99004, (509) 359-6322; Implementation and Enforcement: Laurie Connelly, 214 Showalter, Cheney, WA 99004, (509) 359-2371.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC revision does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-06 WAC is not considered a significant legislative rule by Eastern Washington University.

September 18, 2013

Trent Lutey

University Policy Administrator

AMENDATORY SECTION (Amending WSR 92-09-099, filed 4/20/92, effective 5/21/92)

WAC 172-06-010 Organization and operation. (1) Organization. Eastern Washington University is established in Title 28B RCW as a public institution of higher education. The institution is governed by a board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.

(2) Operation. The administrative office is located at 214 Showalter Hall, (~~Mailstop 130;~~) Cheney, WA 99004-2496. The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except state legal holidays. Educational operations are also located at the (~~EWU Spokane Center; West 705 First, MS-1; Spokane, WA 99204~~) Riverpoint Campus, 668 N. Riverpoint Blvd., Spokane, WA 99202-1677.

(3) Information. Additional and detailed information concerning the university's educational offerings (~~may be obtained from the general or graduate catalogues, copies of which are available for in-house viewing in the EWU Admissions Office; Cheney, WA; or from the EWU Bookstore; Cheney, WA 99004-2496~~) is available through the university's web site at www.ewu.edu.

WSR 13-19-095
PROPOSED RULES
EASTERN WASHINGTON UNIVERSITY

[Filed September 18, 2013, 8:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-069.

Title of Rule and Other Identifying Information: Adopting chapter 172-130 WAC, Undergraduate housing requirement, these rules create an on-campus housing requirement for first-year students at Eastern Washington University.

Hearing Location(s): Eastern Washington University, Main Campus, Showalter Hall, Room 201, Cheney, WA 99004, on October 23, 2013, at 11:00 a.m.

Date of Intended Adoption: November 22, 2013.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by October 22, 2013.

Assistance for Persons with Disabilities: Contact Trent Lutey by October 22, 2013, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are needed to establish a more integrated learning environment and experience for first-year students in order to improve the academic success and retention of those students.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Trent Lutey, 214 Showalter, Cheney, WA 99004, (509) 359-6322; Implementation and Enforcement: Laurie Connelly, 214 Showalter, Cheney, WA 99004, (509) 359-2371.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC revision does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-130 WAC is not considered a significant legislative rule by Eastern Washington University.

September 18, 2013

Trent Lutey
University Policy Administrator

Chapter 172-130 WAC

UNDERGRADUATE HOUSING REQUIREMENT

NEW SECTION

WAC 172-130-010 Students required to reside in university residence halls. All full-time, single, first-year students of Eastern Washington University who are under twenty-one years of age are required to live in university residence hall facilities throughout their first year at the university.

NEW SECTION

WAC 172-130-020 Exceptions. Students may request an exception to WAC 172-130-010. Requests must clearly describe the basis for the request and include supporting documentation as appropriate. The approval authority is the Chief Housing Officer or designee. Exceptions will be considered for the following reasons:

(1) Students who will continuously reside with a parent and/or legal guardian throughout the quarter for which the exception is sought.

(2) Students who have primary legal custody of a child.

(3) Students employed off campus and whose housing is part of their overall compensation received. To qualify, employment must be for an established place of business or for an established family unit when a landlord/employer requires the student to reside where the work is performed and a substantial portion of the rent and/or room and board is reduced as a part of the overall compensation for the work performed.

(4) Students with a documented medical issue that is incompatible with living in a university residence hall. The Director of Disability Support Services will evaluate documentation and make a recommendation regarding this exception.

(5) Students for whom living in a university residence hall would cause undue financial hardship.

(6) Students who will reach the age of twenty-one during their first year at the university.

(7) Students who have attended an institution of higher education as a full-time student for at least two regular semesters or three regular quarters. Enrollments during summer terms or while simultaneously completing high school requirements, e.g. Running Start or similar programs, do not count as previous attendance under this exception.

(8) Students who have unique situations, not otherwise covered in this section, that could make living in a residence hall unduly burdensome.

NEW SECTION

WAC 172-130-020 Process. Applications for permission to reside off campus are available from the Eastern Washington University Department of Housing and Residential Life, 121 Tawanka Hall, Cheney, WA 99004. Applications are reviewed and a determination is made whether an exception will be granted. Persons applying for such exception will be informed of the decision in writing. Requests for reconsideration of the decision may be submitted to the Dean of Students within ten working days of the date the student receives notice that their request has been denied. The Dean of Students, or designee, will evaluate the appeal and approve or deny the appeal. The decision by the Dean of Students is final; no further appeals are available.

Reviser's note: The section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to WAC 172-130-020 is probably intended to be WAC 172-130-030.

WSR 13-19-097
PROPOSED RULES
HEALTH CARE AUTHORITY

(Medical Assistance)

[Filed September 18, 2013, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-021.

Title of Rule and Other Identifying Information: Chapter 182-540 WAC, Kidney disease program.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on October 22, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than October 23, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on October 18, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by October 18, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules contain the following amendments necessary in restructuring the kidney disease program (KDP):

- Clarified, added, and deleted definitions and changed references from "contracted kidney centers" to "KDP contractor." This aligns with the definition of KDP contractor.
- Added a general eligibility section that: (1) Clarifies what medicaid programs and other state-funded programs an applicant needs to be found ineligible for; (2) clarifies exceptions for when a client can be medicaid eligible and receive KDP funds; and (3) changes income limits from a maximum dollar amount of three hundred percent of the federal poverty level (FPL) to a maximum of two hundred twenty percent of the FPL and resource limits from \$15,000 to qualified medicare beneficiary (QMB) standards.
- Added a section describing when a client would not be eligible for KDP and clarified KDP eligibility effective date.
- Added language regarding retroactive coverage, eligibility after receiving a kidney transplant, and appeal rights.
- Added sections for household size, who is counted, income eligibility at or below two hundred twenty percent FPL, resource eligibility, and change of circumstances - when the client needs to report and what types of information they need to report.
- Separated sections for contractor and client responsibilities when it comes to applying and recertifying for KDP.

- Clarified contractor requirements, KDP covered services, and KDP reimbursement.
- Clarified the agency's reimbursement policy for KDP contractors when a KDP client does not follow through with their recommended treatment plan in order to receive or make progress toward receiving a transplant.
- Struck section on transfer of assets and removed all references to "mandatory" and "optional" services.
- Updated web link to QMB resource standards.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Barcus, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1306; Implementation and Enforcement: Mary Sam, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-0469.

No small business economic impact statement has been prepared under chapter 19.85 RCW. HCA has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

September 18, 2013

Kevin M. Sullivan

Rules Coordinator

KIDNEY DISEASE PROGRAM (STATE-FUNDED)

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-540-001 Purpose. This ~~((section))~~ chapter (WAC ~~((388-540-001))~~ 182-540-001 through ~~((388-540-065))~~ 182-540-065) contains rules for the state-funded kidney disease program (KDP) administered by the health care authority (the agency). The ~~((kidney disease program))~~ KDP is ~~((designed to help))~~ available for clients who have end-stage renal disease requiring dialysis or kidney transplant, or clients who have received a kidney transplant but who do not meet the eligibility standards for medicaid or any other state-only funded medical program.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-540-005 Kidney disease program (KDP)--- Definitions. The following definitions and those found in chapter 182-500 WAC ((388-500-0005)), apply to this chapter for the purpose of administering the kidney disease program.

~~((**"Adequate consideration"** means that the reasonable value of goods or services received in exchange for~~

transferred property approximates the reasonable value of the property transferred;))

"Affiliate" ((means a)) - A facility, hospital, unit, business, or person having an agreement with a **kidney center** to provide specified services to **ESRD** patients;

(~~"Application for eligibility" means the form provided by MAA, which the client completes and submits to the contracted kidney center to determine KDP eligibility;~~)

"Applicant for KDP" - An individual who submits a new application for assistance under the kidney disease program (KDP), or an existing client who has had a break in eligibility of over thirty days;

"Application documentation" ((means either a)) - A ~~"(medicaid) medical eligibility determination" letter from the department of social and health services (DSHS) community services office~~(, or a KDP "client recertification waiver" form;

~~"Assets" means income, resources, or any real or personal property that a person or the person's spouse owns and could convert to cash to be used for support or maintenance) either approving or denying an application for medical assistance;~~

"Certification" ((means)) - The kidney center or affiliate has determined a client eligible for the KDP for a defined period of time;

"End-stage renal disease (ESRD)" ((means that)) - The stage of renal impairment which is irreversible and permanent, and requires dialysis or kidney transplant to ameliorate uremic symptoms and maintain life. For purposes of the KDP, this includes clients who have received a transplant;

(~~"KDP application period" means the time between the date the client signed the completed application for eligibility and the date the client is certified for participation in the program;~~)

"KDP application" - The agency Form 13-566 which the individual completes and submits to the KDP contractor to determine KDP eligibility;

"KDP client" ((means a resident of the state)) - An individual who has a diagnosis of ESRD or had a diagnosis of ESRD and has received a kidney transplant and ~~((meets the financial and medical eligibility criteria))~~ has been determined eligible for the kidney disease program as determined by a KDP contractor;

(~~"KDP client recertification waiver for medicaid review" means a KDP eligibility form that may in some circumstances be used in place of a "medicaid medical assistance determination letter."~~)

"KDP contract manual" ((means a set of policies)) - A manual that describes the KDP contract guidelines and procedures for ~~((contracted kidney centers))~~ a KDP contractor;

"KDP contractor" ((means a)) - A kidney center or other ESRD facility that has contracted with the Washington state ~~((department of social and health services (DSHS)))~~ health care authority (the agency), kidney disease program to provide ESRD~~((related))~~ services to KDP clients~~((;))~~;

"Kidney center" ((means a)) - A facility as defined and certified by the federal government to~~((;))~~

~~((;))~~ provide ESRD services~~((;))~~

~~((;))~~ (2) Promote and encourage home dialysis for a client when medically indicated; and

~~((;))~~ (3) For the purposes of WAC 388-540-032 through 388-540-060, it is a facility that has entered into a contract with Washington state department of social and health services (DSHS), kidney disease program to provide ESRD-related services)).

"Kidney disease program (KDP)" ((means a)) - A state-funded program managed by the Washington state health care authority that provides financial assistance to eligible clients ~~((with))~~ for the costs of ESRD~~((related))~~ medical care;

(~~"Medicaid medical assistance determination letter" means a medical assistance client eligibility letter from the DSHS community services office.~~

"Resident" means a person who lives in Washington state on more than a temporary basis.

"Substantial financial change" means the increase or decrease of income or assets that may affect eligibility~~((;))~~

"Spendedown" - The process by which a person uses incurred medical expenses to offset income to meet the financial standards established by the agency. (See WAC 182-519-0110.)

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-540-015 ((Client eligibility for)) Kidney disease program (KDP)—General eligibility criteria. (1) Clients must meet the following criteria to be ~~((considered))~~ eligible for the kidney disease program (KDP) ~~((eligible))~~:

~~((1))~~ ~~Be a) (a) Reside in the state of Washington ((state resident)) as required under WAC 388-468-0005;~~

~~((2))~~ ~~b) Be diagnosed with end-stage renal disease (ESRD) requiring dialysis or kidney transplant as defined in WAC 182-540-005 or have received a kidney transplant;~~

~~((3))~~ ~~c) Be determined ineligible for medicaid((; (4) Exhaust or be ineligible for all other resources providing similar benefits;~~

~~((5))~~ ~~under Title XIX or XXI of the Social Security Act; the alien medical program described in WAC 182-507-0110; the medical care services (MCS) program described in WAC 182-508-0005; or another state-funded medical program with the following exceptions:~~

(i) Clients who are found eligible for the medically needy (MN) program but are required to meet the spenddown liability under WAC 182-519-0110 or who are found or become eligible for the alien emergency medical programs described in WAC 182-507-0110, are eligible for KDP until the spenddown liability has been met;

(ii) A KDP contractor may use KDP funding as available to pay for medical expenses on behalf of a spenddown client as expenses are incurred by the client, and those expenses will be treated as if the client incurred the financial liability for the expense;

(iii) When a KDP contractor uses KDP funding to pay for monthly health insurance premiums (including WSHIP premiums) on behalf of a spenddown client, those committed funds may continue to be paid even if the client becomes eligible for MN coverage by meeting the spenddown liability.

Payment may continue until the client is no longer otherwise eligible for KDP or until the client applies to the agency and is found eligible for assistance in paying the premiums:

(iv) A KDP contractor may use KDP funding to pay for premiums under the health care for workers with disabilities program described in chapter 182-511 WAC if it is cost-effective for the center and KDP funds are available.

(d) Submit an application for medicare with the Social Security Administration (SSA) within thirty calendar days of applying for KDP and provide the KDP contractor with a copy of SSA's approval or denial determination notice with the following exceptions, clients:

(i) That have any employer group health plan (EGHP) or COBRA plan; and

(ii) Who are still within the thirty-month EGHP period.

(e) Have countable income which is equal to or less than

(a)) two hundred twenty percent of the federal poverty level (FPL) ((~~or~~);

((b) Three hundred percent of the FPL with an annual deductible required equal to the income amount which is in excess of two hundred percent of the FPL.

(6)) (f) Have countable resources ((that are either equal to or less than fifteen thousand dollars, or are exempt. Exempt resources are:

(a) A home, defined as real property owned by a client as principal place of residence together with surrounding and contiguous property, not to exceed five acres;

(b) Household furnishings; and

(c) An automobile.

(7)) in an amount that is equal to or less than the resource standards under the qualified medicare beneficiary (OMB) program. Resource rules are defined in WAC 182-540-030.

(g) Report changes in circumstances as required under WAC 182-540-023.

(2) Clients are not eligible for KDP if they:

(a) Become eligible for medicaid, the alien emergency medical program described in WAC 182-507-0110, medical care services or any other state-funded medical program, with the exceptions described in subsection (1)(c) of this section;

(b) Fail to apply for medicare within thirty days of being approved for KDP, or fail to follow through with the medicare application process required by the Social Security Administration;

(c) Are in custody of, or confined in, a public institution such as a state penitentiary or county jail;

(d) Reside in an institution for mental disease and are twenty-one through sixty-four years of age.

(3) Applicants for KDP do not have to meet citizenship criteria described in chapter 388-424 WAC to qualify for KDP.

(4) When a Social Security number has been issued to a client, it must be provided to the KDP contractor. Rules governing Social Security numbers are described in WAC 388-476-0005.

(5) The effective date of eligibility for KDP is the first day of the month in which the ((application for eligibility is signed by the)) client submits the KDP application form, if eligible. A client may be eligible for retroactive coverage for

expenses incurred within the three months immediately prior to the KDP application if the client:

(a) Meets the KDP financial eligibility criteria in this section;

(b) Has a diagnosis of ESRD requiring dialysis or kidney transplant as defined in WAC 182-540-005 or has received a kidney transplant; and

(c) Has incurred medical expenses potentially payable by the kidney disease program during the three-month retroactive period.

(6) A client who is subsequently found retroactively eligible for medicaid or another medical program during the three-month retroactive period is not eligible for KDP reimbursement of expenses which are billable to the other medical program. KDP funds spent on the client's behalf must be reimbursed to the KDP with the following exceptions:

(a) Transportation expenses;

(b) Health insurance premiums;

(c) Expenses paid by the KDP which were used to meet a spenddown liability.

(7) There is no time limit on how long a client may be eligible for KDP as long as the client continues to meet ESRD criteria. The KDP contractor is responsible for certifying that the client meets the functional criteria for ESRD at application and at the time of review.

(8) Clients who have received a kidney transplant are eligible for KDP until they no longer meet the requirements as described in this section.

(9) Clients who are aggrieved by a decision affecting eligibility for KDP have the right to an administrative hearing. See WAC 182-540-0060.

NEW SECTION

WAC 182-540-021 Kidney disease program (KDP)—Household size. (1) Household size is used to determine the appropriate income standard for KDP eligibility and also whose income must be counted or not counted.

(2) The following members of a client's household must be included when determining the household size:

(a) The applicant's spouse if living in the same home;

(b) Dependent children eighteen years of age and younger with no income who live in the same household and for whom the client is legally responsible;

(c) Children nineteen through twenty-one years of age who are attending full-time school or college; and

(d) Any other members of a client's household that the client claimed as a dependent on their most recent federal income tax return.

(3) Children eighteen years of age and younger who have income or separate resources which may make an applicant ineligible for KDP may be included or excluded from the household size determination, depending on what is most beneficial for the KDP applicant. If a child is included in the household size, then their income and/or resources are also counted.

NEW SECTION**WAC 182-540-022 Kidney disease program (KDP)—**

Income eligibility. (1) A household must have net countable income at or below two hundred twenty percent of the federal poverty level in order for a client to be eligible for the kidney disease program (KDP). See WAC 182-540-021 to determine who must be included in the household and whose income counts.

(2) The KDP contractor makes the determination of the household's income based upon the information reported in the KDP application and may request additional verification if the information in the application is not clear. A KDP applicant must provide verification of all household income (and expenses, if self-employed) to the KDP contractor in order for eligibility for KDP to be determined.

(3) The following income is not counted:

(a) Fifty percent of the gross earned income of any person included in the household size;

(b) Income received by a dependent child eighteen years of age and younger who is not included in the household size;

(c) Any income source which is specifically excluded by federal law.

(4) The agency follows rules for SSI-related medicaid described in chapter 182-512 WAC to determine what income types count when determining eligibility for KDP.

NEW SECTION**WAC 182-540-023 Kidney disease program (KDP)—**

Change of circumstances. (1) A client who is approved for KDP is required to report changes in their circumstances to the KDP contractor within thirty days of the date of the change. The client is required to report the following changes:

(a) When total income for household members included in the KDP household size goes above two hundred twenty percent FPL and the change is expected to last for thirty calendar days or longer;

(b) When countable resources exceed the standards described in WAC 182-540-030;

(c) When there is a change in household members or household size;

(d) When the client is determined eligible for medicare;

or
(e) When the client is no longer a resident in the state of Washington.

(2) If the change in circumstances reflects a change in the client's KDP eligibility, the client is required to fill out and submit a new KDP application, with a new effective date reflecting the changes made. The KDP contractor will end the client's previous application.

(3) If the client fails to report their change in circumstance which would result in the client's ineligibility for the program, the KDP contractor is not liable for paying expenses on the individual's behalf. If expenses are paid on behalf of an individual who is not KDP eligible or medicaid eligible, the requirements in WAC 182-502-0160 Billing a client, do not apply.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-540-025 Kidney disease program (KDP) ~~((eligibility determination))~~—Application and recertification requirements—KDP contractor. ~~((The kidney center and))~~ When a client applies for the kidney disease program (KDP), the KDP contractor must ~~((comply with the following rules to determine KDP eligibility))~~:

(1) ~~((The KDP contractor must:~~

~~((a)))~~ Inform the ~~((client))~~ applicant of the requirements for KDP eligibility as defined in this chapter ~~((and))~~, provide the ~~((client))~~ applicant with the necessary ~~((department))~~ forms and instructions~~((;~~

~~((b))~~ Determine client eligibility using department policies, rules, and instructions; and

~~((c))~~ Forward the completed application for eligibility, and the application documentation to the KDP program manager at the medical assistance administration (MAA). ~~((The KDP program manager may amend or terminate a client's certification period within thirty days of receipt if the application is incomplete or inaccurate.))~~

(2) A person applying for KDP must:

~~((a))~~ Complete the application for eligibility and submit any necessary documentation to the kidney center;

~~((b))~~ Apply for medicaid, obtain a written medicaid medical assistance determination letter, submit a copy to the kidney center; and

~~((c))~~ Apply for medicare.

(3) A client reapplying for continued eligibility must:

~~((a))~~ Complete the KDP application for eligibility and submit any documentation necessary to determine eligibility to the kidney center;

~~((b))~~ Apply for medicaid forty-five days before the end of the KDP certification period, obtain a written medicaid eligibility determination, and submit a copy to the kidney center; or

~~((c))~~ Have applied for medicaid within the previous five years and continue to be ineligible.

(4) The KDP application period is:

~~((a))~~ One hundred and twenty days for a new client; and

~~((b))~~ Forty-five days prior to the end of a certification period for a client requesting recertification.

~~((5))~~ The KDP contractor may request an extension of application time limits from MAA when extenuating circumstances prevent the client from completing the application or recertification process within the specified time limits.

~~((6))~~ The KDP contractor certifies the client for no more than one year from the first day of the month of application, unless the client:

~~((a))~~ Needs medical coverage for less than one year; or

~~((b))~~ Has a substantial financial change, in which case the client must complete a new application for eligibility.)) to complete the KDP application, and provide the applicant with a copy of the client's rights and responsibilities.

(2) If required, help the applicant submit an application for medical benefits with the department of social and health services (DSHS) community services office or the health benefits exchange.

(a) The KDP contractor must obtain the individual's application documentation from DSHS or the health benefits exchange and keep a copy in the client's record.

