

WSR 08-22-018
PROPOSED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-06—Filed October 27, 2008,
3:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-07-096.

Title of Rule and Other Identifying Information: Producer licensing.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on December 9, 2008, at 9:30 a.m.

Date of Intended Adoption: December 16, 2008.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail KacyS@oic.wa.gov, fax (360) 586-3109, by December 8, 2008.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by December 8, 2008, 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 changes to the way insurance agents, brokers, solicitors, and general agents are licensed by the state. The proposed changes include: Reciprocity requirements (based on requirements of the Gramm-Leach-Bliley Act); the state's appointment and affiliation processes; agent compensation disclosure requirements; insurance producer lines of authority; fingerprint requirements for background checks of applicants; bonding requirements; grounds for disciplinary actions against insurance producers; licensing of business entities; and prelicensing and continuing education requirements. Several new sections or amendments are proposed to clarify the requirements for prelicensing and continuing insurance education.

Reasons Supporting Proposal: During the 2007-09 legislative sessions, the legislature enacted many provisions of the NAIC's Producer Licensing Model Act. These proposed rules would effectuate the new laws.

Statutory Authority for Adoption: RCW 48.02.060 and 48.17.005.

Statute Being Implemented: Chapter 48.17 RCW.

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: Melodie Bankers, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7039; Implementation and Enforcement: John Hamje, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7262.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed new administrative code provisions contain a number of changes which meet the legal definition of a "rule" under RCW 34.05.010(16). However, a careful staff review of the proposed substantive (as distinguished from the grammatical) administrative changes found that they would not impose "more than minor costs on businesses" in the industry (RCW

19.85.030(1)); as a result, no small business economic impact statement will be needed.

A cost-benefit analysis is not required under RCW 34.05.328. There are a number of provisions in this set of proposed amendments and new rules which diverge from the explicit terms of the NAIC Producer Licensing Model Act or differ from existing administrative code provisions. All but three of these provisions deal explicitly with requirements for license or permit applications and, as such, fall within the definition of a "procedural rule" that "adopts, amends, or repeals... any filing or related process requirement for making application to an agency for a license or permit" (RCW 35.05.328 (5)(c)(i)(B)) and therefore do not require a cost-benefit analysis.

Of the remaining three proposed administrative code provisions, one (the transition rules portion) appears to clearly meet the standard of "any policy statement pertaining to the consistent internal operations of an agency" contained in RCW 35.05.328 (5)(c)(i)(C) and is therefore not subject to a cost-benefit analysis.

The final two proposed code provisions (allowing licensees who are required to publicly display their license(s) to obscure their residence addresses and setting the minimum standard for verifying an applicant's or insured's consent to compensation when purchases are made over the phone or electronically) both fall within the definition of an interpretative rule "that sets forth the agency's interpretation of statutory provisions it administers," especially because neither proposed code provision carries with it a penalty or sanction for violation (RCW 35.05.328 (5)(c)(ii)). These two provisions therefore do not require a cost-benefit analysis.

October 27, 2008

Mike Kreidler

Insurance Commissioner

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-12-090

When general agent may accept applications from nonappointed agents.

AMENDATORY SECTION (Amending Matter No. R 2008-04, filed 7/2/08, effective 8/2/08)

WAC 284-15-010 Brokers—Surplus line ~~brokers~~—Qualifications and examination. (1) Each applicant for a resident surplus line broker's license must take and pass the required examination and pay the required fee prior to acting as a surplus line broker. The examination will test an applicant's qualifications and competence in all areas of surplus line insurance. Current information about testing procedures and examination dates is available on the commissioner's web site at: www.insurance.wa.gov.

(2) Before the commissioner can issue a surplus line broker's license, the applicant must be licensed in this state as an (~~agent or broker~~) insurance producer with both property and

casualty lines of authority. This requirement may be satisfied if the licenses are issued simultaneously.

(3) The commissioner deems that a nonresident person holding a surplus line broker's license, or the equivalent, in the applicant's home state is qualified, competent and trustworthy and, therefore, meets the minimum standards of this state for holding a surplus line broker's license. For that reason, the commissioner will waive the Washington surplus line broker's examination for a person who has and maintains a current resident surplus line broker's license, or the equivalent, in the applicant's home state.

AMENDATORY SECTION (Amending Matter No. R 2008-04, filed 7/2/08, effective 8/2/08)

WAC 284-15-080 Relationship between surplus line broker and insurance ((agent)) producer not acting as the agent of the insured. When a surplus line broker accepts surplus line business from an ((agent)) insurance producer not acting as an agent of the insured, as permitted by RCW 48.15.080, acceptance of the business does not mean that the ((agent)) insurance producer has become the representative of the insured with respect to that business. In this circumstance:

(1) Return premiums or claim payments will not be deemed to have been paid to the insured or claimant until the payments are actually received by the insured or claimant.

(2) Delivery of notices involving the insurance, such as cancellation or renewal notices, will not be deemed to have been made until actually received by the insured.

NEW SECTION

WAC 284-17-001 Definitions. For purposes of this chapter, unless the context requires otherwise:

(1) "Affiliation" is a type of appointment whereby a business entity authorizes an individual insurance producer or surplus line broker to represent it when conducting insurance business.

(2) "Business entity" has the meaning set forth in RCW 48.17.010(2) and includes a sole proprietorship having associated licensees authorized to act on its behalf in the business or trade name of the sole proprietorship.

(3) "Days" means calendar days including Saturday and Sunday and holidays, unless otherwise specified.

(4) "File" means a record in any retrievable format, and unless otherwise specified, includes paper and electronic formats.

(5) "Home state" has the meaning set forth in RCW 48.17.010(3).

(6) "Insurer" has the meaning set forth in RCW 48.17.-020(6).

(7) "Licensee" means a person licensed by the commissioner under Title 48 RCW to sell, solicit or negotiate insurance and includes adjusters.

(8) "Line of authority" means a license issued in one or more lines of insurance listed in RCW 48.17.170.

(9) "NAIC" means the National Association of Insurance Commissioners.

(10) "Reinstatement" means the reissuance by the commissioner of a license that was not renewed more than sixty days but fewer than twelve months after its expiration date.

(11) "Resident" means a person who has elected to make Washington his or her home state, or, in the case of a business entity, has a place of business in this state.

(12) "Sending written notice" or "sending a copy of the written notice" means transmitting the required information in writing and, where required, on forms designated by the commissioner for that purpose, via first class mail, commercial parcel delivery company, telefacsimile, or electronic transmission, unless a specific method of transmission is specified.

(13) "Surety" means that limited line of authority of insurance or bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust.

(14) "Travel insurance" means that limited line of authority of insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier.

(15) "Written" or "in writing" means any retrievable method of recording an agreement or document, and, unless otherwise specified, includes paper and electronic formats.

NEW SECTION

WAC 284-17-005 Address of record. The address of record used by the commissioner will be the last mailing address provided by the person or entity to the commissioner.

Licensees must advise the commissioner of any change of address within thirty days after a change of address. This includes any change in the person's residence, mailing, business or e-mail address. Failure to advise the commissioner of a change of address may subject a licensee to disciplinary action under RCW 48.17.530 and 48.17.560.

NEW SECTION

WAC 284-17-009 Limited line credit insurance. Limited line credit insurance is defined at RCW 48.17.010(8).

(1) Insurers must ensure that their licensed and appointed insurance producers who transact the limited line credit insurance are qualified by education or experience to offer their credit insurance products.

(2) The requirements of this chapter for prelicensing and continuing insurance education do not apply to insurance producers that transact only the limited line credit insurance.

NEW SECTION

WAC 284-17-011 Limited line of travel insurance. Travel insurance is a limited line of authority and is defined in WAC 284-17-001(14).

(1) Insurers must ensure that their licensed and appointed insurance producers who transact the limited line of travel insurance are qualified by education or experience to offer their travel insurance products.

(2) The requirements of this chapter for passing an insurance producer examination and for prelicensing and continuing insurance education do not apply to insurance producers that transact only the limited line of travel insurance.

NEW SECTION

WAC 284-17-015 Variable life and variable annuity products—Standards for resident licenses. (1) Resident insurance producers who desire to sell, solicit or negotiate variable life and variable annuity products in this state must obtain and maintain an insurance producer license with a life line of authority and an appropriate securities license from the Financial Industry Regulatory Authority (FINRA). Upon presentation of satisfactory evidence that the producer has fulfilled this requirement, the commissioner will issue a license with a variable life and variable annuity products line of authority.

(2) All licensees with the variable life and variable annuity products line of authority are also subject to the licensing requirements set forth in RCW 48.18A.060.

AMENDATORY SECTION (Amending Matter No. R 2008-03, filed 8/18/08, effective 9/18/08)

WAC 284-17-120 Resident insurance producer licenses—Examination (~~procedures for agents, solicitors and adjusters~~) required, procedures. Prior to the transaction of insurance, an applicant for a resident insurance producer's license must take and pass the required examination for each line of authority to be applied for, submit an application form with the required attachments and fees, and receive a license from the commissioner.

(1) Examinations.

(a) Any resident person applying to take an examination for (~~any type of~~) a license (~~shown~~) listed in (~~subsection (2) of~~) this section must submit a registration form and the applicable examination fee to an independent testing service (~~under contract with~~) designated by the commissioner (~~for the administration of licensee examinations~~).

(~~This~~) (i) The examination fee is not refundable.

(ii) Registration forms and information about examinations may be obtained from the (~~office of insurance~~) commissioner (~~, any prelicensing education provider,~~) or from the independent testing service (~~Current information about the independent testing service, fees, dates of examinations, and other information related to licensing examinations, or to download an examination registration form, are available through~~) under contract with the commissioner to conduct licensing examinations in this state.

(iii) An examination registration form can be downloaded through the commissioner's web site (~~(f) and current information about registered testing services, fees, dates, and other information is available through the commissioner's web site at www.insurance.wa.gov(f)~~).

(~~2~~) At least once each month at predetermined locations, (b) The examinations required for each line of authority are identified in the following table. The independent testing service will conduct (~~the~~) these examinations (~~(required for the following types of licenses:)~~) at least once each month at predetermined locations.

(TYPE OF LICENSE	EXAMINATION(S) REQUIRED
Life insurance agent or solicitor	Life
Disability insurance agent or solicitor	Disability
Life and disability agent or solicitor	Life, disability
Property/casualty agent or solicitor	Property, casualty
Property/casualty and disability agent or solicitor	Property, casualty, disability
Life/disability/property/casualty agent or solicitor	Life, disability, property, casualty
Vehicle only agent or solicitor	Vehicle
Surety only agent or solicitor	Surety
Credit life and disability agent or solicitor	Credit life and disability
Credit casualty agent or solicitor	Credit casualty
Independent adjuster	Adjuster
Public adjuster	Adjuster
Life and disability broker	Life and disability
Property/casualty broker	Property and casualty (Disability questions are included))

LINE OF AUTHORITY OR TYPE OF LICENSE	REQUIRED EXAMINATION(S)
Life	Life
Disability	Disability
Life and disability	Life(g) <u>and</u> disability
Property	Property
Casualty	Casualty
Property and casualty	Property(g) <u>and</u> casualty
Personal lines	Personal lines
Adjusters (independent or public)	Adjuster
Limited line (of) credit insurance	Credit
Surety	Surety
Surplus line	Surplus line
Variable life and variable annuity products	Life

(~~3~~) (c) If an applicant fails to take a scheduled examination, and requests to take the exam at a later date, a new examination date must be scheduled and a new (~~registration form and applicable~~) examination fee(s) must be (~~submitted for any later examination~~) paid, unless repayment of the fee is waived (~~because~~) by the commissioner (~~finds~~) because the commissioner agrees that a serious emergency prevented the applicant's attendance at the scheduled date.

(~~4~~) (d) Examinations will be graded by the independent testing service and each applicant will be provided a score report (~~, following examination~~).

(~~If the examination is passed,~~) (2) **Application for a license.** The application for a license must be accompanied by all of the following: The score report (~~(must be forwarded by the applicant to the insurance commissioner with)~~) from

the testing service, a completed insurance license application, one finger print card (~~(= appointment form(s) for each insurer to be represented,)~~) and the applicable license, (~~(finger print,)~~) appointment and filing fees.

(3) Approval by the commissioner. The commissioner will review the application and if all requirements have been met will issue the license(s) applied for.

AMENDATORY SECTION (Amending Order R 90-1, filed 2/2/90, effective 3/5/90)

WAC 284-17-122 Applications for nonresident (~~(agent, broker, or adjuster's)~~) licenses. (1) Applicants who are not residents of Washington may be licensed as nonresident (~~(agents or brokers)~~) insurance producers without taking the required Washington examinations specified in WAC 284-17-120 (1)(b) if:

(a) The applicant has and maintains in good standing a similar license in ~~(the)~~ his or her home state (~~(of residence)~~) for the applicable line(s) of (~~(insurance)~~) authority defined in (~~(Washington's insurance statutes)~~) RCW 48.17.170; and

(b) The home state (~~(of residence)~~) reciprocates and licenses Washington's (~~(agents and brokers)~~) insurance producers as nonresident (~~(agents or brokers)~~) insurance producers.

~~(2) (Applicants who are not residents of Washington may be licensed as nonresident adjusters if:~~

~~(a) The applicant has and maintains an adjuster's license in the state of residence; and~~

~~(b) The state of residence reciprocates and licenses Washington's adjusters as nonresident adjusters.~~

~~If an applicant's state of residence does not issue an adjuster's license, the applicant must pass this state's written adjuster's examination.~~

~~(3) All applicants for a nonresident license must provide written certification from the insurance department of their state of residence indicating:~~

~~(a) All currently active license(s) held by an applicant;~~

~~(b) The lines of insurance for which the agent or broker has qualified to sell; and~~

~~(c) All disciplinary actions taken against the applicant.)~~
Nonresident applicants whose home state requires submission of a fingerprint card for conducting background checks in connection with resident insurance producer (or equivalent) license, need not provide a fingerprint card to the commissioner.

(a) A list of states that the commissioner believes require a fingerprint card will be available on the commissioner's web site at www.insurance.wa.gov.

(b) If the home state of an applicant does not appear on that list and the applicant believes that list should include his or her home state, the applicant may provide information concerning the requirements of his or her home state for the commissioner's review. The commissioner will consider that information and determine whether the applicant's home state should be added to that list.

AMENDATORY SECTION (Amending Order R 90-1, filed 2/2/90, effective 3/5/90)

WAC 284-17-123 Resident and nonresident adjuster(~~'s~~) licenses—Trainees. (1) Applicants for a resident adjuster(~~'s~~) license may satisfy the experience or special training requirements of RCW 48.17.380(4) by employment as a "trainee" for a period of not (~~(less)~~) fewer than six months.

~~((2)) (a) Each~~ (~~(=)~~) trainee (~~("shall")~~) must be (~~(under the supervision of)~~) supervised by a resident licensed adjuster. (~~(=)~~) Trainees (~~("shall")~~) must receive training in all adjustment activities and responsibilities. Activities of the (~~(=)~~) trainee (~~("shall")~~) must be restricted to participation in factual investigation and tentative closing of losses. All adjusting transactions (~~(shall)~~) must be completed in the name of the supervising licensed adjuster who (~~(shall)~~) must review, confirm, and be responsible for all acts of the (~~(=)~~) trainee. (~~(=)~~) Compensation of a (~~(=)~~) trainee (~~("shall")~~) must be on a salary basis only.

~~((3) Anyone)~~ (b) Any person employing trainees (~~(shall)~~) must immediately advise the (~~(insurance)~~) commissioner (~~(by letter of such employment, giving)~~) and provide the exact date (~~(of)~~) that employment of (~~(each)~~) the trainee begins and ends. (~~(=)~~) The employer (~~(shall enclose)~~) must submit an application completed by each (~~(=)~~) trainee and one fingerprint card. (~~(=)~~

~~(4)) (c) Trainees~~ (~~(shall be)~~) are eligible to take the adjuster's examination required by the (~~(insurance)~~) commissioner after completing no fewer than six months (~~(in)~~) as a trainee (~~("status")~~).

~~((5) No)~~ (d) The maximum period a person (~~(shall)~~) may be designated as a (~~(=)~~) trainee (~~("as defined herein for more than)~~) is one nine-month period.

~~((A) (e) Any violation of this~~ (~~(requirement)~~) section or a violation of any provision of the insurance code (~~(shall)~~) subjects both the trainee and (~~(their)~~) the supervisory adjuster to penalties of the code.

(2) Applicants who are not residents of Washington may be licensed as nonresident adjusters as follows:

(a) A nonresident adjuster license will be issued if the applicant has and maintains an adjuster license in good standing in his or her home state and the home state reciprocates and licenses Washington adjusters as nonresident adjusters.

(b) If the home state of an applicant for an adjuster license does not issue an adjuster license, the applicant must pass this state's written adjuster examination.

(c) If the home state of an applicant for a nonresident adjuster license does not issue an adjuster license but he or she has an active adjuster license as a nonresident in a state other than Washington that requires passing an examination, and he or she has taken and passed the examination and is in good standing with that state, the nonresident adjuster is deemed by the commissioner to have satisfied the examination required for adjusters in this state.

NEW SECTION

WAC 284-17-124 Examination for limited line surety and limited line credit insurance license required. Applicants for a limited line surety or limited line credit insurance license must take and pass the appropriate license examina-

tion. Information regarding the surety and credit insurance license examinations is available on the insurance commissioner's web site at www.insurance.wa.gov.

AMENDATORY SECTION (Amending Order R 88-11, filed 11/16/88)

WAC 284-17-125 Prohibited acts or practices by license examinees. In addition to the unlawful acts set forth in RCW 48.17.125, the following are prohibited acts or practices by persons taking examinations for licenses:

(1) ~~(Conduct that compromises the security of insurance license examination materials, including but not limited to:~~

~~(a) Unauthorized appropriation of examination questions or materials; or~~

~~(b) Unauthorized reproduction or replication of any portion of an examination; or~~

~~(c) Aiding, by any means, the unauthorized reproduction or replication of an examination; or~~

~~(d) Providing examination questions or other examination information to any person or business engaged in preparing applicants to pass such examination; or~~

~~(e) Obtaining examination questions or materials for the purpose of furnishing the questions or materials to license applicants; or~~

~~(f) Unauthorized sale, distribution, purchase or possession of any portion of a previously administered, current, or prospective examination; or~~

~~(g) Taking or attempting to take an examination in the line of insurance for which the examinee is already qualified.~~

(2) Behavior that undermines the evaluative objective of the examination ~~(including but not limited to:)~~

~~((a))~~ (2) Communication with any other examinee during the examination period; ~~(or~~

~~(b))~~ (3) Copying answers or allowing another to copy answers;

~~((e) Possession of)~~ (4) Possessing during the examination any books, materials, notes, or photography or recording devices not issued or approved by the independent testing service representative; or

~~((d))~~ (5) Impersonating, or engaging another to impersonate, any applicant for the purpose of completing the examination on behalf of another.

AMENDATORY SECTION (Amending Order R 88-11, filed 11/16/88)

WAC 284-17-130 ((Prerequisites to) Admittance to examination. As a prerequisite to admittance to any examination designed to test the ~~((examinee's) applicant's)~~ qualifications to be an ~~((agent, broker, solicitor or adjuster))~~ insurance licensee, each applicant must certify on the form provided, that he or she:

(1) Is not taking the examination for purposes other than as the means to qualify for a license;

(2) Has not passed the examination for that line of ~~((insuranc(e);))~~ authority within the ~~((previous two-year period))~~ last twelve months;

(3) Has been advised that the performance of any of the acts ~~((proscribed))~~ prohibited by WAC 284-17-125 ~~((constitutes))~~ is a violation of RCW 48.17.530 and ~~((48.17.560, as~~

~~well as other statutes and regulations, and))~~ subjects the ~~((offender))~~ person to disciplinary action, including refusal to issue ~~((an insurance))~~ a license ~~((to the offender))~~, revocation of any ~~((insuranc(e))~~ license issued by the commissioner that is currently held by the ~~((offender))~~ licensee, and the imposition of a fine; and

(4) Has been advised that the unauthorized appropriation or conversion of questions or materials comprising the examination for a Washington state insurance ~~((agent's, broker's, adjuster's, or solicitor's))~~ license is a violation of federal copyright law.

AMENDATORY SECTION (Amending Order R 88-14, filed 12/16/88)

WAC 284-17-175 Education referrals. ~~((It shall be unlawful for any))~~ No person ~~((to))~~ may accept any rebate, refund, fee, commission, or discount in connection with referrals of students to an insurance education prelicense or continuing insurance education provider~~(s)~~ without making a full disclosure to each student so referred.

CONTINUING INSURANCE EDUCATION

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-200 ((What is the purpose of the)) Continuing insurance education ((regulation?))—Minimum standards. ~~((The purpose of))~~ WAC 284-17-200 through 284-17-320 ~~((is to implement the provisions of RCW 48.17.150. This regulation establishes))~~ establish the minimum continuing education requirements that must be met prior to the renewal of an insurance ~~((agent, solicitor or broker))~~ producer license, and ~~((specifies))~~ specify the minimum criteria that ~~((must be met in order to qualify))~~ continuing insurance education courses ~~((for approval))~~ must meet to be approved by the commissioner.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-210 ((What)) Definitions ((are important throughout this chapter?)). ~~((As used in this continuing education regulation))~~ The following definitions apply to WAC 284-17-200 through 284-17-320, unless the context clearly requires otherwise:

(1) "Approved course" means ~~((an educational insurance related))~~ a program of continuing insurance education, including live presentations, correspondence courses and seminars ((that have been)), formally approved by ~~((OIC))~~ the commissioner.

(2) "Credit hour(s)" means the value assigned to a course by the ~~((OIC))~~ commissioner. Generally, fifty minutes of instruction equals one credit hour.

(3) "Certificate of completion" means a document signed by ~~((the course instructor or other responsible officer))~~ an authorized designee of the insurance education provider ~~((signifying))~~ attesting to the satisfactory completion of the course and ~~((reflecting))~~ confirming the credit hours earned. ~~((The certificate shall be in standard format, completed in its~~

entirety, and containing such identifying information as is prescribed by the OIC:))

(4) "Course number" means the identifying number assigned by ~~((OIC for))~~ the commissioner to an approved insurance education course.

(5) "Course outline" ~~((includes))~~ means a summary of the insurance education course content ((and)), including the time allotted ((by)) to each topic.

(6) ~~((("Days" means calendar days including Saturday and Sunday.~~

(7)) "Designation course" ~~((includes))~~ means a course of study taken to achieve an insurance professional ((studies taken to achieve nationally recognized professional distinctions)) certification, requiring passage of several standardized examinations, and granted by an insurance or professional organization or an accredited educational institution.

~~((8))~~ (7) "Instructor" means an individual knowledgeable in topic(s) of ~~((discussion.~~

(9) "Licensee" means an individual licensed under Title 48 RCW, as a resident insurance agent, solicitor or broker to sell life, disability, property, casualty or vehicle insurance. An individual holding a limited license to sell credit life and disability insurance, or travel insurance, or holding a license to sell surety insurance, need not satisfy the continuing education requirement.

(10) "Long term care (LTC) special education" means education required by individual resident and nonresident agents and brokers prior to transacting long term care insurance.

(11) "Long term care (LTC) special education refresher course" means a condensed version of the LTC special education course.

(12)) instruction who has been designated by the insurance education provider to teach an approved course or courses.

(8) "Monitor" ~~((is an))~~ means the individual responsible for verifying class attendance and course ((content)) completion.

~~((13) "Override commission" means compensation received for the sale of insurance by a licensee who is not directly involved with a consumer.~~

(14) "OIC" means the Washington state office of insurance commissioner.

~~((15))~~ (9) "Provider" or "insurance education provider" means any insurer, health care service contractor, health maintenance organization, professional association, educational institution ~~((created by Washington statutes)), ((or))~~ vocational school, or independent contractor ~~((to which))~~ authorized by the ((OIC has granted authority)) commissioner to conduct and certify completion of ((a course satisfying the)) insurance education ((requirements of resident individual agents and brokers)) courses.

~~((16))~~ (10) "Provider number" ~~((is))~~ means the identifying number assigned by ((OIC)) commissioner to an approved insurance education provider ((of insurance education.

(17) "Refresher LTC special education" means a condensed version of the LTC special education course.

(18) "Reinstatement" means the reissuance of a license that has expired more than sixty days but less than two years from the expiration date of the previous license.

~~((19))~~ (11) "Request for approval," ~~((is))~~ depending on the context, means either a ((submission of information required)) request for ((approval of a)) authority to act as an insurance education provider ((and)) or for approval of an insurance education course.