(b) The KDP contractor may authorize KDP payment pending the outcome of the medical application; however, if the client is subsequently approved for medical coverage for any month in which KDP funds were authorized, those expenses must not be billed to KDP. If KDP has already reimbursed those funds, the contractor must refund the KDP, subject to exceptions for transportation expenses, health insurance premiums, and expenses paid by the KDP which were used to meet a spenddown liability as described in WAC 182-540-015 (6)(a), (b), and (c).

(3) Inform the applicant of the requirement to apply for medicare and help with the application process. The KDP contractor must obtain a copy of the Social Security Administration's (SSA's) approval or denial of medicare entitlement and keep a copy in the client's record once a determination has been made by SSA.

(4) Determine client eligibility using the agency's policies, rules, and instructions and provide the applicant with a timely written approval or denial notice within no more than sixty calendar days from the date of the KDP application.

(5) The KDP contractor may request an extension of the application time from the KDP program manager when extenuating circumstances prevent the client from completing the application or recertification process within the specified time limit.

(6) Forward the completed KDP application and the application documentation to the KDP program manager at the health care authority (HCA). The KDP program manager may amend or terminate a client's certification period within thirty calendar days of receipt if the application is incomplete or inaccurate.

(7) The KDP contractor certifies an eligible client for no more than one year from the first day of the month of application, unless the client:

(a) Needs medical coverage for less than one year; or

(b) Reports a change as described in WAC 182-540-0023 that makes the client ineligible for KDP.

(8) Within sixty calendar days prior to the end of a client's certification period, the KDP contractor must assist a client with completing a recertification for KDP. To be eligible for ongoing KDP funding, a client must meet the requirements described in WAC 182-540-026(2).

NEW SECTION

WAC 182-540-026 Kidney disease program (KDP)—Application and recertification requirements—Client. (1) An applicant for KDP must:

(a) Complete the KDP application form and submit any necessary documentation to the KDP contractor in order to make an eligibility determination;

(b) Do one of the following:

(i) Provide application documentation from the department of social and health services (DSHS) or the health benefit exchange verifying that the applicant applied for medical assistance within the six-month period prior to the

month of application for KDP, and that the medical application was denied due to an eligibility requirement and not because the client failed to complete the application process; or

(ii) Submit an application for medical assistance with DSHS or the health benefit exchange and provide the kidney center with a copy of the application documentation when an eligibility determination has been made; and

(c) Apply for medicare within thirty calendar days of applying for KDP and provide written proof from the Social Security Administration that the application was approved or denied. A copy of the proof must be kept in the client's record.

(2) At the end of the KDP certification period, a client may reapply for continued KDP eligibility. To complete the recertification, the client must:

(a) Complete a new KDP application no later than thirty calendar days beyond the end of the original certification period and submit any documentation necessary to determine eligibility to the kidney center; and

(b) Submit a new application for medical assistance and submit a copy to the kidney center.

(3) A client who fails to follow through with the required application or recertification processes or fails to provide requested verifications within the time limits requested by the kidney center is not eligible for KDP funding and the application will be denied.

NEW SECTION

WAC 182-540-030 Kidney disease program (KDP)—Resource eligibility. (1) The individual's household must have countable resources at or below the limits established for the qualified medicare beneficiary (QMB) program for the individual to be eligible for the kidney disease program. QMB resource standards for an individual and a couple are listed at: <http://www.hca.wa.gov/medicaid/eligibility/documents/incomestandards.pdf>.

(2) See WAC 182-540-021 to determine who must be included in the household when making a determination of whose resources count.

(3) The following resources are not counted:

(a) A home, defined as real property owned by an individual as their principal place of residence together with surrounding and contiguous property;

(b) Household furnishings;

(c) One burial plot per household member or irrevocable burial plans with a mortuary;

(d) Up to one thousand five hundred dollars for an individual or three thousand dollars for a couple set aside in a revocable burial account;

(e) Any resource which is specifically excluded by federal law.

(4) The agency follows rules for SSI-related medicaid determinations described in WAC 182-512-0200 through 182-512-0550 when determining whether any other resources are countable with the exception of subsection (5) of this section.

(5) The agency follows rules in chapter 182-515 WAC when an individual owns a trust, an annuity, or a life estate.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-540-045 Kidney disease program (KDP) (~~(provider)~~) contractor requirements. (1) The KDP contractor must:

(a) Be a medicare-certified end-stage renal disease (ESRD) facility; and

(b) Have a valid KDP client services contract with the (~~(department)~~) agency.

(2) The KDP contractor must provide, directly or through an affiliate:

(a) Professional consultation, personal instructions, medical treatment and care, drug products and all supplies necessary for carrying out a (~~(medically sound)~~) medically sound end-stage renal disease (ESRD) treatment program;

(b) Dialysis for clients with ESRD when medically indicated;

(c) Coordination of care with a kidney transplant (~~(treatment, either directly or by referral, when medically indicated)~~) center;

(d) Treatment for conditions directly related to ESRD such as anemia (~~(or venous access infections)~~), vascular, or peritoneal access care; and

(e) Supplies and equipment for home dialysis.

(3) The provider must maintain adequate records for audit and review purposes, including:

(a) Medical charts and records that meet the requirements of WAC (~~(388-502-0020)~~) 182-502-0020; and

(b) (~~(Eligibility determination records)~~) Documentation of expenses and amounts paid by the kidney disease program to assist clients in meeting a spenddown requirement as described in WAC 182-519-0100.

(4) The contractor must meet other obligations as required by (~~(their)~~) its contract with the KDP program.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-540-055 Kidney disease program (KDP) covered services. (1) The kidney disease program (KDP) (~~(program)~~) covers the cost of health care services essential to the treatment of end-stage renal disease (ESRD) and its complications. Within available funding and at the discretion of the KDP contractor covered services include:

(~~(1) Mandatory services that must be provided by the KDP contractor:~~)

(a) Dialysis:

(i) Center dialysis(~~(—)~~) - Covers the cost of dialysis, necessary supplies, and related services provided in a kidney center;

(ii) Home dialysis(~~(—)~~) - Covers the cost of providing dialysis and related services in the home; and

(iii) Dialysis while hospitalized(~~(—)~~) - Covers the cost of dialysis and related services while the KDP client is confined to an acute care facility and is unable to dialyze at his/her regular site.

(b) Medication(~~(—)~~) - As defined in the approved drug list in the KDP manual(~~(—)~~)

(~~2) Optional services that may be provided by the KDP contractor:~~

(~~a) Venous~~);

(c) Access surgery(~~(—)~~) (venous and peritoneal) - Covers costs associated with surgically preparing the client for dialysis and medical complications related to the (~~(venous)~~) access site;

(~~(b)~~) (d) Laboratory tests and X rays considered to be part of the overall treatment plan for ESRD;

(~~(e) Post-transplant visit to assess client's ESRD status~~)

(e) Pretransplant work-up including dental treatment, transportation, lodging, and physician visits; (~~(and~~

~~(d) Health insurance premiums including copays and deductibles, when found to be cost-effective.~~) (f) Post-transplant visit to assess client's ESRD status to include transportation, lodging, and physician visits;

(g) Health insurance premium including copays and deductibles when found to be cost-effective;

(h) Spenddown expenses when found to be cost-effective; and

(i) Other services as approved by the agency's KDP program manager.

(2) If the KDP pays for medical and dental services required to receive a transplant, and the KDP client does not follow through with their recommended treatment plan in order to receive or make progress towards receiving a transplant, the KDP contractor must submit a request for a determination of noncompliance to the agency's KDP manager. If the request is approved, KDP funds must not be used for any follow-up or additional services. Once the KDP client makes progress with their treatment plan, the agency may rereview the request.

NEW SECTION

WAC 182-540-060 Kidney disease program (KDP) client appeal rights. (1) Clients have the right to appeal:

(a) KDP eligibility decisions made by the client's KDP contractor;

(b) Coverage decisions made by the contractor or the first decision submitted by the agency for medical services or devices that are not considered to be for the treatment of the client's ESRD diagnosis; or

(c) The denial, made by the contractor, of services found in WAC 182-540-055(1) which have been denied by a KDP contractor.

(2) Clients do not have the right to appeal:

(a) Reimbursement based on covered or noncovered procedure codes or rates; or

(b) The contractor's decision to not cover services found in WAC 182-540-055(1) when the contractor has gone over its KDP allotted funding.

(3) A client who is aggrieved by a decision made by the KDP contractor may request review of the decision to the agency within thirty days of receiving the notice of the decision by sending a written request for review to the agency's KDP Program Manager, Health Care Authority, P.O. Box 45510, Olympia, WA 98504-5510.

(4) The request for review must clearly identify the name and address of the client requesting the review.

(5) Within thirty days of receiving the request for review, the KDP program manager will send the client a written

decision. Failure to request review does not prevent the client from appealing the decision under subsection (6) of this section.

(6) Within ninety days of receiving the contractor's or the KDP program manager's written decision, the client can appeal the decision by sending a written request for hearing to the Health Care Authority, P.O. Box 45504, Olympia, WA 98504-5540.

(7) The request for hearing:

(a) Must clearly identify the name, address, and telephone number of the client requesting the hearing;

(b) Should include a copy of the KDP program manager's written decision which the client is appealing.

(8) The hearing is usually conducted by telephone by an agency presiding officer in accordance with WAC 182-526-0025(1). The client requesting the hearing is responsible for making sure that the agency's presiding officer has the correct telephone number to contact the party for the hearing.

(9) The agency's presiding officer may refer the case in writing to the office of administrative hearings when the:

(a) Client requests an in-person hearing to accommodate a disability; and

(b) The presiding officer determines that the agency does not have the resources needed to conduct the in-person hearing.

(10) When an administrative law judge (ALJ) employed by the office of administrative hearings conducts the hearing on behalf of the agency, the ALJ issues an initial order in accordance with WAC 182-526-0025(1) and 182-526-0215(4). Any party may appeal the initial order to an agency review judge in accordance with WAC 182-526-0575.

(11) When a presiding officer employed by the agency conducts the hearing, the agency's presiding officer issues a final order. Any party may request reconsideration of the final order in accordance with chapter 182-526 WAC. The party who requested the hearing, but not the agency, may file a petition for judicial review as provided in WAC 182-526-0605 and 182-526-0620.

(12) The hearing rules found in chapter 182-526 WAC apply to any administrative hearing requested in accordance with subsection (6) of this section. Where the program rules in this chapter conflict with the hearing rules contained in chapter 182-526 WAC, the program rules in this chapter prevail.

(13) Failure to timely request a hearing will result in the loss of right to appeal.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-540-065 Kidney disease program (KDP)—Reimbursement. (1) The ~~((medical assistance administration (MAA)))~~ agency reimburses KDP contractors:

(a) Within the limits of legislative funding for the program;

(b) According to the terms of each kidney center's contract with the ~~((department))~~ agency; and

(c) According to the provisions of the KDP contract manual.

(2) The KDP contractor must submit the following documentation to ~~((MAA))~~ the agency's KDP program manager within the time limits specified within the KDP contract:

(a) A description of the services for which reimbursement is requested; and

~~(b) ((Statement of client's financial eligibility for the KDP.~~

~~(3) MAA))~~ The client's approved KDP application if the application had not previously been provided to the KDP program manager.

(3) A KDP client is not liable and must not be billed for charges incurred under KDP due to the failure of the KDP contractor to bill the agency within the time limits specified in the contract.

(4) The agency limits KDP reimbursement for out-of-state services to fourteen days per calendar year. Reimbursement is paid only to KDP contractors. Out-of-state dialysis providers must operate under subcontract or agreement with an in-state KDP contractor in order to receive reimbursement under this program.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-540-035 Kidney disease program (KDP)—
Transfer of resources without
adequate consideration.

WSR 13-19-100
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Consumer Services Division)
[Filed September 18, 2013, 9:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-156.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-680 WAC) that implement the Escrow Agent Registration Act (chapter 18.44 RCW).

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700, on October 23, 2013, at 10-11 a.m.

Date of Intended Adoption: November 19, 2013.

Submit Written Comments to: Sara Rietcheck, 150 Israel Road S.W., P.O. Box 41200, Olympia, WA 98504-1200, e-mail sara.rietcheck@dfi.wa.gov, fax (360) 586-5068, by October 25, 2013.

Assistance for Persons with Disabilities: Contact Sara Rietcheck by October 15, 2013, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of amending the rules is to implement changes to the law, to aid the regulated industries by having consistent rules within the

mortgage marketplace, and to make technical changes for clarity and consistency.

Recent amendments to the law become effective July 28, 2013.

Reasons Supporting Proposal: Specific information provided in the rules is necessary to guide the regulated industries in complying with the laws.

The rules are being amended under the authority of OFM Guidelines 3.a. and e. dated October 12, 2011.

Statutory Authority for Adoption: Chapter 43.320 RCW, RCW 18.44.410.

Statute Being Implemented: Chapter 18.44 RCW.

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

Name of Proponent: Department of financial institutions, consumer services, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy Fazio, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8800; Implementation and Enforcement: Deborah Bortner, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-0511.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendments will not impose more than minor costs on the businesses impacted by the proposed rules.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to the proposed rules.

September 18, 2013

Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-030 Definitions. What definitions are applicable to these rules? Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Escrow Agent Registration Act, codified under chapter 18.44 RCW.

"Applicant" means any person applying for an escrow officer license or any person or group of persons applying for an escrow agent license. The term "applicant" includes the principal officers and controlling persons of the applicant, as well as any escrow officer seeking to become an escrow agent's designated escrow officer or branch designated escrow officer.

"Branch designated escrow officer" means any licensed escrow officer designated by a licensed escrow agent and approved by the director to supervise a specific branch office. The branch designated escrow officer is the licensed escrow officer responsible for supervising an agent's handling of escrow transactions, management of the agent's trust account, and supervision of all other licensed escrow officers employed by the agent at his or her branch designated office.

"Cash deposit" means funds deposited, in lieu of an errors and omissions policy, in an account in a recognized Washington state depository which account is maintained separate and apart from the escrow agent's own funds. The funds shall be deposited in such a manner to permit only the

director to withdraw from the principal amount. The escrow agent may withdraw any interest accumulated to the account.

"Closing" means the transfer of title of real or personal property or execution of a real estate contract whichever event occurs first.

"Completed escrow" means a transaction in which the escrow agent has fully discharged its duties to the principal parties to the transaction. This includes, but is not limited to: Obtaining all necessary documents, obtaining required signatures, completing reconveyance or title elimination, and disbursing funds to the principal parties to the transaction, the agents to the transaction, and to third parties to the transaction as agreed by the principal parties in the escrow instructions or on the settlement form (such as HUD-1 or HUD-1A).

"Department" means the department of financial institutions.

"Designated escrow officer" means any licensed escrow officer designated by a licensed escrow agent and approved by the director as the licensed escrow officer responsible for supervising that agent's handling of escrow transactions, management of the agent's trust account, and supervision of all licensed escrow officers and other persons employed by the agent.

"Director" means the director of the department of financial institutions or his or her duly authorized representative. For purposes of this act, the division of consumer services is deemed to be the director's authorized representative.

"Escrow" means the same as in RCW 18.44.011.

"Escrow instructions" are the instructions, signed by the principal parties to the transaction that identify the duties and responsibilities of the escrow agent in carrying out the escrow, that identify the thing or things of value held by the escrow agent and the specified condition or set of conditions under which the thing or things of value are to be transferred.

"Good funds" means funds in a bank account that are immediately usable by the owner of the account. Good funds may be derived from the monetary instruments described in RCW 18.44.400(3).

"Handling escrow transactions" means participating in escrow transactions. It includes, but is not limited to, having access to a client's: Personal information, financial records, or funds. Employees that perform administrative functions like payroll or human resources services are not handling escrow transactions unless such persons also perform duties meeting this definition.

"Investigation" means an inquiry undertaken for the purpose of detection of violations of the act and these rules or securing information lawfully required under the act and these rules. The director may make private or public investigations.

~~("Officers" of the escrow agent shall include the president, secretary, treasurer, vice-president, and any other equivalent persons with control over management decisions of the escrow agent.)~~

"Overdue instrument" means a negotiable instrument that is overdue as defined in RCW 62A.3-304.

"Permanent record" means any record required to be kept under RCW 18.44.400 for a period of six years from the completion of the escrow transaction.

"Principal officers" means natural person applicants for escrow agent licenses ~~(;)~~ including corporate officers, vice-president and above; directors, shareholders, members, or anyone else owning ten percent or more of the escrow agent's equity; general or managing partners; sole proprietors and spouses of sole proprietors; designated and branch designated escrow officers; and any person defined as a "controlling person" in RCW 18.44.011 ~~((+))~~ (2).

"Principal parties" means the buyers and sellers in a purchase transaction, and the borrower and lender in a refinance transaction.

"Providing escrow services" means conducting transactions, except the acts of a qualified intermediary in facilitating an exchange under section 1031 of the Internal Revenue Code, wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third person, in compliance with instructions under which he or she is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

"Reconveyance" means an instrument used to transfer title from an individual holding such title in trust to the equitable owner of real estate, when title is held as collateral security for a debt.

"Third party to the transaction" means those persons providing professional services necessary for the closing of the escrow, including, but not limited to: Real estate brokers, lenders, mortgage brokers, attorneys, tax facilitators or underlying lien holders.

"Transfer of title" occurs at the time the seller executes a deed or bill of sale and such is delivered to the purchaser or recorded.

"Trust" means a fiduciary relationship whereby a thing of value is delivered to an escrow agent with the intention that such thing of value be administered by the escrow agent for the benefit of the principal parties to the transaction.

"Trust account" means a bank account holding funds of any party to the transaction.

"Unclaimed funds" means any funds that are abandoned under the Uniform Unclaimed Property Act, chapter 63.29 RCW.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-045 Exceptions—Attorneys. (1) **I am licensed to practice law in Washington. Am I excepted from licensing as an escrow agent?** Yes, ~~((as long as you only perform escrow services as part of your law practice. You are excepted from licensure as an escrow agent while you are engaged in the practice of law, but you are required to~~

~~apply for and receive an escrow license before you perform escrow services outside of your legal practice. Your attorney exception may be extended to your bona fide legal practice, but is otherwise an individual exception and may not be extended to a separate business entity. Your exception may not be extended to nonattorney individuals unless they are employees of your bona fide law practice and you supervise all of their transactions.~~

~~You or your attorney-owned business entity will be required to license as an escrow agent if you or your business entity do one or more of the following:~~

~~(a) Principally provide escrow services, not including escrow services provided incidentally to the practice of law;~~

~~(b) Advertise yourself or your business entity as providing the services of an escrow agent without identifying yourself or your business entity as an attorney or law practice;~~

~~(c) Receive compensation or gain for providing escrow services through a business entity other than a bona fide law practice; or~~

~~(d) Permit nonattorney associates or employees to conduct escrow transactions without either a valid escrow officer license or an attorney's supervision)) under certain conditions. See RCW 18.44.021(2).~~

(2) I am licensed to practice law in Washington. Am I subject to the department's investigative authority? Yes. The department has broad investigative authority under the act and these rules, and its investigatory authority is not restricted to persons who are required to obtain a license. The department has the power to investigate unlicensed persons and entities at least to the extent necessary to determine whether a violation of the act or these rules has occurred. This includes preliminary investigations of attorneys and business entities that claim the attorney exception from licensure.

Among other actions, the department may:

(a) Compel written statements from or subpoena any person with relevant information;

(b) Compel production of written materials and take evidence; and

(c) Apply to a superior court for an order compelling compliance with its authority under the act.

For further information on the department's investigative authority, see RCW 18.44.420 and WAC 208-680-620.

(3) I am licensed to practice law in Washington. Am I subject to the department's examination authority? Generally, no. Unless the department determines that the attorney exception from licensure does not apply to you or your business, you will not be subject to the department's examination authority under WAC 208-680-610. If the department has determined that the exception does not apply, you will be required to license the escrow portion of your business and it may be subject to regular examinations.

(4) I am licensed to practice law in Washington and excepted from licensing under the act. Am I subject to other provisions of the act? You may be subject to other provisions of the act for activities you conduct outside the practice of law. The attorney exception is a limited, individual exception from the act's licensure provision for actions undertaken while engaged in your professional, legal duties, and is not a general exemption from the act.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-110 Credit and character report. What kinds of credit and character reports must I provide with my application?

(1) If you are applying for an escrow officer license, or are applying to be a designated escrow officer, you must provide:

- (a) Proof that you have passed the escrow officer ~~((examination))~~ test; and
- (b) Satisfactory proof of your good character; and
- (c) Satisfactory proof of your ~~((good))~~ credit rating, as evidenced by a report from a recognized credit-reporting agency, and in a form approved by the director.

(2) If you are applying for an escrow agent license, you must provide satisfactory proof of character and a credit rating for all principal officers. If your applicant is a business entity and not a natural person, you must provide satisfactory proof of your entity's credit rating. This proof must be obtained and provided by a recognized credit-reporting agency in a form approved by the department.