~~((20) "Resident" means a licensee who resides in Washington state.~~

~~((21))~~ (12) "Roster" ~~((is))~~ means a course attendance record ~~((or)), a record of a self-study course purchase ((and)),~~ or a course completion record maintained by the insurance education provider.

~~((22) "Schedule" means written notification of when a course will be offered.~~

(23) "Self study" means a method of study independent of a classroom setting.

(24) "Surety" insurance includes credit insurance, bail bonds, fidelity, insurance contract performance guarantees, bonds, guarantee undertakings, and contracts of suretyship; and indemnification of banks, bankers, brokers, financial or moneyed corporations or associations against certain losses enumerated in RCW 48.11.080(5).

(25) "Transacting" means solicitation, negotiations preliminary to execution, execution of an insurance contract, transaction of matters subsequent to execution of the contract and arising out of it and insuring.

(26) "Vehicle insurance" includes insurance against loss or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therefrom, and against any liability resulting from or incident to ownership.

~~((27))~~ (13) "Waiver" means an ~~((OIC))~~ approved exemption from ~~((the))~~ this state's continuing insurance education requirement granted by the commissioner.

AMENDATORY SECTION (Amending Matter No. R 2007-16, filed 3/19/08, effective 4/19/08)

WAC 284-17-220 ((Who is required to meet)) Continuing insurance education ((CE requirements?)) required—Resident licensees. Except as provided in WAC 284-17-222 or waived in accordance with WAC 284-17-254, all individual residents ((agents, brokers and solicitors)) licensed to ((sell)) transact life, disability, personal lines, property ((and)), casualty or variable life and variable annuity products lines of ((insurance)) authority must meet the continuing insurance education requirements of this chapter.

AMENDATORY SECTION (Amending Matter No. R 2007-16, filed 3/19/08, effective 4/19/08)

WAC 284-17-222 ((Who is exempt from the)) Continuing insurance education ((requirements?)) exemptions. ~~((All individual resident agents licensed under chapter 48.17 RCW to sell credit life and disability, credit casualty, travel, surety lines of insurance, and vehicle insurance are exempt from the continuing education requirement. Resident adjusters are exempt from the continuing education requirement.))~~ Resident adjusters and individuals holding only lim-

ited credit insurance, travel insurance, or surety licenses are exempt from the continuing insurance education requirements of this chapter.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-224 ~~((How many))~~ Continuing insurance education—Required credit~~((s do I need?))~~ hours. ~~((Currently you are required to))~~ Timely completion of this state's continuing insurance education requirement is a prerequisite for renewal or reinstatement of a license. Before applying for renewal or reinstatement of a license, except as provided in WAC 284-17-222 or waived in accordance with WAC 284-17-254, all resident persons licensed for personal lines, life, disability, property, casualty or variable life and variable annuity product lines of authority must complete ~~((thirty-two hours of approved continuing education for each license renewal cycle. Effective January 1, 2006, you will be required to complete))~~ twenty-four credit hours of approved continuing insurance education~~((, including))~~. The twenty-four hours of education must include three credit hours of ethics education during every license continuation period. Courses must be completed within the twenty-four month period prior to the date of renewal or the date of the request for reinstatement.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-226 ~~((What is))~~ Required ~~((as))~~ proof of completion of a course~~((?))~~. The ~~((course))~~ insurance education provider ~~((will))~~ must issue ~~((you))~~ a certificate of completion to each attendee within ~~((fifteen))~~ ten days ~~((of))~~ after completion of the course.

(1) The certificate of completion must be in the commissioner's designated format, completed in its entirety, and include all of the information prescribed by the commissioner. A form of certificate of completion is available to insurance education providers only on the commissioner's web site at www.insurance.wa.gov.

(2) For designation courses, the passing grade report will be accepted by the commissioner in lieu of a certificate of completion.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-244 ~~((How do I request individual))~~ Request for approval ~~((for my))~~ of attendance ~~((of))~~ at an insurance related education course that is not ~~((already approved?))~~ preapproved and is given by a nonapproved insurance education provider. ~~((You))~~ A licensee may ~~((attend and))~~ request credit for completion of an insurance related course organized and conducted by an entity that is not already approved ~~((as a provider))~~ by the commissioner as a continuing insurance education provider. The ~~((IC))~~ commissioner will ~~((make an informed determination as to))~~ consider the educational value of the course. ~~((You must submit))~~ Evidence of the following must be provided with the licensee's request for this approval:

(1) Proof of attendance ~~((by))~~, including the signature of the instructor(s) or person in charge verifying ~~((licensee's))~~ attendance;

(2) ~~((Sufficient))~~ Supporting materials ~~((regarding))~~ in sufficient detail to show the course content; and

(3) ~~((Credit))~~ The number of hours ~~((sought))~~ of actual attendance.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-246 ~~((Can I get))~~ Approval of continuing insurance education credit for ~~((attending an))~~ insurance related college ~~((course?))~~ courses. ~~((Yes;))~~ The commissioner may grant continuing insurance education credits ~~((are))~~ granted for insurance related college level courses on approved subjects ~~((by submitting))~~. To request approval, the licensee must submit to the commissioner a copy of the course syllabus and a transcript showing ~~((completion of))~~ that the requester completed the course. The number of credit hours ~~((are))~~ will be determined as follows:

(1) Twelve hours will be assigned for each college quarter credit hour ~~((;))~~; and

(2) Sixteen hours will be assigned for each college semester credit hour.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-250 ~~((Can I repeat))~~ Retaking a continuing insurance education course ~~((?))~~. ~~((Yes, you can repeat))~~ A continuing insurance education course with the same course number ~~((after three years from the previous completion date))~~ may be completed for credit only once every three years.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-252 ~~((If I have excess hours (hours that exceed the minimum required for license renewal), can I carry them over to my next license renewal?))~~ No carry-over of excess continuing education credits. ~~((No, excess hours))~~ Credit hours earned during any license continuation period in excess of the continuing insurance education requirement cannot be carried over to the next license renewal period.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-254 ~~((How can I be granted a))~~ Waiver of the continuing insurance education requirements ~~((?))~~. ~~((If you believe good cause exists, you))~~ Licensees may request a waiver of the continuing insurance education requirement. Requests must be ~~((in writing))~~ sent to the commissioner at time of renewal of ~~((your))~~ the license and must specify in detail the reason why ~~((you believe))~~ a waiver is merited.

(1) ~~((Retirement waiver. If your request for a waiver is based upon your retirement, your request must be accompanied by a statement attesting that:~~

~~(a) You are least sixty-five years of age;~~

~~(b) You are retired from selling insurance products; and~~

~~(c) You no longer represent any insurer either directly or through an affiliation with a business entity.~~

~~((2)) **Medical waiver.** If ~~((your))~~ the request for a waiver is based ~~((upon a))~~ on the medical condition of the licensee. ~~((your))~~ the request must be accompanied by a ~~((physician's))~~ statement ~~((of your))~~ from the treating provider describing the illness or injury.~~

~~((3)) (2) **Military waiver.** If ~~((your))~~ the request for a waiver is based ~~((upon))~~ on activation to military service, ~~((your))~~ the request must be accompanied by a copy of the licensee's "Letter of Mobilization," ~~((and your))~~~~

~~(a) The licensee must designate a representative~~ ~~((s))~~ (including the name and address of the individual given power-of-attorney by the licensee), by name and address ~~((so that your))~~, to whom the license renewal notice or other correspondence can be sent ~~((to your representative))~~ during the licensee's active military service. ~~((Your))~~

~~(i) The address of the designee may be a mailing address or may be an e-mail address.~~

~~(ii) It is the obligation of the licensee to notify the commissioner of any change to the identity or contact information of the designee.~~

~~(b) In order to renew a license during the licensee's military deployment, the designated representative must sign the renewal~~ ~~((The renewal and))~~ form and submit it with the applicable fees ~~((must be returned))~~ to the ~~((OIC))~~ commissioner no later than the due date.

~~(c) The~~ ~~((OIC))~~ commissioner may waive the continuing insurance education requirement for renewal of ~~((your))~~ a license for the duration of the licensee's active military service.

~~(3) A waiver is only valid~~ ~~((up to two years from the licensee's regular license renewal date))~~ for the associated license continuation period. If the medical condition or period of active duty exists on the date of the next license renewal, a new waiver may be requested by the licensee or the licensee's designee.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-256 ~~((If I instruct a class, how many))~~ **Approved credits** ~~((will I receive?))~~ **for insurance education instructors.** ~~((You will))~~ Instructors who teach an entire course receive twice the ~~((amount))~~ number of approved credit ~~((s if you instruct the entire course))~~ hours for that course. Credit hours for the same course may be used only once in a three-year period.

CONTINUING INSURANCE EDUCATION PROVIDERS

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-270 ~~((How do I become a provider?))~~ **Continuing insurance education providers—Standards.** A person who seeks to become a continuing insurance education provider ~~((, you))~~ must meet the ~~((standard as required in))~~ requirements of RCW 48.17.563 ~~((1))~~ and ~~((complete))~~ submit the ~~((provider))~~ proper application ~~((form CEPROVIDER), available on the OIC web site or upon request from the OIC))~~ for approval to act as a continuing insurance education provider. The application form can be found on the commissioner's web site at www.insurance.wa.gov.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-272 ~~((What are the))~~ **Responsibilities of an approved continuing insurance education provider** ~~((2))~~. (1) In addition to meeting the relevant requirements of this chapter and any other applicable law or rule, an approved continuing insurance education provider ~~((is responsible for))~~ must:

~~((1) Providing))~~ (a) Provide the ~~((OIC with the))~~ name of a contact person who is the responsible person for the provider; ~~((2) Hiring and supervising))~~ (b) Hire only instructors who are trustworthy, competent, and knowledgeable;

~~((3) Providing))~~ (c) Provide adequate supervision over instructors;

~~((4) Notifying, in a format as required by OIC, the OIC with a))~~ (d) Notify the commissioner of the course schedule at least ten ~~((calendar))~~ days prior to the course start date in the format required by the commissioner;

~~((5) Identifying))~~ (e) Designate a monitor ~~((an individual))~~ who is responsible for verification of class attendance and course content completion;

~~((6) Maintaining))~~ (f) Maintain a course roster, consisting of ~~((a))~~ sign-in ~~((s))~~ and sign-out registers, for lecture ~~((classroom))~~ courses;

~~((7) Maintaining))~~ (g) Maintain a purchase and completion roster for self-study courses;

~~((8) Filing))~~ (h) File the course roster electronically in ~~((a))~~ the format ~~((as))~~ required by ~~((OIC))~~ commissioner, within ten days after completion of the course;

~~((9) Issuing))~~ (i) Issue course completion certificates to attendees within ~~((fifteen))~~ ten days ~~((of))~~ after completion of course; and

~~((10) Maintaining))~~ (j) Maintain records for a period of three years ~~((from))~~ after the completion date of the course.

(2) The format for providing this information is available on the commissioner's web site at www.insurance.wa.gov.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-274 ~~((Is there a fee to become an approved provider or for course approval?))~~ **Fee.** No fee is required for applying to become a continuing insurance

education provider or for requesting the commissioner's approval of a continuing insurance education course.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-276 ~~((Will I be issued a))~~ Continuing insurance education provider ~~((number?))~~ numbers. ~~((Yes. You))~~ A continuing insurance education provider will be ~~((given))~~ assigned a provider number by the commissioner. That number must be included on all correspondence related to continuing insurance education and on all certificates of completion.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-278 ~~((How do I get a))~~ Approval of a continuing insurance education course ~~((approved?))~~. ~~((You must submit a))~~ (1) Request for approval of a continuing insurance education course must be submitted to the ~~((OIC))~~ commissioner no fewer than twenty days prior to ~~((offering))~~ the first date the course is offered for credit. ~~((This))~~ The request must include all of the following, as applicable:

~~((1))~~ (a) Lecture (classroom) ~~((:))~~ courses:

~~((a))~~ (i) Completed course approval request form;

~~((b))~~ (ii) Content outline ~~((which includes))~~, including a list of topics to be covered and an estimate of the time to be spent on each topic;

~~((c))~~ (iii) Biography or resume of instructor(s); and

~~((d))~~ (iv) Date(s) that course ~~((is to))~~ will be offered.

~~((2))~~ (b) Self-study ~~((:))~~ courses:

~~((a))~~ (i) Completed course approval request form;

~~((b))~~ (ii) Study material; and

~~((c))~~ (iii) Sample exams.

(2) Continuing insurance education courses eligible for approval to satisfy the continuing insurance education requirement include:

(a) Courses demonstrating a direct and specific application to insurance; and

(b) Courses presenting information relevant to insurance-related statutory and regulatory requirements.

(3) General education, sales, motivation, management, leadership, and automation courses are not eligible unless the insurance education provider demonstrates to the satisfaction of the commissioner that a substantial portion of the course relates to the business of insurance and is not solely focused on a particular insurer's products. Prelicensing insurance education courses are not eligible for approval for continuing insurance education credit.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-282 ~~((Will I be issued a))~~ Continuing insurance education course ~~((number?))~~ numbers. ~~((Yes, you will be issued a))~~ The course number issued by the commissioner at the time of approval of the continuing insurance education course ~~((This number))~~ must be included on all

correspondence related to the course and must be included on all certificates of completion for that course.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-284 ~~((What courses are specifically approved?))~~ Designation courses. ~~((Designation courses.))~~

(1) ~~((The following courses are))~~ Successful completion of any part of a course of study leading to an insurance professional designation is approved for the maximum number of credit hours required per renewal period ~~((:))~~

(a) Any part of the American College Life Underwriting Training Council (LUTC) designation program.

(b) Any part of the American College Chartered Life Underwriter (CLU) designation program and advanced study programs.

(c) Any part of the Insurance Institute of America's program of insurance.

(d) Any part of the American Institute for Chartered Property-Casualty Underwriter (CPCU) designation program.

(e) Any part of the Certified Insurance Counselor (CIC) program.

(f) Any part of the Health Insurance Association of America (HIAA) designation program.

(g) Any part of the Certified Employee Benefit Specialist (CEBS) designation program.

(h) Any part of the Life Office Management Association (FLMI) designation program. Changes in the above identified courses are presumed to be approved by the OIC unless the sponsoring organization is advised of disapproval.

(2) The OIC may approve additional designation courses of similar substance ~~((:))~~ as a designation course, as defined in WAC 284-17-210(7).

(2) A current list of approved designations for course credit can be found on the commissioner's web site at www.insurance.wa.gov.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-286 ~~((How are credit hours assigned to a))~~ Continuing insurance education course ~~((:))~~ credit hours. (1) The number of credit hours assigned to a continuing insurance education course will ~~((normally))~~ be based upon the number of classroom hours or ~~((their))~~ the equivalent for self-study ~~((correspondence))~~ courses.

~~((However, the number of credit hours assigned may be less))~~ (2) After evaluation of the content of a continuing insurance education course, the commissioner may assign fewer credits than the total ~~((amount of time))~~ hours spent by the licensee in the ~~((course, based upon an evaluation of the course content))~~ classroom or in self-study.

(3) No continuing insurance education course will be approved for less than one hour of continuing insurance education credit.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-292 ~~((What must be included on a))~~ **Certificates of completion** ~~((?))~~ **of continuing insurance education courses—Form.** The form of certificate of course completion ~~((must be in the form specified by OIC and))~~ required by the commissioner is available to insurance education providers only on the commissioner's web site at www.insurance.wa.gov. The certificate must include the following:

- (1) Name of student;
- (2) Course title and number;
- (3) Date of purchase of course, if applicable;
- (4) Date of completion of course;
- (5) Number of credit hours;
- (6) Provider's name and number; and
- (7) Signature of instructor or monitor and date ~~((; and~~
- ~~((8) Certification of completion by student)).~~

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-294 ~~((Do I have to renew my approval as a))~~ **Renewal—Continuing insurance education provider** ~~((?))~~ ~~((No—You))~~ A continuing insurance education provider is required to request renewal of approval to act as a continuing insurance education provider ~~((does not need to be renewed as long as you have received))~~ only if the provider did not receive approval from the commissioner for ~~((a))~~ at least one course within the last four years. Otherwise, the commissioner's approval is continuous.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-296 ~~((Do I have to renew an))~~ **Renewal—Approval of a continuing insurance education course** ~~((?))~~ ~~((Yes, a))~~ Approval of a continuing insurance education course offered by an approved insurance education provider must be renewed every two years. A ~~((renewal))~~ notice of renewal of course approval will be sent ~~((by the OIC and must be completed and returned with a copy of the current course material for a correspondence course or outline for a lecture course))~~ to the continuing insurance education provider. If ~~((substantial))~~ substantive changes have been made in the course curriculum since its most recent approval, ~~((it should))~~ the course must be ~~((submitted))~~ resubmitted as a new course.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-302 ~~((What))~~ **Actions by a continuing insurance education provider** ~~((could))~~ **that may result in a fine** ~~((?))~~. The following actions by a continuing insurance education provider may result in a fine:

- (1) Advertising or offering a course for credit without the prior approval of the commissioner;
- (2) ~~((Not following))~~ Failing to follow the approved course outline;
- (3) Issuing fraudulent completion certificates; ~~((and))~~
- (4) ~~((Recruitment within an advertisement or during the hours of a course presentation.))~~ Erroneous advertising; or
- (5) ~~((The provider has failed))~~ Failing to comply with ~~((or has violated))~~ any statute or ~~((regulation))~~ rule pertaining to continuing insurance ~~((continuing))~~ education providers.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-304 ~~((Can the))~~ **Revocation or suspension of approval of a continuing insurance education provider** ~~((be suspended or revoked?))~~ **—Reinstatement.** (1) ~~((Yes, the))~~ The commissioner's approval of a person to act as a continuing insurance education provider and approval of any or all of the provider's approved courses may be suspended or revoked by the commissioner if:

(a) The provider or any of its employees involved in continuing insurance education is found to have violated any ~~((of the))~~ provision ~~((s))~~ of Titles 48 RCW or ~~((Title))~~ 284 WAC; or

(b) The ~~((OIC))~~ commissioner finds ~~((under these titles))~~ that disciplinary action against ~~((any))~~ a continuing insurance education provider is appropriate ~~((; the OIC may exercise the discretion to suspend or revoke the provider approval and all of its courses))~~ based on the facts and circumstances of the violation.

(2) Reinstatement of a suspended or revoked approval ~~((shall be at the discretion of the OIC))~~ may be made by the commissioner only after ~~((receipt))~~ acceptance of satisfactory proof that the conditions responsible for the suspension or revocation have been successfully corrected and the possibility of reoccurrence of the violation has been eliminated.

(3) Reinstatement is at the sole discretion of the commissioner.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-306 ~~((Can an))~~ **Grounds for revocation or suspension of approval of a continuing insurance education course** ~~((be suspended or revoked?))~~. (1) ~~((Yes, the))~~ Approval of a continuing insurance education course may be suspended or revoked if the ~~((OIC determines))~~ commissioner concludes that any of the following has occurred:

(a) The content of an approved course ~~((was))~~ is significantly changed without notice to and prior approval from ~~((;))~~ the ~~((OIC))~~ commissioner;

(b) A certificate of completion ~~((was))~~ is issued to ~~((any individual))~~ a person who did not complete the course;

(c) A certificate of completion ~~((was))~~ is not issued to ~~((any individual))~~ a person who satisfactorily completed the course;

(d) The actual instruction of the course is ~~((determined))~~ found by the commissioner to be inadequate; or

(e) Within fifteen days after the date of the commissioner's request, the continuing insurance education provider

~~((failed)) fails to ((comply with the OIC's request for submissions of)) supply updated descriptions of any course ((offerings; or)), records, ((course)) materials, or audit ((information were not provided within fifteen days of the OIC's request)) reports.~~

(2) Reinstatement of ~~((a suspended or revoked))~~ approval is at the sole discretion of the ~~((OIC. The OIC must receive))~~ commissioner and is conditioned upon receipt of satisfactory proof that the conditions responsible for the suspension have been corrected and the possibility of reoccurrence of the violation has been eliminated.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-310 ~~((What must))~~ Content of a course advertisements ~~((include?)).~~ A continuing insurance education course advertisement must include all of the following:

- (1) The insurance education provider's name, using the name registered with the commissioner;
 - (2) The course title, as approved by the commissioner;
 - (3) A brief description of the content of the course;
 - (4) The number of credit hours ~~((applied for or))~~ approved by the commissioner;
 - (5) The location where the course will be held;
 - (6) The date and time that the course will be presented;
- and
- (7) The total cost of the course.

AMENDATORY SECTION (Amending Matter No. R 2004-04, filed 3/17/05, effective 4/17/05)

WAC 284-17-312 ~~((Does Washington participate in the))~~ NAIC Uniform Continuing Education Reciprocity Agreement ~~((?)).~~ ~~((1) Yes,))~~ Washington ~~((has entered into an agreement with states participating))~~ participates in the NAIC Uniform Continuing Education Reciprocity Agreement. ~~((With just a few state specific exceptions))~~ Generally, a continuing insurance education course approved by a participating state will be accepted by ~~((other participating states))~~ this state by submitting the NAIC Uniform Continuing Education Reciprocity Course Filing Form and any required attachments.

(1) An insurance education provider must be qualified as an approved provider in this state.

(2) ~~((Participating states have agreed they will not review another state's CE credit hours. Instructor qualifications will also not be reviewed.))~~ A standard course filing form, available on the commissioner's web site or through the NAIC, will be ~~((used))~~ acceptable for reciprocity filings.

(3) ~~((The))~~ Participation in the NAIC Uniform Continuing Education Reciprocity Agreement does not change ~~((any of a provider's current duties under Washington law))~~ this state's standards for insurance education providers. ~~((A provider must still be independently qualified as an approved provider in a participating state.))~~

RENEWALS, APPOINTMENTS AND AFFILIATIONS

AMENDATORY SECTION (Amending Matter No. R 2008-03, filed 8/18/08, effective 9/18/08)

WAC 284-17-422 Reciprocity for nonresident ~~((agents))~~ insurance producers holding ~~((personal))~~ licenses for lines ~~((only))~~ of authority in the home state that are not issued in this state. If an otherwise qualified applicant for a nonresident ~~((agent's))~~ insurance producer's license holds a license in his or her home state ~~((limited to personal lines only authority,))~~ that is not among the recognized lines of authority in this state, the commissioner will ~~((reciprocate by licensing the nonresident for property and casualty lines of authority))~~ issue a nonresident license that is substantially equivalent to the license issued by the person's home state insurance regulator.

~~((1))~~ The nonresident licensee's authority to transact insurance in this state is limited to the scope of the license granted by the licensee's home state.

~~((2))~~ For purposes of this section, "personal lines only authority" means property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes. For example nonresident insurance producers holding a limited line crop insurance license in their home states will be issued Washington insurance producer licenses with a property line of authority.

AMENDATORY SECTION (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

WAC 284-17-423 ~~((How long are))~~ Term of initial and reinstated individual license ~~((s in effect?)).~~ (1) Initial and reinstated individual licenses are valid from ~~((the))~~ their date of issuance until the date of the licensee's next birthday anniversary plus one year. Additional licenses issued to the same active licensee will be on the same renewal cycle as the first license issued to that licensee.

(2) The renewal date of a business entity license is based on the date of application. The license is valid for two years. Additional licenses issued to the same active licensee will be on the same renewal cycle as the first license issued to that licensee.

AMENDATORY SECTION (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

WAC 284-17-429 ~~((How long is an initial appointment valid?))~~ Appointments and affiliations of licensees. (1) An insurance producer may be appointed or affiliated:

(a) By submitting the notice of appointment or affiliation electronically through a third-party on-line licensing provider or the commissioner's on-line services, available at www.insurance.wa.gov; or

(b) By submitting the notice of appointment or affiliation to the commissioner using the form provided by the commissioner for that purpose available on the commissioner's web site at www.insurance.wa.gov.

(2) Insurance producers upon initial appointment by an insurer or upon initial affiliation by a business entity must be

authorized to transact at least one line of authority within the authority of the insurer or the business entity.

(3) Initial appointments and affiliations are ((valid for the period ending with the insurer's first appointment renewal date after the initial issue date of the appointment. The appointment renewal date for the insurer is assigned by the commissioner)) continuous. Each appointment or affiliation is effective until the insurance producer's license is revoked, terminated, or nonrenewed; the appointment or affiliation renewal fee is not paid; or written notice of termination is received by the commissioner, whichever occurs first.

(4) The insurer is obligated to ensure that its appointed insurance producers are licensed for the proper line of authority for which the insurance producer submits an application for insurance.