(3) If you are reporting a change in principal officer, you ~~((will be required to))~~ must provide ~~((with your))~~ an escrow agent amendment application, and for any new principal officer:

- (a) Satisfactory proof of his or her good character; and
- (b) Satisfactory proof of his or her ~~((good))~~ credit rating as evidenced by a report from a recognized credit-reporting agency, and in a form approved by the director.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-125 License not transferable. (1) **Can I transfer my license to another person or entity?** No. Neither an escrow agent license nor an escrow officer's license may be transferred.

(2) **Can all or substantially all of the assets of an escrow agent be transferred to another person?** Yes. A licensed escrow agent may transfer all or substantially all of its assets to another person as long as the transfer is approved by the department and the receiving party (the transferee) has been issued an escrow agent license under the act prior to the transfer.

(3) **If I am transferring my assets to another escrow agent, what notification must I provide to the department?** You must provide written notice to the department at least thirty days before the effective date of the transfer. The written notice must include a copy of the signed transfer agreement that contains, at a minimum:

(a) A stipulation that the transferee is responsible for obtaining an escrow agent license ~~((and finding or designating a licensed escrow officer as a designated escrow officer))~~ before completion of the transfer;

(b) ~~((A stipulation that the transferee will obtain and submit to the director evidence of financial responsibility in the form of the required bond or bonds and errors and omission insurance in compliance with RCW 18.44.201 and these rules before completion of the transfer;~~

~~((e)))~~ A stipulation that the transferee is either restricted from using or authorized to use, the escrow agent's business name, unless this requirement is waived by the director; and ~~((c)))~~ (c) A stipulation indicating which of the parties will:

(i) Make all payments due to principal parties on or before the effective date of the transfer;

(ii) Maintain and preserve the accounting and other records as required by RCW 18.44.400 and WAC 208-680-520 and 208-680-530; and

(iii) Provide notice of the transfer to all principal parties who have pending escrows or deposited funds with the escrow agent, or who have executed some other form of written agreement with the escrow agent. Such notice must be provided within five days of your notice to the department, and must comply with RCW 18.44.465.

(4) **If I am acquiring all or substantially all of the assets of an escrow agent, what notifications must I provide?** The department treats this kind of sale of assets as a change in a principal officer. If you do not have an escrow agent license, you must apply for and receive one. If you already have an escrow agent license, at least thirty days before you acquire all or substantially all of the assets of an escrow agent you must provide the department with all the information required of a principal officer or controlling person as if you were applying for a new license. The change of control transaction may not be completed until the transferee has received a license and provided the department with appropriate notices.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-135 What kind of background check and fingerprinting information may the department require with my application for an escrow officer license?

(1) If you are applying for an escrow officer license or to be a designated escrow officer:

(a) You must submit fingerprint identification ~~((for the applicant. This identification must be submitted))~~ on standard Federal Bureau of Investigation fingerprint cardstock or another form acceptable to the department.

(b) You may be required, at the department's discretion, to provide additional background information about yourself to ascertain your honesty, truthfulness, and ~~((good))~~ reputation. This information may include, but is not limited to: Residential address and telephone number, qualifications, employment history, a personal credit report, and other information that the director may deem appropriate under RCW 18.44.031(2).

(2) The department will collect a fingerprinting fee from you equal to the department's cost for processing fingerprints through the Washington state patrol.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-145 Escrow officer ~~((examination))~~ test. (1) **How do I take the escrow officer ~~((examination))~~ test?** While the director determines the form and content of the escrow officer ~~((examination))~~ test with the advice of the

escrow (~~(commission)~~) committee, the test is administered by a third-party company under a contract with the department. It is given at least annually. For information about the (~~(examination)~~) test process and available dates, applicants should consult the department's web site, which will redirect them to the current testing service provider for more detailed information.

(2) **Do I need to take and pass the escrow officer (~~(examination)~~) test before filing my application and paying my application fee to the department?** Yes. You must submit a copy of your test pass certificate with your application to the department. You must have passed the escrow (~~(examination)~~) test no more than one year before your initial application for a license. If your license is not issued within two years of your successful completion of the (~~(examination)~~) test, you will be required to retake the (~~(examination)~~) test.

(3) **Will the department review my application before I take the test to see if I meet the other requirements?** No. Due to volume and resource limitations, the department does not review escrow officer applications unless they are accompanied by a test pass certificate.

(4) **I am an attorney licensed to practice law in Washington. If I am required to license as an escrow officer, will I be required to take and pass the escrow officer (~~(examination)~~) test?** No, the department will accept membership in the Washington bar in lieu of taking and passing the escrow officer exam.

(5) My company provides payment collection and processing, and the performance of related services on seller financed loans secured by real or personal property. Must my employees take the escrow officer test? If you satisfactorily demonstrate during the license application process that your company only provides contract collection services your employees will not be required to take the escrow officer test. The employees will not receive a license and are prohibited from holding themselves out as being licensed escrow officers. Similarly, the company may not hold itself out as being able to provide escrow services on transactions not already closed. The company remains subject to all other provisions of the act.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-155 What escrow officer and agent fees will I be required to pay? (1) Escrow officer and agent fees charged by DFI:

Title of Fee	Fee
Escrow officer:	
First ((examination-)) <u>test</u> ((-))	\$168.00
((Reexamination-(test))) <u>Subsequent tests</u>	168.00
Application	179.26
License renewal	179.26
Transfer of license to a new escrow agent, name or address change, or license activation	28.01
Duplicate license	28.01

Title of Fee	Fee
Escrow agent:	
Application	386.55
Renewal	386.55
Late renewal with penalty	579.81
Change of designated escrow officer, or name or address change, per license generated	28.01
Duplicate license	28.01
Escrow agent branch office:	
Application and original license	386.55
Renewal	386.55
Late renewal with penalty	579.81
Change of branch designated escrow officer, or name or address change, per license generated	28.01
Duplicate license	28.01
<u>Fingerprints</u>	

(2) If your license is managed on a multistate licensing system pursuant to RCW 18.44.023, you may be charged system fees by the licensing system, including a fee for fingerprints managed through the system.

(3) You will be charged an hourly fee of \$62.50 for examinations and investigations.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-170 What happens if my check is dishonored or my payment of an escrow fee is insufficient? Payment of any fee required under chapter 18.44 RCW by a check that is dishonored or is an insufficient payment will be considered nonpayment. The license action for which the dishonored check or insufficient payment was tendered will not be completed by the department, and a (~~(fifteen dollar)~~) nonsufficient funds fee may be charged.

DESIGNATED ESCROW OFFICERS

NEW SECTION

WAC 208-680-174 What are the designated escrow officer's responsibilities? (1) The designated escrow officer is responsible for the custody, safety, and correctness of entries of all required escrow records. He or she retains this responsibility even if he or she has assigned the duties of preparation, custody, recording or disbursing to another person or persons.

(2) The designated escrow officer is responsible for the actions of all employees. This supervisory duty must be exercised within reasonable parameters. For example, a DEO who is on extended leave may not be reasonably available to

supervise the activities of the escrow agent and its employees.

(3) The branch designated escrow officer bears responsibility for the custody, safety and correctness of entries of all required escrow records at his or her assigned branch office. The designated escrow officer bears responsibility for all actions of the branch designated escrow officer.

(4) Before issuing a new license reflecting a change of the designated escrow officer or branch designated escrow officer of a licensed escrow agent, the department must receive evidence that the responsibility for preexisting escrows is being transferred to the incoming designated escrow officer or incoming branch designated escrow officer. Such evidence must be demonstrated by a statement signed by both the outgoing designated escrow officer and the incoming designated escrow officer that lists all outstanding trust liabilities and certifies that funds in the trust account maintained by the agent are adequate to meet all trust liabilities. This statement must be received by the department before the changeover can occur. In the case of a change in branch designated escrow officer, the outgoing and incoming branch designated escrow officers must sign the statement.

(5) If the department is concerned that the licensee's trust accounting records may not comply with the requirements of WAC 208-680-410, and before accepting a new designated escrow officer or branch designated escrow officer, the department may retain or instruct the licensee to retain a certified public accountant, or other person acceptable to the department, to reconcile the trust account or accounts and report whether they have been maintained in compliance with WAC 208-680-410 and to report on the adequacy of the licensee's internal routines and controls to ensure continuing compliance with WAC 208-680-410.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-175 May my designated escrow officer or branch designated escrow officer supervise more than one of my locations? ~~((No, unless the director provides written consent.))~~ Yes, with the director's prior written consent designated escrow officers and branch designated escrow officers may ~~((not simultaneously))~~ supervise more than one location ~~((without the prior written consent of the department)).~~

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-176 What must I do if my designated escrow officer or branch designated escrow officer leaves? ~~((, may I continue to operate my escrow business?))~~
(1) You must notify the department within one business day of the loss of or change of any designated escrow officer.

(2) You may not accept new clients or new files until the new designated escrow officer has been approved by the department or the department has otherwise authorized new activities.

(3) You must apply to the department for approval of the new designated escrow officer or branch designated escrow

officer. The new designated escrow officer must meet the requirements of WAC 208-680-110 and 208-680-135.

If you need more than five days to identify your replacement designated escrow officer, you must seek approval from the department. If your identified replacement is rejected by the department, you will have an additional thirty days to find a new replacement.

~~(4) You may continue to complete existing client files to the extent necessary to avoid prejudicing those existing clients and files(~~(, provided you notify the department within one business day of the loss of or change of your designated escrow officer or branch designated escrow officer. You must notify the department of your proposed replacement designated escrow officer within five days of the loss or change, and you may not accept new clients or new files until your designated escrow officer has been approved by the department or the department has otherwise authorized new activities. If you need more than five days to identify your replacement designated escrow officer, you must seek approval from the department)).~~~~

~~(5) Failure to replace your designated escrow officer or to receive approval from the director for an extension may result in an enforcement action against you and the suspension or revocation of your license. ((If your identified replacement is rejected by the department, you will have an additional thirty days to find a new replacement.))~~

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-180 May a designated escrow officer or a branch designated escrow officer work for two or more escrow agents? ~~((No, unless the director provides))~~ Yes, with the director's prior written consent ~~((-))~~ a designated escrow officer or branch designated escrow officer may perform escrow services for ~~((only))~~ more than one escrow agent ~~((at a time without the prior written consent of the director or his/her designee)). ((A designated))~~ An escrow officer or branch ~~((designated))~~ escrow officer may only ~~((supervise those escrow agent and escrow agent employees for whom the officer has been designated by the director or his/her designee))~~ become designated with the director's prior written consent.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-195 Can an escrow agent prohibit its designated escrow officer from accessing its trust account books and records? Yes, provided the agent notifies the department within twenty-four hours of the prohibition. Notification must include the reason for the prohibition, a current address and telephone number for the prohibited designated escrow officer, and a request for ((a)) an identified escrow officer to become the replacement designated escrow officer ~~((, and a notice that no)).~~ You must not accept new escrow business ~~((will be conducted))~~ until a new designated escrow officer is approved or the director has given prior written consent for you to accept new business. You may continue to complete existing transactions to the extent necessary to avoid prejudicing those existing clients. Unless

this notice is given under this section, an escrow agent may not prohibit the designated escrow officer from accessing the escrow agent's trust account books and records.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-210 How must I identify my location or locations? Any main or branch office of an escrow agent must be identified by displaying the escrow agent's name in a manner visible to the public. The displayed name must be the name recorded on the license for that particular location. Any physical location where an escrow agent holds itself out to the public as able to perform escrow services as defined under RCW 18.44.011~~((4))~~ (8) is considered an office for the purposes of this section.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-225 ~~((Do I need to))~~ Must I display my licenses? ~~((1) The licenses of a designated escrow officer, branch designated escrow officer, and all other escrow officers must be prominently displayed in the office at the address on each individual license.~~

~~((2) An escrow agent license must be displayed in the main office of that escrow agent, and any branch licenses must be displayed in the appropriate branch office.)) You must prominently display all licenses in their associated places of business, including branches.~~

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-235 How must I notify the department if I move the location of one or more of my offices~~((what notification requirements must I meet))~~? You must notify the department of any change of the location or mailing address of your main or branch offices before engaging in business at your new locations or addresses. You must file your change of address application with the department at least ten business days before the change in business location or address. The application and required attachments must be accompanied by all applicable fees specified under WAC 208-680-155.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-240 Escrow agent renewal and reinstatement. (1) ~~((How long is an))~~ When does the escrow agent license ~~((valid))~~ expire? All escrow agent licenses expire on December 31st of every year.

(2) ~~((Can))~~ How do I renew my escrow agent license? ~~((Yes.))~~ Escrow agent licenses may be renewed by filing for renewal and paying the applicable fee to the department.

(3) **I did not renew my escrow agent license on time, did not pay my escrow agent renewal fee by my renewal date, or my renewal fee payment was rejected. Can ~~((my escrow officers))~~ I still provide escrow services?** No. Your escrow agent license is now expired, and any escrow services

~~((your escrow officers perform))~~ you provide are considered unlicensed activities and are in violation of the act. If ~~((they))~~ you continue to ~~((perform))~~ provide escrow services ~~((on behalf of your agent))~~ after expiration of your license, the department may investigate and bring an enforcement proceeding against ~~((them))~~ you.

For ~~((additional))~~ information about failed payments, see WAC 208-680-170.

(4) **Can my licensed escrow officers provide escrow services if my license is expired?** No. If your licensed escrow officers continue to provide escrow services on your behalf after your license has expired, the department may investigate and bring an enforcement action against them.

(5) **I did not renew my escrow agent license on time. Can I still renew my license, or do I need to file a new application?** Once your license has expired, you have thirty days to file for renewal and to pay the renewal fee, and the department may assess a penalty. If you don't renew, your license will be canceled on the thirty-first day. A canceled license cannot be renewed or reinstated. If your escrow agent license is canceled and you wish to provide escrow services, you will have to apply for a new escrow agent license. Any escrow services your escrow officers perform after your license is canceled are unlicensed activities and are in violation of the act.

Even if you renew your license before it is canceled, you (and your licensed escrow officers) are still liable for any unlicensed activities conducted while your license was expired.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-243 Escrow officer renewal and reinstatement. (1) **For how long is an escrow officer license valid?** Escrow officer licenses are valid for one year from the date of issuance.

(2) **Can I renew my escrow officer license?** Yes. Escrow officer licenses may be renewed by completing the online renewal application and paying the annual renewal license fee specified under WAC 208-680-155 by your renewal date. Your renewal date is the date one year after the day your license was issued.

(3) **I did not complete the online escrow officer renewal process, did not pay my renewal fee by my renewal date, or my renewal fee payment was rejected. Can I still provide escrow services?** No. Your license is now expired, and any escrow services you perform are considered unlicensed activities and are in violation of the act. If you continue to perform escrow services after expiration of your license, the department may investigate and bring an enforcement proceeding against you.

For ~~((additional))~~ information about failed payments, see WAC 208-680-170.

(4) **I did not complete the online escrow officer form and pay my renewal fee by my renewal date. Can I still renew my license, or do I need to reapply?** Once your license has expired, you have sixty days to file for renewal and to pay the renewal fee, and the department may assess a penalty. If you don't renew, your license will be canceled on

the sixty-first day. A canceled license cannot be renewed or reinstated. If your license is canceled and you wish to provide escrow services, you will have to apply for a new license. You should note that if your new license is not issued within two years of your passing the escrow ((examination)) test, you will have to take the escrow ((examination)) test again. See WAC 208-680-135.

Even if you renew your license before it is canceled, you are still liable for any unlicensed activities you conducted while your license was expired.

For the renewal fee structure, see WAC 208-680-155.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-245 Closure of office. (1) **If I close ((one of)) my main office(s), what effect does that have on any other offices?** When the main office of an escrow agent closes, all branch offices must close. ((When a branch office closes and the main office remains licensed, the responsibility for records maintenance and trust accounting for the branch's transactions reverts to the main office.))

(2) **~~((If I close an office,))~~ What are my notification requirements to DFI when I plan to close my business?** ((When either the main office or a branch office of an escrow agent closes, either the designated escrow officer or a controlling person are jointly and severally obliged to notify the department within twenty-four hours of closure.

~~In addition to notifying the department,))~~ The designated escrow officer or a controlling person must, within thirty days of office closure provide the department with:

(a) ~~((Within thirty days of office closure, provide the department with))~~ An itemized accounting of funds held in trust at the time of closure, including the names of the principal parties to the transaction, the escrow number, the amount of funds held and the purpose of the funds. If the trust account balance is zero, the escrow agent must provide a reconciliation of the trial balance supporting the zero balance;

(b) ~~((Within thirty days of office closure, provide the department with))~~ The name, residence address and telephone number of the person responsible for the records;

(c) ~~((Within thirty days of office closure,))~~ The street address and telephone number where the records are located;

(d) ~~((Within thirty days of any change in the person responsible for the records or the place the records are maintained, notify the department of the change;~~

~~(e) Within thirty days of closure, provide the department with))~~ An itemized list of your retained records, specifying their location and quantity, including the number of files and the number of boxes they are stored in; and

~~((f) Within thirty days of closure, provide the department with))~~ (e) A records retention plan that identifies the ways that you will store, retrieve, and destroy your required records in compliance with the act and this section. Your plan must identify how you will continue to pay any costs associated with your storage location.

(3) **For how long ((do)) must I ((need-to)) maintain ((my)) records after ((closure)) my company closes?**

(a) ~~((You))~~ You must maintain the records ((must be maintained)) for at least six years((, and)). The records must be maintained in the state of Washington. They must be available upon demand of the department during business hours and must be maintained in a readily retrievable manner. Closing one or more of your branch offices does not discharge your obligation to retain your records.

(b) ~~((If there is a change in the person responsible for your records, or if the location of your records change, you must notify the department within thirty days.~~

~~(e))~~ Your records must be stored, retrievable, and destroyed in accordance with the records retention plan you have submitted to the department.

(4) ~~**What are my obligations regarding my trust account after I close a branch office?**~~ If the closed branch office has an associated trust account that contains client funds at the time of closure, the designated escrow officer or branch designated escrow officer responsible for that location must provide the department with monthly reports and reconciliations of the trust account to the trial balance, in compliance with WAC 208-680-410(9), until the trust account balance is zero. These reconciliations are due within thirty days of the end of the preceding month. If the designated or branch designated escrow officer is no longer with the escrow agent, another principal officer must file the monthly reports and reconciliations.

~~(5))~~ **What are my obligations regarding my trust account after I close my main office?** If your trust account ((contains)) contained client funds at the time of closure, the designated escrow officer or a controlling person must provide the department with monthly reports and reconciliations of the trust bank account to the trial balance, in compliance with WAC 208-680-410(9), until the trust bank account balance is zero. These reconciliations are due within thirty days of the end of the preceding month.

~~((6))~~ **(5) If I close my main office, what obligation do I have regarding winding up my business?** You must wind up your business in a reasonably prompt manner. Until your trust account balance((s are)) is zero, you must also maintain your fidelity and surety bonds under WAC 208-680-310 and your errors and omissions policy under WAC 208-680-320.

(6) If I close one of my branch offices, what are my notification requirements? When a branch office of an escrow agent closes, the branch designated escrow officer, designated escrow officer, or a controlling person are jointly and severally obliged to notify the department within twenty-four hours of closure. In addition to notifying the department, if the closed branch office had an associated trust account that contained client funds at the time of closure, the branch designated escrow officer responsible for that location must provide the department with monthly reports and reconciliations of the trust account to the trial balance, in compliance with WAC 208-680-410(9), until the trust bank account balance is zero. These reconciliations are due within thirty days of the end of the preceding month. If the branch designated escrow officer is no longer with the escrow agent, either the designated escrow officer or a controlling person must file the monthly reports and reconciliations.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-265 Reporting significant events. What significant events am I required to report to the department, and how quickly must I report them?

Depending on the significant event, you will have different reporting periods.

(1) **Ten-day prenotification required.** You must report to the director, in writing, changes to the following information at least ten days before they occur:

(a) Your location or mailing address. See RCW 18.44-061 and WAC 208-680-235;

(b) The form of your business organization or its place of organization. For example, if your business is changing from a sole proprietorship to a corporation, or from a corporation to a limited liability corporation, you must notify the department and may be required to file a new escrow agent application;

(c) The name and mailing address of your registered agent if you are an out-of-state escrow agent; or

(d) Your legal or trade name.

(2) Twenty-four hour post-notification required.

(a) You must notify the director in writing within twenty-four hours of any change to the trust status of your trust account. For example, if you use an interest-bearing trust account because you are required to under a limited practice officer or attorney license, and the status of your interest-bearing account changes for any reason, you must notify the department in writing within twenty-four hours. This notification does not affect your responsibility to comply at all times with the trust account requirements of the act and WAC 208-680-410.

(b) You must notify the director in writing within twenty-four hours of receiving notice from a financial institution that your trust account is overdrawn. The notice to the director must contain the name of the financial institution holding the trust account and the trust account number. The notice must also contain an explanation for insufficiency in your trust account.

~~(3) **(Five-day post-notification required.** You must notify the director in writing within five business days of any changes to the escrow agent's surety or fidelity bonds or errors and omissions policy. See RCW 18.44.201.~~

~~(4)) **Ten-day post-notification required.** You are required to notify the director in writing within ten days of the occurrence of any of the following:~~

~~(a) The cancellation or expiration of your Washington state master business license;~~

~~(b) For an in-state escrow agent, a change in your standing with the Washington secretary of state, including the resignation or change of your registered agent. If you are an out-of-state escrow agent, you are subject to subsection (1) of this section, which requires ten-day prenotification;~~

~~(c) The escrow agent filing for bankruptcy;~~

~~(d) The personal bankruptcy filing of one or more of your principal officers, controlling persons, licensed escrow officers, designated escrow officers, or branch designated escrow officers; or~~

~~(e) Any change in a principal officer, if no other reporting period is specified in the act or these rules. This~~

includes changes in ownership affecting ten percent or more of the escrow agent's equity.

~~((5)) (4) **Other notification requirements.** In addition to the notice requirements under this section, you are required to follow any other notification requirements in the act or in these rules. These include, but are not limited to:~~

~~(a) For an escrow office closure, see WAC 208-680-245.~~

~~(b) For a transfer involving all or substantially all of its assets, the escrow agent must comply with WAC 208-680-125.~~

~~(c) For a change in principal officer or controlling person of a licensed escrow agent, the escrow agent must comply with WAC 208-680-125 and 208-680-110 and may be required to file a new application for an escrow agent license.~~

~~(d) For changes in designated escrow officer or branch designated escrow officer, see WAC ((208-680-510)) 208-680-174.~~

~~(e) For termination of a licensed escrow officer, the escrow agent must notify the department within three business days that the escrow officer no longer represents the escrow agent. If the escrow officer was terminated for dishonesty or financial misconduct involving the business, the escrow agent must provide the department with that information. Within ten business days of the termination, the escrow agent must deliver the escrow officer's license to the department. See RCW 18.44.101.~~

~~(f) For the filing of quarterly reports, see WAC 208-680-425.~~

~~(g) For ~~((suit))~~ lawsuit or complaint notification, see WAC 208-680-570.~~

~~(h) Within five business days of the escrow agent's license being revoked, surrendered, suspended, or the license expiring, the escrow agent shall notify the principal parties of preexisting escrows of the action. The contents of the notification must comply with RCW 18.44.465.~~

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-275 Employment restrictions. (1) What criminal background restrictions are there on the persons I may employ? You may not employ any person to handle escrow transactions who has been convicted of or plead no contest within the last seven years to either:

(a) A felony; or

(b) A gross misdemeanor involving dishonesty.

(2) What financial responsibility restrictions are there on the persons I may employ to handle client funds? In addition to the criminal background restrictions that apply to all employees handling escrow transactions, an employee that receives money, disburses funds, or acts as a signatory on trust accounts may not have demonstrated disregard in the management of his or her financial condition in the last three years. Disregard for his or her financial condition may be shown by, but is not limited to:

(a) Being subject to an administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act, the Insurance Code, the Securities Act, the Check Cashers and Sellers Act, or other similar laws in this or another state;

(b) An independent credit report issued by a recognized credit reporting agency that indicates the person has a history of unpaid debts; or

(c) Any other demonstration of his or her inability to appropriately manage his or her personal finances in a way that may endanger the funds of either the escrow agent or the escrow agent's client.

(3) **Do I need to examine my current employee's backgrounds to ensure that I am in compliance with this requirement?** Yes. The restrictions are on all employees, not just new hires.

(4) **How will the department enforce these provisions?**

(a) Each escrow agent must develop written policies and procedures to document its efforts to comply with (~~section 4, chapter 34, Laws of 2010~~) RCW 18.44.311 and this section. You must make your policies and procedures available to the department upon request, and they must be maintained as part of your books and records;

(b) Your actual practices must be consistent with your written policies and procedures and your employees must be trained in those policies and procedures;

(c) Each year, each escrow agent's designated escrow officer must submit to the department a statement along with the agent's renewal paperwork attesting to its compliance with its internal policies and procedures. Failure to truthfully submit this statement is a violation of the act. A branch designated escrow officer may sign and submit the statement of compliance for a branch office; and

(d) The department reserves the right to perform its own background checks on escrow agent employees to determine compliance during examinations, investigations, and enforcement proceedings.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-310 Fidelity and surety bonds. (1) **What is a fidelity bond under the act?** For purposes of the act, a fidelity bond is a primary commercial blanket bond or an equivalent bond that is acceptable to the department, regardless of the name used to identify the specific insurance product. A bond is an acceptable equivalent if it meets the requirements of the act. At a minimum, it must:

(a) Provide an aggregate minimum coverage of (~~two hundred thousand~~) one million dollars;

(b) Have a deductible of no more than ten thousand dollars;

(c) Cover fraudulent or dishonest acts committed by one or more corporate officers, partners, sole practitioners, escrow officers, and employees, acting alone or in concert; and

(d) Run to the benefit of the escrow agent, unless the fraudulent or dishonest act is committed by one or more corporate officers, partners, or sole practitioners, in which case it runs to the benefit of the harmed consumer.

(2) **I am unable to find a fidelity bond that permits third parties to claim on the bond. Can I use a bond that does not allow a third party to claim on the bond?** If you make a good faith effort to find a bond that complies with the

statutory and regulatory requirements, and are unable to do so, the department may accept a bond that meets the other fidelity requirements but does not permit third-party claims. The department may relax this requirement only until a determination can be made about the general availability of conforming bonds.

Licenses that use a nonconforming bond as authorized under this subsection should be aware that the department may consider a refusal to file a claim on a fidelity bond for fraudulent or dishonest acts committed by a corporate officer, partner, or sole practitioner, to be conducting business in an unsafe or unsound manner under (~~section 11, chapter 34, Laws of 2010~~) RCW 18.44.455 and WAC 208-680-645.

(3) **Am I required to maintain any other kind of bond?** If your fidelity bond has a deductible, you must maintain a surety bond in the amount of ten thousand dollars. The surety bond must run to the benefit of the state and any person harmed by an escrow agent or its employees. The surety bond must be an original signed and sealed document with power of attorney attached, not a certificate of insurance.

(4) **How long must I maintain my bonds?** All bonds must be kept in effect while you are conducting escrow business. Additionally, after closure of your office you must maintain your fidelity and surety bonds until your escrow trust accounts have been reconciled and all balances are zero.

(5) **How do I demonstrate compliance with (~~this~~) the bond requirements?** Along with your application or renewal, you must provide the department with a certificate of insurance. You must also provide coverage information to the department upon demand. The certificate of insurance does not need to be entitled a certificate of insurance, but must include at a minimum:

(a) Your escrow agent's name;

(b) The insurer's name;

(c) The aggregate amount of coverage;

(d) The amount of any deductible; and

(e) A statement of compliance with RCW 18.44.201.

To ensure compliance with the bonding requirement, you must provide a copy of the full bond language to the department during your first year of compliance, and then upon demand in subsequent years.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-320 Errors and omissions (~~policies~~) insurance. (1) **What errors and omissions (~~policy~~) insurance must I carry?** You must carry an errors and omissions policy in the minimum aggregate amount of fifty thousand dollars or provide the department with a cash or securities alternative as described in subsection (2) of this section. Either a bond or the cash or securities deposit must be maintained until you have closed your office, all of your accounts have been reconciled, and all balances are zero.

(2) **If I want to use a securities alternative to the errors and omissions bond requirement in RCW 18.44-201 (1)(b), what are the requirements?**

(a) Securities used as an alternative to an errors and omissions policy must be effectively delivered to the director

along with a properly executed irrevocable assignment and any supporting documentation as required by the director.

(b) Only those securities that meet the definition of "investment securities" under chapter 208-512 WAC may be used to satisfy RCW 18.44.201. Securities issued by the licensed escrow agent or its affiliates are not acceptable securities for the purposes of fulfilling the requirements of RCW 18.44.201.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-330 When will the cash deposit or securities I used in lieu of an errors and omissions insurance policy be returned to me? (1) If your cash deposit or securities were deposited with the department (~~to allow you to conduct escrow business~~) and you are closing the business, they will be returned to you the later of:

(a) One year from the date of the expiration, cancellation, surrender, or revocation of your license, unless there are any pending actions commenced under WAC 208-680-340 prior to the expiration, cancellation, surrender, or revocation of the escrow agent's license; or

(b) The day your trust accounts are fully reconciled and show a zero balance.

(2) If your cash deposit or securities were (~~provided to~~) deposited with the department (~~to allow you to conduct escrow business~~) and you have now obtained an errors and omissions insurance policy to replace them, your deposit or securities will be returned within thirty days of (~~your~~) you providing the department with proof that you have obtained an errors and omissions policy.

(3) If your cash deposit or securities were provided to the department as part of a licensing application, they will be returned to you within thirty days of the department's denial of your application for an escrow agent license.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-340 How are claims filed on my cash deposit or securities in lieu of an errors and omissions policy? (1) Upon receipt of notification of a legal action for which notice is required to be given to the department under WAC 208-680-570, the department will notify the complaining party of the existence of any cash deposit or securities and the provisions of this chapter.

(2) A claim against the cash deposit or securities must be in the form of certified copy of a final judgment from a court of competent jurisdiction. Upon receipt of a claim in the proper form, the department will release the amount of cash deposit or securities sufficient to pay the final judgment.

(3) The department will notify the escrow agent of the receipt of the claim and advise the escrow agent that it must deposit additional cash or securities with the department to maintain the required principal amount (~~of fifty thousand dollars~~) after payment of the claim.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-350 How long do I have to maintain my cash deposit and securities, and what are the consequences of failure to do so? If you assign, transfer, or set over a cash or securities deposit in lieu of an errors and omissions policy, you must keep the deposit in full force and effect at all times as a condition precedent to your authority to transact escrow business. Your deposit or securities must be at least the principal amount of fifty thousand dollars. (~~After closure, you must maintain your cash deposit until your trust account has a zero balance.~~)

Failure to maintain the deposit or securities at the minimum level is sufficient grounds for the suspension or revocation of your license.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-410 Administration of funds held in trust. (1) Who is responsible for funds received from the principal parties to an escrow? The designated escrow officer or branch designated escrow officer is responsible for all funds received from the principal parties to an escrow transaction or escrow collection account. He or she must hold the funds in trust for the purposes of the transaction or agreement and must not utilize such funds for the benefit of the agent or any person not entitled to such benefit. The escrow agent must establish a trust account or accounts in a recognized Washington state depository. The escrow agent, through the designated escrow officer, is responsible for depositing, holding, disbursing, and accounting for funds in the trust account as provided in the act and the rules. For branch offices, the branch designated escrow officer is also responsible for depositing, holding, disbursing, and accounting for funds in the branch's trust account. The escrow agent is ultimately responsible for all the actions of the designated escrow officer or branch designated escrow officer.

(2) **What kind of an account can I use as a trust account for my escrow services?** Your trust account or accounts must be designated as a trust account or accounts in the certified name of the escrow agent. Your trust accounts must be noninterest bearing demand deposit accounts unless they are one of the following:

(a) An interest-bearing trust account or dividend earning investment account containing funds pertaining to an individual escrow transaction or escrow collection account, if directed to use one by a written agreement between and signed by all principal parties to the transaction. The agreement must specify the manner of distribution of accumulated interest to the parties to the transaction;

(b) An interest-bearing trust account or dividend-earning investment account containing only funds held on behalf of an owner, vendor, lessor, etc., involving escrow collections, if directed to use one by a written agreement or directive signed by the principal parties. The agreement must specify the manner of distribution of accumulated interest to the parties to the transaction;

(c) An interest-bearing trust account containing funds related to transactions in which a limited practice officer has prepared documents under authorization set forth in APR 12(h); or

(d) An interest-bearing trust account containing funds related to transactions in which a licensed attorney has prepared documents. Your trust account cannot be used for any purpose other than that specified in the act or rules. You cannot use the trust account for the receipt or disbursement of funds for any business other than that conducted under the act.

(3) What information do I need to provide to the department regarding my trust account? Each time you renew your escrow agent license, you must provide the department with an authorization to examine your trust account. This authorization must be on a form specified by the department, signed by a representative of the bank, and notarized.

(4) Can I set up a system of records and procedures that varies from this section? You must establish and maintain a system of records and procedures as provided in this section unless you receive approval from the department. Any alternative records or procedures proposed for use by the escrow agent must be approved in advance by the department.

(5) Who is responsible for disbursements of funds and funds held in trust? The escrow agent is ultimately responsible for the disbursement of all funds received and held in trust, regardless of how they are disbursed.

(6) Who may have signatory authority over trust account disbursements? The designated escrow officer must have signatory authority on all trust accounts, and he or she may authorize any employee that he or she supervises to sign disbursements by including them on a bank account signature card. Branch designated escrow officers must have signature authority for trust accounts at their branch, and may have signature authority for other branches if the designated escrow officer authorizes it on either a temporary or permanent basis. The signatory authority of any employee other than a designated or branch designated escrow officer is discretionary, may be conditional or temporary, and may be revoked by the designated escrow officer at any time.

(7) When must my client's funds be deposited into a trust account? You must deposit any funds you receive for an escrow transaction or collection account into the escrow agent's trust account on the first banking day following receipt.

This requirement does not apply to funds owned exclusively by the agent.

(8) What do I need to do when I receive escrow funds?

(a) When you receive funds, you must record the date, amount, source, and purpose on either a cash receipts journal or duplicate receipt. If you use a duplicate receipt, you must keep it as a permanent record.

(b) When you deposit funds into your trust account or accounts, the deposit must be documented by:

(i) For traditionally deposited funds, a duplicate bank deposit slip that is validated by bank imprint or an attached deposit receipt that bears the signature of the authorized

representative of the agent indicating that the funds were actually deposited into the proper trust account;

(ii) For funds received via wire transfer, posting of the deposit in the same manner as other receipts with a traceable identifying name or number supplied by the financial institution or transferring entity. You must also make arrangements for a follow-up "hard copy" receipt for the deposit; or

(iii) For remotely deposited funds, a follow-up "hard copy" receipt for the deposit.

(c) The traceable identifying name or number supplied by the financial institution in (b) of this subsection does not need to be a name or number you use to identify the transaction, but must be enough to allow the department to track and verify the transfer.

(9) What are my responsibilities regarding my individual client ledgers? You must maintain an individual client ledger for each escrow transaction or collection account for which funds are received in trust. All receipts and disbursements must be posted in the individual client ledger. Your client ledgers are subject to the following requirements:

(a) Credit entries must show the date of deposit or wire transfer, amount, and name of remitter.

(b) Debit entries must show the date of check or wire transfer, check number (if funds are disbursed via check), amount of check or wire transfer, and name of payee.

(c) You must prepare monthly trial balances of each client ledger. You must reconcile the ledger with both the trust account bank statement and the trust account receipts and disbursement records. The reconciliation must be signed by the designated escrow officer or branch designated escrow officer, and must be maintained as permanent records.

(10) What are my obligations regarding a reconciled trust account? Your reconciled trust account or accounts must be equal at all times to your outstanding trust liability to clients. Your outstanding trust liability to clients must equal the trial balance of all of your escrows with undisbursed balances.

(11) What requirements must I meet for disbursements of trust funds?

(a) Disbursed funds must be good funds.

(b) Unless otherwise authorized in the escrow instructions, you must make trust fund disbursements by check or cashier's check. Checks must be drawn on your trust account or accounts, and must identify which specific escrow transaction or collection account the disbursement relates to. Cashier's checks may be issued by the financial institution and drawn upon the trust account. The number of each check and its amount, date, payee, and the specific client's ledger sheet debited must be shown in the cash register or cash disbursement journal. All data must agree exactly with the check as written.

(c) You may make disbursements via wire transfer or ACH if both of the following are true:

(i) You have made arrangements with the financial institution that holds your trust account or accounts to provide you with a follow-up "hard copy" debit memo when funds are disbursed via wire transfer; and

(ii) You retain in the transaction file a copy of instructions signed by the owner of the funds to be wire

transferred identifying the receiving entity and account number.

(d) You may make appropriate transfers between escrow accounts by ledger entries alone if you use either:

(i) A transfer form containing the date of the transfer, the amount being transferred, the identity of the accounts being debited and credited, and the signature of a person authorized to approve disbursements; or

(ii) An intrabank debit memo transfer form, and all escrow accounts involved in the transaction are closed through the same bank account.

(e) If you are making recurring transfers between collection escrows, they must be authorized by standing escrow instructions on file from all appropriate parties.

(f) See also WAC 208-680-560.

(12) I have a voided check written on the trust account. What do I need to do with it? You must permanently deface the check and retain it.

(13) What are my obligations regarding fees payable to me for my escrow services? You must be paid via a separate check or bank transfer, drawn on the trust account and bearing the escrow or transaction number, for escrow and service fees. This payment must be provided for in the escrow instructions. All of your fees relating to a transaction may be combined in a single check, or transfer, but either the closing or settlement statement or an addendum signed by the principal parties must itemize the included charges.

(14) What are my obligations regarding fees payable to me for my collection account services? Your collection account fees may be paid with a single check for each collection period as long as such a check is supported by a schedule of fees and identified to each individual account. Your fees must be paid monthly unless the collection contract agreement provides a longer collection period.

(15) May I have funds in my Washington trust account that are not related to (()) a Washington escrow transaction or collection account?** No. Only funds related to ~~((an escrow transaction or an escrow collection account))~~ the activities you conduct under the authority of your Washington license may be placed in your trust account. ~~((None of your))~~ No other funds may be in the trust account for any reason.

(16) What kinds of disbursements am I not allowed to make from my trust account? You may only make disbursements from your trust account for authorized purposes. Specifically, you may not make disbursements:

(a) For items not related to a specific escrow transaction or escrow collection account, including aggregate disbursements to the department of revenue of unclaimed funds from multiple transactions. Such disbursements must be made for each specific account with unclaimed funds;

(b) To any person or for any reason before the closing of an escrow transaction, or before the happening of a condition set forth in the escrow instructions. You may make a disbursement before the closing of a transaction or before a triggering condition if you receive a written release from all principal parties of the escrow transaction or collection account. Unless the disbursement is disputed under WAC 208-680-560, you are permitted to disburse earnest money funds without a written release if the earnest money agree-

ment terminates according to its own terms prior to closing and provides for such disbursement((-));

(c) Relating to a specific escrow transaction or collection account in excess of the actual amount held in your trust account in connection with such transaction or collection account;

(d) To pay any fee owed to your employees or for your own business expenses. Such fees or expenses must be paid from your own regular business bank account and not from your trust account or accounts;

(e) For bank charges of any nature. You must make arrangements with your bank to have any bank charges applicable to the trust accounts charged to your regular business bank account, or to provide a separate statement of bank charges so they may be paid from your regular business bank account. However, you may pay bank charges from the interest you receive on trust accounts allowed under subsection (2)(c) or (d) of this section;

(f) For preauthorization of payments by the financial institution for recurring expenses such as mortgage payments on behalf of the owner if the account contains tenant security deposits or funds belonging to more than one client;

(g) Of funds received as a damage or security deposit involving a lease or rental contract, to the property owner or any other person or persons, without the written authority of the lessee. You must hold these funds until the end of the tenancy, at which point you must disburse them to the person or persons entitled to the funds under the terms of the rental or lease agreement, and as consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act, or other appropriate statute((-));

(h) If the financial institution's automated system does not have the ability to charge fees to another account, or does not provide a separate statement for the service fees as required by (e) of this subsection, and the account is debited for service fees, you must deposit funds from your general business or other nontrust account to cover the service fee charged within one banking day after receipt of notice.

(17) If I choose to use a computer accounting system, what additional requirements do I need to meet? The provisions of this section apply to both manual and computerized accounting systems. However, there are some additional requirements if you choose to use a computer accounting system.

(a) Your computer accounting system must provide a capability to back-up all data files;

(b) You must print receipt and check registers at least once monthly. You must retain printed records as permanent records. Reconciliations and trial balances must be conducted at least once monthly, and then printed and retained as a permanent record;

(c) You must maintain a printed, dated source document file to support any changes to existing accounting records;

(d) If your computer accounting system has the ability to write checks by filling in fields on existing checks, the check number must be preprinted on the check or a voucher copy retained by the supplier. Your computer accounting system may assign suffixes or subaccount codes before or after the check number for identification purposes;

(e) If your computer accounting system has the ability to print entire checks on blank check stock using MICR toner or a similar system, it must track all checks that are printed. Those checks must be verifiable against your check register to ensure no duplication or skipping of check numbers;

(f) The check number must appear in the magnetic coding which also identifies the account number for readability by the financial institution's computer; and

(g) All checks you write must be included within the computer accounting system.