(5) Individual surplus line brokers may be affiliated with a business entity possessing a surplus line broker license in the manner set forth in subsection (1) of this section.

(6) Business entities are obligated to ensure that all affiliated insurance producers for the proper line of authority for which the insurance producer submits an application for insurance and that surplus line brokers are properly licensed.

(7) The applicable initial and renewal appointment and affiliation fees, as set forth in RCW 48.04.010, must be paid at the time of appointment, affiliation, or their renewals.

AMENDATORY SECTION (Amending Matter No. R 2005-06, filed 5/30/06, effective 6/30/06)

WAC 284-17-435 ((How will the commissioner notify an insurer that an agent has been appointed?)) Notification of appointments and affiliations. The commissioner will confirm the ((agent's)) licensee's appointment or affiliation by sending ((written notice)) an electronic message to the insurer or business entity within fifteen ((calendar)) days after ((receipt of the appointment by the commissioner)) the commissioner receives the notice from an insurer or business entity. If an insurer or business entity is not registered with the commissioner's on-line services, notice will be sent to the address of record.

AMENDATORY SECTION (Amending Matter No. R 2008-03, filed 8/18/08, effective 9/18/08)

WAC 284-17-439 Notice that ((an agent)) a licensee is not eligible for an electronic appointment or affiliation. A licensee is not eligible for an appointment or affiliation if the license is not valid or the person is not licensed for at least one line of authority within the authority of the appointing insurer or affiliating business entity. If ((an agent)) a licensee is not eligible for an electronic appointment or affiliation, the insurer or business entity will be notified at the time the electronic notice of appointment or affiliation is not accepted for transmission through ((NIPR)) the third-party on-line licensing provider or the commissioner's web site. ((An agent is not eligible for an appointment if the agent's license is not valid or the agent is not licensed for all lines of insurance that the appointing insurer is authorized to transact in the state of Washington.))

AMENDATORY SECTION (Amending Matter No. R 2008-03, filed 8/18/08, effective 9/18/08)

WAC 284-17-443 Renewal ((of)) fee for an ((agent's)) appointment or affiliation. ((Prior to the renewal date of an agent's)) **(1) Insurer and business entities that are not registered with the commissioner's on-line services.**

(a) At least forty-five days prior to the renewal date, an appointment((, the commissioner will send)) or affiliation list will be sent to the insurer ((an appointment renewal notification. An insurer may renew an appointment by:

(1) Sending notice to the commissioner that the appointment will be renewed on the form provided by the commissioner for that purpose or through the commissioner's web site (www.insurance.wa.gov); and

(2) Paying the renewal fee for each agent appointed by the insurer no later than the renewal date assigned by the commissioner)) or business entity identifying all of the licensees appointed by or affiliated with the insurer or business entity whose appointments or affiliations are due to expire.

(b) The insurer or business entity must verify that the list is accurate, make any changes, and return the list with the correct fees to the commissioner.

(c) The verified and corrected list and fees are due to the commissioner no later than the renewal date.

(2) Insurer and business entities that are registered with the commissioner's on-line services.

(a) At least sixty days prior to the renewal date, an appointment or affiliation renewal fee notice will be sent to the insurer or business entity electronically.

(b) The insurer or business entity may review the on-line list of appointees or affiliates, make any changes and must remit the correct fees to the commissioner.

(c) The on-line appointment or affiliation renewal and payment of fees must be completed no later than the renewal date.

AMENDATORY SECTION (Amending Matter No. R 2008-03, filed 8/18/08, effective 9/18/08)

WAC 284-17-445 Termination of an appointment or affiliation by an insurer or business entity. (1) An insurer or business entity may terminate an appointment or affiliation of an insurance producer or surplus line broker through the commissioner's web site if the insurer or business entity is registered for on-line services by sending written notice of termination to the ((agent and by sending a notice of termination of the appointment to)) insurance producer or surplus line broker with a copy to the commissioner ((electronically)), or through ((NIPR, the commissioner's web site, or on the form provided by the commissioner for that purpose)) a third-party on-line licensing provider. ((The)) A form ((may be obtained upon request or may be found)) for that purpose is available on the commissioner's web site ((()) at www.insurance.wa.gov(())).

(2) The effective date of the termination is the date of receipt by the commissioner.

AMENDATORY SECTION (Amending Matter No. R 2008-03, filed 8/18/08, effective 9/18/08)

WAC 284-17-449 (~~Terminating an appointment~~)
Termination of an affiliation (~~(")~~) for cause. (~~(")~~) (~~(+)~~) If (~~(an insurer)~~) a business entity or its authorized representative terminates the (~~(appointment)~~) affiliation of an (~~(agent")~~) insurance producer or surplus line broker for cause, (~~(")~~) the (~~(insurer must notify the insurance)~~) commissioner must receive notice of that termination by mail or electronic facsimile within thirty days following the effective date of the termination (~~(by sending notice of the "for cause" termination to the commissioner)~~).

(1) A form for this purpose is available on the commissioner's web site (~~(f)~~) at www.insurance.wa.gov (~~(g)~~).

(2) (~~(If requested by the commissioner, the insurer must provide additional information, documents, records or other data pertaining to the "for cause" termination or activity of the agent.~~)

(3) "For cause" includes the following conduct:

(a) Providing incorrect, misleading, incomplete or materially untrue information in the license application;

(b) Violating any insurance law, or violating any regulation, subpoena or order of the commissioner or of another state's insurance commissioner;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating or converting any moneys or properties received in the course of transacting the business of insurance;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony;

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

(i) Having an insurance license denied, suspended or revoked in any other state, province, district or territory;

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Knowingly accepting insurance business from an individual who is not licensed;

(l) Being incompetent;

(m) Failing to account for premiums;

(n) Rebating; and

(o) Abandonment.) Upon the request of the commissioner, additional information, documents, records or other data pertaining to the for-cause termination or activity of a licensee's affiliation must be provided promptly to the commissioner.

(3) The reasons an insurance producer may be terminated for cause are set forth in RCW 48.17.530 and 48.17.595. The reasons a surplus line broker may be terminated for cause are set forth in RCW 48.15.140.

AMENDATORY SECTION (Amending Matter No. R 2008-03, filed 8/18/08, effective 9/18/08)

WAC 284-17-467 Consequences—(~~Agent~~) Insurance producers not eligible for appointment by the insurer. If an (~~(agent)~~) insurance producer solicits insurance on behalf of an insurer, as authorized by (~~(WAC 284-17-457)~~) RCW 48.17.160, but it is later determined that the (~~(agent)~~) insurance producer was not eligible for appointment by the insurer:

(1) The insurance contract will be effective;

(2) The (~~(agent)~~) insurance producer must not receive compensation for any insurance product sold by the (~~(agent)~~) insurance producer; and

(3) The (~~(agent)~~) insurance producer and the insurer may be subject to disciplinary action under RCW 48.17.530.

AMENDATORY SECTION (Amending Matter No. R 2008-03, filed 8/18/08, effective 9/18/08)

WAC 284-17-473 (~~(")~~) Affiliation (~~(")~~ defined—Procedures for affiliation, renewal) requirements. (~~"Affiliation" is a type of appointment where a business entity authorizes one or more individual licensed agents, brokers, surplus line brokers or adjusters to represent the business entity. An affiliated licensee may exercise only the authority the business entity confers. The commissioner must receive notice of an affiliation and accept the affiliation before the licensee is allowed to represent the business entity.~~)

(~~(+)~~) Individual licensees that represent a business entity or act on its behalf must be affiliated with the licensed business entity. A business entity must have at least one affiliated individual licensee in order to transact insurance business. Each business entity must (~~(submit to)~~) provide the commissioner (~~(a notice of affiliation for)~~) with the names of all individual licensees authorized to represent the business entity and act on its behalf (~~(-A)~~) using the form (~~(is)~~) provided by the commissioner for that purpose (~~(which can be obtained upon request or found on)~~) and paying the applicable fees, or by using the on-line services available through the commissioner's web site (~~(f)~~) at www.insurance.wa.gov (~~(g)~~).

(~~(2)~~) A licensed business entity must have at least one affiliated individual licensee.

(3) If an agent is affiliated with a licensed business entity, the agent is not required to be directly appointed by an insurer to sell its products if the business entity is appointed by the insurer.

(4) The affiliated agent's, broker's, or surplus line broker's authority to act as a representative of a business entity is limited to those lines of authority for which the agent, broker, or surplus line broker is qualified and that are consistent with the business entity's lines of authority.

(5) If an agent, broker, surplus line broker, or adjuster cannot be affiliated electronically, the commissioner will notify the business entity that the licensee is not eligible for affiliation. A licensee cannot be affiliated under the following circumstances:

(a) The person's license is not valid;

(b) The agent, broker, or surplus line broker is not licensed for at least one of the lines or limited lines of author-

ity that the business entity is authorized to transact in this state, or

(c) The agent is not licensed for at least one of the lines or limited lines of authority of the business entity's appointing insurers.

(6)(a) At the time of renewal of a business entity license, a renewal affiliation list will be sent to the business entity listing the affiliated agents, brokers, surplus line brokers, or adjusters whose affiliations are due to expire.

(b) A business entity may renew an affiliation by sending a list of affiliations to be renewed to the commissioner and paying the renewal fees by mail or through the commissioner's web site (www.insurance.wa.gov:))

NEW SECTION

WAC 284-17-476 License requirements for business entity affiliations. If an individual insurance producer is affiliated with a business entity, the insurance producer is not required to be directly appointed by the insurer.

(1) The individual insurance producer's authority to transact insurance is limited to those lines of authority for which the insurance producer is licensed and that are within the business entity's lines of authority.

(2) When an insurance producer places business with an insurer that has appointed the business entity with which the insurance producer is affiliated, the insurance producer is deemed to be placing business with an insurer with which the insurance producer holds an appointment for the purpose of the bonding requirements set out in RCW 48.17.250.

AMENDATORY SECTION (Amending Matter No. R 2008-03, filed 8/18/08, effective 9/18/08)

WAC 284-17-483 Termination of an appointment or affiliation by ((a licensee)) an insurance producer. (1) An ((individual agent)) insurance producer or surplus line broker may terminate ((an)) its appointment or affiliation with ((a)) an insurer or business entity by sending advance written notice to the insurer or business entity, with a copy to the commissioner. ((The notice must state that the agent is no longer authorized to act on behalf of the business entity:))

(2) The notice must state that the insurance producer or surplus line broker will no longer transact insurance on behalf of the business entity, as the case may be.

(3) The effective date of the termination is the date of receipt by the commissioner.

NEW SECTION

WAC 284-17-490 Late renewal or reinstatement. If a request for renewal of a license is received by the commissioner after its due date, the licensee must not transact insurance under the license until the renewal or reinstatement is completed.

(1) As a precondition to late renewal or reinstatement of a license, payment of the following late fees, as set forth in RCW 48.17.170 (6) and (7), is required:

Days Late	Surcharge
First 30 days late	50% of the license renewal fee
31-60 days late	100% of the license renewal fee
61 days to one year late	200% of the license renewal fee

(2) If no request for late renewal is received by the commissioner within sixty days after expiration of a license, the license and all associated appointments and affiliations will be terminated. All authority conferred by the license ends on its expiration date.

(3) If a license is expired for more than sixty days but less than one year, a licensee may request its reinstatement. A license is not eligible for reinstatement if the reinstatement application is received by the commissioner more than one year after its expiration date.

(4)(a) A licensee may request reinstatement of a license without retesting if no more than one year has passed since the expiration or cancellation date of the license, whichever is earlier. All of the following must accompany the request for reinstatement:

- (i) A completed application for reinstatement;
- (ii) Certificates for twenty-four credit hours of continuing education, including three hours of ethics education, completed during the twenty-four months prior to the date of application for reinstatement, as set forth in WAC 284-17-224; and
- (iii) The fee and surcharge applicable to the reinstatement, as set forth in subsection (1) of this section.

(b) After one year, the licensee must retake and pass all applicable preclicensing education courses and the applicable license examinations. A new license application, including fingerprint card, and all required fees are also required. A new fingerprint card is not required if the licensee has other active licenses or held another license during the past year.

(5)(a) If a licensee cancels a license prior to its renewal date and later asks that it be reissued and the request to reissue is submitted prior to the license renewal date, the licensee must submit an application and must pay the applicable fee prior to the license renewal date.

(b) If a licensee cancels a license prior to its renewal date and a request to reissue the license is made after the license renewal date but before one year after the date the license was canceled, the request to reissue will be treated as though it were a late renewal or reinstatement and the late fee will be calculated from the cancellation date.

(c) If the request to reissue is made more than one year after the license renewal date, it cannot be reissued.

(d) The renewal date of any reissued license will be on the same renewal cycle as the original license.

(6) Information regarding renewal or reinstatement of a license and the necessary forms are available at the commissioner's web site at www.insurance.wa.gov.

(7) License renewals and reinstatements may be submitted by licensees that are registered with the commissioner's on-line services through the web site at www.insurance.wa.gov.

**((PRELICENS)) PRELICENSING
INSURANCE EDUCATION**

AMENDATORY SECTION (Amending Order R 89-8, filed 6/29/89)

WAC 284-17-505 Definitions. As used in WAC 284-17-505 through ~~((284-17-565))~~ 284-17-580, the ~~((following))~~ terms below have the following meaning~~((s indicated))~~ unless the context clearly requires otherwise:

(1) "Approved ~~((prelicense))~~ prelicensing insurance education provider" or "provider" means any insurer, professional association, educational institution ~~((created by Washington statutes or)),~~ community college or vocational school ~~((licensed under Title 28C RCW)),~~ or independent contractor, to which the commissioner has granted authority to conduct and certify completion of an approved course satisfying the prelicensing insurance education requirements of ~~((RCW 48.17.150))~~ this state.

(2) "Approved course" means a series of seminars, classes, or lectures meeting the requirements of WAC 284-17-517 and 284-17-550 ~~((;)),~~ covering the prescribed ~~((curricula of WAC 284-17-551 and the applicable section(s) of WAC 284-17-552 through 284-17-555))~~ course of study. A course is approved only ~~((for offering by an approved provider, while))~~ if when offered it will be supervised by an approved program director, and presented by or under the supervision of an approved instructor, according to the applicable section of either WAC 284-17-540 or 284-17-545.

(3) ~~((;))~~ "Instructor" means a person meeting the requirements of WAC 284-17-537.

~~((b))~~ "Student" means an individual taking the prelicense education course that is required as a prerequisite to admission to the life, disability, property, or casualty resident insurance agent's license examination.

(4) "Curriculum" ~~((or "curricula"))~~ means the ~~((topics))~~ course of study prescribed for ~~((prelicense))~~ prelicensing insurance education by the commissioner ~~((at WAC 284-17-551 through 284-17-555, concerning the)),~~ covering personal lines, life, disability, property ~~((; and))~~ or casualty lines of ~~((insurance))~~ authority, and ~~((including the))~~ Washington insurance ~~((statutes))~~ laws and ~~((regulations curriculum))~~ rules.

(5) "Independent testing service" means the entity having a contract with ~~((which))~~ the commissioner ~~((has contracted))~~ to develop, administer, and score ~~((license))~~ prelicensing insurance examinations.

(6) ~~((;"Insurer" means an insurance company, health care service contractor, or health maintenance organization authorized to conduct business in Washington under RCW 48.05.030, 48.44.015, or 48.46.027, respectively.))~~ "Independent provider" means an insurance education provider that is not an insurer or affiliated with an insurer.

(7) "Provider" or "prelicensing insurance education provider" means any insurer, health care service contractor, health maintenance organization, professional association, educational institution, vocational school, or independent contractor authorized by the commissioner to conduct and certify completion of prelicensing insurance education courses.

AMENDATORY SECTION (Amending Order R 88-14, filed 12/16/88)

WAC 284-17-510 ~~((Prelicense))~~ Prelicensing insurance education requirement. (1) Unless ~~((exempted))~~ waived by the commissioner under WAC 284-17-515, as a prerequisite to admission to the examination, an applicant for a resident~~((s))~~ insurance producer license ~~((as a))~~ for personal lines, life, disability, property ~~((;))~~ or casualty ~~((insurance agent or solicitor))~~ line of authority must complete ~~((the following education requirements as a prerequisite to admission to the examination:~~

~~Complete four))~~ twenty hours of ~~((instruction relating to))~~ prelicensing insurance education for each major line of authority for which the applicant will be tested. Each course must include training on Washington~~((s general statutes))~~ insurance laws and ~~((regulations governing the sale of))~~ rules applicable to that line of authority and general insurance ~~((; and sixteen hours of instruction relating to the specific line of:~~

(a) Life insurance, if the applicant is seeking to be licensed as a life insurance agent or solicitor; or

(b) Disability insurance, if the applicant is seeking to be licensed as a disability insurance agent or solicitor; or

(c) Casualty insurance, if the applicant is seeking to be licensed as a casualty insurance agent or solicitor; or

(d) Property insurance, if the applicant is seeking to be licensed as a property insurance agent or solicitor)) laws and rules.

(2) ~~((An applicant planning to undergo examination for more than one major line need not repeat the four hours' instruction on general statutes and regulations.~~

~~((;))~~ The prescribed curriculum for ~~((a particular;))~~ each line of authority to be tested and the ~~((prescribed curriculum for the))~~ related insurance ~~((statutes))~~ laws and ~~((regulations))~~ rules, must be successfully completed within the twelve-month period immediately preceding the examination.

AMENDATORY SECTION (Amending Order R 91-2, filed 6/3/91, effective 7/4/91)

WAC 284-17-515 Waiver of the ~~((prelicense))~~ prelicensing insurance education requirement—Equivalent education. Any person ~~((with documented insurance education or licensed experience that meets or exceeds the requirements of subsections (1) or (2) of this section as applicable;))~~ may file a ~~((written))~~ petition with the commissioner for a waiver of the ~~((prelicense))~~ prelicensing insurance education requirement ~~((Any person who believes that a prelicense education course is unavailable to her or him may file a written petition with the commissioner for permission to undertake self-study in accordance with provisions of subsection (3) of this section))~~ upon completion of equivalent education.

(1) ~~((Equivalent education.))~~ A ~~((written))~~ waiver~~((;))~~ based on a documentation of equivalent insurance education ~~((;))~~ may be granted by the commissioner in lieu of the certificate of completion ~~((for the purpose of complying with))~~ of the ~~((prelicense))~~ required prelicensing insurance education ~~((requirement, provided that))~~ if the ~~((insurance education))~~ course of study was completed within the twelve

months immediately preceding the date of the petition for waiver and the petitioner demonstrates to the satisfaction of the commissioner that the ((materials and/or classes required to complete such insurance)) education meets or exceeds the curriculum ((prescribed by WAC 284-17-552 through 284-17-555)) required for ((each)) the applicable line of authority.

((a)) An equivalent education in insurance may be demonstrated by a course syllabus and the student's transcript from an accredited college, university, or a course of study recognized as a mark of distinction by the insurance industry and deemed by the commissioner to be fully qualified and competent.

((b)) (2) Persons successfully completing the following insurance professional designations are deemed to have completed the required prelicensing education requirements and will be issued a waiver of the prelicensing insurance education requirements:

(a) Life insurance: CEBS, ChFC, CIC, CFP, CLU, FLMI, and LUTCF;

(b) Disability insurance: RHU, CEBS, REBC, and HIA; and

(c) Property or casualty insurance: AAI, ARM, CIC, and CPCU.

(3) Except as provided in subsection (2) of this section, the commissioner retains the discretion to determine whether a petitioner has presented sufficient evidence ((that her or his")) of equivalent ((")) education and merits a waiver of the ((prelicense)) prelicensing insurance education requirement.

((e)) Prior to the petitioner's participation in the insurance agent's license examination, (4) The petition must be submitted and the commissioner's written waiver of prelicensing insurance education must ((be)) have been issued before the petitioner will be admitted to the insurance licensing examination.

((d)) A waiver is valid for twelve months from the date signed by the commissioner. A waiver of the applicable insurance line curriculum requirement is not a waiver of the insurance statutes and regulations curriculum requirement, or of any other requirement prescribed by the commissioner for insurance license examination eligibility.

(2) **Licensed experience.** A written waiver from the prelicense education requirement for life, disability, casualty, or property insurance as defined respectively by WAC 284-17-552, 284-17-553, 284-17-554, or 284-17-555 may be granted by the commissioner to any person who can demonstrate that (a) he or she has been licensed within the previous ninety days for the same line or lines of insurance in another state and that (b) he or she was licensed continuously for at least two years. Such waiver is not a waiver of Washington's statutes and regulations curriculum as defined in WAC 284-17-551.

(3) **Unavailability.** Any person who believes that a prelicense education course is unavailable to her or him may file a written petition with the commissioner for permission to undertake self-study. Written permission to undertake self-study of the prelicense education curricula, based on a showing of the unavailability of an approved prelicense education course, may be granted by the commissioner provided that the petition shall specify in detail the reasons why a pre-

license education course for the identified line of insurance is unavailable, and shall identify with particularity the materials to be used to study the prescribed curricula.

The petitioner shall demonstrate that the materials cover the curriculum prescribed for Washington insurance statutes and regulations as well as the curriculum prescribed for that line.

(a) The commissioner retains the discretion to determine whether the petitioner has presented sufficient cause to justify a grant of permission to self-study the prelicense curriculum.

(b) If the commissioner grants permission to self-study, such study must be completed within twelve months of the grant. Upon completion of study, the petitioner shall present to the commissioner a certified statement in which the self-study materials that have been utilized are identified, and in which the amount of time spent in study is clearly recorded by dates and clock times as covering at least the prelicense education hour requirement.

(e) Upon the petitioner's satisfactory completion of the approved program of self-study, the commissioner will issue a certificate of completion of approved self-study.)

NEW SECTION

WAC 284-17-516 Home self-study—Candidate, course materials and approved providers. (1) A candidate for an insurance producer license examination that undertakes home self-study in lieu of attending a lecture class or proctored self-study, must contact an approved prelicensing insurance education provider to purchase the required course materials.

(2) A list of approved prelicensing insurance education providers is available on the commissioner's web site at www.insurance.wa.gov.

(3) The candidate must complete all prelicensing insurance education requirements set forth in WAC 284-17-510.

(4) After completion of the program of home self-study, the petitioner must provide verification of completion of each course to the prelicensing insurance education provider before the provider can issue a certificate of completion. A certificate of completion is required before the candidate will be admitted to the insurance licensing examination.

(5) The prelicensing insurance education provider must keep accurate purchase and completion rosters of all students participating in home self-study.

(6) "Home self-study" means a form of study using course materials approved by the commissioner and completed away from an insurance school; and a course other than a lecture or classroom course. It includes approved internet-based on-line courses accessed from a home computer. The course materials may include textbooks, CDs or reading material accessed on-line from the insurance school's web site.

NEW SECTION

WAC 284-17-517 Home self-study—Materials, course standards. (1) Home self-study course materials must be approved by the commissioner before being used by

a prelicensing insurance education provider or offered to a candidate for purchase or use.

(2) To qualify for the commissioner's approval, the prelicensing insurance education provider must demonstrate to the commissioner's satisfaction that the study materials for each course include all prescribed curriculum specified in the examination content outline of the candidate handbook for the particular line of authority.

(3) Each course must be divided into individual lessons covering the prescribed curriculum. The table of contents of the materials must follow the examination content outline as published in the candidate handbook. Each course must cover all required content and must be designed so that a candidate will complete twenty hours of study per line of authority.

(4) Approved prelicensing education providers must apply to the commissioner for amendment to the course approval if there is a change in the content of the study material other than changes made to conform the study materials to modifications of the candidate handbook examination content outline.

(5) Prior to implementation of any change, the prelicensing insurance education provider must advise the commissioner if it makes any change to its course tuition charge or to its rebate policy.

(6) The candidate handbook is available through the commissioner's web site at www.insurance.wa.gov.

AMENDATORY SECTION (Amending Order R 89-8, filed 6/29/89)

WAC 284-17-520 (~~When prelicense education requirement must be met.~~) **Certificates of completion required for admittance to licensing exam—Passing score report must be provided to the commissioner.** The requirements of WAC 284-17-505 through 284-17-520 apply to all persons taking an (~~agent's~~) insurance license examination(~~conducted on or after November 1, 1989~~).

(1) (~~Any~~) In order to be admitted to the examination, an applicant (~~seeking~~) for a resident(~~'s~~) license (~~as a~~) with a personal lines, life, disability, property(~~'s~~) or casualty (~~insurance agent or solicitor in the state of Washington who appears at an examination site~~) line of authority must present certificates of completion of the (~~requisite~~) required number of hours of approved (~~prelicense~~) prelicensing insurance education(~~'s~~) or a written waiver (~~of the applicable line curriculum and a certificate of completion of the statutes and regulations curriculum, to be allowed access to the examination~~).