(18) I have unclaimed funds in my trust account. What do I need to do with them? Unclaimed funds are governed by and defined in the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW. If you have unclaimed funds in your trust account, your designated escrow officer or branch designated escrow officer must contact the department of revenue for disposition instructions. You must maintain a record of the correspondence relating to unclaimed funds for at least five years.

You must dispose of unclaimed funds in accordance with this section on a rolling basis to ensure that you do not have unclaimed funds in your trust account. You must examine your books at least once a quarter to determine if you have unclaimed funds. If you have unclaimed funds in your trust account, they must be purged at least quarterly in order to comply with the completed quarterly reconciliation as required in WAC 208-680-425.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-425 What are the requirements for my quarterly reports? (1) In order to determine compliance with chapter 18.44 RCW and chapter 208-680 WAC, each escrow agent must file with the director, within thirty days following the end of each fiscal quarter, the following in a form prescribed by the director:

(a) A report concerning its operations, including the number of escrow transactions conducted and the total dollar volume of those transactions;

(b) A report concerning the trust account administration; ~~((and))~~

(c) A one page summary of the completed three way reconciliation from the last month of the quarter; and

(d) Such other reports or documents in support of the reports as requested by the department. At a minimum, you must provide copies of your bank statements in support of (c) of this subsection.

(2) A three way reconciliation is completed if it demonstrates:

(a) You have no unclaimed funds in your trust account;

(b) You have no overdue instruments; and

(c) You have no outstanding balances more than nine months old, unless:

(i) The outstanding balance is authorized by valid instructions from the principal parties stating a finite period the funds should be held; or

(ii) You have conducted a quarterly examination of your records to ensure compliance with the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW.

(3) For trust account matters, your designated escrow officer must certify that he or she has reviewed the trust account report and any exhibits filed with it and that the information contained in the report and any exhibits is true and correct. This certification must be under penalty of perjury in a manner consistent with RCW 9A.72.085. The chief executive officer or chief financial officer of the escrow agent, or other knowledgeable person acceptable to the director, may certify the information on the report not related to trust account matters.

(4) Failure to file these reports within the time period specified in this rule is a violation of RCW 18.44.430 and may result in legal action by the department. False certifications of compliance may result in revocation of your license and referral to a prosecuting attorney.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-520 What trust account records am I required to keep? (1) You are required to keep the following trust account records:

(a) Copies of all duplicate deposit slips, validated by the bank or bearing the signature of the designated escrow officer or branch designated escrow officer, and including the date of actual deposit; wires; separate receipts; or other evidence of the deposit of funds into the trust account;

(b) Copies of all checks, wires, or other evidence of any disbursement from the trust account;

(c) Copies of all bank statements for the trust account, including all paid checks or copies of paid checks, electronic or otherwise, provided that such copies are made in such a manner that the endorsement on the paid check is visible and readable;

(d) A client's ledger containing an individual ledger sheet for each escrow transaction or collection account, unless you use a computer accounting system. If you use a computer accounting system, an individual ledger sheet does not need to be maintained in the transaction files until the closing of the escrow transaction or collection account as long as the computer accounting system records provide the status of the escrow transaction or collection account funds on a daily basis;

(e) Copies of all written receipts and prenumbered checks, if you use a manual trust accounting system to administer the trust account.

(2) In addition to trust account records, you are required to keep additional records, including:

(a) Transaction files containing all agreements, contracts, documents, leases, escrow instructions, closing statements and correspondence for each transaction;

(b) Reconciled bank statements and canceled checks for all bank accounts of the escrow agent, including but not limited to the pooled escrow trust accounts, individual escrow trust accounts, and general business operating accounts of the agent;

(c) All checks and receipts produced by any computer accounting system. These checks and receipts must be sequentially numbered. You must retain the original of any

voided or incomplete sequentially numbered check or receipt which was not issued.

(3) All records other than the reconciled bank statements must identify the transaction they relate to, either by escrow number or some other clear identifying information.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-530 Records. (1) **What are the records requirements (~~are there for my records~~)?** All of your records must be accurate, posted, and kept current to the date of the most recent activity.

(2) **How long (~~do~~) must I (~~need to~~) retain my records?** You must keep required records and make them available for inspection by the department for a minimum of six years from completion of a transaction. Records must be retained in their original format until the related transaction is completed and the client's trust account balance is zero.

(3) **Where (~~do~~) must I (~~need to~~) retain my records?** You must at all times maintain your records in a location that is reasonably likely to preserve them. For the first year after completion, records of a transaction must be maintained at an address where you are licensed to maintain an escrow office. Records of transactions that have been completed for more than one year may be stored at another location within the state of Washington. Records stored at a remote location must be available during business hours upon demand of the department and must be maintained in a manner that is readily retrievable.

(4) **When can I convert my records to an electronic format?** Once a transaction is completed and a client's trust account balance is zero, you may convert that client's file into a permanent storage format and destroy the originals.

(5) **How can I store my records electronically?** Records stored electronically must be electronically imaged and stored on permanent storage media like optical disks or microfilm. The storage media must meet the following requirements:

(a) The retrieval process must provide the ability to view and print the records on-site in their original form, including any signatures or other writings placed on the records prior to imaging;

(b) The equipment must be made available on- and off-site to the department for the purposes of an examination or investigation;

(c) The records must be stored exclusively in a nonrewritable and nonerasable format;

(d) The hardware and software necessary to display and print the records must be maintained by the escrow agent during the required retention period under subsection (2) of this section.

Permanent storage does not affect your duties under subsection (3) of this section to maintain files in your licensed location for the first year.

(6) **Are there records that I cannot store in an unlicensed location or in an electronic format?** Transactions and accounting records may not be stored at a remote location or on permanent storage media as described under this section if there are funds relating to the transaction,

including reconveyances or holdbacks, remaining in the trust account.

(7) **I am closing my escrow agent business. What are my obligations regarding my records?** You must ensure that all records retention requirements are met and that records are properly destroyed when appropriate. You also have an ongoing duty to ensure the department is informed about who has your records and where they are being maintained.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-540 What are my obligations regarding escrow transactions? The escrow agent is responsible for conducting escrow agreements between the principal parties. The agent must at a minimum:

(1) **Escrow instructions.**

(a) Prepare or accept an instrument of escrow instructions from and agreed to by the principal parties and the escrow agent. The escrow instructions must be signed by the principal parties. Escrow instructions must contain any and all agreements between the principal parties and the escrow agent or incorporate other written agreements by reference. The escrow instructions must not be modified except by written agreement signed by all principal parties and accepted by the escrow agent.

(b) Comply with the escrow instructions for completing the closing statement. All funds disbursed on the closing statement should be bona fide and supported with adequate documents.

(c) Provide the services and perform all acts pursuant to the escrow instructions.

(2) **Fee disclosures.** Disclose in writing to the principal parties when fees for services provided may be earned by the escrow agent. The disclosure must specifically identify the fees using the same terminology as that provided on the closing statement (for example the HUD-1 or HUD-1A), and reflect the dollar amount associated with each item identified as a fee payable to the escrow agent. For purposes of this section, fees payable to the escrow agent mean any item payable directly to the escrow agent whether accounted for by the escrow agent as profit, potential for profit, or the offset of justifiable costs.

(3) **Justifiable fees.** Ensure that all fees are for bona fide services and bear a reasonable relationship in value to the services performed, regardless of whether the services are performed by the escrow agent or by a third party under contract with the escrow agent. No charges known at the time of closing for services performed by a third party to the transaction may exceed the actual cost of the third-party service. When the cost of a third-party service cannot be known with certainty at the time of closing, an escrow agent may:

(a) Provide an estimate of the charge for the third-party service on the preliminary closing statement, disclose the actual charge for the third-party service on the final disclosure statement, and refund any amounts collected in excess of the actual charge for the third-party service to the principal parties;

(b) Assume responsibility for performing the service and charge the principal parties a one-time fee for performing the service. The one-time fee must be reasonably related to the value of the service provided. The escrow agent may contract with a third party to perform the service. The escrow agent must disclose to the principal parties in the preliminary and final settlement statement that the fee is being paid to the escrow agent. The escrow agent may transfer such fees earned into the general account in compliance with WAC 208-680-410; or

(c) If conducting a subescrow transaction, charge the principal parties the average charges as determined by the master escrow agent or title insurance company.

~~(4) ((Escrow instructions. Comply with the escrow instructions for completing the closing statement. All funds disbursed on the closing statement should be bona fide and supported with adequate documents.~~

~~(5))~~ **Recordkeeping.** Maintain copies of the escrow instructions and closing statement (for example, HUD-1 or HUD-1A) in the escrow transaction file.

~~((6))~~ **(5) Addendums.** Require an addendum to the purchase agreement for any and all material changes in the terms of the escrow transaction, including but not limited to, changes in the financing of the transaction.

~~((7) Services. Provide the services and perform all acts pursuant to the escrow instructions.~~

~~(8))~~ **(6) Closing statements.** Provide a complete detailed closing statement (for example HUD-1 or HUD-1A) as it applies to each principal at the time the transaction is closed and provide copies to each real estate broker or agent involved with the transaction. The escrow agent must retain a copy of all closing statements in the transaction file, even if funds are not handled by the agent. The closing statements must show, at a minimum:

(a) The date of closing;

(b) The total purchase price;

(c) An itemization of all adjustments, moneys or things of value received or paid in compliance with requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, and Regulation X, 24 C.F.R. Section 3500, and all other applicable rules and regulations. Such itemization must include the name of the person or company to whom each individual amount is paid, or from whom each individual amount is received. If there is not enough room on the closing statement for a full itemization, itemization may be provided on an addendum as long as a copy of the addendum was also provided to the principal parties and is included in the transaction file;

(d) A detail of debits and credits identified to each principal party; and

(e) Names of payees, makers and assignees of all notes paid, made or assumed.

~~((9))~~ **(7) Payment of proceeds.** Pay the net proceeds of sale directly to the seller unless otherwise provided in writing by the seller or a court of competent jurisdiction.

~~((10))~~ **(8) Obtain signatures.** Obtain original signatures of the principal parties on either the preliminary or final closing statement and maintain a copy of the signed closing statement in the escrow transaction file, unless the escrow instructions authorize use of faxed or electronic

signatures. If an escrow agent completes a transaction based on faxed signatures in accordance with the escrow instructions, it must obtain original signatures for the file only if the escrow instructions so require.

~~((11) Final closing statements. Provide a copy of the final closing statement to each principal party and to each real estate broker or agent involved with the transaction.)~~

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-550 Am I obligated to conduct escrow transactions within the time period specified in the escrow instructions? Yes. An escrow agent must perform all acts required of the escrow agent as expeditiously as possible and within any time period identified in the escrow instructions. Intentional or negligent delay in such performance is a violation of RCW 18.44.430 (1)(h) and (i), and may result in enforcement action by the department.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-560 What requirements must I follow when disbursing funds or other things of value? (1) The escrow agent must disburse funds as set forth in the escrow instructions. Disbursement of any money or other or other things of value in violation before the happening of the conditions of the escrow instructions is a violation of RCW 18.44.430 (1)(e). Funds and other items or documents must be paid and/or disbursed immediately upon closing of the transaction or as specifically agreed to in writing by the principal parties, and all funds must be disbursed in compliance with RCW 18.44.400(3).

(2) Upon written notice from any principal party that the ownership of the funds is in dispute or is unclear based on the written agreements of the parties, the escrow agent must hold such funds until it receives written notice from all principal parties that the dispute has been resolved. In lieu of holding such funds, the escrow agent may interplead the funds into a court of competent jurisdiction pursuant to chapter 4.08 RCW. Upon notification of a bona fide dispute between the principal parties, the department may, at its discretion, order the escrow agent to interplead the funds into a court of competent jurisdiction. If the department orders an escrow agent to interplead funds, the escrow agent may deduct only the actual costs of interpleading from the escrow funds.

(3) Except as provided otherwise in this section, at no time may an escrow agent disburse or delay the disbursement of funds without the written consent of the principal parties unless the delay is necessary to ensure the funds being disbursed are good funds.

(4) See also WAC 208-680-410 (11) and (16).

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-570 When ~~(do)~~ must I ~~(have to)~~ notify the department about a lawsuit or complaint against me? Every escrow agent and escrow officer must,

within twenty days after service or knowledge of a suit or complaint, notify the department of the following:

(1) Any criminal complaint, information, indictment, or conviction (including a plea of guilty or nolo contendere) in which the licensee is named as a defendant.

(2) Entry of a civil court order, verdict, or judgment, against the licensee in any court of competent jurisdiction in which the subject matter involves any escrow or business related activity by the licensee. Notification is required regardless of any pending appeal.

(3) Any administrative action or Washington state bar association disciplinary action taken against an escrow officer or any of an escrow agent's employees for subject matter involving escrow or related business activities, if the designated or branch designated escrow officer is aware of such action. Notification is required regardless of any pending appeal.

(4) If an escrow agent or escrow officer is aware of it, any criminal complaint, information, indictment, or conviction of any of a licensee's employees where the complaint, information, indictment, or conviction is for a felony or a gross misdemeanor involving dishonesty. Notification is required regardless of any pending appeal, and notifying the department under this section does not change an escrow agent's responsibilities under WAC 208-680-275.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-580 What are the responsibilities of a licensed escrow officer? ~~((+) It is the responsibility of)~~ Every licensed escrow officer ~~((+))~~ must:

(1) Be knowledgeable of and keep current with chapter 18.44 RCW and the rules implementing chapter 18.44 RCW~~((-))~~;

(2) ~~((It is the responsibility of every licensed escrow officer to))~~ Keep the department informed of his or her current home address~~((-))~~;

(3) ~~((It is the responsibility of every licensed escrow officer to))~~ Ensure accessibility of ~~((their))~~ the escrow agent's offices and records to representatives of the department~~((-))~~; and

(4) ~~((It is the responsibility of every licensed escrow officer to))~~ Promptly inform the department if he or she loses his or her affiliation with an escrow agent, and to stop conducting escrow transactions until he or she associates with a licensed escrow agent.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-590 What practices are violations of the act? It is a violation of the act for you or your employees to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(3) Directly or indirectly obtain property by fraud or misrepresentation;

(4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the conduct of the business of escrow, or relative to the business of escrow or relative to any person engaged therein;

(5) Knowingly receive or take possession for personal use of any property of any escrow business, other than in payment authorized by this chapter, and with intent to defraud, omit to make, or cause or direct to be made, a full and true entry thereof in the books and accounts of the business;

(6) Make or concur in making any false entry, or omit or concur in omitting to make any material entry, in its books or accounts;

(7) Knowingly make or publish, or concur in making or publishing, any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or omit or concur in omitting any statement required by law to be contained therein;

(8) Willfully fail to make any proper entry in the books of the escrow business required by law;

(9) Fail to disclose in a timely manner to the other officers, directors, controlling persons, designated escrow officer, or other licensed escrow officers the receipt of service of a notice of an application for an injunction or other legal process affecting the property or business of an escrow agent, including in the case of a licensed escrow agent an order to cease and desist or other order of the director;

(10) Fail to make any report or statement lawfully required by the director or other public official;

(11) Fail to comply with any requirement of any applicable federal or state act as described in RCW 18.44.-301;

(12) Collect a fee for tracking unclaimed funds that is not a bona fide out-of-pocket expense;

(13) Convert unclaimed funds for personal use; or

(14) Receive compensation or any ~~((thing of))~~ value from any party for assisting in "real estate flopping." "Real estate flopping" is a short sale transaction where the value of a property is misrepresented to the lender, who then authorizes sale of the property for less than market value. The property is resold to another person at market value or closer to market value, creating a profit. The failure to disclose the nature of the transactions or the true value of the property to the lender constitutes fraud on the lender, the original property owner, or the second buyer, and is a violation of this chapter.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-610 What are the department's examination powers under the act? (1) For the purposes of determining compliance with chapter 18.44 RCW and chapter 208-680 WAC, the department may examine, wherever located, the records used in the business of every licensee and any person who must be licensed under the act.

(2) The department may make necessary inquiry of the business or personal affairs of each person identified in subsection (1) of this section for the purposes of determining

compliance with the act and these rules. In conducting examinations, the department may:

(a) Access, during reasonable business hours, the offices and places of business, books, accounts, papers, files, records, including electronic records, computers, safes, and vaults of all such persons. Access must be given to both the trust account records and general business account records;

(b) Interview or take sworn testimony of any person subject to RCW 18.44.021, or any employee or independent contractor of any person subject to RCW 18.44.021;

(c) Interview or take sworn testimony of any principal party or agent to the transaction;

(d) Require the filing of statements in writing by any person, under oath or otherwise, as to all facts and circumstances concerning the matters under examination;

(e) Copy, or request to be copied, any items described in this section;

(f) Analyze and review any items described in this section;

(g) Require assistance, as necessary, from any employee or person subject to the act;

(h) Conduct meetings and exit reviews with owners, management, officers, or employees of any person subject to the act; and

(i) Prepare and deliver, as necessary, a report of examination requiring a response from the recipient.

(3) The department may make examinations as frequently as it deems necessary or appropriate; and

(4) The department may charge an appropriate hourly audit fee for examination under RCW 18.44.121~~((5))~~ (1)(e).

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-620 What are the department's investigatory powers under the act? (1) The department may ~~((make at any time public or private))~~ conduct investigations ~~((within or outside of this state))~~ at any time to determine whether any person has violated or is about to violate chapter 18.44 RCW, or any rule, regulation, or order under chapter 18.44 RCW, or to aid in the enforcement of chapter 18.44 RCW. For that purpose, the department may conduct inquiries, interviews, and examinations of any person deemed relevant to the investigation.

(2) The department may investigate the escrow business or other business or personal financial records of any person subject to investigation under subsection (1) of this section. In conducting investigations, the department may:

(a) Access, during reasonable business hours, any location where any escrow business records are or may be located, including offices, places of business, personal residences, storage facilities, computers, safes, and vaults, for the purposes of obtaining, reviewing, or copying books, accounts, papers, files, or records, including electronic records, or records stored in any format;

(b) Administer oaths or affirmations;

(c) Subpoena witnesses and compel their attendance at a time and place determined by the director or designated person;

(d) Subpoena the production of any evidence or matter which is relevant to the investigation, including the taking of such evidence;

(e) Subpoena any person to determine the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence;

(f) Interview, publicly or privately, under administration of oath or otherwise, or take the sworn testimony of: Any principal party, any agent to the transaction, any employee or independent contractor of any person subject to the act, or any other person whose testimony is deemed relevant to the department's investigation;

(g) Require the filing of statements, affidavits, or declarations in writing by any person, under administration of oath, notary or otherwise, as to all facts and circumstances concerning the matters under investigation;

(h) Copy, or request to be copied, any items described in this section, or if the department makes a determination that there is a danger that original records may be destroyed, altered, or removed to deny the director access, or that original documents are necessary for the preparation of a criminal referral, the department may take originals of any items described in this section, regardless of the source of such items. Originals and copies taken by the department may be held, returned, or forwarded to other regulatory or law enforcement officials as deemed necessary;

(i) Analyze and review any items described in this section;

(j) Receive assistance, as necessary, from any employee or other person subject to RCW 18.44.021;

(k) Conduct meetings and exit reviews with owners, management, officers, or employees of any person subject to RCW 18.44.021;

(l) Conduct meetings and share information with other regulatory or law enforcement agencies;

(m) Prepare and deliver, as necessary, a report of investigation requiring a response from the recipient.

(3) For purposes of this section and RCW 18.44.420(1), "public" means open to the public as determined by the department.

(4) For purposes of this section and RCW 18.44.420(1), "private" means closed to the public or any person, including attorneys for witnesses, as determined by the department.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-630 What are the department's enforcement powers under the act? The department may conduct ~~((the following types of))~~ enforcement ~~((activity))~~ activities that include, but are not limited to:

(1) Enter orders, including temporary orders to cease and desist, compelling any person to cease and desist from an unlawful practice, and to take such affirmative action as in the judgment of the department will carry out the purposes of this chapter;

(2) Enter charges for violations of chapter 18.44 RCW and chapter 208-680 WAC;

(3) Bring an action, with or without prior administrative proceedings, in the superior court to enjoin conduct or to enforce compliance with chapter 18.44 RCW, or any rule, regulation, or order of the department;

(4) Appoint a receiver or conservator to take over, operate, or liquidate any licensed escrow agent;

(5) Hold hearings;

(6) Make referrals to other regulatory or law enforcement agencies; or

(7) Under specific circumstances, take control of an escrow agent. See WAC 208-680-645.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-640 ((Sanctions:)) What sanctions may the department impose on a licensed escrow agent or officer? (1) ~~((What sanctions may the department impose on a licensed escrow agent or officer?))~~ The department may take any or all of the following actions against escrow licensees:

(a) Deny, suspend, or revoke the escrow agent's license for any violation of RCW 18.44.430;

(b) Remove or prohibit any corporate officer, controlling person, director, employee, or licensed escrow officer from participation in the conduct of the affairs of any licensed escrow agent, for any violation of RCW 18.44.430;

(c) Order a licensed escrow agent or officer to pay restitution to an injured party; or

(d) Impose a fine of up to one hundred dollars per day against any escrow officer or agent for each day's violation of chapter 18.44 RCW or these rules.