(2) (~~Any~~) The commissioner will issue a license after the applicant (~~who receives a passing score on the licensing examination must include validated certificates of completion of the approved prelicense education, or a written waiver of the applicable line curriculum requirement, along with~~) provides the passing score report, all other required license application documents, (~~to be issued the license~~) and the proper fee.

AMENDATORY SECTION (Amending Order R 88-14, filed 12/16/88)

WAC 284-17-530 **Requirements applicable to all (~~prelicense~~) prelicensing insurance education providers.** (~~This section applies to all persons offering life, disability, property, or casualty insurance prelicense education, for purposes of satisfying the education requirements prescribed by the commissioner at WAC 284-17-505 through 284-17-520 for insurance license applicants.~~

(1) ~~Persons seeking authority to conduct an approved course for life, disability, property, or casualty insurance shall obtain the written approval from the commissioner prior to the commencement of any such course. No course may be advertised as approved until the provider has obtained in writing all approvals required from the commissioner.~~

(a) ~~The request for approval must include all information, disclosures, statements, and certifications required by the commissioner, on the prescribed forms.~~

(b) ~~Course materials must be submitted to the commissioner with references to the provisions of the prescribed curricula: Provided, however, That the commissioner may waive submission of materials that were approved within the previous twelve months, if references to the prescribed curriculum are drawn in sufficient detail. The provider shall submit a request for approval only for those courses that satisfy the requirements of WAC 284-17-550, 284-17-551, and the applicable sections of WAC 284-17-552 through 284-17-555.~~

(c) ~~The provider must disclose the tuition to be charged for each proposed course.~~

(i) ~~Disclosure to the office of insurance commissioner of the total tuition to be charged for all course offerings shall be made in the request for provider approval.~~

(ii) ~~The provider must disclose to each student at the time of enrollment the amount of the course tuition to be paid; to persons other than the provider's full-time employees, as compensation for referring students to the provider.~~

(iii) ~~The provider must comply with the enrollment procedures set out at WAC 490-800-060 by the Washington state board for vocational education.~~

(2) ~~The commissioner will look to the provider to maintain the integrity of the training system. The provider shall be responsible for its employees' conduct, and shall be subject to disciplinary action for its employees' failure to comply with chapter 284-17 WAC. As a condition of approval, therefore:~~

(a) ~~The provider must retain all student enrollment and performance data, personnel records, and course materials and student evaluations of each course, available for the commissioner's review, for three years.~~

(b) ~~The provider must identify its proposed program director, and must certify, upon conclusion of a competent background investigation, that its program director's qualifications meet or exceed the requirements at WAC 284-17-535, including that the program director has been determined to be trustworthy.~~

(i) ~~The commissioner's approval of a program director is valid for a period of twelve months from the most recent provider approval date.~~

(ii) The provider must apply to the commissioner for amended approval at least ten calendar days before instituting a change of program director.

(iii) The provider must continually monitor its program director's supervision of instruction, and must immediately remove the program director if he or she violates any statute or regulation pertaining to insurance sales or licensing then in effect.

(e) The provider must identify its proposed instructor(s), and must certify, upon conclusion of a competent background investigation, that each instructor's qualifications meet or exceed the requirements at WAC 284-17-537, including that each instructor has been determined to be trustworthy.

(i) The commissioner's approval of each instructor is valid for a period of twelve months from the most recent provider approval date.

(ii) The provider must apply to the commissioner for amended approval at least ten calendar days before instituting a change of instructors, except in the case of an instructor vacancy created by an emergency as defined by WAC 284-17-535(3)(a)(i).

(3) After due investigation and consideration, the commissioner may grant approval of the provider upon a showing that the provider has satisfied all the requirements of WAC 284-17-530 through 284-17-539, 284-17-540 or 284-17-545, and 284-17-550.

(4) Provider approval is valid for a period of twelve months from the initial approval date. To retain such approval, approved prelicense education providers must:

(a) Post in a conspicuous location at the prelicense education site, the procedures for applying for an insurance agent's or solicitor's license, including all preexamination qualifications and a notice of prohibited examination behavior in the standard form prescribed by the commissioner.

(b) Apply to the commissioner for amended provider approval at least ten calendar days prior to instituting any change of its owner or executive officer or of its program director. Amended approval, if granted, is valid only until the original provider approval expiration date.

(c) Report to the commissioner, by the fifteenth day of each month, the name of each student receiving a certificate of completion for each approved course offered during the previous calendar month.

(d) Permit the commissioner or the commissioner's designees to conduct unannounced audits of any of the provider's approved courses, for purposes of monitoring the provider's continued compliance with WAC 284-17-530 through 284-17-565.

(e) Immediately produce, upon request of the commissioner or the commissioner's designee, a true and complete copy of the provider's instructional plan for each approved course.

(f) Post in a conspicuous location at the prelicense education site, the tuition for each approved course, and if applicable:

(i) The full text of any referral/rebate policy;

(ii) The specific dollar amount of course tuition which is payable, to each person other than the provider's full-time employees, as compensation for referring students to the provider;

(iii) The name(s) of the person(s) to whom referral fees are paid.

(g) Any approved provider that has a referral fee/tuition rebate plan must provide a written copy of the agreement to each referred student at the time of her or his enrollment. The copy must contain:

(i) The full text of any referral/rebate policy;

(ii) The specific dollar amount of course tuition which is payable, to each person other than the provider's full-time employee, as compensation for referring students to the provider;

(iii) The name(s) of the person(s) to whom referral fees are paid.

(5) The provider must notify the commissioner, in writing, of the provider's intent to terminate its prelicense education program at least ten calendar days prior to the termination:

(a) If the commissioner sends a written inquiry by certified mail, the provider must respond within ten calendar days:

(b) Failure to notify the commissioner of a course termination, or to respond to a written inquiry, within the specified time limits will result in immediate loss of provider approval, and shall be so noted upon the record.

(6) The provider must give at least ten calendar days' notice to the commissioner of the provider's intent to change the tuition amount or the rebating policy, or to initiate a rebating policy with a person other than the provider's full-time employee.

(7) It shall be unlawful for any prelicense education provider to use license examination performance data for advertising or promotional purposes.

(8) It shall be unlawful for any prelicense education provider to use any name that implies or suggests that the provider is affiliated with either the office of insurance commissioner or with the independent testing service that conducts the examination, or to use any name that implies or suggests that the provider is the only person authorized to provide prelicense education in the state of Washington.)) This section applies to all persons seeking to be approved by the commissioner to act as prelicensing insurance education providers.

(1) Approval to act as prelicensing education providers. Persons seeking to be approved as prelicensing insurance education providers must obtain the written approval of the commissioner prior to offering any prelicensing insurance education course for credit.

(a) Requests for approval must include all information, disclosures, statements and certifications required by the commissioner. An approved form for this purpose is available on the commissioner's web site at www.insurance.wa.gov.

(b) The provider must comply with the standards for licensing and regulating this state's private vocational schools, but need not be actually licensed as a private vocational school.

(c) The commissioner may grant approval of the prelicensing insurance education provider upon a showing that the provider has satisfied all requirements of this chapter.

(d) Approval of a preclicensing education provider is valid for a period of twelve months.

(2) Approval of the preclicensing insurance education provider's program director.

(a) The preclicensing insurance education provider must identify its proposed program director, must complete a background investigation of that person, must certify that the qualifications of the proposed program director meet or exceed the requirements of WAC 284-17-535 and must verify that the proposed program director is trustworthy.

(b) The commissioner's approval of the program director is valid for twelve months.

(c) The provider must certify on its annual renewal notice that the approved individual continues to act as its program director.

(d) The provider must apply for an amendment to its approval at least ten days before changing its program director, unless the change is required due to an emergency.

(e) The commissioner retains discretion to determine whether the qualifications of each proposed program director meet the minimum scholastic and professional criteria required for approval.

(3) Approval of the provider's instructors.

(a) The provider must identify each proposed instructor, conduct a background investigation of each individual, certify that each proposed instructor's qualifications meet or exceed the requirements in WAC 284-17-537, and verify that each proposed instructor is trustworthy.

(b) Approval of each instructor is valid until the next renewal date of the preclicensing education provider.

(c) The provider must state on its annual renewal notice whether each individual continues to act as its instructor.

(d) The provider must apply to the commissioner for amended approval at least ten days before adding a new instructor, except if an instructor vacancy is created by an emergency.

(e) The commissioner retains discretion to determine whether the qualifications of each proposed instructor meet the minimum scholastic and professional criteria required for approval.

(4) Approval of courses.

(a) Course materials must be submitted to the commissioner prior to use.

(b) The provider must provide all of the following information to the commissioner with its request for course approval:

(i) The total tuition to be charged to students; and

(ii) The provider's referral and rebate policy.

(c) No course may be advertised until the provider has been finally approved by the commissioner in writing.

(5) Duties of approved providers. Throughout any period of approval to act as a preclicensing insurance education provider, the provider must:

(a) Retain all student enrollment and performance data, personnel records, and copies of course materials and student evaluations for each course and make them available to the commissioner upon request;

(b) Continually monitor its program director's supervision of instruction;

(c) Immediately remove the program director if that individual violates any law or rule related to insurance;

(d) Apply for amended approval to act as a provider at least ten days prior to a change of ownership, the executive officer, or of the program director. Amended approval, if granted, is valid only until the original provider approval expiration date;

(e) Report to the commissioner by the fifteenth day of each month the name of each student receiving a certificate of completion for each approved course offered during the previous calendar month;

(f) Permit the commissioner or the commissioner's designee to conduct unannounced audits of any approved course in order to monitor the provider's continuing compliance with WAC 284-17-530 through 284-17-580;

(g) Provide a true and complete copy of the provider's instructional plan for each approved course, upon request;

(h) Notify the commissioner if it intends to terminate its preclicensing education program at least thirty days prior to the date of termination;

(i) Notify the commissioner at least ten days in advance of its intent to change the tuition amount, the referral or rebate policy, or initiate a referral or rebate policy with a person other than a full-time employee of the provider.

(6) Provider advertising and name. A provider must not:

(a) Use license examination performance data for advertising or promotional purposes; or

(b) Use any name that implies or suggests that the provider is affiliated with either the commissioner or with the independent testing service that conducts the examination.

(7) Renewal requirements for all providers.

(a) At the time of renewal all providers must provide all of the following information:

(i) List of preclicensing education courses currently offered and the tuition for each and verify that the course curricula meet the requirements of WAC 284-17-550;

(ii) A description of the instruction method used for each course, lecture, proctored self-study, or home self-study;

(iii) List of all active instructors and verify that each has complied with the requirements of WAC 284-17-537;

(iv) Verify that the program director has complied with WAC 284-17-535; and

(v) Confirm the address and contact information for each business location.

(b) The commissioner may approve renewal of the preclicensing insurance education provider upon a showing that the provider has satisfied all requirements of this chapter required for renewal, including the annual renewal requirements provided in WAC 284-17-547.

(c) Detailed information related to course standards is available on the commissioner's web site at www.insurance.wa.gov.

(8) Required disclosures to students.

(a) The preclicensing insurance education provider must disclose to prospective students the total amount of tuition that will be charged for each proposed course.

(b) The provider must post in a conspicuous location at the preclicensing insurance education site a note containing all of the following:

(i) Procedures for applying for an insurance license, including all preexamination qualifications;

(ii) A notice of prohibited examination behavior; and

(iii) The tuition for each approved course.

(c) If the provider has a referral or rebate program, it must be fully disclosed to each student in writing.

(i) The disclosure must state the amount of the course tuition that will be paid to persons other than the provider's full-time employees as compensation for referring students to the provider;

(ii) The full text of the policy must be posted, including the specific amount of tuition payable to persons other than full-time employees of the provider as compensation for referring students to the provider, and the names of any individuals to whom referral fees or rebates may be paid.

(9) Penalties.

(a) The commissioner may refuse to renew or immediately terminate a provider for the following reasons:

(i) Failure to notify the commissioner that a course will be terminated at least thirty days prior to the date of termination;

(ii) Failure to respond to an inquiry of the commissioner within the time limit specified in the inquiry.

(b) A provider is responsible for the conduct of its employees and may be subject to disciplinary action for failure of any employee to comply with the requirements of this chapter.

AMENDATORY SECTION (Amending Order R 89-9, filed 9/15/89, effective 10/16/89)

WAC 284-17-535 Program director's qualifications and responsibilities. (1)(a) A program director's necessary qualifications are:

(a)) must have at least five years of teaching experience and knowledge of insurance products, principles, (and) laws and rules.

((+)) (b) Each independent prelicensing insurance education provider's program director must possess and hold in good standing a Washington ((agent's or broker's)) insurance license(-

(ii) Each insurer provider's program director must) and possess ((such a license or comparable)) scholastic or professional credentials ((that)) acceptable to the commissioner ((deems equivalent to such a license.

((+)) (c) The requirements of ((a)(i) and (ii) of) this subsection ((shall)) do not apply to program directors employed by ((approved providers governed by chapters 28B.19 and 28B.50 RCW, community colleges within Washington state; or to program directors employed by vocational-technical institutes)) community or technical colleges governed by the ((superintendent of public instruction and the)) state board ((of education)) for community and technical colleges.

((b) An employment)) (2) A program director must have a history ((involving)) of employment demonstrating administrative educational experience.

((e) Trustworthiness-) (3) A program director must be trustworthy. A program director is ((untrustworthy)) not trustworthy if he or she has violated any ((statute)) law or

((regulation)) rule pertaining to insurance((-)) or to any other regulated occupation((-or)), has had an occupational or professional license revoked in any state((-)), or has been convicted of a crime ((evidencing lack of fitness to assume fiduciary duties)) reasonably related to his or her honesty or integrity.

((2) Information on)) (4) The program director ((which)) must ((be submitted to the commissioner includes the full disclosure of)) fully disclose to the commissioner any regulatory or legal action ((involving the program director's)) related to his or her honesty, integrity, or professional or occupational activities.

((3)) (5) A program director's responsibilities include:

(a) Conducting a ((competent)) background investigation to ascertain that each instructor is trustworthy and qualified ((under WAC 284-17-537 and under WAC 284-17-540 or 284-17-545 for)) to teach the line of ((insurance)) authority he or she has been designated to instruct((-)), except ((that)) as follows:

(i) In the event of an emergency created by the unavoidable absence of an approved instructor, the program director may appoint an interim instructor who was not previously certified and approved((-)) to complete the current course offering((-however-);

(ii) If it is necessary to appoint an interim instructor, the program director must immediately notify the commissioner of the nature of the emergency, the name of the interim instructor, and the date ((upon which)) the current course offering will conclude((-); and

(iii) At the conclusion of the ((current)) affected course ((offering)) the program director and provider ((shall suspend operation of)) must not continue to offer the affected course until an approved instructor is available ((to conduct the classes)).

(b) Supervising each approved course and reviewing all completed student evaluations ((of the course)); and

(c) ((Insuring)) Ensuring that instructors properly issue certificates of completion according to WAC 284-17-539 to ((the)) students at the ((completion)) end of each course.

AMENDATORY SECTION (Amending Order R 89-8, filed 6/29/89)

WAC 284-17-537 Prelicensing insurance education instructor qualifications and responsibilities. The prelicensing insurance education provider must submit the name((-s)) of each proposed prelicensing insurance education instructor to the commissioner for approval.

(1) To qualify as ((an)) a prelicensing insurance education instructor for an approved provider, each proposed instructor must:

(a) Demonstrate any combination of at least three years of experience instructing insurance education courses, supervising students completing self-paced insurance instructional materials, or experience as ((a licensed)) an insurance ((agent or broker)) producer.

(b) Be trustworthy. An instructor is ((untrustworthy)) not trustworthy if he or she has violated any statute or ((regulation)) rule pertaining to insurance((-)) or to any other regulated occupation((-or)), has had an occupational or profes-

sional license revoked in any state(;) or has been convicted of a crime ((evidencing lack of fitness to assume fiduciary duties)) reasonably related to his or her honesty or integrity.

(c) Demonstrate competence in the line of ((insurance)) authority he or she proposes to teach:

(i) Each independent provider's instructor must possess and hold in good standing a Washington ((agent's or broker's)) insurance producer license for the applicable line(s) of ((insurance)) authority.

(ii) Each ((insurer provider's)) instructor of an insurer-based provider must ((possess such a)) have a current license or provide to the satisfaction of the commissioner evidence of appropriate scholastic or professional credentials ((that the commissioner deems)) reasonably equivalent to ((such a)) an insurance license.

(2) The instructor of each approved course ((shall)) must perform all of the following instructional and administrative duties:

(a) At the beginning session of each approved course, ((assure)) ensure that each student has been properly registered.

(b) Remain on the premises whenever instruction is being offered.

(c) Ensure that the study materials ((utilized,)) incorporate the prescribed curriculum(;) and ((comply with)) follow the lesson plans filed with the commissioner.

(d) ((The instructor may)) Teach approved courses on a live-instruction basis(;) or combine live instruction with the use of other instructional aids, or proctor student use of self-paced insurance instructional materials.

(e) At the conclusion of the course, distribute ((the standard)) a course evaluation form ((prescribed by the commissioner,)) to each student who ((has completed)) completes the course(;) and collect the completed forms.

(i) A form that can be used for evaluation of a course is available at the commissioner's web site at www.insurance.wa.gov.

(ii) A copy of each evaluation must be available to the commissioner upon request for three years after conclusion of the course.

(f) ((To each student who has completed the course,)) Issue a signed certificate of completion ((by signing each certificate, and thereby certify)) to each student who completes the course that certifies that the student actually completed the course.

(g) Review course evaluations with the program director.

AMENDATORY SECTION (Amending Order R 88-14, filed 12/16/88)

WAC 284-17-539 Certificates of completion of a preclicensing insurance education course. (1) A ((=)) certificate of completion((=)) in the standard form prescribed by the commissioner((, shall)) must be completed in its entirety, signed by the instructor, and issued by the approved ((prelicense)) preclicensing insurance education provider to each student in the student's legal name, who has satisfactorily completed an approved course.

(2) Both the student and the instructor(s) ((shall)) must certify that the course was conducted and completed accord-

ing to the credit hours and curriculum required((, by affixing their original signatures in the spaces provided on the certificate of completion)).

(3) The provider ((shall indicate,)) must include on the face of the certificate of completion(;) the correct codes assigned by the commissioner to each approved ((prelicense)) preclicensing insurance education provider and to each approved course.

(4) The approved ((prelicense)) preclicensing insurance education provider must issue ((each valid)) certificates of completion within ((twenty-four hours from)) two business days after the ((time the)) course ((was)) is completed.

(5) No instructor may issue a certificate of completion to herself or himself.

(6) Completion of less than the full course curriculum, or of individual classes(;) does not qualify ((for)) a student to receive a certificate of completion.

(7) A valid certificate of completion (or a valid waiver) for the line of ((insurance)) authority on which the student will be examined((, and a certificate of completion for the statutes and regulations curriculum,)) must be presented to the independent testing service as a prerequisite to ((participating in any of the agent's)) taking any insurance license examination((s) for life, disability, property, or casualty insurance)).

(8) The certificate ((is valid)) of completion for the preclicensing insurance education course will be accepted for twelve months ((from)) after the course completion date ((shown on its face)). Unless waived in accordance with RCW 48.17.175, a preclicensing insurance education course must be retaken if a student does not pass the required examination within twelve months after completion of preclicensing education.

AMENDATORY SECTION (Amending Order R 89-9, filed 9/15/89, effective 10/16/89)

WAC 284-17-540 Requirements applicable to independent ((prelicense)) preclicensing insurance education providers. ((This section applies to all persons, other than insurers, offering life, disability, property, or casualty insurance courses to license applicants for purposes of satisfying the educational requirement prescribed by WAC 284-17-505 through 284-17-520.

(1) In addition to the general conditions for approval set out at WAC 284-17-530 through 284-17-539, and in addition to complying with the requirements of WAC 284-17-550, each noninsurer prelicense education provider shall:

(a) Describe any existing insurance education program:

(i) Class titles and curricula covered;

(ii) Number of students per course during previous year;

(iii) Name(s) and qualifications of instructor(s);

(iv) Name and qualifications of the person responsible for the previous program.

(b) Describe the changes necessary to bring any existing program into compliance with WAC 284-17-530 through 284-17-539, 284-17-550 and 284-17-551, and each applicable section of WAC 284-17-552 through 284-17-555.

(c) Reveal the provider's department of revenue registration number.

~~(2) To qualify a provider for the commissioner's approval, the provider's proposed program director must hold in good standing a valid Washington agent's or broker's license and present evidence of teaching experience, the combination to total a minimum of five consecutive years' qualifications.~~

~~(a) After November 1, 1994, the license(s) must have been held in good standing for at least five years.~~

~~(b) The requirements of this subsection shall not apply to program directors employed by community colleges governed by chapters 28B.19 and 28B.50 RCW, or to program directors employed by vocational technical institutes governed by the superintendent of public instruction and the state board of education.~~

~~(3) To qualify a provider for the commissioner's approval, each of the provider's proposed instructors must hold in good standing a valid Washington agent's or broker's license for the line(s) of insurance he or she will be instructing, and present evidence of teaching experience or experience supervising student completion of self-paced instructional materials, the combination to total a minimum of three consecutive years' qualifications. After November 1, 1992, the license(s) must have been held in good standing for at least three years.~~

~~(4) An independent provider shall establish and maintain records and an appropriate accounting system for all tuition payments received by the provider.~~

~~(a) All tuition funds received must be deposited promptly into a bank account or depository separate from any other account or depository.~~

~~(b) The accounting system used must effectively isolate the separate account from any other operating or personal accounts, and must provide an audit trail so that details underlying the summary data may be identified.~~

~~(c) The provider shall make such records available for inspection by the commissioner during regular business hours upon demand during the three years immediately after the date of the transaction.~~

~~(5) Noninsurer course providers shall have an exact physical location or locations.)) In addition to the requirements set forth in WAC 284-17-530, all independent providers must comply with the following additional requirements:~~

~~(1) The proposed program director must meet the standards set forth in WAC 284-17-535.~~

~~(2) The proposed instructors must be in good standing with the commissioner and must meet the standards set forth in WAC 284-17-537.~~

~~(3) All tuition funds received must be promptly deposited into an account separate from any other account or depository.~~

~~(4) The accounting system used must provide an audit trail so that details underlying the summary data can be identified.~~

~~(5) Records of tuition accounting must be available for inspection by the commissioner during regular business hours for three years after the date of the transaction.~~

~~(6) Lecture or proctored self-study courses must be offered at one or more physical locations accessible to the public within Washington.~~

AMENDATORY SECTION (Amending Order R 88-14, filed 12/16/88)

WAC 284-17-545 Requirements applicable to ~~((insurer prelicense)) insurer-based prelicensing education providers.~~ ((This section applies to all admitted insurers regulated by the commissioner, and offering life, disability, property, or casualty insurance education courses to license applicants for purposes of satisfying the educational requirements prescribed by WAC 284-17-505 through 284-17-520.

~~(1) In addition to the general conditions for approval set out at WAC 284-17-530 through 284-17-539, and in addition to complying with the requirements of WAC 284-17-550, each insurer applying for prelicense education provider approval must exhibit an existing, bona fide insurance education function which is supervised from the corporate level. The insurer shall:~~

~~(a) Describe the existing program:~~

~~(i) Class titles and curricula covered;~~

~~(ii) Number of students per course during previous year;~~

~~(iii) Name(s) and qualifications of instructor(s);~~

~~(iv) Name and qualifications of person responsible for the program.~~

~~(b) Describe the insurer's plan for agent development.~~

~~(c) Submit the prelicense education plan to be applied throughout Washington state.~~

~~(2) For each program director not licensed as a Washington agent or broker, the provider shall in the request for approval identify the program director's equivalent qualifications, including educational degrees or professional designations earned, and certified evidence of past insurance education and licenses held in this or other states, and identify the program director's past teaching experience.~~

~~(3) For each instructor not licensed as a Washington agent or broker in the line of insurance which is the subject of instruction, the insurer's program director shall in the request for approval identify the instructor's equivalent qualifications, including educational degrees or professional designations earned, and certified evidence of past insurance education and licenses held in this or other states.~~

~~(4) The commissioner retains discretion to determine whether the proposed instructor(s) and the proposed program director's asserted qualifications meet the minimum scholastic and professional criteria required herein.)) In addition to the requirements set forth in WAC 284-17-530, all insurer-based providers are subject to the following additional requirements:~~

~~(1) Each course must be supervised from the insurer's corporate level.~~

~~(2) If the program director does not hold a current Washington insurance license, the insurer must provide the following to the commissioner:~~

~~(a) Description of the program director's qualifications, including educational degrees or professional designations earned;~~

~~(b) Summary of the program director's past insurance education and past teaching experience; and~~

~~(c) Evidence of past insurance education and insurance licenses held in this or other states.~~

NEW SECTION

WAC 284-17-547 Renewal—Prelicensing insurance education provider. A prelicensing insurance education provider must obtain renewal of the provider's authority, program director, instructors, and courses yearly.

AMENDATORY SECTION (Amending Order R 89-8, filed 6/29/89)

WAC 284-17-550 Prelicensing insurance education course standards. (1) No prelicensing insurance education course will be approved unless the Washington insurance statutes and ~~((regulations))~~ rules applicable to the specific line are incorporated into ~~((each specific line(s)))~~ the curriculum ~~((offered by the provider. These line specific statutes and regulations are not to be contained in the statutes and regulations curriculum of general application found at WAC 284-17-551))~~ for the line of authority.

(2) To qualify for approval, each course ~~((shall be presented under the supervision of an approved instructor, utilizing))~~ must use study materials that include all ~~((the prescribed))~~ required curriculum, ~~((and shall be presented under the general supervision of an approved prelicense education provider.~~

(a) Each instructor's qualifications shall be identified, according to the requirements of WAC 284-17-530 (2)(d) and 284-17-537, and 284-17-540 or 284-17-545, for approval by the commissioner.

(b) ~~The course instructor shall be on the premises whenever instruction is being offered))~~ as set forth in the examination content outline published in the candidate handbook for each line of authority. The candidate handbook is available through the commissioner's web site at www.insurance.wa.gov.

(3) Each prelicensing insurance education course ~~((shall))~~ must be broken into individual lesson components covering the prescribed curriculum and the table of contents must follow the examination content outline.

(a) The course may include instruction ~~((may include coverage of))~~ on related subject matter; however, ~~((such peripheral instruction must be presented in the individual lesson components))~~ any optional subject matter must be designated as supplementary and must be provided as an addition to the prescribed curriculum hours set forth in WAC 284-17-510.

(b) The provider ~~((may choose the prelicense education study materials, and shall))~~ must certify that the study materials include all of the prescribed curriculum.

(4) ~~((“Hours” are approved by the commissioner for an approved course. Each “hour” shall represent at least fifty minutes of actual instruction on a topic within the prescribed prelicense education curriculum.~~

~~((5))~~ No prelicensing insurance education course may be represented as approved until the approved ((prelicense)) prelicensing insurance education provider has received the commissioner's written approval of the instructor and of the course.

(a) Approved ~~((prelicense))~~ prelicensing insurance education providers must apply to the commissioner for amended course approval if any of the following changes or

revisions ~~((are instituted))~~ will be made before the original course approval expiration date:

- (i) Change of study materials; or
- (ii) Change of location ~~((or~~
- ~~((iii) Change of course tuition or rebate policy)).~~

(b) Amended approval, if granted, is valid only until the original course approval expiration date.

(5) Detailed requirements of course content are available on the commissioner's web site at www.insurance.wa.gov.

AMENDATORY SECTION (Amending Order R 91-3, filed 6/3/91, effective 7/4/91)

WAC 284-17-551 ~~((Statutes and regulations curriculum))~~ Prelicensing insurance education—Candidate handbook. ~~((Every prelicense education course shall incorporate study of the:~~

(1) Nature of insurance:

(a) Definition of insurance; insurance transaction;

(b) Insurer;

(c) Public interest;

(d) Risk management;

(e) Law of large numbers;

(f) Indemnification.

(2) Insurance commissioner:

(a) Authority and duties;

(b) Broad powers;

(c) Rate and form filings;

(d) Examination of records;

(e) Penalties;

(f) Notice of hearing;

(g) Examinations:

(i) Insurers' financial status;

(ii) License applicant's qualifications;

(h) Hearings and appeals;

(i) Public access to records.

(3) Insurers:

(a) Definitions:

(i) Domestic, foreign, alien;

(ii) Life, disability—stock, mutual, fraternal;

(iii) Property, casualty, vehicle, surety—stock, mutual, reciprocal, Lloyds;

(iv) Authorized, unauthorized insurers; certificate of authority;

(b) Financial status:

(i) Mergers, insider trading;

(ii) Rehabilitation, liquidation; Washington Insurance Guaranty Associations;

(c) Insuring powers—defining the separate lines;

(d) Assets and liabilities:

(i) Investments;

(ii) Reserves;

(e) Fees and taxes;

(4) The insurance contract:

(a) General provisions;

(b) Exclusions and limitations;

(c) Insured;

(d) Cancellation and nonrenewal;

(e) Premium;

(f) Binder.

- (5) Agents, brokers, solicitors, adjusters:
 - (a) Company appointment or affiliation:
 - (i) Purpose, contractual authority, and liability;
 - (ii) Termination.
 - (b) Types of licenses:
 - (i) Exemptions;
 - (ii) Limited lines;
 - (iii) Temporary;
 - (iv) Nonresident;
 - (v) Authority and liability under the regulation:
 - (A) Solicitor;
 - (B) Agent;
 - (C) Broker;
 - (D) Surplus lines broker;
 - (E) Adjuster: Independent, public.
 - (6) Major lines:
 - (a) Life insurance;
 - (b) Disability insurance;
 - (c) Property insurance;
 - (d) Casualty insurance.
 - (7) Other lines:
 - (a) Vehicle insurance;
 - (b) Surety;
 - (c) Credit life and credit accident/health;
 - (d) Travel insurance.
 - (8) Penalties for noncompliance:
 - (a) Refusal/nonrenewal;
 - (b) Suspension/revocation;
 - (c) Fines;
 - (9) Maintenance and duration of license:
 - (a) Appointments/terminations of appointments;
 - (b) Renewal procedures;
 - (10) Licensing requirements:
 - (a) Purpose;
 - (b) Licensing procedures:
 - (i) Resident;
 - (ii) Nonresident.
 - (iii) Temporary license.
 - (c) Continuing education; renewal procedures;
 - (d) Penalties for misconduct;
 - (e) Exemption from the licensing requirement.
 - (f) Temporary license.
 - (11) Agent responsibilities:
 - (a) Recordkeeping;
 - (b) Reply promptly to inquiry by the commissioner;
 - (c) notify the commissioner of a change of address;
 - (d) Application completion;
 - (e) Policy delivery;
 - (f) Separate account requirement;
 - (g) Premium accountability;
 - (h) Fiduciary accountability.
 - (12) Compensation of licensees:
 - (a) Sharing commissions;
 - (b) Charges for extra services.
 - (13) Protection of public interest.
 - (14) Unfair practices:
 - (a) Advertising, comparisons, and defamation;
 - (b) Charges, inducements, rebating;
 - (c) Misrepresentation;
 - (d) Twisting;

- (e) Illegal dealing in premiums;
- (f) Illegal inducements;
- (g) Failure to issue proper receipts;
- (h) Unfair claims methods and trade practices;
- (i) Broker's fees disclosed;
- (j) Penalties;
- (k) ~~Discrimination.~~) The prelicensing insurance education curriculum is described in the candidate handbook. The candidate handbook is incorporated by reference and its entire contents will be enforced by the commissioner. A copy of the current candidate handbook is available through the commissioner's web site at www.insurance.wa.gov.

(1) Information in the current version of the candidate handbook must be provided to each license candidate at the time of enrollment.

(2) If changes are implemented in the prescribed prelicensing education curriculum, the prelicensing insurance education provider must submit a revised course outline at least fifteen calendar days before the implementation date.

AMENDATORY SECTION (Amending Order R 88-14, filed 12/16/88)

WAC 284-17-560 Providers (~~not approved~~) denied approval. The commissioner may deny approval to any (~~prelicense~~) prelicensing insurance education provider (~~based upon~~) if:

(1) (~~Such~~) The prelicensing insurance education provider (~~'s refusal~~) refuses or (~~failure~~) fails to comply with any (~~of the~~) requirement(~~s~~) of chapter 284-17 WAC, including but not limited to the provider's employment and use of an unqualified program director or instructor; or

(2) Any owner, (~~operator,~~) program director, or instructor (~~, or other employee of such provider has~~), directly or indirectly, (~~compromised~~) compromises or (~~attempted~~) attempts to compromise the integrity or security of Washington state licensing examination questions, or has induced another to do so; or

(3) Any owner, (~~operator,~~) program director, or instructor (~~, or other employee of such provider has been cited for noncompliance~~);

(a) Fails to comply with any of the requirements of (~~this chapter or chapter 284-12 WAC, or of~~) any (~~other~~) statute or (~~regulation~~) rule pertaining to the (~~sale~~) transaction of insurance or to insurance education; (~~or has been cited for violations of~~)

(b) Violates statute(~~s~~), (~~regulations~~) rule, or copyright(~~s~~) related to an examination for any occupational or professional license; or

(c) Is convicted of a crime reasonably related to his or her honesty or integrity.

AMENDATORY SECTION (Amending Order R 88-14, filed 12/16/88)

WAC 284-17-565 Suspension or revocation of approved prelicensing insurance education providers(~~— Loss of approval~~). (1) The commissioner may suspend or revoke approval of any (~~prelicense~~) prelicensing insurance education provider based upon a finding that:

(a) Any owner, ~~((operator,))~~ program director, or instructor ~~((, or other employee of such provider has))~~ failed to comply with any of the requirements of chapter 284-17 WAC, including but not limited to the failure to employ a qualified program director or instructor(s); or

(b) Any owner, ~~((operator,))~~ program director, or instructor ~~((, or other employee of such provider has))~~, directly or indirectly, compromised or attempted to compromise the integrity or security of Washington state insurance licensing examination questions, or has induced another to do so; ~~((or))~~

(c) ~~((Such))~~ The provider ~~((has))~~ failed to maintain an effective instructional program~~((;))~~ or ~~((has))~~ misrepresented the quality of the instruction provided~~((;))~~ to the detriment of its students; or

(d) An owner, program director, or instructor is or has been convicted of a crime reasonably related to his or her honesty or integrity.

(2) The commissioner may suspend or revoke approval of any ~~((prelicense))~~ prelicensing insurance education provider based upon ~~((such))~~ a provider's failure to:

(a) Reply promptly~~((, in writing,))~~ to an inquiry of the commissioner.

(b) Submit revised course outlines requested by the commissioner. ~~((If changes are implemented in the prescribed prelicense curricula, affected providers must submit revised course outlines at least fifteen calendar days before the implementation date.))~~

(c) Make timely disclosure to the ~~((office of insurance))~~ commissioner and to enrolling students at the time of their enrollment ~~((of))~~ about any offer or payment of any rebate, refund, fee, commission, or discount to persons~~((;))~~ other than the provider's full-time employees~~((, in connection with))~~ made by the provider based on referrals of students to the provider.

NEW SECTION

WAC 284-17-572 Fee. No fee is required for applying to become a prelicensing insurance education provider or for requesting the commissioner's approval of a prelicensing insurance education course.

NEW SECTION

WAC 284-17-574 Prelicensing insurance education provider numbers. A prelicensing insurance education provider will be assigned a provider number by the commissioner. That number must be included on all correspondence related to prelicensing insurance education and on all certificates of completion.

NEW SECTION

WAC 284-17-576 Actions by a prelicensing insurance education provider that may result in a fine. The following actions by a prelicensing insurance education provider may result in a fine:

(1) Advertising or offering a course for credit without the prior approval of the commissioner;

(2) Failing to follow the approved course outline;

(3) Issuing fraudulent completion certificates;

(4) Erroneous advertising; or

(5) Failing to comply with any statute or rule pertaining to prelicensing insurance education providers.

NEW SECTION

WAC 284-17-578 Reinstatement of approval of a prelicensing insurance education provider. (1) Reinstatement of a suspended or revoked approval may be made by the commissioner only after acceptance of satisfactory proof that the conditions responsible for the suspension or revocation have been successfully corrected and the possibility of reoccurrence of the violation has been eliminated.

(2) Reinstatement is at the sole discretion of the commissioner.

NEW SECTION

WAC 284-17-580 Grounds for revocation or suspension of approval of a prelicensing insurance education course. (1) Approval of a prelicensing insurance education course associated with a prelicensing provider may be suspended or revoked if the commissioner concludes that any of the following has occurred:

(a) The content of an approved course is significantly changed without notice to and prior approval from the commissioner;

(b) A certificate of completion is issued to a person who did not complete the course;

(c) A certificate of completion is not issued to a person who satisfactorily completed the course;

(d) The actual instruction of the course is found by the commissioner to be inadequate; or

(e) Within fifteen days after the date of the commissioner's request, the prelicensing insurance education provider fails to supply updated descriptions of any course, records, materials, or audit reports.

(2) Reinstatement of approval of a prelicensing insurance education provider is at the sole discretion of the commissioner and is conditioned upon receipt of satisfactory proof that the conditions responsible for the suspension have been corrected and the possibility of reoccurrence of the violation has been eliminated.

AMENDATORY SECTION (Amending Order R 90-12, filed 11/1/90, effective 1/15/91)

WAC 284-17-600 Licensing requirements for ~~((licensees))~~ insurance producers who maintain more than one place of business in the state. (1)(a) If ~~((an agent operates))~~ an individual insurance producer transacts the business of insurance out of more than one place of business in this state, in addition to complying with the requirements of RCW 48.17.450, each ~~((such location))~~ place of business must be under the charge of an individual properly licensed for the insurance transactions being conducted at the location~~((, and such individual)).~~

(b) A business entity insurance producer that maintains more than one place of business in this state must ~~((be))~~ have an individual licensed as an insurance producer physically

present in ~~((such))~~ the location ~~((during the times such))~~ when the location is open for the transaction of insurance ~~(;)~~ to the same extent as would be expected of ~~((an agent))~~ an insurance licensee operating at a single location.

(2) Each ~~((agent))~~ insurance producer involved in an insurance transaction must have ~~((the appointments))~~ all authority necessary for each ~~((such))~~ insurance transaction, whether by direct appointment from the insurer or by affiliation with ~~((an appropriately appointed agent.~~

~~(2) If an insurance agent is also licensed as an insurance broker while maintaining more than one place of business in this state, transactions in any location which require the services of a broker shall be conducted only by a properly licensed broker))~~ a business entity.

(3) ~~((A))~~ If a surplus line broker maintains more than one place of business in this state, transactions in any location which require the services of a surplus line broker must be conducted only by a properly licensed individual.

(4) Each failure to comply with this section ~~((shall be))~~ is an unfair practice pursuant to RCW 48.30.010 ~~((; and a violation of a regulation pursuant to RCW 48.17.530 and 48.05-140.~~

~~(4) As contemplated by RCW 48.01.060, the transaction of insurance includes solicitation, negotiations preliminary to execution, execution of an insurance contract, transaction of matters subsequent to execution of the contract and arising out of it, and insuring)).~~

NEW SECTION

WAC 284-17-610 Insurance producers and business entities home state. (1) An individual insurance producer may claim only one state as the home state at a time.

(a) Individual insurance producers that claim multiple states as their home state must choose one state to be their home state for all insurance licensing purposes. This will usually be the state chosen for tax reporting.

(b) Insurance producers or business entities that do not claim Washington to be their home state are Washington nonresidents for purposes of Titles 48 RCW and 284 WAC.

(2) Business entities that have a location in this state must have a resident license.

NEW SECTION

WAC 284-17-620 Loans from insurance clients—Reasonable arrangements. RCW 48.17.530 (1)(m) permits the commissioner to define certain reasonable arrangements where an insurance producer may obtain a loan from an insurance client. The commissioner finds that a reasonable arrangement exists when an insurance producer and an insurance client enter into an arms-length commercial transaction, such as for the purchase of real property, and the financial arrangement is based on fair market value.

NEW SECTION

WAC 284-17-625 Documentation of consent to remuneration other than commissions if insurance is purchased over the telephone or by electronic means. RCW 48.17.270(5) requires the insurance producer to document an

applicant's or insured's consent to compensation in addition to commissions where insurance is purchased over the telephone or electronically and written consent cannot be reasonably obtained at the time.

(1) The following procedure is the minimum standard that must be followed to verify the applicant's or insured's consent:

(a) The insurance producer must place a notice in the applicant's file documenting all of the following:

(i) The date that the insurance producer disclosed to the applicant or insured that the insurance producer will receive compensation in addition to commissions;

(ii) Who is expected to pay the additional compensation; and

(iii) Any other understandings regarding the additional compensation agreed to between the insurance producer and the applicant or insured.

(b) As soon as reasonably possible, but no later than five business days afterwards, a written confirmation of the content of the notice required in subsection (1) of this section must be sent to the applicant or insured for confirmation and signature.

(c) The confirmation must provide a place for the signature of both the insurance producer and the applicant or insured.

(d) It is the obligation of the insurance producer to make sure that the signed confirmation is returned and placed in the applicant's or insured's files kept by the insurance producer.

(e) The insurance producer must promptly provide a copy of the document to both parties after it is signed by both the insurance producer and the applicant or insured.

(2) In lieu of a signed consent form, the insurance producer and the applicant or insured may acknowledge that the required consent has been obtained in a recording, if it meets the standards of RCW 9.73.030. Both parties must clearly consent to the recording and to the compensation in addition to commissions. The recording must be made and maintained in a retrievable format.

NEW SECTION

WAC 284-17-630 Display of licenses. RCW 48.17.460 requires the display of the license or licenses of each insurance producer, title insurance agent, or adjuster in a conspicuous place in that part of the place of the licensee's business which is customarily open to the public. Licensees whose personal residence is shown on their licenses may obscure their residence addresses as long as the licensee's name can be seen clearly by the public.

NEW SECTION

WAC 284-17-650 Transition rules—July 1, 2009. All licensees and applicants for licenses are urged to read and understand the changes in the insurance producer statutes, new rules and amendments to existing rules related to licensing and insurance education found in chapters 48.17 RCW and 284-17 WAC before July 1, 2009. A link to the statutes and rules is available at the commissioner's web site at www.insurance.wa.gov.

(1) Insurance licenses held on June 30, 2009, as an agent, broker or solicitor will automatically transition to an insurance producer license at 12:01 a.m. on July 1, 2009. For example, persons holding an agent's license on June 30, 2009, will automatically become licensed insurance producers beginning at 12:01 a.m. on July 1, 2009. No application is required for this transition. It will occur automatically by operation of law.

(2) The agent, general agent, broker and solicitor license types will be discontinued on June 30, 2009. After 12:01 a.m. on July 1, 2009, these types of licenses will be merged and converted to an insurance producer license. Additionally, all active appointments or affiliations associated with these license types will be merged and associated with the producer license.

(3) Title insurance agent licenses will not transition to insurance producer licenses.

(4) The limited appointments to an insurer by a resident general agent based on RCW 48.05.320 will be eliminated on June 30, 2009. No conversion of existing limited appointments will occur.

(5) At 12:01 a.m. on July 1, 2009, licenses for the following lines of authority will automatically transition as follows:

Line of authority held on or before June 30, 2009	Line of authority transitioned to on July 1, 2009
Life	Life
Life with a securities license	Variable life and variable annuity products
Disability	Disability
Property	Property
Casualty	Casualty
Marine	Property and casualty
Surety	Surety
Vehicle	Personal lines
Credit life and disability	Limited line credit
Credit casualty	Limited line credit
Credit life and disability, with life, disability, property or casualty	Life, disability, property, casualty, or personal lines
Credit casualty, with life, disability, property or casualty	Life, disability, property, casualty, or personal lines
Travel	Travel

(6) Any license renewed or issued by the commissioner prior to July 1, 2009, will not be reprinted using the new license type or line of authority. Licensees who wish to obtain a new license document should go to the commissioner's web site (www.insurance.wa.gov) after July 1, 2009, for instructions on how to obtain a new license document.

(7) The license, licensing renewal and late fees must be paid beginning July 1, 2009, in accordance with RCW 48.17.170.

(8) Applications for late renewal and reinstatement not received by the commissioner as of midnight June 30, 2009,

will be processed based on the requirements in effect on July 1, 2009.

(9) Pending applications for an initial or reinstated license or license renewal for agents, general agents, brokers, or solicitors received prior to June 30, 2009, but not approved for issuance until on or after July 1, 2009, will be issued as producer licenses.

(10) Any over-payments received by the commissioner based on fees in effect until July 1, 2009, will not be refunded; however, applicants for licenses, renewals and reinstatements, and assessments for late fees will be assessed, and must be paid according to the requirements of RCW 48.14.010 beginning at 12:01 a.m. on July 1, 2009.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 284-17-121 Qualifications of agents of insurers authorized to transact more than one line of insurance—Exceptions.
- WAC 284-17-230 May I take any approved continuing education course?
- WAC 284-17-232 When must I meet the continuing education requirement?
- WAC 284-17-234 What happens if I am late renewing my license?
- WAC 284-17-236 What happens if my renewal is received prior to expiration but is incomplete due to the submission of an invalid course(s), an incorrect fee or noncompletion of the renewal notice?
- WAC 284-17-238 What happens if I do not meet the continuing education requirement?
- WAC 284-17-240 Can I reinstate my license?
- WAC 284-17-242 How long do I have to keep the course completion certificates?
- WAC 284-17-248 How long are my certificates of completion valid?
- WAC 284-17-280 What courses are eligible for approval?
- WAC 284-17-288 What attendance records must the provider maintain?
- WAC 284-17-290 How long must the provider maintain the attendance or purchase and completion records?
- WAC 284-17-298 Must I submit an electronic attendance roster?
- WAC 284-17-301 Does the commissioner have the authority to levy a fine

	against a CE provider or revoke or suspend a CE provider's approval?	WAC 284-17-479	Termination of an affiliation by a business entity.
WAC 284-17-308	May I advertise a course prior to approval?	WAC 284-17-481	Requirements for termination of an affiliation by a business entity "for cause."
WAC 284-17-320	What are the qualifications of an instructor?	WAC 284-17-482	Information to be provided relating to a "for cause" termination to the commissioner.
WAC 284-17-421	Definitions.		
WAC 284-17-425	How long are initial and reinstated business entity licenses in effect?	WAC 284-17-552	Life insurance curriculum.
		WAC 284-17-553	Disability insurance curriculum.
WAC 284-17-427	What is the renewal period for a license?	WAC 284-17-554	Casualty insurance curriculum.
WAC 284-17-431	What is the renewal period for an appointment?	WAC 284-17-555	Property insurance curriculum.
WAC 284-17-433	How long is an appointment effective?		
WAC 284-17-437	Appointments of agents.		
WAC 284-17-441	Notice to an insurer if an agent is not eligible for an appointment if the appointment was not submitted electronically.		
WAC 284-17-447	Termination of an appointment by an agent.		
WAC 284-17-455	Agent must be licensed for all lines of authority of the appointing insurer.		
WAC 284-17-457	Authority of an agent to act as a representative of an insurer and solicit insurance on its behalf before notifying the commissioner of the appointment.		
WAC 284-17-463	Who is responsible for ensuring that the agent is eligible for appointment?		
WAC 284-17-469	Is the insurer responsible for the acts of the agent during the period of time the agent is acting as a representative of the insurer or soliciting insurance on its behalf?		
WAC 284-17-471	What are the consequences if the commissioner is not notified of the appointment within thirty calendar days after the date the agent has signed the first application for insurance for submission to the insurer and the agent continues to act as a representative of the insurer or solicit insurance on its behalf?		
WAC 284-17-477	Valid period of an affiliation.		

WSR 08-22-024**PROPOSED RULES****SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed October 28, 2008, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-17-012.

Title of Rule and Other Identifying Information: WAC 392-121-133 Annual average full-time equivalent students.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Olympia, WA, on December 10, 2008, at 9:30.

Date of Intended Adoption: December 11, 2008.

Submit Written Comments to: Mitch Thompson, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Mitch.Thompson@k12.wa.us, fax (360) 725-6306, by December 9, 2008.

Assistance for Persons with Disabilities: Contact Clarice Nnanabu by December 9, 2008, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently the WAC directs school districts to divide student hours by 900 to derive the annual average full-time equivalent (AAFTE) for the nonstandard school year reporting and the ancillary services reporting. An AAFTE for the normal school year is 720 hours for grades K-3 and 900 hours for grades 4-12. The changes to the WAC will instruct districts to divide by 720 for grades K-3 and 900 for grades 4-12.