(2) **I work as an escrow agent, but I am excepted from licensure. What sanctions may the department impose on me for violations of the act?** The department may deny a future application for a license under the act.

(3) **I have been sanctioned in the past for providing unlicensed escrow services in Washington. May I apply for an escrow license?** Yes, if you were sanctioned more than five years ago. Under RCW 18.44.430, the department may deny a license to anyone who has violated the act or its implementing rules, including the licensure requirements. The department will not issue a license to a person who has provided unlicensed escrow services within the last five years, but may issue a license to a person whose unlicensed activity took place more than five years before his or her application. If your unlicensed activity was particularly widespread or egregious, or if it posed a particular risk to the public interest, the department may still deny you an escrow license even if your unlicensed activity took place more than five years before your application.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-645 Seizure of business. (1) When may the department take control of my escrow business? The department may take control of a licensed escrow agent

if, as a result of an examination, report, investigation, or complaint, it appears to the department that the licensee:

(a) Is conducting business in an unsafe and unsound manner that poses a risk to the public;

(b) Has suspended payment of its trust obligations;

(c) Has refused to comply with a lawfully issued order of the department and one or more consumers are likely to be harmed by noncompliance.

A licensee may be considered to be conducting its business in an unsafe and unsound manner that is injurious to the public if it refuses to file a valid claim against its fidelity bond or errors and omissions policy for claims that affect a consumer and his or her property.

(2) **What can the department do with a business it has taken control of?** The department may take any action that the licensee would be able to take. At a minimum, the department may:

(a) Work with other licensees to complete pending escrow transactions;

(b) Discontinue unsafe or unsound practices and violations of laws or regulations;

(c) ~~((Make good))~~ Provide funds to cure any deficiencies;

(d) Make claims against the licensee's fidelity or surety bonds or errors and omissions insurance to make consumers harmed by employee activities whole;

(e) Make restitution to injured parties;

(f) Renew the licensee's license;

(g) Renew or make premium payments to maintain the licensee's bonds and insurance; and

(h) Take necessary steps to wind down the business of the escrow agent where it is clear that the escrow agent cannot be safely operated.

(3) **How long may the department keep control of a business?** The department may maintain control over a business until the licensee is able to resume business or the business is fully liquidated.

(4) **I also conduct nonescrow business through my licensed escrow agent business. If the department seizes my escrow business, will it also seize these other areas of business?** When possible, the department will only take control of the portion of a business related to escrow. If the portions of a business are not clearly divisible, the department will determine its actions on a case-by-case basis, based in part on the relationship between and degree of commingling of the business lines.

(5) **I am an attorney whose law practice is licensed as an escrow agent. Will the department seize my law practice under this section?** Where an attorney's law practice is excepted from licensure, the law practice is not subject to seizure under the act. For attorneys with a business entity licensed under the act, the department will generally not exercise its seizure authority against a business entity or portion of a business entity supervised by the Washington state bar association. In any event, the department will only take control of the portion of a business related to escrow as set forth in subsection (4) of the section.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-647 Seizure of business by the department—Notice to licensee. Under the circumstances set forth in WAC 208-680-645, the department may give the licensee notice to correct an unsafe or unsound condition. If the licensee fails to comply with the terms of the notice within thirty days of its issuance or within such further time as the department may allow, then the department may take possession of the licensee.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-648 What ~~(can I do)~~ are my rights if the department takes possession of my business without cause? You may challenge the department's decision to take possession of your business under the Administrative Procedure Act, chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-650 What examination and investigation fees may the department charge me, and what specialists may the department retain in connection to its examination or investigation of an escrow agent or officer? (1) ~~((The director may retain attorneys, appraisers, independent certified public accountants, or other professionals and specialists as examiners, auditors, or investigators, the cost of which shall be borne by the person who is the subject of the examination, audit, or investigation.~~

~~((2) The expense of))~~ You will be charged \$62.50 per hour for an examination or investigation pursuant to WAC 208-680-610 or 208-680-620 ((inside or outside this state shall be borne by the person examined or investigated)).

~~((3))~~ (2) You will also be charged the expenses of an examination or investigation or both pursuant to this section which expenses may include, but are not limited to, staff time, travel, lodging, per diem, and any other expenses related to the ((examination or)) investigation. At a reasonable time following each examination or investigation performed, the director must provide the person examined with an invoice for the expenses incurred during the examination or investigation. Payment of the invoiced amount is due within thirty days of the date of the invoice.

(3) The director may retain attorneys, appraisers, independent certified public accountants, or other professionals and specialists as examiners, auditors, or investigators, the cost of which shall be borne by the person who is the subject of the examination or investigation.

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-660 Abandoned escrow records. What happens if I fail to maintain my records after closing? If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic formats, ~~((or))~~ and proper destruction.

ESCROW ~~((COMMISSION))~~ ADVISORY COMMITTEE

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-710 Organization of ~~((commission))~~ committee. (1) **What is the escrow ~~((commission))~~ committee, and what are its duties? The escrow ~~((commission))~~ committee is composed of the director or his or her designee and five board members appointed by the director. The ~~((commission))~~ committee provides advice on the escrow officer examination, acts in an advisory capacity to the department regarding the activities of escrow agents and escrow officers, and performs such other duties and functions as prescribed by chapter 18.44 RCW.**

(2) **Are escrow ~~((commission))~~ committee meetings open to the public? Yes. Meetings of the escrow ~~((commission))~~ committee are open to the public. Records, minutes, and recordings of each meeting are also available on the department's web site, www.dfi.wa.gov.**

AMENDATORY SECTION (Amending WSR 10-20-124, filed 10/5/10, effective 11/5/10)

WAC 208-680-720 Escrow ~~((commission))~~ committee meeting notice. I would like to know when the next meeting of the escrow ~~((commission))~~ committee will be held. How can I get this information? If you would like to know about the date, time, place and agenda of the escrow ~~((commission))~~ committee meetings, you may make a request of the department, or may join the department's escrow e-mail distribution list, the listserv, at <http://dfi.wa.gov/about/listservs.htm>.

Dates and times of the escrow ~~((commission's))~~ committee's meetings are also posted on the department's web site, www.dfi.wa.gov.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-680-177 What must I do to replace my designated escrow officer?

WAC 208-680-510 What are the designated escrow officer's responsibilities?

WSR 13-19-101

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed September 18, 2013, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-068.

Title of Rule and Other Identifying Information: Amending chapter 172-121 WAC, Eastern Washington University student conduct code.

Hearing Location(s): Eastern Washington University, Main Campus, Showalter Hall, Room 201, Cheney, WA 99004, on October 23, 2013, at 11:00 a.m.

Date of Intended Adoption: November 22, 2013.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by October 22, 2013.

Assistance for Persons with Disabilities: Contact Trent Lutey by October 22, 2013, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These revisions are needed to improve conduct review proceedings, better comply with changes to state and federal laws, and improve clarity throughout. This update modifies student disciplinary council composition; identifies the university's role as complainant in some cases; clarifies the standard of proof for conduct code proceedings; adds degree revocation to the list of possible sanctions; adds provisions to better comply with Title IX and the Violence Against Women Act; and modifies language throughout the chapter to improve readability.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Trent Lutey, 214 Showalter, Cheney, WA 99004, (509) 359-6322; Implementation and Enforcement: Laurie Connelly, 214 Showalter, Cheney, WA 99004, (509) 359-2371.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC revision does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-121 WAC is not considered a significant legislative rule by Eastern Washington University.

September 18, 2013

Trent Lutey
University Policy Administrator

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-010 Introduction. Eastern Washington University is an academic community dedicated to providing instruction in higher education, advancing knowledge through scholarship and research, and providing related services to the community.

As a public institution of higher education, the university has a special responsibility to create and maintain an academic environment that promotes freedom of inquiry and expression while protecting the rights, opportunities and welfare of students, faculty, staff and guests. To achieve this, the university establishes rules, regulations, procedures, policies, and standards of conduct.

Through the student conduct code as well as other university policies and directives, the university sets forth specific behavioral and academic expectations for students and student organizations. It is the responsibility of each

student to clearly understand and comply with those expectations. The responsibility for enforcement of the student conduct code rests with the university president.

The board of trustees of Eastern Washington University, acting under the authority granted by RCW 28B.35.120, has established the following regulations for student conduct and discipline.

These provisions are not intended to protect any person or class of persons from injury or harm.

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-020 Definitions. For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

"Accused" refers to any student or student organization that is accused of violating the ~~((standards of conduct for))~~ student ~~((s))~~ conduct code under this chapter.

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any accused or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

"Business days" refers to the days and hours the university is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in the university holiday schedule.

"Complainant" means any person who files a complaint alleging that a student or student organization violated the standards of conduct for students. Complainant also refers to the university when the university files the complaint.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or a designee of the dean of students.

"Director of ~~((OSRR))~~ SRR" refers to the director of ~~((the office of))~~ student rights and responsibilities, or designated representative.

"Harassment" encompasses harassment, sexual harassment, gender-based harassment, and stalking for the purposes of WAC 172-121-030 through 172-121-140. These terms are further defined in WAC 172-121-200.

"Hearing authority" refers to the university official ~~((holding a conduct review hearing. The conduct review officer is the hearing authority for a summary hearing while the))~~ or student disciplinary council ((is the hearing authority for a council)) who holds a conduct review hearing.

~~(((Local or surrounding communities" refers to communities having an existing relationship with Eastern Washington University (EWU) including, but not limited to, satellite campus communities and surrounding Spokane County communities.))~~

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

~~(((Officer" or "the officer" refers to the conduct review officer as described in WAC 172-121-070.))~~

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, university policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the associated students of Eastern Washington University (ASEWU).

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

"Sexual misconduct" encompasses domestic violence, dating violence, and acts of sexual violence for the purposes of WAC 172-121-030 through 172-121-140. These terms are further defined in WAC 172-121-200.

"Student" includes all ~~((persons taking courses through the university, both full and part time, pursuing undergraduate, graduate or professional studies. Nonmatriculated, international students attending language institutes or foreign study programs through the university, and persons, who have been notified of acceptance for admission at EWU, are also considered students. Any person who engaged in conduct in violation of the student conduct code during a period in which they had student status as previously described in this subsection, remain subject to action under this conduct code even if the person has graduated, withdrawn, or has not officially enrolled for a particular term at the university))~~ of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person currently enrolled at the university;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

"Summary hearing" refers to a conduct review hearing before the conduct review officer.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased ~~((or used))~~, rented or operated by the university, to include all satellite campuses affiliated with the university.

"University president" refers to the university president or a designee of the university president.

"Vice-president for student affairs" refers to the vice-president for student affairs or ~~((a designee of the vice-president for student affairs))~~ their designated representative.

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-030 Rights of students. ~~((+))~~ Any student or student organization ~~((accused of or))~~ charged with any violation of the student conduct code ~~((has))~~ and the victim in the case of an allegation of harassment or sexual misconduct, have the following rights ~~((in conduct review proceedings))~~:

~~((a))~~ (1) The right to a fair and impartial conduct review ((hearing before the conduct review officer or the student disciplinary council)) process;

~~((b))~~ (2) The right to prior written notice to attend a preliminary conference ((as described in WAC 172-121-110)) or hearing;

~~((c))~~ (3) The right to remain silent during any conduct review ((proceeding)) hearing;

~~((d))~~ The right to prior written notice to attend a council hearing as described in WAC 172-121-120 if the matter is not resolved through a summary hearing process;

(e) The right to waive his/her right to prior notice about a council hearing and to request that the case be heard in a summary hearing immediately following the preliminary conference;

~~((f))~~ (4) The right to know who ((is bringing the accusation(s)) filed the complaint against them as described in WAC 172-121-110 ((and 172-121-120-2)(b)));

~~((g))~~ (5) The right to speak on ((his/her)) their own behalf in all proceedings;

~~((h))~~ (6) The right to hear all information and view all material presented against him or her;

(7) The right to call witnesses as described in WAC 172-121-120;

(8) The right to submit questions to be asked of witnesses as described in WAC 172-121-120;

(9) The right to consult an advisor as described in WAC 172-121-090;

~~((i))~~ (10) The right to appeal as provided in WAC 172-121-130; and

~~((j))~~ (11) The right to be subjected to university disciplinary action only one time for the same ((incident)) conduct.

~~((2))~~ Any student or student organization appearing before a council hearing has the following additional rights:

~~((a))~~ The accused has the right to hear all information and view all material to be presented against them;

~~((b))~~ The accused and complainant have the right to present witnesses as described in WAC 172-121-120;

~~((c))~~ The accused and complainant have the right to submit questions to be asked of witnesses as described in WAC 172-121-120;))

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-040 Jurisdiction. Eastern Washington University shall have jurisdiction over student behavior which occurs on university premises. The university may also exercise jurisdiction over student conduct which occurs at off-campus locations if the behavior adversely affects the university and/or the pursuit of its objectives and the

university determines that a significant university interest is affected. The university has sole discretion in determining what conduct adversely impacts the university and/or the pursuit of its objectives.

~~((Similarly,))~~ The student conduct code shall apply to conduct without regard to a student's academic status at the time the conduct took place. This includes all periods from the time of application for admission through the actual awarding of a degree, including times between academic periods or outside of normal business hours.

~~((The student conduct code shall also apply to former students if the accused was in a student status as defined in WAC 172-121-020 when the misconduct took place. This is true even if the alleged misconduct is discovered after the student was awarded a degree or if the student withdrew from school while a disciplinary matter was pending.~~

~~These provisions are not intended to protect any person or class of persons from injury or harm, or to deny students their legally and/or constitutionally protected rights.)~~

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-050 External authorities. Many offenses under this code are also violations of federal, state or local laws. A student or student organization may face criminal and civil prosecution as well as university disciplinary action for violation of these laws.

The university reserves the right to ~~((initiate action for offenses that have an impact on the educational or administrative functions or the general well-being of the university and its surrounding communities))~~ take action under this code for any offenses over which it has jurisdiction. Proceedings under this code may be carried out prior to, simultaneously with, or following civil or criminal proceedings in the courts. University proceedings under the student conduct code are not subject to challenge, delay, or dismissal based solely on ~~((the disposition of any))~~ criminal charges ~~((related to the same incident)).~~

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-060 Notification of criminal arrest. A student is responsible for notifying the university of any off-campus arrest.

When ~~((the office of))~~ student rights and responsibilities ~~((OSRR))~~ (SRR) is informed of the arrest of a student, the university may send a letter to the student requiring that he or she make an appointment for an interview with the ~~((OSRR))~~ (SRR). During this interview, the director of ~~((OSRR))~~ (SRR) shall discuss with the student:

- (1) The facts involved in the student's arrest;
- (2) The student's obligation to keep the university informed of the progress of ~~((the))~~ any criminal charge(s); and
- (3) The student's obligation to advise the university of the final disposition of ~~((the))~~ any criminal charge(s).

The university will cooperate ~~((fully))~~ with law enforcement and other agencies administering a corrective or

rehabilitative program for the student. ~~((The university reserves the right to initiate concurrent disciplinary action.))~~

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-070 Conduct review officials. (1) The director of ~~((OSRR))~~ (SRR) shall:

- (a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;
- (b) Manage the proceedings as described in this chapter;
- (c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;

(d) Ensure complaints of harassment or sexual misconduct involving students are promptly investigated and resolved as required by federal and state laws.

(2) Conduct review officer: The university president shall designate one or more conduct review officers. The director of OSRR may be designated as a conduct review officer. The conduct review officer(s) shall:

- (a) ~~((Perform))~~ Preside over conduct review proceedings under this chapter; and
- (b) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university community and/or the pursuit of its objectives.

(3) Student disciplinary council: The student disciplinary council hears cases of student conduct code violations as described in WAC 172-121-120. The council also serves as an appeal authority under WAC 172-121-130.

(a) Council pool: For each academic year, a pool of council members ~~((is))~~ shall be established ~~((based on availability)).~~ Appointment of council pool members and their terms of service are as follows:

- (i) Faculty: Three faculty members shall be selected by the faculty senate for three-year terms;
- (ii) Staff: Three university staff members shall be appointed by the university president for three-year terms;
- (iii) Students: Six students shall be appointed by the president of the ASEWU for one-year terms. Student appointments shall be made with the advice and consent of the associated students' legislature, as described in the constitution of the ASEWU. Students holding a position with any of the associated student courts, or who are in any way affiliated with any judicial, quasi-judicial, or advocacy position with the courts of the ASEWU, may not be appointed to the council pool;

(iv) ~~((Nonvoting chair: Two nonvoting chairs shall be elected for a one-year term by members of the council pool. Re-election of chairs is permissible))~~ Community members: One or more members of the local community may be appointed by the university president. Community members serve until either the community member or the university president elects to sever the appointment, up to a maximum appointment period of three years. Community members shall be considered school officials while acting in their capacities as community members on the student disciplinary council and shall sign statements indicating they will comply with the confidentiality requirements of the Family Education Rights and Privacy Act;

(v) Council chair: The director of SRR, or designee, shall serve as chair of council proceedings but will not have the right to vote;

~~((+))~~ (vi) Vacancies: Council pool vacancies shall be filled as needed by the designated appointing authority.

(b) Session council: When a student disciplinary council is needed for a hearing or an appeal, council members shall be selected from the council pool as follows:

(i) Composition: A session council ~~((shall include, at a minimum,))~~ will typically consist of one nonvoting chair, two student members, and two faculty or staff members. The faculty/staff members may be both faculty, both staff, or one faculty and one staff member. The number of council members may vary, so long as quorum requirements are met. A community member may also serve on a session council, at the discretion of the director of SRR;

(ii) Selection: The director of ~~((OSRR))~~ SRR shall select available members from the council pool to serve as the session council. ~~((As much as possible, council members should be selected based on their availability;~~

~~(iii) If a nonvoting chair is unavailable, the director of OSRR shall select another member of the council pool to serve as chair;~~

~~(iv))~~ (iii) Quorum: ((Four)) A quorum consists of three voting members ((constitute a quorum;

~~(v) Members of the student disciplinary council shall not participate in any case in which they are a defendant, complainant or witness; in which they have a direct or personal interest or bias; or in which they have acted previously in an advisory or adjudicatory capacity;~~

~~(vi) A council member's eligibility to participate in a case may be challenged by parties to the case or by other council members. When such a challenge is made, the session council shall make a decision on the challenge and respond as needed and appropriate; and~~

~~(vii) In the event members of the session council are disqualified or disqualify themselves from a case, a temporary (for that case only) replacement will be appointed by the director of OSRR)) which must include at least one student and one faculty/staff member.~~

NEW SECTION

WAC 172-121-075 Conflicts of interest. (1) Individuals who play a role in receiving, investigating, and otherwise processing complaints shall not have any conflict of interest in the process. In the event such a conflict arises in the process, the person shall disclose such interest to the parties. Parties to the complaint who believe a university official involved in the process has a conflict of interest may report such concerns to the director of SRR or the dean of students. The director or dean shall determine whether a conflict of interest exists and take appropriate action.

(2) Challenges to council membership. Members of the student disciplinary council shall not participate in any case in which they are the accused, the complainant, a victim, or a witness; in which they have a personal interest or bias; or in which they have acted previously in an investigatory, advisory, or adjudicatory capacity.

(a) If a member has such a conflict, the person shall recuse themselves from further involvement in the case. In the event such a conflict arises after the council has been selected or during a proceeding, the member shall disclose the conflict to the parties.

(b) A member's eligibility to participate in a case may be challenged by parties to the case or by other council members at any time. When such a challenge is made, the session council shall make a decision on the challenge.

(c) If a member is disqualified or disqualifies themselves from a case, the director of SRR will appoint a replacement.

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-080 Administration and records. (1) Student conduct code.

(a) Interpretation: Any questions regarding the interpretation or application of this student conduct code are referred to the vice-president for student affairs for final determination.

(b) Review: This student conduct code shall be reviewed every three years under the direction of the vice-president for student affairs.

(2) Records of conduct review proceedings.

(a) Records of conduct review proceedings under this chapter shall be prepared by the conduct review official(s) involved and maintained by the director of ~~((OSRR))~~ SRR. As much as possible, records should include:

(i) A summary of the proceedings during a preliminary conference;

(ii) ~~((A written record of the statements made during a conduct review hearing;))~~ An audio recording of conduct review hearings;

(iii) All letters, statements, memoranda, decisions, orders, notices, and other documents related to conduct review proceedings; and

(iv) Any images, articles, recordings, or other materials presented as evidence in a conduct review proceeding.

(b) The director of ~~((OSRR))~~ SRR shall keep records of conduct review proceedings for seven years.

(c) Records of conduct review proceedings are the property of the university and are confidential to the extent provided in applicable law.

(d) Prior to the final disposition of a case, the accused may review the records relative to their case. The accused shall request to review the case records by contacting the conduct review officer. The conduct review officer shall make every reasonable effort to support the accused's request.

(3) Student disciplinary records.

(a) Student disciplinary records are confidential and shall be treated consistently with the requirements of the Family Educational Rights and Privacy Act (FERPA) and applicable law. Disciplinary records shall be maintained in accordance with the university's records retention schedule.

(b) Release of student disciplinary records. The university ~~((may))~~ shall not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student,

except as required or permitted by law. Exceptions include, but are not limited to:

(i) The student's parents or legal guardians may review these records as permitted by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(ii) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

~~(iii) ((The university may inform the complainant of the outcome of any disciplinary proceeding involving a crime of violence as defined by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99)).~~

~~(iv) The university will, upon written request, disclose to the alleged victim of any crime of violence (as that term is defined in section 16 of Title 18, United States Code), or a nonforcible sex offense, the report on the results of any disciplinary proceeding conducted by the university against a student who is the alleged perpetrator of such crime or offense with respect to such crime or offense. If the alleged victim of such crime or offense is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this subsection (3)(b)(iv). Such disclosure will be subject to the provisions of 20 U.S.C. 1094.)~~ In response to a judicial order or a lawfully issued subpoena.

(iv) The university shall release information related to disciplinary records to complainants, victims, or other persons as required by Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other state and federal laws.

(v) Disciplinary records will be made available to hearing councils and university personnel as needed for legitimate educational purposes.

(vi) A student may authorize release of ~~((his or her))~~ their own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by providing a written consent to ~~((the office of))~~ student rights and responsibilities.

(vii) Any student may review his/her own disciplinary records by contacting ~~((the office of))~~ student rights and responsibilities.

(viii) A student may obtain a copy of ~~((his or her))~~ their disciplinary record by making a written request to ~~((the office of))~~ student rights and responsibilities. ~~((The office of))~~ Student rights and responsibilities may charge the student a reasonable amount to cover copying expenses.

(ix) The university may disclose to a student's parents a violation of any federal, state, or local law, or of any university policy or rules regarding use or possession of alcohol or a controlled substance so long as the student is under the age of twenty-one at the time of the disclosure to the parent.

(c) When disciplinary records are released, personally identifiable information may be redacted to protect the privacy of others as permitted by ~~((applicable))~~ law.

(4) Holds:

(a) Types of holds. Holds placed on a student's academic records may prevent admission, registration, graduation, or

other academic activities. Holds may also restrict access to transcripts, grades, or other academic records.

(b) Discretionary holds: The conduct review officer may place a hold on a student's academic records in either of the following situations:

(i) Pending the student's satisfactory completion of any sanctions imposed by a conduct review hearing; or

(ii) If the student fails to respond to any properly delivered notice from the conduct review officer.

(c) Required holds: The conduct review officer shall place a hold on a student's academic record if the student is accused of violating the conduct code and has withdrawn from the university, or if the student withdraws from the university after a complaint is filed against the student. This hold shall remain in place until the allegation or complaint is resolved.

~~((i) In such cases, the student shall be notified that disciplinary action may be initiated when the student reenters or applies for readmission.~~

~~((ii) Holds of this type may not be implemented in cases where the university proceeds with a conduct review hearing or other disciplinary action under this chapter.))~~

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-100 Complaints. (1) Filing of complaints.

(a) Any ~~((student, faculty member, staff member, or other member of the university community))~~ person may file a complaint against a student or student organization for ~~((any))~~ violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) ~~((The office of))~~ Student rights and responsibilities; or

(ii) The office of the dean of students ~~((or~~

~~((iii) Another designated university office or official)).~~

(c) ~~((In instances of alleged))~~ Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law ~~((, nothing in this student conduct code will prohibit or limit the rights of persons to go directly to the civil and/or criminal authorities and file charges)).~~

(d) All student conduct code complaints will be forwarded to the director of ~~((OSRR))~~ SRR for further review and action.

(e) In cases where the university is acting as the complainant, the director of SRR shall initiate the complaint.

(2) Complaint review. ~~((The))~~ Upon receipt of a complaint, the director of ~~((OSRR will))~~ SRR shall review the complaint to determine ~~((if there is sufficient information to hear the matter. During this review, the director of OSRR will also evaluate the circumstances to determine if any interim restriction action is warranted))~~ whether it includes allegations of harassment, sexual misconduct, and/or criminal conduct that will require special processing under subsection (3) of this section and whether appropriate law enforcement or other authorities should be notified.

(3) Special rules for complaints of harassment and/or sexual misconduct. Except where specifically stated, this section applies to all allegations the university receives of harassment and/or sexual misconduct. This section shall apply regardless of where the alleged acts occurred.

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of harassment and/or sexual misconduct to the university Title IX coordinator within two business days.

(b) Prompt resolution. The university shall investigate any complaint alleging harassment and/or sexual misconduct when it is legally required to do so to determine if the university will pursue the incident under this student conduct code and/or refer the incident to other departments or agencies for further criminal, civil, or disciplinary action. All allegations of harassment and/or sexual misconduct shall be promptly investigated and resolved. In the absence of extenuating circumstances, the university will seek to have the allegations resolved within sixty days from the date it is notified of the allegation.

(c) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant or victim wishes to remain anonymous, the university will take all reasonable steps to investigate the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant or victim wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants or victims. Files subject to public disclosure will be released to the extent required by law.

(d) Right to file a criminal report. Once the university is notified of an allegation of sexual harassment, gender-based harassment, stalking, or any form of sexual misconduct, it will notify the potential victim of their right to file a criminal complaint with campus or local law enforcement. If the victim in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the victim that he or she is not required to file a report with local law enforcement. The university will report allegations of harassment or sexual misconduct to law enforcement or other authorities consistent with federal, state, and local law.

(4) Interim measures. During the complaint review, the director of SRR will evaluate the circumstances and recommend to the dean of students if any interim restriction action against the accused is warranted or if any interim measures to assist or protect the complainant and/or victim during the conduct code process are needed. In cases of alleged harassment and/or sexual misconduct, the director of SRR shall, in conjunction with the dean of students and other appropriate university officials, take immediate steps to

protect the complainant and/or victim from further harassment prior to completion of the investigation/ resolution of the complaint. Appropriate steps may include separating the accused harasser and the complainant/victim, providing counseling for the complainant/victim and/or harasser, and/or taking disciplinary action against the accused.

~~((3))~~ (5) Inform complainant. As part of the complaint review process, the director of ((OSRR will contact the complainant and explain to him/her:

~~(a))~~ SRR will follow up with the complainant as described below.

(a) For cases other than harassment and/or sexual misconduct, the director of SRR will contact the complainant and provide them with the following information:

(i) The ((complainant)) complainant's rights under the student conduct code;

~~((b))~~ (ii) The allegations which the complainant has against the accused; ((and

~~(c))~~ (iii) The potential conduct code violations related to the allegations; and

(iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging harassment or sexual misconduct, the director of SRR will provide the complainant with written notification that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the respondent, available resources to assist the student regarding academic, living, transportation and working situations, and possible protective measures they can take;

(ii) Procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

~~((4))~~ (6) Following the complaint review, the director of ((OSRR)) SRR will either dismiss the matter or arrange a preliminary conference ((with the accused)).

(a) Dismiss the matter. If the director of ((OSRR)) SRR believes that there is insufficient justification or insufficient evidence to pursue conduct review proceedings against the accused, he/she may dismiss the matter. In such cases, the director of ((OSRR)) SRR will prepare a written record of the dismissal. The director of ((OSRR)) SRR will also notify the complainant of their decision, if such notification is appropriate and feasible. The dismissal letter, along with the original complaint and any other related documents, will be

maintained as described in WAC 172-121-080. In cases of harassment and/or sexual misconduct, the complainant/victim may request a review of the dismissal by the dean of students.

(b) Preliminary conference. If the director of OSRR does not dismiss the matter he/she will arrange a preliminary conference as described in WAC 172-121-110.

~~((5) Records. The dismissal letter, along with the original complaint and any other related documents, shall be maintained as described in WAC 172-121-080.))~~

NEW SECTION

WAC 172-121-105 Conduct review proceedings. (1)

General provisions:

(a) All conduct review proceedings are brief adjudicative proceedings in accordance with WAC 172-108-010(3) and shall be conducted in an informal manner.

(b) Nonjudicial proceedings: Formal rules of process, procedure, and/or technical rules, such as are applied in criminal or civil courts, do not apply in student conduct code proceedings.

(2) Notification for student organizations: When a charge is directed towards a student organization, the conduct review officer will communicate all matters relative to conduct review proceedings with the president of the organization or their designee.

(3) Advisors: The complainant, victim, and the accused may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the complainant, victim, or the accused that employed the advisor;

(b) The advisor may be an attorney;

(c) The complainant and the accused are responsible for presenting their own case and, therefore, advisors may not speak or participate directly in any conduct review proceeding. The complainant and/or the accused may, however, speak quietly with their advisor during such proceedings; and

(d) If an attorney is used as an advisor, the person using the attorney shall inform the conduct review officer or the council of their intent to do so at least two business days prior to any conduct review proceeding.

(4) Evidence: The accused, and, in cases of harassment and/or sexual misconduct, the complainant/victim may request to view material related to their case prior to a scheduled hearing by contacting the conduct review officer. To facilitate this process, the party should contact the conduct review officer as early as possible prior to the scheduled hearing. The conduct review officer shall make a reasonable effort to support the request to the extent allowable by state and federal law.

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-110 Preliminary conference. (1) Scheduling. If, after reviewing a complaint, the director of ~~((OSRR))~~ SRR decides to initiate conduct review proceedings, the director ~~((of OSRR))~~ shall within ten business days of receiving the initial complaint, appoint a

conduct review officer (CRO) to the case and notify the accused ~~((according to the following provisions))~~. In cases alleging harassment and/or sexual misconduct, the CRO assigned must have completed training on issues relating to harassment and sexual misconduct, including Title IX requirements. Notification of the accused must:

(a) ~~((Notification shall))~~ Be made in writing;

(b) Include a written list of charges against the accused ~~((shall be included with the notification));~~ and

(c) ~~((Notification shall))~~ Include the name of the conduct review officer assigned to the case and the deadline for the accused to contact the CRO in order to schedule a preliminary conference. Whenever possible, the deadline for the accused to contact the CRO will be within five business days of the date the director of SRR sent notification to the accused.

(2) Failure to respond: If the accused fails to comply with the notification requirements, the director of ~~((OSRR))~~ SRR shall schedule the preliminary conference and notify the accused. The notification shall be in writing and shall include a date, time, and location of the preliminary conference.

(3) Follow up with complainant/victim. In all cases alleging harassment and/or sexual misconduct, the CRO shall notify the complainant(s) of the date, time, and location of the preliminary conference and of their right to attend the conference. The CRO shall also follow up with the complainant(s)/victim(s) to determine whether any retaliation or new incidents of harassment have occurred. If the complainant/victim has experienced any type of retaliatory behavior, the university shall take immediate steps to protect the complainant/victim from further harassment or retaliation.

(4) Appearance. Except for cases alleging harassment and/or sexual misconduct, only the accused and the accused's advisor may ~~((attend))~~ appear at the preliminary conference. ~~((The accused may be assisted by an advisor during the preliminary conference. The complainant, complainant's advisor, and witnesses may not))~~ In cases alleging harassment and/or sexual misconduct, the accused and the complainant/victim, along with their advisors, if they choose to have an advisor, may appear at the preliminary conference.

~~((4))~~ (5) Failure to appear. In cases where proper notice has been given but the accused fails to attend the preliminary conference, the CRO may:

(a) Proceed with a hearing and decide the case based on the information available; or

(b) Place a hold on the accused's academic records as described in WAC 172-121-080.

~~((5))~~ (6) Proceedings. During the preliminary conference, the conduct review officer will:

(a) Review the written list of charges with the accused;

(b) Inform the accused who is bringing the ~~((accusa- tion(s)))~~ complaint against them;

(c) Provide the accused with a copy of the student conduct code and any other relevant university policies;

(d) Explain the accused's rights under the student code;

(e) Explain the conduct review procedures;

(f) Explain the accused's and complainant's rights and responsibilities in the conduct review process; and

(g) Explain possible penalties under the student conduct code.

~~((6))~~ (7) After the preliminary conference, the conduct review officer will take one of the following actions:

(a) Conduct a summary hearing with the accused as described in WAC 172-121-120;

(b) Schedule a summary hearing with the accused as described in WAC 172-121-120; or

(c) Refer the case to the student disciplinary council for a council hearing under WAC 172-121-120.

~~((7) Records. Records of the preliminary conference shall be maintained as described in WAC 172-121-130.)~~

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-120 Hearings. The provisions of subsections (1) through (8) of this section apply to both summary hearings and to council hearings.

(1) General provisions.

(a) Hearing authority: The hearing authority exercises control over hearing proceedings. All procedural questions are subject to the final decision of the hearing authority.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the hearing authority.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(2) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the accused fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the accused's input.

(b) Complainant's appearance: The complainant will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the accused student during the hearing. The complainant may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, so long as the complainant's identity can be reasonably established.

(c) Advisors: The complainant and the accused may be assisted by an advisor during conduct review hearings as described in WAC 172-121-090.

(d) Disruption of proceedings: Any person, including the accused, who disrupts a hearing, may be excluded from the proceedings.

(e) Telephonic appearance. In the interest of fairness and expedience, the hearing authority may permit any person to appear by telephone, audio tape, written statement, or other means, as ~~((determined))~~ appropriate.

(3) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the hearing authority. However, hearing authorities are not bound by the rules of evidence observed by courts ~~((and))~~,

The hearing authority may exclude incompetent, irrelevant, immaterial or unduly repetitious material.

(b) The accused ~~((has))~~ and, in cases of sexual harassment or sexual misconduct, the complainant and/or victim, have the right to view all material ~~((admitted into evidence by the hearing authority))~~ presented during the course of the hearing.

~~((i) If the accused wishes to view such material prior to the scheduled hearing, he/she shall contact the CRO. The CRO shall make a reasonable effort to support the request of the accused. To facilitate this process, the accused should contact the CRO as early as possible prior to the scheduled hearing-~~

~~((ii) In every case, the accused may examine any material presented against him/her during the course of the hearing.))~~

(4) ~~((Reasonable cause))~~ Standard of proof. The hearing authority shall ~~((consider information presented at the hearing in determining whether there is reasonable cause to believe that))~~ determine whether the accused violated the student conduct code, as charged~~((-In determining whether such reasonable cause exists, the hearing authority shall decide))~~, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more ~~((likely))~~ probable than not that the accused violated the student conduct code ~~((by engaging in the conduct for which he or she is charged than that he or she did not)).~~

(5) Sanctions. In determining what sanctions shall be imposed, the hearing authority may consider the ~~((information))~~ evidence presented at the hearing as well as any information ~~((available from past conduct and academic performance))~~ contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the hearing authority shall review the evidence provided and may consider information available from ~~((past conduct and academic performance))~~ the student's disciplinary and academic records in determining what sanction should be imposed. ~~((The hearing authority cannot impose a sanction based solely on the failure to answer the charges or appear at the hearing.))~~

(6) Witnesses.

(a) The complainant, ~~((the))~~ victim, accused and ~~((the))~~ hearing authority may present witnesses at council review hearings. ~~((Witnesses may not appear during summary hearings unless the CRO specifically allows it.))~~

(b) The ~~((complainant and the accused shall provide the name and reasonable contact information for each proposed witness to the office of student rights and responsibilities at least two business days before the scheduled hearing. For each proposed witness requested, the complainant and the accused must also provide a brief statement regarding what relevant information the witness may have))~~ party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing.

(c) The ~~((office of student rights and responsibilities shall attempt to contact each proposed witness and request their attendance at the scheduled hearing. The office of student rights and responsibilities is not obligated to contact proposed witnesses who appear to have no relevant first hand information))~~ hearing authority may exclude witnesses from

the hearing room when they are not testifying. The hearing authority is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

~~((The accused has))~~ All parties have the right to hear ~~((or view))~~ all ~~((information))~~ testimony provided by witnesses during the hearing.

(7) Questioning:

(a) The complainant and the accused may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the hearing authority. The hearing authority may ask such questions, but is not required to do so. The hearing authority may reject any question which it considers inappropriate, irrelevant, immaterial or unduly repetitious. The hearing authority has complete discretion in determining what questions will be asked during the hearing.

(b) During a conduct review hearing, only the hearing authority may pose questions to persons appearing before them.

(c) The hearing authority may ask their own questions of any witness called before them.

~~((Risk management-))~~ (8) The hearing authority may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means, as determined appropriate.

(9) Summary hearing procedures.

(a) The ~~((CRO))~~ conduct review officer may hold a summary hearing with the accused only if all of the following conditions are met:

(i) The accused waives his/her right to prior notice about a conduct review hearing;

(ii) The accused requests that the case be heard in a summary hearing with the ~~((CRO))~~ conduct review officer; and

(iii) The ~~((CRO))~~ conduct review officer agrees to conduct the summary hearing. The ~~((CRO))~~ conduct review officer is not obligated to conduct a summary hearing, but may instead refer the case to the student disciplinary council for a council hearing.

(b) Sexual misconduct cases. Allegations of sexual misconduct may not be resolved through a summary hearing but must be referred for a council hearing, unless the case has been otherwise resolved.

~~((and notification. The))~~ A summary hearing may take place immediately following the preliminary conference or it may be scheduled for a later date or time, except that, in cases of harassment, a summary hearing cannot take place without first notifying the complainant/victim of the hearing. If the summary hearing will be held at a later date or time, the conduct review officer shall schedule the hearing and notify the accused and, in the case of harassment, the complainant/victim of the date, time, and place of the hearing. The conduct review officer may coordinate with the parties to facilitate scheduling, but is not required to do so.

~~((If the summary hearing will be held at a later date or time, the CRO shall schedule the hearing in the presence of~~

~~the accused so that the accused is informed of the date, time, and place of the hearing-~~

~~((i))~~ (d) If the ~~((CRO is not able to schedule the hearing in the presence of the accused, the accused shall contact the CRO at a later time, as specified by the CRO, to be informed of the date, time, and location of the summary hearing. If the))~~ accused fails to ~~((contact the CRO, the CRO shall))~~ appear at the summary hearing, the conduct review officer may conduct the summary hearing without the accused present or refer the case to the student disciplinary council for a council hearing under WAC 172-121-110. The ~~((CRO))~~ conduct review officer may also place a hold on the accused's academic records under WAC 172-121-080.

~~((e))~~ (e) Deliberation~~((s)).~~ After the hearing, the conduct review officer shall decide whether ~~((there is reasonable cause to establish))~~ the accused violated the student conduct code based on a preponderance of the evidence.

(i) If the ~~((CRO))~~ conduct review officer determines that there is not sufficient information to establish ~~((reasonable cause))~~ a violation by a preponderance of evidence, the ~~((CRO))~~ conduct review officer shall ~~((terminate))~~ dismiss the complaint.

(ii) If the ~~((CRO))~~ conduct review officer determines that ~~((there is reasonable cause to establish))~~ the accused violated the student conduct code, the ~~((CRO))~~ conduct review officer shall impose any number of sanctions as described in WAC 172-121-210.

(f) Notification. The conduct review officer shall notify the accused, in writing, of the summary hearing outcome and the right to appeal. In the case of sexual harassment, gender-based harassment, or stalking, the victim shall be provided with written notice of: (i) The university's determination as to whether such harassment occurred; (ii) the victim's right to appeal; (iii) any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)). Information regarding the discipline of the accused will not be released unless:

(A) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(B) The misconduct involves a crime of violence or a sexual assault, including rape, dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

(10) Council hearing procedures.

(a) Scheduling and notification. If the conduct review officer has decided to refer the case to the student disciplinary council for a council hearing, the director of ~~((OSRR))~~ SRR shall schedule the hearing and notify the council, accused, and the ~~((council))~~ complainant/victim of the date, time, and location of the hearing in writing. The council must receive at least seventy-two hours' notice as to the time and place of the hearing. The ~~((CRO))~~ conduct review officer may coordinate with the ~~((accused))~~ parties to facilitate scheduling, but is not required to do so. ~~((The CRO shall notify the accused of the preliminary conference. Notification will be in writing and will include the date, time and location of the hearing.))~~

(b) Deliberations and sanctions. ~~((After))~~ Following the hearing, the council shall meet in closed session and, within seven days, determine by majority vote whether ~~((reasonable~~

~~cause exists to indicate that~~), by a preponderance of the evidence, the accused violated the student conduct code. If the council ~~((decides that))~~ determines the accused ~~((did violate))~~ violated the student conduct code, the council shall then decide what sanctions shall be imposed. Sanctions shall be decided by majority vote and in closed session.