Reasons Supporting Proposal: This aligns the FTE calculation in WAC 392-121-133 with WAC 392-121-106 which gives the hours for monthly FTE calculation.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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: Mitch Thompson, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: Calvin W. Brodie, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: Jennifer Priddy, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

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.

October 27, 2008
Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending Order 97-06, filed 10/27/97, effective 11/27/97)

WAC 392-121-133 Definition—Annual average full-time equivalent students. As used in this chapter, "annual average full-time equivalent students" means the sum of the following:

(1) The annual total of full-time equivalent students enrolled on the nine enrollment count dates of the school year and reported to the superintendent of public instruction pursuant to WAC 392-121-122 divided by nine;

(2) Annual hours of ancillary service to part-time, private school, and home-based students reported pursuant to WAC 392-121-107 divided by 720 for grades kindergarten through third and 900 for grades fourth through twelfth; and

(3) Annual hours of eligible enrollment in nonstandard school year programs pursuant to WAC 392-121-123 divided by 720 for grades kindergarten through third and 900 for grades fourth through twelfth.

WSR 08-22-025

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 28, 2008, 11:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-17-011.

Title of Rule and Other Identifying Information: WAC 392-121-136 Limitations on enrollment counts.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Olympia, WA, on December 10, 2008, at 9:15.

Date of Intended Adoption: December 11, 2008.

Submit Written Comments to: Mitch Thompson, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Mitch.Thompson@k12.wa.us, fax (360) 725-6306, by December 9, 2008.

Assistance for Persons with Disabilities: Contact Clarice Nnanabu by December 9, 2008, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 392-121-136 was created to specify the limits to counting a student for enrollment purposes. An item that was included in the limitations should have been placed under WAC 392-121-108 which covers the enrollment exclusions. This change is to delete this exception from the list of limitations. A WAC change is being proposed concurrently which adds this item to the exceptions WAC. The item in question states that a student who is claimed on institution education enrollment reporting Form E-672 cannot be counted on Form P223 for basic education.

Reasons Supporting Proposal: This facilitates the placement of an exclusion for enrollment reporting under the correct WAC.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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: Mitch Thompson, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: Calvin W. Brodie, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: Jennifer Priddy, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

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.

October 27, 2008
Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending WSR 08-04-010, filed 1/24/08, effective 2/24/08)

WAC 392-121-136 Limitation on enrollment counts. Enrollment counts pursuant to WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a), (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the first school day of July of each year. Each district operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term based upon the July enrollment data.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments.

(c) Subject to (b) of this subsection, a student enrolled in a skill center program during the regular school year may be claimed for up to a combined 1.6 full-time equivalent student.

A student can be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment and a maximum of a 1.0 full-time equivalent for the student's high school enrollment.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old preschool student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

~~(5) ((A student reported as full-time on Form SPI E-672 pursuant to WAC 392-122-275 for institutional education funding shall not be reported by a school district for basic education funding on that enrollment count date.~~

~~(6))~~ A student reported as part-time on Form SPI E-672 shall not be reported by a school district for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts for basic education and on Form SPI E-672 must not exceed one full-time equivalent.

~~((7))~~ (6) Districts providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim up to an additional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.

WSR 08-22-028
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 (Division of Child Support)
 [Filed October 28, 2008, 2:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-06-089.

Title of Rule and Other Identifying Information: The department is adding new sections and/or making amendments to chapter 388-14A WAC. The division of child support (DCS) is adopting new and amended sections to implement state legislation which implements the federal Deficit Reduction Act of 2005. The state law was signed by the governor on April 20, 2007, as chapter 143, Laws of 2007, with an effective date of July 22, 2007. The changes to the public assistance assignment and to the distribution of child support collections with which these new and revised rules are con-

cerned were effective October 1, 2008. Emergency rules with an effective date of October 1, 2008, were filed in order to keep the DCS in compliance with the state plan pending enactment of the permanent rules.

Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-2037 What are permanently assigned arrears?, 388-14A-2038 What are temporarily assigned arrears?, 388-14A-5000 ~~((How does the division of child support distribute support payments?))~~ What is the difference between distribution and disbursement of child support collections?, 388-14A-5001 What procedures does DCS follow to distribute support ~~((payments))~~ collections?, 388-14A-5002 How does DCS distribute support ~~((money))~~ collections in a nonassistance case?, 388-14A-5003 How does DCS distribute ~~((money))~~ support collections in an assistance case?, 388-14A-5004 How does DCS distribute ~~((money))~~ support collections in a former assistance case?, 388-14A-5005 How does DCS distribute ~~((intercepted))~~ federal ~~((income))~~ tax refund~~((s))~~ offset collections?, 388-14A-5006 How does DCS distribute support ~~((money))~~ collections when the paying parent has more than one case?, 388-14A-5010 How does the division of child support ~~((handle))~~ distribute ~~((intercepted))~~ federal ~~((income))~~ tax refund~~((s))~~ offset collections from ~~((a))~~ joint returns? and 388-14A-5100 ~~((What kind of distribution notice does the division of child support send?))~~ How does the division of child support notify the custodial parent about support collections?; and new sections WAC 388-14A-2039 What are conditionally assigned arrears? and 388-14A-5015 What is a pass-through payment?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (behind Goodyear Courtesy Tire) (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on December 23, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 24, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by noon on December 23, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 9, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCS is adopting new and amended sections of chapter 388-14A WAC to implement state legislation that implements the federal Deficit Reduction Act of 2005 (DRA). These new and amended WAC sections will implement RCW 26.23.035 and 74.20.-330. These statutes will affect the public assistance assignment and the rules concerning the distribution of child support collections. These changes took effect on October 1, 2008. The overall effect of these rules will be to direct more money to families.

Reasons Supporting Proposal: Efficiency and clarity.

Statutory Authority for Adoption: Sections 2 and 6, chapter 143, Laws of 2007.

Statute Being Implemented: RCW 26.23.035 and 74.20.330.

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: Onika Garvin, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS rules relating to the care of dependent children are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

October 27, 2008

Stephanie E. Schiller
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 08-23 issue of the Register.

WSR 08-22-039
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Management Services Administration)

[Filed October 30, 2008, 3:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-097.

Title of Rule and Other Identifying Information: The department is amending WAC 388-06-0010 Purpose; and creating the following new sections WAC 388-06-0600 Background checks for employees and applicants for a covered position, 388-06-0605 Definition—Covered position, 388-06-0610 Definition—Vulnerable adults, juveniles and children, 388-06-0615 Definition—Unsupervised access, 388-06-0620 Information considered and how results are used for a DSHS background check, 388-06-0625 Requirement for DSHS employees and applicants to authorize a background check and consequences for denying authorization, 388-06-0630 DSHS actions when a permanent employee is disqualified because of background check or refusal to authorize a background check, 388-06-0635 DSHS secretary's responsibilities in carrying out the requirements to conduct background checks, and 388-06-0640 A permanent DSHS employee who is disqualified from a covered position—Right to request a review by DSHS secretary or designee.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on December 9, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 10, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 9, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by November 25, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is proposing these rules to comply with RCW 43.43.832 and make permanent the emergency rules originally filed on July 20, 2007. These rules describe the requirements related to background checks for DSHS employees and applicants.

Reasons Supporting Proposal: RCW 43.43.832 requires the department of social and health services to adopt employee background check rules and standards. Chapter 387, Laws of 2007 (ESSB 5774) repealed the department of personnel (DOP) statute which required DOP to adopt DSHS employee background check rules. DOP repealed DSHS employee rules effective July 22, 2007.

Statutory Authority for Adoption: RCW 43.43.832, 43.20A.710.

Statute Being Implemented: RCW 43.43.832, 43.20A.-710.

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: Cindy LaRose, P.O. Box 45025, Olympia, WA 98504-5025, (360) 902-8072.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules apply to internal agency operations only and are exempt from the requirement for a small business economic impact statement.

A cost-benefit analysis is not required under RCW 34.05.328. These rules apply to internal agency operations only and are exempt from the requirement as described in RCW 34.05.328 (5)(b)(ii).

October 29, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

WAC 388-06-0010 What is the purpose of this chapter? (1) The purpose of this chapter is to establish rules for background checks conducted by children's administration (CA), and the division of developmental disabilities (DDD)

at the department of social and health services (DSHS). The department does background checks on individuals who are licensed, certified, contracted, or authorized to care for or have unsupervised access to children and to individuals with a developmental disability. Background checks are conducted to find and evaluate any history of criminal convictions and child abuse or neglect.

(2) This chapter also defines when the one hundred twenty-day provisional hire is allowed by DSHS. WAC 388-06-0500 through 388-06-0540 apply to all DSHS administrations

(3) WAC 388-06-0600 through 388-06-0640 of this chapter includes the background check requirements for DSHS employees and applicants seeking, working or serving in a covered position.

NEW SECTION

WAC 388-06-0600 Must the DSHS secretary or designee conduct background checks on all employees in covered positions and applicants under consideration for a covered position? (1) The secretary of the department of social and health services (DSHS) or designee must conduct a background check, which may include fingerprinting as authorized by statute, on all employees in covered positions and applicants under final consideration for a covered position.

(2) The requirement to conduct a background check must include the following:

(a) Any employee seeking a covered position because of a layoff, reallocation, transfer, promotion or demotion or otherwise requesting a move to a covered position.

(b) Any applicant prior to appointment to a covered position, except when the appointment is made on a conditional basis in accordance with agency procedures authorized by WAC 388-06-0635.

(3) Applicant means any person who has applied for work or serves in a covered position, including current employees requesting transfer, promotion, demotion, or otherwise requesting a move to a covered position.

NEW SECTION

WAC 388-06-0605 What is a covered position? A covered position is one in which a person will or may have unsupervised access to vulnerable adults, juveniles or children.

NEW SECTION

WAC 388-06-0610 Who are vulnerable adults, juveniles or children? (1) Vulnerable adult means a person who is a client of DSHS and/or is:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(b) Found incapacitated under chapter 11.88 RCW;

(c) Developmentally disabled as defined under RCW 71A.10.020;

(d) Admitted to any facility that is operated by DSHS;

(e) Receiving services from a DSHS contracted, authorized, certified, licensed or individual provider, including those certified under chapter 70.96A RCW;

(f) Receiving services through home health, hospice, or home care agencies required to be licensed under chapter 70.127 RCW; or

(g) Admitted to detoxification in a certified chemical dependency treatment facility in accordance with chapter 70.96A RCW.

(2) Juvenile means a person under the age of twenty-one under the juvenile rehabilitation administration's (JRA) jurisdiction, or under the department of corrections's jurisdiction while placed in a JRA facility.

(3) Child or children means any person under eighteen years of age.

NEW SECTION

WAC 388-06-0615 What is unsupervised access?

Unsupervised access means a DSHS employee, volunteer or student intern who:

(1) Works or serves in a setting, such as an institution, that provides residential services to vulnerable adults, juveniles and children;

(2) Works or serves in a position where, during the course of his or her employment, the employee may transport, or visit the residence of, a vulnerable adult, juvenile or child; or

(3) Works or serves in a position, other than one described in (1) and (2) above, where the employee may be left alone with a vulnerable adult, juvenile or child. "Left alone" does not include the possibility of a public encounter, or public interaction.

NEW SECTION

WAC 388-06-0620 What information is considered in a background check conducted by DSHS and what are the results of the background check used for? (1) The background check information considered by the DSHS secretary will include but is not limited to conviction records, pending charges, and civil adjudications as defined in RCW 43.43.830.

(2) The background information must be used by DSHS to determine the character, competence, and suitability of the applicant and/or employee to have unsupervised access to vulnerable adults, juveniles and children.

NEW SECTION

WAC 388-06-0625 Must an employee and/or applicant authorize the secretary of the department of social and health services or designee to conduct a background check and what happens if the employee or applicant does not provide authorization? (1) An employee and/or applicant applying for or being considered for retention in a covered position must authorize the secretary of DSHS or designee to conduct a background check which may include fingerprinting.

(2) Failure to authorize the DSHS secretary or designee to conduct a background check disqualifies an employee or

applicant from consideration for any covered position including their current covered position.

NEW SECTION

WAC 388-06-0630 What happens when a permanent DSHS employee is disqualified because of a background check or failure to authorize a background check? (1) A DSHS employee who fails to authorize a background check or who is disqualified based on a background check and character, competence, and suitability assessment will be denied unsupervised access to vulnerable adults, juveniles and children.

(2) A permanent employee with a background check disqualification or who fails to authorize a background check may be subject to any of the following actions in no specific order:

- (a) Denial of a transfer, promotion, demotion, or elevation;
- (b) Job restructuring;
- (c) Job reassignment or transfer to a noncovered position;
- (d) Nondisciplinary separation;
- (e) Disciplinary action;
- (f) Voluntary demotion to a noncovered position;
- (g) Voluntary resignation from employment.

(3) An appointing authority may use the following interim measures or any combination while deciding which action to take. Use of these interim measures will generally not exceed thirty calendar days except in the case of ongoing investigations or pending charges:

- (a) Voluntary use of accrued vacation, exchange, and/or compensatory time;
- (b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave; or
- (c) Reassignment to another work location to prevent unsupervised access.

(d) When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(4) Before an appointing authority implements the non-disciplinary separation of a permanent employee, a search for a noncovered position that is vacant, funded and for which the employee meets the skills and abilities will occur for a period of thirty calendar days. The search will be conducted in accordance with the layoff requirements listed in applicable collective bargaining agreements and DSHS administrative policies.

NEW SECTION

WAC 388-06-0635 What are the DSHS secretary's responsibilities in carrying out the requirements to conduct background checks? (1) The DSHS secretary or designee will:

- (a) Notify employees and applicants that a background check is required for covered positions;
- (b) Develop procedures specifying when employees and applicants may be hired on a conditional basis pending the results of a background check; and

(c) Develop policies and procedures pertaining to background checks.

(d) Use information contained in a background check for the purpose of determining the character, competence, and suitability of the applicant and/or employee to have unsupervised access to vulnerable adults, juveniles and children.

(2) The DSHS secretary or designee will not further disseminate background check information unless authorized or required by law to do so. In addition, results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

NEW SECTION

WAC 388-06-0640 Does a DSHS permanent employee who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification? A DSHS permanent employee who is disqualified from a covered position as a result of a background check has the right to present the DSHS secretary or designee evidence that may mitigate the disqualifying background information identified by the department. The permanent employee may present additional information for consideration that includes, but is not limited to:

- (1) The employee's background check authorization and disclosure form;
- (2) The employee's age at the time of conviction, charge, or disciplinary board final decision;
- (3) The nature and severity of the conviction, charge, or disciplinary board final decision;
- (4) The length of time since the conviction, charge, or disciplinary board final decision;
- (5) The nature and number of previous offenses;
- (6) Vulnerability of the child, vulnerable adult, or individual with mental illness or developmental disabilities to which the employee will or may have unsupervised access; and
- (7) The relationship between the potentially disqualifying event and the duties of the employee.

WSR 08-22-044

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 31, 2008, 11:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-19-007.

Title of Rule and Other Identifying Information: WAC 392-121-123 Nonstandard school year programs.

Hearing Location(s): Office of the Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 South Washington, Olympia, WA, on December 10, 2008, at 9:00.

Date of Intended Adoption: December 11, 2008.

Submit Written Comments to: Mitch Thompson, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Mitch.

Thompson@k12.wa.us, fax (360) 725-6306, by December 9, 2008.

Assistance for Persons with Disabilities: Contact Clarice Nnanabu by December 9, 2008, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule change allows for student enrollment during the nonstandard school year to be reported based upon enrolled FTE rather than on actual hours served.

Reasons Supporting Proposal: 2SSB 5790 section 3 allows for students attending skills centers to be claimed for a combined FTE of 1.60. This WAC change allows for reporting of those students served during the nonstandard school year to be counted under the same guidelines that are set for FTE reporting during the normal school year.

ALE programs have a different methodology for calculating FTE for apportionment funding than standard school district programs. This WAC change will allow for that methodology to be used for the nonstandard school year reporting. FTE calculation for summer programs has historically been based upon the actual hours of student attendance. With the changes in programs over the past few years it has been determined that the nonstandard school year should be based upon enrolled time rather than the actual hours served due to the complexity of calculating actual hours.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Mitch Thompson, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: Calvin W. Brodie, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: Jennifer Priddy, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

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.

October 27, 2008
Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending WSR 95-01-013, filed 12/8/94, effective 1/8/95)

WAC 392-121-123 Nonstandard school year programs. (~~Notwithstanding the count dates in WAC 392-121-122, a student who is participating in a course of study, other than running start and transition school, on a tuition-free basis and who has not been counted as a full-time equivalent student for all of the first nine months of the school year may be counted in any of the last three months of the school year as long as enrollment counts for such student do not exceed the limitation on enrollment counts set forth in WAC 392-121-136.~~) A student participating in a program of education occurring during June, July, or August (nonstandard school

year) on a tuition-free basis may be claimed for state funding to the extent that the student was not claimed as a 1.0 AAFTE during the regular school year (September through May), subject to the following:

(1) Eligible student FTE in a nonstandard school year program shall be claimed based upon the following:

(a) Enrolled hours based upon the standards in WAC 392-121-122 or 392-121-182.

(b) Credit based for student enrolled in a college program under WAC 392-121-188.

(c) A student enrolled in transition school or a running start program is not eligible for nonstandard school year funding.

(2) A district shall make month by month evaluation of the student to determine if the following conditions were met during the regular school year:

(a) The student was not home schooled or enrolled in a private school.

(b) The student was not claimed as a 1.0 FTE in a regular or institution education program.

(3) For each month in which the conditions of subsection (2) of this section are met, the district shall determine the amount of student FTE claimed for the student. To the extent the enrollment claimed is less than 1.0 FTE for each month, the school district may claim nonstandard school year FTE based upon the student enrollment in the nonstandard school year school program.

WSR 08-22-045

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 31, 2008, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-19-048.

Title of Rule and Other Identifying Information: Chapter 392-153 WAC, Traffic safety education.

Hearing Location(s): Office of the Superintendent of Public Instruction (OSPI), P.O. Box 47200, Olympia, WA 98504, on December 10, 2008, at 8:30 a.m.

Date of Intended Adoption: December 11, 2008.

Submit Written Comments to: Allan J. Jones, P.O. Box 47200, Olympia, WA 98504-7200, e-mail allan.jones@k12.wa.us, fax (360) 586-6124, by December 9, 2008.

Assistance for Persons with Disabilities: Contact Penny Coker by December 9, 2008, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend the language to reflect requirements adopted by the 2008 legislative session. The changes include the addition of language requiring public school district traffic safety education programs to incorporate "driving safely among pedestrians and bicyclists" curriculum materials, approved by the director of licensing, into their local curriculum. This change is in response to HB

2564 and the resulting changes made to chapter 28A.220 RCW.

In addition, there is a change made to the language in the WAC regarding the process for obtaining a TSE conditional certificate to clarify that process and remove ambiguity in the training requirement.

Statutory Authority for Adoption: Chapter 28A.220 RCW and RCW 46.20.100.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: To amend the language to reflect requirements adopted by the 2008 legislative session. The changes include the addition of language requiring public school district traffic safety education programs to incorporate "driving safely among pedestrians and bicyclists" curriculum materials, approved by the director of licensing, into their local curriculum. This change is in response to HB 2564 and the resulting changes made to chapter 28A.220 RCW. In addition, there is a change made to the language in the WAC regarding the process for obtaining a TSE conditional certificate to clarify that process and remove ambiguity in the training requirement.

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, OSPI, (360) 725-6136; Implementation: Martin Mueller, OSPI, (360) 725-5175; and Enforcement: Allan J. Jones, OSPI, (360) 725-6120.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

October 30, 2008
Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending WSR 06-08-043, filed 3/30/06, effective 4/30/06)

WAC 392-153-021 Conditional traffic safety education certificates—Behind the wheel or classroom. (1) ~~((If you are not a certificated teacher,))~~ You may be issued a behind the wheel conditional certificate by the superintendent of public instruction to teach the laboratory phase, provided you meet the following requirements:

(a) Complete a behind the wheel conditional certificate course, consisting of at least sixty clock hours of instruction, approved by the superintendent of public instruction that includes supervised practice in instructing and demonstration of instructional competencies within two years prior to application. You must also pass practical and knowledge examinations administered by an agent approved by the office of the superintendent of public instruction.

(b) Possess a valid Washington state driver's license (or a valid license from another state provided you are a resident of that state).

(c) Hold a high school diploma or its equivalent.

(d) Have at least five years of licensed driving experience.

(e) Provide a current satisfactory driving record to the employing school district on an annual basis.

~~(f) ((Verify completion of at least sixty hours of course work within the previous two years.~~

~~(g))~~ Provide verification to the office of the superintendent of public instruction that the employing school district has determined that you comply with all of the requirements set forth in this chapter.

~~((H))~~ (g) To teach using a simulator or on a multiple car driving range, you must provide evidence of having completed an additional thirty hours of course work which includes supervised practice in instructing using the designated method.

(2) ~~((If you are not a certificated teacher,))~~ You may be issued a classroom conditional certificate by the superintendent of public instruction to teach the classroom phase, provided you meet the following requirements:

(a) Possess a valid Washington state driver's license (or a valid license from another state provided you are a resident of that state).

(b) Provide a current satisfactory driving record to the employing school district on an annual basis.

(c) Complete at least one thousand hours of behind the wheel teaching experience within the last five years.

(d) Complete an eighty clock hour classroom instructor training course approved by the superintendent of public instruction.

(e) Provide verification to the office of the superintendent of public instruction that the employing school district has determined that you comply with all of the requirements set forth in this chapter.

(3) A behind the wheel or classroom conditional certificate is valid for two years or less. The superintendent of public instruction may reissue the conditional certificate if you provide verification that you continue to meet all requirements of this chapter, including having completed sixty hours of course work within the previous two years. However, for the purpose of reissue, the employing school district superintendent (or designee) may approve up to forty-eight of the sixty hours, including approving credit for professional development courses or traffic safety education related projects.

(4) Conditional certificates are subject to suspension and revocation under the provisions of 180-79A WAC.

AMENDATORY SECTION (Amending WSR 06-08-043, filed 3/30/06, effective 4/30/06)

WAC 392-153-032 Curriculum guide and course requirements. (1) Each school district curriculum guide shall include:

(a) The minimum concepts to be taught, which are: Introduction to highway transportation system; preparing and controlling the vehicle; maneuvering in limited space; signs, signals, and pavement markings; vehicle characteristics; human functions used in driving; roadway variations; intersections, which shall include highway-rail grade crossings; management of time and space; lane changes; passing; non-motorized traffic; internal factors affecting driving performance, which shall include emotional and behavior issues;

physical factors affecting driving performance, which shall include seatbelt usage and its benefits; alcohol and drugs; vehicle maintenance; planning for travel; limited visibility; reduced traction; special driving conditions; vehicle malfunctioning; avoiding and minimizing impact; post-crash responsibilities; legal responsibilities; highway transportation system improvement; fuel conservation; and motorcycle awareness; and driving safely among bicyclists and pedestrians using materials approved by the director of the department of licensing.

(b) The methods of instruction used by the teacher in presenting the material.

(c) The student performance objectives and evaluation criteria.

(d) The activities that will enable a student to accomplish the objectives (while allowing for individual differences) and the required level of competency for each objective.

(e) Information on the fifty hours of adult guided practice and the driving restrictions required by the intermediate driver license.

(f) A flow chart that indicates how the classroom and laboratory lessons are sequenced and integrated.

(g) Classroom and laboratory lesson plans, including driving routes for laboratory experience.

(2) Each traffic safety education course shall include comprehensive written and driving exams.

WSR 08-22-046

PROPOSED RULES

DEPARTMENT OF FINANCIAL INSTITUTIONS

(Division of Consumer Services)

[Filed October 31, 2008, 11:33 a.m.]

Continuance of WSR 08-21-165.

Preproposal statement of inquiry was filed as WSR 08-13-051.

Title of Rule and Other Identifying Information: Amending the rules in chapter 208-660 WAC, implementing the Mortgage Brokers Practices Act, chapter 19.146 RCW.

Hearing Location(s): John A. Cherberg Senate Building, Senate Hearing Room 3, Capitol Campus, Olympia, Washington 98504, on November 25, 2008, at 1:00 p.m. to 3:00 p.m.

Date of Intended Adoption: December 23, 2008.

Submit Written Comments to: Elizabeth Stancil, P.O. Box 41200, 150 Israel Road, Olympia, WA 98504-1200, e-mail estancil@dfi.wa.gov, fax (360) 586-5068, by November 25, 2008.