(c) Notification. ~~((The council's decision must be made within seven business days of the hearing conclusion.))~~ The council chair shall forward the council decision to the director of ~~((OSRR))~~ SRR. The director of ~~((OSRR))~~ SRR shall notify the accused of the ~~((council))~~ council's decision and ~~((sanctions (if any)))~~ of the right to appeal. In the case of sexual harassment, gender-based harassment, stalking, or any act of sexual misconduct, the victim shall be provided with written notice of: (i) The university's determination as to whether such harassment/sexual misconduct occurred; (ii) the victim's right to appeal; (iii) any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)). Information regarding the discipline of the accused will not be released unless:

(A) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(B) The misconduct involves a crime of violence or a sexual assault, including rape, dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

~~((11) Records. Records of the conduct review hearing shall be maintained as described in WAC 172-121-080.))~~

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-130 Appeals. (1) Basis: Appeals may be filed by ~~((either))~~ the accused or the complainant. In cases of harassment and/or sexual misconduct, the victim may also file an appeal. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures. A hearing may have deviated from established procedures if:

(i) The hearing was not conducted fairly in light of the charges and information presented;

(ii) The complainant was not given a reasonable opportunity to prepare and to present information as provided by the student conduct code;

(iii) The accused was not given a reasonable opportunity to prepare and to present a response as provided by the student conduct code.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority was based on the information presented and that that information was sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

~~((e))~~ (d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

~~((d))~~ (e) To consider ~~((new))~~ newly discovered material information ~~((or other relevant facts not previously presented because such information and/or facts were))~~ which was not known to the appellant and could not reasonably have been discovered and presented by the appellant at the original hearing. It is the party's obligation to present all evidence at the time of the original hearing. ((If such cases, if the information was reasonably available at the time of the original hearing but the appellant did not make a good faith effort to discover the information, there is no basis for appeal. It is important for the parties to make a good faith effort to gather all relevant facts before the hearing.)) The university is not obligated to ~~((hold))~~ grant an appeal and conduct a new hearing when ((the)) parties ((did)) do not take reasonable efforts to prepare their cases for the ((initial)) original hearing.

(2) Filing: Appeals may be filed following a conduct review hearing, ~~((if the accused or the complainant believes there is basis to support an appeal, they may file such an appeal.))~~ subject to the following provisions:

(a) The appeal must be submitted to the director of ~~((the office of))~~ student rights and responsibilities within five business days of receipt of the decision;

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(3) Appeal authorities:

(a) For summary hearings heard by the conduct review officer, ~~((the appeal authority is))~~ appeals are determined by the student disciplinary council.

(b) For ~~((council hearings heard by the))~~ student disciplinary council ~~((, the appeal authority is))~~ hearings, appeals are determined by the dean of students.

(4) Forwarding of appeals: The director of ~~((the office of student rights and responsibilities))~~ SRR shall ~~((, within five business days of receipt of an appeal.))~~ forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of ~~((OSRR))~~ SRR may also forward any other written records related to the case.

(5) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal and other information and/or explanation it has requested from the parties to the proceedings.

(6) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, or remand the decision(s) of the hearing authority.

(7) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

(8) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the accused. When determining sanctions, the appeal authority may consider the complete record of the accused's prior conduct and academic performance in addition to all other information associated with the case.

(9) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR shall notify, in writing, the accused, and, in cases of harassment or sexual misconduct, the complainant and victim, of the outcome of the appeal.

(10) Further proceedings. ~~((After an appeal authority has completed an appeal action;))~~ The appeal authority's decision is final and no further appeals may be made under ((this chapter)) the student conduct code.

~~((10))~~ (11) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether ~~((reasonable))~~ sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation ~~((resulted in a material change in))~~ materially changed the outcome of the case or the sanctions imposed.

~~((11) Records: Records of appeal proceedings shall be maintained as described in WAC 172-121-080.))~~

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-140 Interim restriction. ~~((Ordinarily, the disciplinary authority of the university will be invoked only after all related review, hearing, and appeal procedures have been completed. However;))~~ In situations where there is cause to believe that a student or a student organization endangers the health, safety, or welfare of themselves, the university community, or property of the university community, the dean of students may take immediate action(s) against the student or student organization without prior notice or hearing.

Simultaneous with such action(s), the dean of students will refer the charges to the conduct review officer, who will process such charges in accordance with the provisions of this student conduct code.

Interim restriction is subject to the following:

(1) Interim restriction actions may only be imposed in the following situations:

(a) When a student or student organization poses an immediate threat to:

(i) The health, safety or welfare of any part of the university community or public at large;

(ii) The student's own physical safety and well-being; or

(iii) Any property of the university community;

(b) When it is believed that the student's or student organization's continued attendance or presence may cause disorder, substantially interfere with or impede the lawful activities of others, or imperil the physical or mental health and safety of members of the university community; or

(c) ~~((In all cases where))~~ When a student is undergoing criminal proceedings for any felony charge.

(2) During the interim restriction period, a student may be restricted by any or all of the following means:

(a) Denial of access, including but not limited to: Assignment to alternate university housing or removal from university housing, limitation of access to university facilities, or restriction of communication with specific individuals or groups;

(b) Interim suspension, including temporary total removal from the university or restriction of access to campus;

(c) Mandatory medical/psychological assessment of the student's capability to remain in the university.

(3) The dean of students will determine what restriction(s) will be ~~((ordered))~~ placed on a student.

(4) All interim restrictions that involve any type of restriction from any university premises will be accomplished by giving a notice against trespass. The notice against trespass may be given by any manner specified in WAC 172-122-200.

(5) The dean of students will prepare a brief memorandum for record containing the reasons for the interim restriction. The dean of students will forward copies of the memorandum for record by personal delivery or by U.S. mail to the restricted student, ~~((the office of))~~ student rights and responsibilities, and all other persons or offices bound by it. At a minimum, the memorandum will state:

(a) The alleged act(s) or behavior(s) of the student or student organization which prompted the interim restriction;

(b) How those alleged act(s) or behavior(s) constitute a violation of the student conduct code; and

(c) How the circumstances of the case necessitated the interim restriction action(s).

(6) In all such cases, the student or student organization may appeal the interim restriction to the vice-president for student affairs. The challenge must be submitted, in writing, within ten business days after the interim restriction action is taken, unless the student requests an extension. Requests for extension will only be granted to review the following issues:

(a) The reliability of the information concerning the student's behavior; and

(b) Whether the student's continued presence or prior or present behavior warrants interim restriction for the causes listed in subsection (1) of this section.

(7) As a result of the challenge, the vice-president for student affairs will schedule a meeting with the accused. The vice-president for student affairs may have the dean of students or any other person deemed relevant attend the meeting. The accused may have an advisor present at the meeting so long as the name of that person is provided to the director of ~~((OSRR))~~ SRR at least two business days prior to the scheduled meeting.

(8) During the appeal meeting, the vice-president for student affairs will review available materials and statements. After the meeting, the vice-president for student affairs may ~~((either))~~ uphold, modify, or terminate the interim restriction action.

(9) The interim restriction does not replace the regular hearing process, which will proceed consistent with this chapter.

~~(10) ((Records. Records of interim restriction proceedings shall be maintained as described in WAC 172-121-080-))~~ Duration. An interim restriction will remain in effect until terminated, in writing, by the student disciplinary council or the vice-president for student affairs.

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-200 Violations. The following are defined as offenses which are subject to disciplinary action by the university.

(1) Acts of academic dishonesty. University policy regarding academic dishonesty is governed by the university academic integrity policy. However, repeated violations, as described in the academic integrity policy, are subject to action under the student conduct code. Academic dishonesty includes, but is not limited to, any of the following activities:

(a) Plagiarism: Representing the work of another as one's own work;

(b) Preparing work for another that is to be used as that person's own work;

(c) Cheating by any method or means;

(d) Knowingly and willfully falsifying or manufacturing scientific or educational data and representing the same to be the result of scientific or scholarly experiment or research; or

(e) Knowingly furnishing false information to a university official relative to academic matters.

(2) Acts of social misconduct.

~~(a) ((Violence/threats/abuse/endangerment-))~~

~~(i) Abuse or harm of others. Conduct which causes physical abuse, harm, threats, intimidation, coercion, detention, and/or other conduct which threatens or endangers the health or safety of any person.~~

~~(ii) Reckless endangerment. Engaging in conduct that creates an unreasonable risk of harm to another person or property.)~~ Abuse. Physical abuse, verbal abuse, and/or other conduct which threatens or endangers the health or safety of any person.

(b) Bullying. Bullying is behavior that is:

(i) Intentional;

(ii) Targeted at an individual or group;

(iii) Repeated;

(iv) Objectively hostile or offensive; and

(v) Creates an intimidating and/or threatening environment which produces a risk of psychological and/or physical harm.

(c) Domestic violence and dating violence. Domestic violence means:

(i) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

(ii) Sexual assault of one family or household member by another; or

(iii) Stalking of one family or household member by another family or household member.

Dating violence is a type of domestic violence, except the acts specified above are committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. In determining whether such a relationship exists, the following factors are considered:

(i) The length of time the relationship has existed;

(ii) The nature of the relationship; and

(iii) The frequency of interaction between the parties involved in the relationship.

(d) Harassment, gender-based harassment, and sexual harassment.

(i) Harassment is conduct by any means that is sufficiently severe, pervasive, or persistent, and objectively offensive so as to threaten an individual or limit the individual's ability to work, study, participate in, or benefit from the university's programs or activities.

(ii) Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes. Gender-based harassment violates this code and Title IX when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

(iii) Sexual harassment is unwelcome conduct of a sexual nature and may include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment violates this code and Title IX when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

In determining whether any of the above-listed types of harassment are severe, pervasive, or persistent, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the victim; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.

(e) Retaliation. Any actual or threatened retaliation or any act of intimidation intended to prevent or otherwise obstruct the reporting of a violation of this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation or act of intimidation directed towards a person who participates in an investigation or disciplinary

process under this code is prohibited and is a separate violation of this code.

~~(f) Sexual misconduct. ((Sexual misconduct is any sexual activity with another person that is unwanted and nonconsensual. Sexual misconduct includes, but is not limited to:~~

~~(i) Unwanted verbal (including telephone), written (including electronic media), pictorial or physical conduct of a sexual nature which a reasonable person would consider to be harassing, intimidating, hostile, offensive and/or which adversely affects the learning or living environment of the campus;~~

~~(ii) Unwanted, forceful, sexual contact. The use of force may include, but is not limited to use of body weight, pushing or hitting, coercion, threats, or intimidation;~~

~~(iii) The use of force (body weight, hitting or pushing, use of a weapon, threats to kidnap or kill, for example) to overcome earnest resistance to engaging in sexual intercourse. Earnest resistance may be verbal, physical or both;~~

~~(iv) Sexual intercourse which occurs without consent whether force is used or not. Consent requires actual words or conduct demonstrating freely given agreement to the sexual activity. Sexual activity is nonconsensual when the victim is incapable of consent by reason of mental incapacity, drug/alcohol intoxication, illness, unconsciousness or physical helplessness. Silence and passivity do not constitute consent;~~

~~(v) Voyeurism. Voyeurism occurs when an individual, for the purpose of arousing or gratifying his/her sexual desire, knowingly views, photographs, or films another person, without that person's knowledge or consent, while the person being viewed, photographed, or filmed is in a place where he or she has a reasonable expectation of privacy;~~

~~(vi) Charges of sexual harassment may be adjudicated under the university sexual harassment policy in addition to any processing under this student conduct code.~~

~~(e) Harassment. Harassment of any sort is prohibited. Conduct (physical, verbal, graphic, written, or electronic) that is sufficiently severe, pervasive, or persistent to have the purpose or effect of unreasonably interfering with an individual's ability to work, study, or participate in his/her regular life or university activities. Examples of harassment include, but are not limited to the following:~~

~~(i) Cyberstalking;~~

~~(ii) Unwanted telephone calls;~~

~~(iii) Unwanted text messaging; and/or~~

~~(iv) Unwanted conversation.~~

(d)) Sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion, are types of sexual misconduct. Sexual violence is sexual intercourse or sexual contact with a person without his or her consent or when the person is incapable of giving consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is nonconsensual when the victim is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, or physical condition. Sexual misconduct

also includes, but is not limited to, indecent liberties, indecent exposure, sexual exhibitionism, sex-based cyber-harassment, prostitution or the solicitation of a prostitute, peeping or other voyeurism, or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity.

(g) Stalking. ((Any repeated)) Stalking is engaging in a course of conduct directed ((specifically at another)) at a specific person that ((causes that)) would cause a reasonable person to:

(i) Fear for ((his/her)) their health and/or safety((-Such behaviors and activities may include, but are not limited to the following:

(i) Nonconsensual communication or contact, including face-to-face, telephone calls, voice messages, electronic mail, instant messaging, written letters, unwanted gifts, etc.;

(ii) Harassment, either by the individual or through a third party;

(iii) Use of threatening or obscene gestures;

(iv) Pursuing or following;

(v) Surveillance or other types of observation;

(vi) Use of electronic devices or software to track or obtain private information;

(vii) Trespassing;

(viii) Vandalism; and

(ix) Nonconsensual touching)) or the health/safety of others: or

(ii) Suffer substantial emotional distress.

((e)) (h) Unauthorized use of electronic or other devices: Making an audio or video ((record)) recording of any person while on university premises without ((his or her)) the person's prior knowledge((-)) or without ((his or her)) their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where ((she or he)) the person would reasonably expect privacy and where such ((images)) recordings are likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

(3) Property violations. Theft ((from, or)) of, damage to, or misuse of ((university)) another person's or entity's property ((or the property of any person on or off campus are subject to university disciplinary action)).

(4) Weapons. No individual shall have on ((his/her)) their person, in ((his/her)) their vehicle or otherwise in ((his/her)) their possession any ((gun, pistol, or firearm or explosives, dangerous chemicals or other dangerous weapons or instruments on the university campus or other university premises)) weapon, explosive, dangerous chemical or other dangerous instrument except as ((follows:)) described in (a) through (c) of this subsection. Examples of weapons under this section include, but are not limited to: Shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, stun guns, electroshock weapons, and any item that can be used as an object of intimidation and/or threat, such as replica or look-a-like weapons.

(a) Authorized law enforcement officers are permitted to carry arms while on duty and engaged in their regular duties;

(b) Activities requiring use of the prohibited items may be conducted on approval of the activity by the board of trustees;

(c) Persons are permitted to have firearms in their possession directly en route to or from campus firearm storage facilities where such possession is incidental to approved on or off campus possession or use of such firearms(;

~~(d) Examples of weapons under this section include, but are not limited to: Shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, any item that can be used as an object of intimidation and/or threat, replica or look-a-like weapons, etc).~~

~~(5) ((Disobedience.— Disobedience,— interference, resistance, or failure to comply with direction of an identified university official or other authority acting in the line of duty, including:)) Failure to comply.~~

(a) Failure to comply with lawful and/or reasonable directions of university officials or law enforcement officers acting in performance of their duties on campus or affecting conduct on campus;

(b) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so(~~(; or the violation of sanctions imposed after such proceedings));~~

(c) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students(~~(; the self-harm prevention team,))~~) or other authorized university official.

(6) Trespassing/unauthorized use of keys.

~~(a) Trespass. ((The unauthorized entry into or onto, or the unauthorized remaining in any building or facility or on any property-))~~ Entering or remaining on university property without authorization.

~~(b) Unauthorized use of keys ((and unauthorized entry)). Unauthorized possession, duplication, or use of ((keys to university premises or unauthorized entry to or use of university premises))~~ university keys or access cards.

(7) Deception, forgery, fraud, unauthorized representation.

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of university documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose.

(c) Forgery or issuing a bad check with intent to defraud.

(d) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

(8) Safety.

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

(c) Tampering with fire extinguishers, alarms, or safety equipment.

(d) Tampering with elevator controls and/or equipment.

(e) Failure to evacuate during a fire, fire drill, or false alarm.

(9) Alcohol, drugs, and controlled substances.

(a) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of twenty-one use, possess, distribute, manufacture or sell alcoholic beverages. Public intoxication is ~~((also))~~ prohibited.

~~(b) ((Illegal))~~ Drugs and paraphernalia.

(i) Use, possession, distribution, manufacture, or sale of marijuana, drug paraphernalia and/or illegal drugs, ((including marijuana,)) narcotics or ((other)) controlled substances, is prohibited ((except as authorized by federal or state law)).

(ii) Being under the influence of marijuana or an illegal substance, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance, except when legally prescribed by a licensed medical practitioner, is also prohibited while on property owned or operated by the university((; except when legally prescribed by a licensed medical practitioner)).

(10) Hazing. Any ((action required of or imposed on current or potential members of an organization or group which, regardless of location of the incident or consent of the participant(s))) act which, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization:

(a) ((Produces or is reasonably likely to produce bodily harm or danger, mental or physical discomfort, embarrassment, harassment, fright, humiliation or ridicule)) Endangers the mental or physical health or safety of any student or other person:

(b) Destroys or removes public or private property; or

((b)) (c) Compels an individual to participate in any activity which is illegal((; perverse or publicly indecent)) or contrary to university rules, regulations or policies((; or which is known by the compelling person(s) to be contrary to the individual's moral or religious beliefs)).

The express or implied consent of any participant is not a defense. A person who is apathetic or acquiesces in the presence of hazing violates this rule.

(11) Disruptive conduct/obstruction.

(a) Disruptive conduct. Conduct which ~~((disrupts or obstructs teaching, research, administration, disciplinary proceedings, freedom of movement or other lawful activities))~~ unreasonably interferes with any person's ability to work or study, or obstructs university operations or campus activities.

(b) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace.

(c) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

(d) Demonstration. Participation in a campus demonstration which violates ~~((the))~~ university regulations ~~((governing campus assembly and peaceful demonstration)).~~

(12) Violations of other laws, regulations and policies.

(a) Violation of a local, county, state, or federal law.

(b) Violation of other university policies ~~((or)), regulations, or handbook provisions.~~

(13) Assisting/attempts. Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code. ~~((Conduct involving being an accessory to any person who violates this code.))~~

(14) Acts against the administration of this code.

(a) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(b) Interference with or attempt to interfere with the enforcement of this code, including but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(c) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

(15) Other ~~((provisions))~~ responsibilities:

(a) ~~((Responsibility for))~~ Guests. A student, student group or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

(b) Students studying abroad. Students who participate in any university sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

(i) The laws of the host country;

(ii) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying; ~~((and))~~

(iii) Any other agreements related to the student's study program in the foreign country; and

(iv) The student conduct code.

~~((or))~~ (16) Student organization and/or group offenses. Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized group to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 09-12-001, filed 5/20/09, effective 6/20/09)

WAC 172-121-210 Sanctions. If any student or student organization is found to have committed any of the offenses described in WAC 172-121-200, one or more of the following sanctions may be imposed against the student or student organization. Failure to comply with any imposed sanction may result in additional sanctions.

(1) Individual student sanctions:

(a) Admonition: An oral statement to a student that he/she has violated university rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any regulation within a stated period of time

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's university-related privileges;

(ii) Limiting the student's participation in extra-curricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to the university or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: The university conduct review officer and the student disciplinary council may assess monetary fines up to a maximum of four hundred dollars against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to the university community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW 28B.30.125, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time.

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

~~((Deferred suspension: Notice of suspension from the university with the provision that the student may remain enrolled contingent on meeting a specified condition or conditions. Not meeting the specified condition(s) will~~

immediately invoke the suspension for the period of time and under the conditions originally imposed.

~~((k))~~) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. Suspension is subject to the processes outlined in this chapter except any suspension must also be approved by the dean of students and the vice-president for student affairs before such sanction is imposed.

~~((l))~~) ~~(Dismissal)~~ (k) Expulsion: Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. ~~((Dismissal))~~ Expulsion actions will be accomplished by issuing both an order of ~~((dismissal))~~ expulsion and a notice against trespass. The notice against trespass may be given by any manner specified in chapter 9A.52 RCW. Expulsion is subject to the processes outlined in this chapter except any expulsion must also be approved by the dean of students and the vice-president of student affairs before such sanction is imposed.

~~((m))~~) (l) Loss of institutional, financial aid funds: Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time.

(m) Revocation of degree: A degree awarded by the university may be revoked for fraud, misrepresentation, or other violation of law or university standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the university president.

(2) Student organizations and/or group sanctions: Any of the above sanctions may be imposed in addition to those listed below:

(a) Probation: Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) Social probation: Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) ~~((Charter))~~ Restriction: The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. ~~((It may be recommended by the appropriate disciplinary body, but may only be imposed by the university president))~~ Restriction is subject to the processes outlined in this chapter except any restriction must also be approved by the dean of students and the vice-president of student affairs before such sanction is imposed;

(d) ~~((Charter))~~ Revocation: The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization. ~~((It may be recommended by the appropriate judicial body, but can only be imposed by the university president))~~ Revocation is subject to the processes

outlined in this chapter except any revocation must also be approved by the dean of students and the vice-president of student affairs before such sanction is imposed;

(e) Additional sanctions: In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

- (i) Exclusion from intramural competition as a group;
- (ii) Denial of use of university facilities for meetings, events, etc.;
- (iii) Restitution; and/or
- (iv) Fines.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 172-121-090 Conduct review proceedings.