Assistance for Persons with Disabilities: Contact Elizabeth Stancil by November 19, 2008, TTY (360) 664-8126 or (360) 902-8793.

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

hearing on the proposed rules to November 25, 2008, 1-3 p.m.

October 31, 2008

Deborah Bortner, Director

Division of Consumer Services

WSR 08-22-050

PROPOSED RULES

PIERCE COLLEGE

[Filed November 3, 2008, 10:13 a.m.]

Continuance of WSR 18-21-002 [08-21-002].

Preproposal statement of inquiry was filed as WSR 08-17-093.

Title of Rule and Other Identifying Information: Student rights and responsibilities/student code of conduct.

Hearing Location(s): Pierce College, Fort Steilacoom Board Room (325-H), 9401 Farwest Drive S.W., Lakewood, WA 98498, on December 8, 2008, at 12 noon.

Date of Intended Adoption: December 23, 2008.

Submit Written Comments to: Marie Harris, Executive Assistant to the Chancellor, 1601 39th Avenue S.E., Puyallup, WA 98374, e-mail mharris@pierce.ctc.edu, fax (253) 864-3123, by December 3, 2008.

Assistance for Persons with Disabilities: Contact Susan McPhee by November 24, 2008, TTY (253) 964-6228 or (253) 964-6525.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Address current social and technological issues related to student rights, responsibilities and conduct of students at Pierce College.

Reasons Supporting Proposal: Change of date for public hearing to better accommodate college/community input during holiday season.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Pierce College, public.

Name of Agency Personnel Responsible for Drafting: Nancy Houck, Director of Student Success, Pierce College (FS), (253) 964-6581; Implementation: Nancy Houck and Mari Kruger, Pierce College District, (253) 964-6581; and Enforcement: Vice Presidents of Learning and Student Success, Pierce College District, (253) 964-6584.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not impose any costs for the institution.

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

October 3, 2008

Michele Johnson

Chancellor

WSR 08-22-053
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed November 3, 2008, 12:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-15-135.

Title of Rule and Other Identifying Information: The department is amending chapter 388-71 WAC, Home and community services and programs and chapter 388-112 WAC, Residential long-term care services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on December 9, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 10, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 9, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by November 25, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 146, Laws of 2008 (ESSHB [E2SHB] 2668) requires that all nursing assistants who will be delegated the task of insulin injections complete a specialized diabetes nurse delegation training. The new language in chapters 388-71 and 388-112 WAC add this requirement.

The purpose of new rules in WAC 388-112-02605 through 388-112-02630 is to add content requirements for the existing HIV/AIDS training requirement.

New language in WAC 388-112-0250 clarifies that the existing CPR training requirement must include skills demonstration tests.

WAC 388-112-0180 is amended to correct a WAC reference.

Statutory Authority for Adoption: Chapter 146, Laws of 2008 (ESSHB [E2SHB] 2668), RCW 18.20.090, 74.08.090, chapter 70.128 RCW.

Statute Being Implemented: Chapter 146, Laws of 2008 (ESSHB [E2SHB] 2668), RCW 18.20.090, 74.08.090, chapter 70.128 RCW.

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: Barbara Hanneman, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2540.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the rules and determined that no more than minor costs will be imposed on small businesses or nonprofit organizations.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Barbara Hanneman, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2540, fax (360) 725-2646, e-mail HanneBJ@dshs.wa.gov.

October 29, 2008

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0520 Are there training requirements for an individual provider or a home care agency provider of an adult client? An individual provider or a home care agency provider for an adult client must meet the training requirements in WAC 388-71-05665 through 388-71-05865 and WAC 388-71-0801 through 388-71-0826.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

WAC 388-71-05810 What knowledge and skills must nurse delegation core training include? Only the ~~((curricula))~~ curriculum developed by DSHS ~~((may be used))~~, "Nurse Delegation for Nursing Assistants", meets the training requirement for nurse delegation core training.

AMENDATORY SECTION (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

WAC 388-71-05895 What additional qualifications are required for instructors of nurse delegation core training and specialized diabetes nurse delegation training? An instructor for nurse delegation core training and specialized diabetes nurse delegation training must have a current RN license in good standing.

NEW SECTION

WAC 388-71-0801 What is specialized diabetes nurse delegation training? Specialized diabetes nurse delegation training is the required training for nursing assistants, certified or registered, who will be delegated the task of insulin injections. DSHS approves the instructors for the specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-71-0806 What knowledge and skills must specialized diabetes nurse delegation training include? Specialized diabetes nurse delegation training consists of three modules on diabetes, insulin, and injections. Only the curriculum developed by DSHS, "Nurse Delegation for Nurs-

ing Assistants: Special Focus on Diabetes", may be used for the specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-71-0811 Is competency testing required for the specialized diabetes nurse delegation training? Passing the DSHS competency test is required for successful completion of specialized diabetes nurse delegation training, as provided under WAC 388-71-05835 through 388-71-05865.

NEW SECTION

WAC 388-71-0816 Is there a challenge test for specialized diabetes nurse delegation training? There is no challenge test for specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-71-0821 What documentation is required for successful completion of specialized diabetes nurse delegation training? (1) Specialized diabetes nurse delegation training must be documented by a certificate of successful completion of training, issued by the instructor or training entity, that includes:

- (a) The name of the trainee;
 - (b) The name of the training;
 - (c) The name of the training entity giving the training;
 - (d) The instructor's name and signature; and
 - (e) The date(s) of training.
- (2) The trainee must be given an original certificate.

NEW SECTION

WAC 388-71-0826 Who is required to complete the specialized diabetes nurse delegation training, and when? Specialized diabetes nurse delegation training is required before a nursing assistant, certified or registered, who meets the qualifications in WAC 388-71-05830, may be delegated the task of insulin injections.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0175 What knowledge and skills must nurse delegation core training include? Only the curriculum developed by DSHS (~~may be used~~), "Nurse Delegation for Nursing Assistants", meets the training requirement for nurse delegation core training.

AMENDATORY SECTION (Amending WSR 02-15-065, filed 7/11/02, effective 8/11/02)

WAC 388-112-0180 Is competency testing required for nurse delegation core training? Passing the DSHS competency test is required for successful completion of nurse delegation core training, as provided under WAC (~~(388-112-0265)~~) 388-112-0290 through (~~(388-112-0295)~~) 388-112-0315.

NEW SECTION

WAC 388-112-0196 What is specialized diabetes nurse delegation training? Specialized diabetes nurse delegation training is the required training for nursing assistants, certified or registered, who will be delegated the task of insulin injections. DSHS approves the instructors for specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112-01961 What knowledge and skills must specialized diabetes nurse delegation training include? Specialized diabetes nurse delegation training consists of three modules on diabetes, insulin, and injections. Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants: Special Focus on Diabetes", may be used for the specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112-01962 Is competency testing required for the specialized diabetes nurse delegation training? Passing the DSHS competency test is required for successful completion of the specialized diabetes nurse delegation training, as provided under WAC 388-112-0290 through 388-112-0315.

NEW SECTION

WAC 388-112-01963 Is there a challenge test for specialized diabetes nurse delegation training? There is no challenge test for specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112-01964 What documentation is required for successful completion of specialized diabetes nurse delegation training? (1) Specialized diabetes nurse delegation training must be documented by a certificate of successful completion of training, issued by the instructor or training entity, that includes:

- (a) The name of the trainee;
 - (b) The name of the training;
 - (c) The name of the training entity giving the training;
 - (d) The instructor's name and signature; and
 - (e) The date(s) of training.
- (2) The trainee must be given an original certificate.

Adult family homes and boarding homes must keep a copy of the certificate on file.

NEW SECTION

WAC 388-112-01965 Who is required to complete the specialized diabetes nurse delegation training, and when? Specialized diabetes nurse delegation training is required before a nursing assistant, certified or registered, who meets the qualifications in WAC 388-112-0195, may be delegated the task of insulin injections.

AMENDATORY SECTION (Amending WSR 06-16-072, filed 7/28/06, effective 8/28/06)

WAC 388-112-0250 What is CPR training? Cardiopulmonary resuscitation (CPR) training is training provided by an authorized CPR instructor. Trainees must successfully complete the written and skills demonstrations tests.

NEW SECTION

WAC 388-112-02610 What is HIV/AIDS training? It is recommended that the HIV/AIDS training be taught in classroom style by an expert instructor who can answer technical questions. The Washington state department of health's "KNOW HIV Prevention Education for Health Care Facility Employees" manual is the state model, designed as a complete training. HIV/AIDS training must be based on this curriculum, be a minimum of two to three hours, and include the following topics:

- (1) Causes of HIV and how it is spread, including:
 - (a) Reported cases in the United States and Washington state; and
 - (b) Risk groups and risky behaviors.
- (2) Transmission and infection control, including:
 - (a) Infection control precautions;
 - (b) Factors affecting the risk for transmission; and
 - (c) Risks for transmission to health care workers.
- (3) Legal and ethical issues, including:
 - (a) Confidentiality;
 - (b) Informed consent;
 - (c) Legal reporting requirements;
 - (d) Ethical issues; and
 - (e) Civil rights.
- (4) Psychosocial issues, including:
 - (a) Personal impact of HIV continuum;
 - (b) The human response to death and dying;
 - (c) Issues for care providers;
 - (d) Family issues; and
 - (e) Special populations.

NEW SECTION

WAC 388-112-02615 Is competency testing required for HIV/AIDS training? No competency testing is required for HIV/AIDS training.

NEW SECTION

WAC 388-112-02620 Is there a challenge test for HIV/AIDS training? There is no challenge test for HIV/AIDS training.

NEW SECTION

WAC 388-112-02625 What documentation is required for completion of HIV/AIDS training? HIV/AIDS training must be documented by:

- (1) Proof of registration, certification or licensure from the department of health; or

- (2) A certificate of completion of the state developed twenty-eight hour revised fundamentals of caregiving, completed after December 19, 2003; or

- (3) A certificate of completion of HIV/AIDS training issued by the instructor or training entity that includes:

- (a) The name of the trainee;
 - (b) The name of the training curriculum;
 - (c) The name of the home or training entity giving the training;
 - (d) The instructor's name and signature; and
 - (e) The date(s) of the training session(s).
- (4) The trainee must be given an original certificate. The facility or entity must keep a copy of the certificate on file.

NEW SECTION

WAC 388-112-02630 Who is required to complete HIV/AIDS training, and when? Adult family home and boarding home staff who have potential exposure to bodily fluids must complete HIV/AIDS training before having routine interaction with residents.

- (1) Licensed, certified or registered staff meet the HIV/AIDS training requirements for their specific department of health license, certification or registration.

- (2) All other adult family home and boarding home staff must complete the HIV/AIDS training, as defined in WAC 388-112-02610.

WSR 08-22-054

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 3, 2008, 12:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-15-131.

Title of Rule and Other Identifying Information: The community services division is proposing to amend WAC 388-448-0050 PEP step II—How we determine the severity of mental impairments.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on December 9, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 10, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 9, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by November 25, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amendments in order to replace obsolete and outdated medical descriptions and references.

Reasons Supporting Proposal: The proposed changes are necessary to support documents that are more easily understood by mental health professionals and will promote more accurate and consistent medical evidence.

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

Statute Being Implemented: 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: Melissa Mathson, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4563.

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. The proposed amendments only affect DSHS clients by clarifying the description of medical evidence requirements to determine incapacity.

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)(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 concerning liability for care of dependents."

October 31, 2008
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-16-113, filed 8/2/00, effective 9/1/00)

WAC 388-448-0050 PEP step II—How we determine the severity of mental impairments. If you are diagnosed with a mental impairment by a professional described in WAC 388-448-0020, we use information from the provider to determine if your impairment prevents you from being ~~((gainfully employed))~~ able to work. ~~((We review the psychological evidence to determine the severity of your mental impairment.))~~

(1) We review the following psychological evidence to determine the severity of your mental impairment ~~((is based on))~~:

- (a) Psychosocial and treatment history records;
- (b) Clinical findings of specific abnormalities of behavior, mood, thought, orientation, or perception;
- (c) Results of psychological tests; and
- (d) Symptoms observed by the examining practitioner that show ~~((impairment of))~~ how your impairment affects your ability to perform basic work-related activities.

(2) We exclude diagnosis and related symptoms of alcohol or substance abuse or addiction;

(3) If you are diagnosed with mental retardation, the diagnosis must be based on the Wechsler Adult Intelligence

Scale (WAIS). The following test results determine the severity rating:

Intelligence Quotient (IQ) Score	Severity Rating
85 or above	1
71 to 84	3
70 or lower	5

~~((3))~~ (4) If you are diagnosed with a mental impairment with physical causes, we assign a severity rating based on the most severe of the following ~~((three))~~ four areas of impairment:

- (a) Short term memory ~~((defect for recent events))~~ impairment;
- (b) ~~((Impoverished, slowed, perseverative thinking, with confusion or disorientation))~~ Perceptual or thinking disturbances; ~~((or))~~
- (c) Disorientation to time and place; or
- (d) Labile, shallow, or coarse affect.

~~((4))~~ (5) We base the severity of ~~((the))~~ a functional ~~((psychotic or nonpsychotic))~~ disorder ~~((, excluding alcoholism or drug addiction.))~~ on a clinical assessment of the intensity and frequency of symptoms that:

- (a) ~~((Clinical assessment of these twelve symptoms: Depressed mood, suicidal trends, verbal expression of anxiety or fear, expression of anger, social withdrawal, motor agitation, motor retardation, paranoid behavior, hallucinations, thought disorder, hyperactivity, preoccupation with physical complaints))~~ Affect your ability to perform basic work related activities; and
- (b) ~~((Clinical assessment of the intensity and pervasiveness of your symptoms and their effect on work activities))~~ Are consistent with a diagnosis of a mental impairment as listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV).

~~((5))~~ (6) We base the severity rating for a functional mental impairment on accumulated severity ratings for the ~~((twelve))~~ symptoms in subsection ~~((4(a)))~~ (5)(a) of this section as follows:

Symptom Ratings or Condition	Severity Rating
(a) The functional mental impairment is diagnosed with psychotic features; (b) You have had two or more hospitalizations for psychiatric reasons in the past two years; (c) You have had more than six months of continuous psychiatric hospital or residential treatment in the past two years; (d) The overall assessment of symptoms is rated three; or (e) At least three symptoms are rated three or higher.	3
(f) The overall assessment of symptoms is rated four; or (g) At least three symptoms are rated four or five.	4

Symptom Ratings or Condition	Severity Rating
(h) The overall assessment of symptoms is rated five; or (i) At least three symptoms are rated five.	5

~~((6))~~ (7) If you ~~((have more than one type of))~~ are diagnosed with any combination of mental retardation, mental impairment with physical causes, or functional mental impairment, we assign a severity rating as follows:

Condition	Severity Rating
(a) Two or more disorders with ratings of three; or (b) One or more disorders rated three; and one rated four.	4
(c) Two or more disorders rated four.	5

~~((7))~~ (8) We deny incapacity when you ~~((do not have))~~ haven't been diagnosed with a significant physical impairment and your overall mental severity rating is one or two;

~~((8))~~ (9) We approve incapacity when you have an overall mental severity rating of five ~~((, regardless of whether you have a physical impairment))~~.

WSR 08-22-064

WITHDRAWAL OF PROPOSED RULES GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed November 4, 2008, 8:02 a.m.]

WAC 230-06-030, proposed by the gambling commission in WSR 08-09-096 appearing in issue 08-09 of the State Register, which was distributed on May 7, 2008, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 08-22-065

WITHDRAWAL OF PROPOSED RULES LIQUOR CONTROL BOARD

(By the Code Reviser's Office)

[Filed November 4, 2008, 8:03 a.m.]

WAC 314-42-020 and 314-42-055, proposed by the liquor control board in WSR 08-09-048 appearing in issue 08-09 of the State Register, which was distributed on May 7, 2008, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 08-22-079 PROPOSED RULES GAMBLING COMMISSION

[Filed November 4, 2008, 11:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-19-027.

Title of Rule and Other Identifying Information: Amending WAC 230-17-025 Appointment of administrative law judge or "presiding officer" and new WAC 230-17-137 Adjudicative proceedings—Consideration of aggravating and mitigating circumstances.

Hearing Location(s): Holiday Inn, 1 South Grady Way, Renton, WA 98057, (425) 226-7700, on January 9, 2009, at 9:00 a.m.

Date of Intended Adoption: January 9, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by January 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by January 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The coalition for responsible gaming and regulation ("coalition") has submitted a petition for rule change. The coalition is a group that includes manufacturers, distributors, charitable/nonprofit organizations, and commercial operators. Beginning in the fall of 2006, staff had several meetings with the coalition. During these meetings, the parties discussed the coalition's concerns about some aspects of the administrative case process and worked on a rules proposal. However, an agreement satisfactory to both parties was not reached.

- **WAC 230-17-025:** The coalition proposes adding language to clarify that the "presiding officer" (which would be the administrative law judge (ALJ) or the commissioners if hearing a case on appeal) has the authority to modify sanctions sought by commission staff. Some coalition members previously told staff that they believe the ALJ's are hesitant to impose penalties that are different than those recommended by staff. Although staff does not share this perception, this addition makes it clear that the presiding officer can impose the penalty they feel is appropriate. **Staff does not object to this particular concept.**
- **WAC 230-17-137:** This new rule would require that, upon the request of any party, the presiding officer (which would be the ALJ or the commissioners if hearing a case on appeal) consider a list of aggravating and mitigating factors (included in the rule) when determining whether to modify a penalty sought by commission staff.

Staff does not support this new rule. It would extend the hearings because it creates a "sentencing/penalty" phase to the hearings. In addition, it would take the focus away from whether there was a violation.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Coalition for Responsible Gaming and Regulation, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; 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 the change would not impose additional costs on businesses.

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.

October 14, 2008

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 615, filed 10/24/07, effective 1/1/08)

WAC 230-17-025 Appointment of administrative law judge or "presiding officer." (1) The commissioners hereby appoint the office of administrative hearings to assign an administrative law judge (ALJ), called the "presiding officer," to preside at all hearings which result from administrative charges, unless:

(a) The commissioners, by their own order, declare their intent to preside at a specific proceeding; or

(b) The proceeding is an appeal of an initial order issued by an ALJ.

(2) All hearings must be conducted in compliance with Title 230 WAC and chapter 34.05 RCW.

(3) The presiding officer is authorized to modify an administrative penalty sought by commission staff against the applicant, licensee, or permittee.

NEW SECTION

WAC 230-17-137 Adjudicative proceeding—Consideration of aggravating and mitigating circumstances. At the request of any party, the presiding officer or the commissioners shall consider one or more of the following nonexclusive aggravating and mitigating circumstances to determine whether to modify a penalty sought by commission staff:

(1) The risk posed to the public health, safety, or welfare by the violation;

(2) Whether the applicant, licensee, or permittee:

(a) Knew, or reasonably should have known, the action complained of was a violation of any law, regulation, or condition of their license;

(b) Previously received a verbal warning, written warning, notice of infraction, notice of violation and settlement (NOVAS), or administrative charges from the commission for similar violations;

(c) Made, or attempted to make, a financial gain from the violation;

(d) Had an existing compliance program related to the violation; or

(e) Has subsequently initiated remedial measures to prevent similar violations from reoccurring.

(3) Whether requiring the applicant, licensee or permittee to implement a written self-enforcement and compliance program would assist in ensuring future compliance with relevant laws, regulations, and license conditions;

(4) If the violation was caused by an officer or employee of the applicant, licensee, or permittee:

(a) Whether the individual who caused the violation acted within the scope of authority granted to him or her by the applicant, licensee or permittee; or

(b) Whether the individual violated company policies, procedures, or other standards.

(5) The adequacy of any relevant training programs the applicant, licensee or permittee previously offered or made available to its employees;

(6) Whether and the extent to which the applicant, licensee or permittee cooperated with the commission staff during the investigation of the violation; and

(7) The penalties imposed on other applicants, licensees or permittees for similar violations;

(8) Whether the applicant, licensee, or permittee reasonably relied upon professional advice from an accountant or other recognized professional, which was relevant to the conduct or action resulting in the violation; or

(9) Any other aggravating or mitigating circumstances the commissioners deem relevant.

WSR 08-22-088

PROPOSED RULES

**DEPARTMENT OF COMMUNITY,
TRADE AND ECONOMIC DEVELOPMENT**

[Filed November 4, 2008, 2:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-19-111.

Title of Rule and Other Identifying Information: Update to chapter 130-20 WAC, Motion Picture Competitiveness Act.

Hearing Location(s): Yesler Community Center, Multi-Purpose Room, 835 Yesler Way, Seattle, WA 98105, (206) 386-1245, on December 12, 2008, at 11:00 a.m. to 1:00 p.m.

Date of Intended Adoption: January 3, 2009 [2009].

Submit Written Comments to: Mary Trimarco, Managing Director, CTED, Washington State Film Office, 2001 Sixth Avenue, Suite 2600, Seattle, WA 98121-2895, e-mail maryt@cted.wa.gov, fax (206) 256-6158, by December 17, 2008.

Assistance for Persons with Disabilities: Contact Yesler Community Center by December 11, 2008, TTY (206) 386-1245.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2008 legislative session, the legislature passed SSB 6423 (chapter 85, Laws of 2008) which made changes to the motion picture

competitiveness program. Some of the statutory changes require an update to chapter 130-20 WAC. Additionally, the program has been under way for twenty months. The department is proposing some rule updates based on nearly two years' of program experience.

Reasons Supporting Proposal: Conform WAC to law (reference SSB 6423, chapter 85, Laws of 2008) and enhance efficiency of program by providing additional clarity to the rules.

Statutory Authority for Adoption: Chapter 43.365 RCW.

Statute Being Implemented: Chapter 43.365 RCW.

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

Name of Proponent: Washington department of community, trade and economic development, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mary Trimarco, Managing Director, CTED, Washington State Film Office, 2001 Sixth Avenue, Suite 2600, Seattle, WA 98121-2895, (206) 256-6156.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small businesses are directly affected by the rule (or statute).

A cost-benefit analysis is not required under RCW 34.05.328. CTED is not included in the list of departments required to conduct a cost-benefit analysis.

October 20, 2008

Marie Sullivan

Director of
Government Relations

AMENDATORY SECTION (Amending WSR 07-03-015, filed 1/4/07, effective 2/4/07)

WAC 130-20-010 Definitions. The following definitions apply to this chapter, unless the context clearly requires otherwise:

(1) "Applicant" means a television, film or commercial production company intending to produce a qualified production in Washington state.

(2) "Motion picture competitiveness program" means an approved program that is a 501 (c)(6) nonprofit organization with the sole purpose of revitalizing the state's standing in the film production marketplace through recommending and awarding financial assistance to qualified productions.

(3) "Costs" mean actual expenses of preproduction, production and postproduction expended in Washington state for the production of motion pictures, including but not limited to payments made for salaries, wages, and health insurance and retirement benefits, the rental/lease costs of machinery, equipment and facilities, and the purchase of food, property, lodging, and permits for work conducted in Washington state.

(4) "Department" means the department of community, trade, and economic development.

(5) "State film office" means a program within the department with the responsibility of promoting Washington state as a premier location for film and video production and assisting production needs within the state.

(6) "Motion picture" means a recorded audio-visual production intended for distribution to theaters, DVD, video, or the internet, or television, or one or more episodes of a single television series, television pilot or television commercials. Motion picture does not mean production of a television commercial that spends less (~~(then two)~~) than one hundred fifty thousand dollars in the state of Washington or one or more segments of a newscast or sporting event.

(7) "Funding assistance" means financial assistance from a motion picture competitiveness program.

(8) "Person" means the same as defined in RCW 82.04.-030.

(9) "Qualified production" is a production that has been certified by the motion picture competitiveness program as fully meeting the requirements for funding assistance.

(10) "Qualified expenditures" include production costs for wages and benefits provided to residents of Washington state for services performed in Washington state, goods and services purchased, leased or employed from a legal resident of this state, or a vendor or supplier who is located and doing business in this state for one year. Qualified expenditures do not include wages, salaries or other compensation for services of nonresident production personnel.

(11) "Motion picture competitiveness board" means a board appointed by the governor that administers the motion picture competitiveness program. The board evaluates and awards funding assistance to motion picture projects pursuant to the guidelines of this chapter.

AMENDATORY SECTION (Amending WSR 07-03-015, filed 1/4/07, effective 2/4/07)

WAC 130-20-020 Eligibility criteria and guidelines.

(1) To qualify for funding assistance, the applicant must:

(a) Certify that it is not engaged, to any extent, in the production of erotic material, as defined in RCW 9.68.050.

(b) The end credits of a film production must acknowledge that the production was filmed in Washington state. The type and style of acknowledgment shall be negotiated between the motion picture competitiveness board and the production company.

(c) Agree to pay all obligations the film production company incurs in Washington state.

(d) Complete a survey as required in WAC 130-20-060 and file it with the state film office following the completion of the part of the project covered by the contract with the competitiveness board and before distribution of the funding assistance.

(e) Make every effort to maximize the hiring of local cast, crew and support services.

(f) Make industry standard payments for health insurance and a retirement plan for those positions typically covered by a collective bargaining agreement; and

(g) Enter into a contract with the motion picture competitiveness program accepting the terms above.

(2) The following activities are considered, but not limited to, qualified expenditures, provided the expenditure occurs in Washington state:

(a) Production costs include costs for preproduction, production and postproduction.

(b) Salaries of Washington state residents who are cast and crew, (~~not to exceed two hundred fifty thousand dollars for any one employee,~~) including wages and payments for health insurance and retirement plans, or fees of Washington state residents to include talent, management and labor.

(c) Cost of set construction and operations, wardrobe, make-up, accessories, location fees and related services.

(d) Costs associated with photography, sound synchronization, lighting and related services and materials.

(e) Renting or leasing vehicles, equipment or facilities.

(f) In-state food (~~and~~), lodging (~~or a per diem for in-state employees, not to exceed the IRS rate or rate negotiated with the production company~~), and per diems.

(g) Agency fees for insurance coverage and bonding if purchased from Washington state-based insurance agent.

(h) Postproduction expenditures directly attributable to the production of a motion picture or commercial for services including, but not limited to: Editing and related services, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects, animation services, and music.

(i) Legal and accounting fees and expenses related to the production's activities in Washington state, provided such services are performed by Washington state licensed attorneys or accountants.

(j) "Preproduction" means costs for standard activities directly related to the production, which are incurred prior to the first day of principal photography for a motion picture.

(k) Other direct or indirect costs of producing a film in accordance with the generally accepted entertainment industry practices if expenditures occurred in the state of Washington.

(l) Other costs the competitiveness program believes add economic benefit to the state of Washington.

(3) The board is encouraged to consider the following when considering certifying a production for funding assistance:

(a) The additional income and tax revenue to be retained in the state for general purposes.

(b) Creation and retention of family wage jobs that provide health insurance and payments into a retirement plan.

(c) The impact of projects to maximize in-state labor and use of in-state film production and film postproduction companies.

(d) The impact on the local economy and the state economy as a whole.

AMENDATORY SECTION (Amending WSR 07-03-015, filed 1/4/07, effective 2/4/07)

WAC 130-20-030 Funding assistance limits. (1) Maximum funding assistance from a motion picture competitiveness program is (~~capped at one million dollars per production and~~) subject to the following limitations:

(a) No more than twenty percent of a total actual expenditure in the state of at least five hundred thousand dollars for a single feature film produced in Washington state.

(b) No more than twenty percent of a total actual expenditure in the state of at least three hundred thousand dollars

per television episode produced in Washington state (e.g., television series, pilot, movie of the week).

(c) No more than twenty percent of a total actual expenditure in the state of at least (~~two~~) one hundred fifty thousand dollars for an infomercial or television commercial produced in Washington state.

(2) Funding assistance is subject to the amount available in the account managed by the motion picture competitiveness program.

AMENDATORY SECTION (Amending WSR 07-03-015, filed 1/4/07, effective 2/4/07)

WAC 130-20-060 Survey requirement. In order to recognize the accountability and effectiveness of tax policy, the legislature requires that each production receiving funding assistance from the motion picture competitiveness program shall report information to the state film office through a survey.

(1) The motion picture competitiveness program shall ensure that no funds are disbursed until an applicant submits answers to a survey developed by the state film office.

(2) The state film office will make available on its web site a survey template.

(3) The motion picture competitiveness program may extend the due date for timely filing of the survey if failure to file was the result of circumstances beyond the control of the motion picture production receiving the funding assistance.

(4) Surveys shall include the following information:

(a) The amount of funding assistance requested.

(b) The total amount of preproduction, production and postproduction spending made in the state.

(c) The number of total employment positions.

(d) The number of full-time and part-time/temporary employment positions as a percent of total employment.

(i) Full-time employment is (~~sixty~~) forty hours or more per week, or positions held for the full shooting schedule;

(ii) Part-time/temporary employment is for positions held for less than the full shooting schedule.

(e) The number of jobs at the wage bands of less than thirty thousand dollars, thirty thousand to sixty thousand dollars, and sixty thousand dollars and greater per production.

(f) The number of jobs that have employer-provided health insurance and payments into a retirement plan by each wage band.

(g) Additional information as requested by the department or state film office.

(5) The state film office will continue to track total production spending of projects, monitor the state's competitiveness in the national marketplace, and continue to build partnerships that streamline the delivery of production services statewide.

(6) The department shall submit a summary of descriptive statistics based on information from the survey each year by September 1.

(7) The department shall provide the complete surveys to the joint legislative audit and review committee each year by September 1.

WSR 08-22-089
PROPOSED RULES
WASHINGTON STATE UNIVERSITY

[Filed November 4, 2008, 2:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-16-098.

Title of Rule and Other Identifying Information: Update rules regarding access to student education records and the process for seeking amendments to such records. Includes amendments to WAC 504-21-030, 504-21-040, 504-21-050, 504-21-060, and 504-21-080.

Hearing Location(s): Washington State University, Lighty Room 405, Pullman, Washington, on December 11, 2008, at 4:00 p.m. to 5:00 p.m.

Date of Intended Adoption: January 30, 2009.

Submit Written Comments to: Ralph T. Jenks, Director, Procedures, Records, and Forms and University Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail jenks@wsu.edu, fax (509) 335-3969, by December 11, 2008.

Assistance for Persons with Disabilities: Contact Deborah Bartlett by December 5, 2008, (509) 335-2005.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are required to ensure compliance with the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended. The rules are updated to accommodate administrative and location changes and to allow for student requests to dispute and seek amendment to student education records.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Richard Backes, Registrar's Office, (509) 335-1139; Implementation and Enforcement: Julia Pomerenk, Registrar's Office, (509) 335-2522.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

November 4, 2008

Ralph T. Jenks, Director
 Procedures, Records, and Forms
 and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-07-043, filed 3/8/95, effective 4/8/95)

WAC 504-21-030 Education records—Student's right to inspect. (1) A student has the right to inspect and review his or her education records. A list of the types of education records maintained by the university and the record locations may be obtained by the student (~~at the office of student affairs or~~) at the registrar's office.

(a) For purposes of this chapter the term "education records" means those records, files, documents and other

materials which contain information directly related to a student.

(b) The term "education records" does not include:

(i) Records of instructional, supervisory and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute or the maker's administrator.

(ii) Records of the university police department which are maintained by the law enforcement unit of WSU that were created by the WSU law enforcement unit for the purposes of law enforcement.

(iii) Records made and maintained in the normal course of business which relate exclusively to the person's capacity as an employee and are not available for any other purposes. Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under this paragraph.

(iv) Records on a student which are created or maintained by a physician, psychiatrist, psychologist or other recognized professional or para-professional, acting in a professional or para-professional capacity, or assisting in that capacity and which are created, maintained or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment. Such records can be personally reviewed by a physician or other appropriate professional of the student's choice. In addition, health care information may be disclosed if authorized by state law.

(v) Records that contain information about an individual after he or she is no longer a student at that agency or institution.

(2) Recommendations, evaluations or comments concerning a student that are provided in confidence, either expressed or implied, as between the author and the recipient, shall be made available to the student, except as provided in this subsection.

(a) The student may specifically release his or her right to review where the information consists only of confidential letters and recommendations respecting:

(i) Admission to any educational institution, or

(ii) Employment application information and documents filed and maintained at the student's request at the (~~university office of career services and placement~~) career services office.

(iii) Receipt of an honor or honorary recognition.

(iv) Faculty evaluations and other education records placed in departmental files where the department serves in a placement or referral capacity.

(b) A student's waiver of his or her right of access to confidential statements is valid only if:

(i) The student, upon request, shall be notified of the names of all persons making confidential statements concerning him; and

(ii) Confidential statements shall be used solely for the purpose for which they were originally intended; and

(iii) Such waivers are not required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from the university.

(iv) The waiver is made in writing and signed by the student, regardless of age.

(c) Recommendations, evaluations or comments concerning a student that have been provided in confidence, either expressed or implied, as between the author and the recipient, prior to January 1, 1975, shall not be subject to release to the student. Such records shall remain confidential and shall be released only with the consent of the author of the specific document. Such records shall be used by the institution only for the purpose for which they were originally intended.

(3) Where requested records or data include information on more than one student, the student shall be entitled to receive or be informed of only that part of the record or data that pertains to the requesting student.

(4) Students have the right to obtain copies of their education records. Charges for the copies shall not exceed the cost normally charged by a Washington State University copy center (except in cases where charges have previously been approved for certain specified services, such as transcripts and grade sheets).

(5) The registrar is the official custodian of academic records and therefore is the only official who may issue a transcript of the student's official academic record.

(6) Student education records may be destroyed in accordance with a department's routine retention schedule where the departmental procedure has been approved by the university records officer. In no case will any record which is requested by a student for review in accordance with these regulations be removed or destroyed prior to final disposition of the record request.

AMENDATORY SECTION (Amending WSR 95-07-043, filed 3/8/95, effective 4/8/95)

WAC 504-21-040 Requests and appeal procedures.

(1) A request by a student for review of information or a request for amendment shall be made in writing to the university employee or office having custody of the particular record. A request for amendment may be appropriate if the student believes the records contain information that is inaccurate, misleading, or in violation of his/her rights to privacy. Neither the student records officer nor the registration and records committee shall review any matter regarding the appropriateness of official academic grades. (University academic regulations 104, "academic complaint procedures," and 105, "administrative changes to final grades," should be followed in all cases involving grading disputes.)

(2) The person or office receiving a proper request for review ~~((of information must respond to a request for education records within a reasonable period of time, but in no case more than forty-five days after the request has been made. A university employee or office which is unable to comply with a student's request within the above-stated time period shall inform the student of that fact and the reasons therefor in writing))~~ or amendment of information must respond to the request within a reasonable period of time, but in cases where a student requests review, no more than forty-five days after the request has been made.

(3)(a) A student who believes his or her request has not been properly answered by a particular person or office should consult the appropriate dean or director having supervisory responsibility for the office.

(b) If a student remains dissatisfied after consulting with the appropriate dean or director, the student may then ~~((request a hearing before the university's student records committee. Following the hearing, the university's student records committee shall render its decision within a reasonable period of time))~~ appeal to the student records officer, who will review the appeal and may refer it to the university registration and records committee. All cases involving requests for amendment will be referred to the registration and records committee for hearing. In either case, the decision shall be rendered within a reasonable period of time. The decision ((of the university's student records committee)) shall be final, except as provided in WAC 504-21-080.

(c) ~~((In no case shall any request for review by a student be considered by the university's student records officer which has not been filed with that officer in writing within ninety days from the date of the initial request to the custodian of the record.))~~ Appeals must be filed with the student records officer within ninety days from the date of the initial request to the custodian of the record.

(d) ~~((The student records committee shall not review any matter regarding the appropriateness of official academic grades. (University Academic Regulation 104, "academic complaint procedure" should be followed in all cases involving grading disputes.))~~

(e)) Eligible students are hereby notified of their right to file a complaint with the Department of Education concerning any alleged failure of Washington State University to comply with the Family Educational Rights and Privacy Act of 1974, as amended.

AMENDATORY SECTION (Amending WSR 01-19-027, filed 9/13/01, effective 10/14/01)

WAC 504-21-050 Release of personally-identifiable records.

(1) The university shall not permit access to or the release of education records or personally-identifiable information contained therein, other than "directory information," (as defined in ~~((paragraph 5))~~ subsection (5) of this section), without the written consent of the student to any party other than the following:

(a) ~~((University staff and faculty, including deans, department and program chairs and academic advisers, and faculty and students when officially appointed to a university senate or administrative committee, when the information is required for a legitimate educational interest within the performance of their responsibilities to the university, with the understanding that its use will be strictly limited to the performance of those responsibilities.))~~ School officials with a legitimate educational interest. A school official is a person employed by WSU in an administrative, supervisory, academic or research, or support staff position (including health staff and WSU police); a person or company with whom the university has contracted (such as an attorney, auditor, or collection agent); a person serving on the board of trustees; or a student serving on an official committee (such as a disciplin-

ary or grievance committee, or assisting another school official in performing his or her tasks). A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her educational responsibilities.

(b) Federal and state officials requiring access to education records in connection with the audit and evaluation of a federally- or state-supported education program or in connection with the enforcement of federal or state legal requirements which relate to such programs. In such cases the information required shall be protected by the federal or state official in a manner which will not permit the personal identification of students and their parents to other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation or enforcement of legal requirements.

(c) Persons or organizations, other than parents or legal guardians, providing to the student financial aid, or determining financial aid decisions concerning eligibility, amount, condition, and enforcement of terms of said aid.

(d) Organizations conducting studies for or on behalf of the university for purposes of developing, validating or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students by persons other than representatives of such organizations, and such information will be destroyed when no longer needed for the purposes for which it was provided.

(e) Education records may be used for legitimate academic research; provided that

(i) The procedures utilized and the reported findings do not violate the student's confidence;

(ii) Students' names will not be included in the study or in any way linked with the data;

(iii) Case histories and case records are sufficiently disguised to prevent identification of the individuals involved; and

(iv) The student's written permission is obtained where individual identification occurs.

(f) Accrediting organizations in order to carry out their accrediting functions.

(g) Any person or entity designated by judicial order or lawfully issued subpoena, upon condition that a reasonable attempt has been made to notify the student of all such orders or subpoenas in advance of the compliance therewith unless the subpoena is issued for a law enforcement purpose or is issued by a federal grand jury and the court or other issuing agency has ordered that the existence of the subpoena not be disclosed. Any university employee or office receiving a subpoena or judicial order for education records should immediately notify the WSU division of the office of the attorney general.

(h) Parents or legal guardians of a student who have established that student's status as their dependent according to Internal Revenue Code.

(i) An alleged victim of any crime of violence or non-forcible sexual offense, as they are defined in Appendix A to 34 CFR Part 99, shall be informed of the results of any disci-

plinary proceeding conducted by WSU against the alleged perpetrator of that crime with respect to that crime.

(j) To the office of the attorney general when disclosure is to comply with a judicial order or to provide legal advice.

(k) WSU may provide to parents or guardians of students under age twenty one information regarding violations of federal, state, or local laws or the university's conduct code where such violations concern the use or possession of alcohol or controlled substances and where WSU determines that those students have committed such violations.

(l) When either the student initiates legal action against WSU or when WSU initiates legal action against the student, WSU may disclose to the court any educational records of the student that are relevant to the legal action.

(m) Information may be disclosed in conformance with other exceptions to the prior written consent requirement of the Family Educational Rights and Privacy Act and implementing regulations found at 34 C.F.R. § 99. A copy of these regulations may be obtained from the Office of the Registrar.

(2) Where the consent of a student is obtained for the release of education records, it shall be in writing, signed and dated by the person giving such consent, and shall include:

(a) A specification of the records to be released,

(b) The reasons for such release, and

(c) The ~~((names))~~ identity of the parties to whom such records will be released unless the nature of the activity is such that advance identification of recipients is not possible such as employment assistance provided by the university office of career services and placement, in which case an effort will be made to identify recipients of information as they become known.

(3) In cases where records are made available without student consent as permitted by ~~((WAC 504-21-050))~~ subsection (1)(b), (c), (d), (e), (f), ~~((i) and (j))~~ and (g) of this section (except in cases where the subpoena prohibits disclosure), subsection (1)(i) of this section and, when required by law, subsection (1)(m) of this section the university shall maintain a record which will indicate the parties which have requested or obtained access to a student's records maintained by the university and which will indicate the legitimate interest of the requesting party. ~~((Releases in accordance with WAC 504-21-050 (1)(a) need not be recorded.))~~

(4) Personally-identifiable education records released to third parties, with or without student consent, shall be accompanied by a ~~((printed))~~ written statement indicating that the information cannot be subsequently released in a personally-identifiable form to any other parties without obtaining consent of the student unless such disclosures are made pursuant to ~~((WAC 504-21-050))~~ subsection (1)(g), (h), (j), (k), or (l) of this section or the information released is directory information as defined in ~~((paragraph 5))~~ subsection (5) of this section.

(5) The term "directory information" used in ~~((WAC 504-21-050))~~ subsection (1) of this section is defined as student's name (including any former name), local and permanent addresses and telephone numbers, electronic mail address(es), major and minor fields of study, participation in officially-recognized activities in sports, weight and height of members of athletic teams, dates of attendance, enrollment status (e.g., undergraduate ~~((or))~~ or graduate; full time or

part-time), grade level, degrees, status as graduate assistant and assignment, certificates, and awards received including the president's honor roll, and the most recent previous educational institution attended by the student. Students may request that the university not release directory information by filing a request (~~(with the registrar's office or)~~ on-line or with the office of payroll services).

(6) Information from education records may be released to appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other person(s).

AMENDATORY SECTION (Amending Order 89-1, Resolution No. 3-31-89-16, filed 5/18/89, effective 7/1/89)

WAC 504-21-060 University records. All university employees or offices who have custody of education records will develop procedures in accord with WAC 504-21-010 through 504-21-060. Any supplementary regulations found necessary by departments will be filed with the (~~(student))~~ registration and records committee, which will be responsible for periodic review of policy and procedures.

No records shall be kept that reflect a student's political or ideological beliefs or associations.

AMENDATORY SECTION (Amending WSR 95-07-043, filed 3/8/95, effective 4/8/95)

WAC 504-21-080 Right of student to register objections. Any student who (~~(objects to the accuracy or truthfulness of any information contained in any university education record that is related to him or her may, after processing an unsuccessful appeal pursuant to WAC 504-21-040, submit a written view))~~ unsuccessfully requests an amendment pursuant to WAC 504-21-040 may submit a written objection regarding his or her education records to the provost, who shall *review the appeal and take necessary action which may include reconsideration by the student records officer or inclusion of the written objection or summary thereof in such education records*; provided, however, no student has any right to post objections to academic grades and have the same appear on the student's academic record.

WSR 08-22-090
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed November 4, 2008, 4:49 p.m.]

Supplemental Notice to WSR 08-14-143.

Preproposal statement of inquiry was filed as WSR 08-08-088.

Title of Rule and Other Identifying Information: Chapter 246-322 WAC, Private psychiatric and alcoholism hospitals, supplemental notice creating new section WAC 246-322-260 for adverse health event and incident reporting system.

Hearing Location(s): Department of Health, Point Plaza East, Room 139, 310 Israel Road S.E., Tumwater, WA 98501, on January 12, 2009, at 9:30 a.m.

Date of Intended Adoption: February 12, 2009.

Submit Written Comments to: John Hilger, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by January 12, 2009.

Assistance for Persons with Disabilities: Contact John Hilger by January 9, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2006 the legislature passed 2SHB 2292 codified as chapter 70.56 RCW establishing the adverse health event and incident reporting system for "medical facilities." For the purposes of adverse event reporting, psychiatric hospitals are defined as a medical facility. The proposed rules include a list of reportable adverse events, how and when to report adverse events, the form and content of the root cause analysis and the corrective action plan. In 2008 the legislature passed SB 6457 allowing hospitals to include any contextual information about an adverse event, added a timeline for reporting confirmed events and the subsequent report within forty-five days. Also in 2008, E2SHB 3123 was passed which added elements related to staffing levels at the time an event occurred. This supplemental notice amends the original proposal to include the requirements from the 2008 legislation. The intent is to improve patient safety.

Reasons Supporting Proposal: 2SHB 2292 (chapter 70.56 RCW) requires the department to adopt in rule updates to the list of serious reportable events adopted by the national quality forums in 2002. Establishing the 2002 list in rule provides for a basis for future amendments. In addition, 2SHB 2292 requires the form and content of the root cause analysis and corrective action plan, which are required in the event of the occurrence of adverse events, to be adopted into rule. In addition, the 2008 legislation requires the rules to be amended so that they are in compliance with the statute.

Statutory Authority for Adoption: Chapter 70.56 RCW.

Statute Being Implemented: Chapter 70.56 RCW.

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

Name of Proponent: Department of health, health professions and facilities, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Byron Plan, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-2905; and Enforcement: Steve Saxe, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-2905.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the facilities subject to this rule fall under the definition of a small business.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is exempt from this requirement under RCW 34.05.328 (5)(b)(v). The content of the rules are explicitly and specifically dictated by statute.

November 4, 2008

Mary C. Selecky

Secretary

NEW SECTION

WAC 246-322-260 Adverse health events and incident reporting system. The purpose of this section is to outline each psychiatric hospital's responsibilities for reporting and addressing adverse events. In this section, "serious dis-

ability" means a physical or mental impairment that substantially limits the major life activities of a patient.

Psychiatric hospitals must:

(1) Notify the department whenever any of the following adverse events as defined by the National Quality Forum, *Serious Reportable Events in Health Care* occur:

1. Surgery performed on the wrong body part.
2. Surgery performed on the wrong patient.
3. Wrong surgical procedure performed on a patient.
4. Unintended retention of a foreign object in a patient after surgery or other procedure.
5. Intraoperative or immediately postoperative death in an ASA Class 1 patient.
6. Patient death or serious disability associated with the use of contaminated drugs, devices, or biologics provided by the health care facility.
7. Patient death or serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended.
8. Patient death or serious disability associated with intravascular air embolism that occurs while being cared for in a health care facility.
9. Infant discharged to wrong person.
10. Patient death or serious disability associated with patient elopement (disappearance).
11. Patient suicide, or attempted suicide resulting in serious disability, while being cared for in a health care facility.
12. Patient death or serious disability associated with a medication error (e.g., errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation or wrong route of administration).
13. Patient death or serious disability associated with a hemolytic reaction due to the administration of ABO/HLA-incompatible blood or blood products.
14. Maternal death or serious disability associated with labor or delivery in a low-risk pregnancy while being cared for in the health care facility.
15. Patient death or serious disability associated with hypoglycemia, the onset of which occurs while the patient is being cared for in a health care facility.
16. Patient death or serious disability (kernicterus) associated with failure to identify and treat hyperbilirubinemia neonates.
17. Stage 3 or 4 pressure ulcers acquired after admission to a health care facility.
18. Patient death or serious disability due to spinal manipulative therapy.
19. Patient death or serious disability associated with electric shock or electric cardioversion while being cared for in a health care facility.
20. Any incident in which a line designed for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances.
21. Patient death or serious disability associated with a burn incurred from any source while being cared for in a health care facility.
22. Patient death or serious disability associated with a fall while being cared for in a health care facility.
23. Patient death or serious disability associated with the use of restraints or bedrails while being cared for in a health care facility.
24. Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed health care provider.
25. Abduction of a patient of any age.
26. Sexual assault on a patient within or on the grounds of a health care facility.
27. Death or significant injury of a patient or staff member resulting from a physical assault (i.e., battery) that occurs within or on the grounds of a health care facility.
28. Artificial insemination with the wrong donor sperm or egg.

(2) Notify the department within forty-eight hours of confirmation by the psychiatric hospital when any adverse event has occurred. Until the internet-based reporting system

is developed and available, notify the department using established procedures. The notice must include:

- (a) The psychiatric hospital's name;

(b) The type of event identified in subsection (1) of this section;

(c) The date the event was confirmed; and

(d) Any additional contextual information the hospital chooses to provide.

(3) Conduct a root cause analysis of each adverse event following the procedures and methods of:

(a) The joint commission;

(b) The department of Veterans Affairs National Center for Patient Safety; or

(c) Another nationally recognized root cause analysis methodology found acceptable by the department;

(4) As part of the root cause analysis, include the following information in the report submitted to the contract entity referenced in RCW 70.56.040:

(a) The number of patients, registered nurses, licensed practical nurses, and unlicensed assistive personnel present in the relevant patient care unit at the time the reported adverse event occurred;

(b) The number of nursing personnel present at the time of the adverse event who have been supplied by temporary staffing agencies including traveling nurses; and

(c) The number of nursing personnel, if any, on the patient care unit working beyond their regularly scheduled number of hours or shifts at the time of the event and the number of consecutive hours worked by each such nursing personnel at the time of the adverse event.

(5) Create and implement a corrective action plan for each adverse event consistent with the findings of the root cause analysis. Each corrective action plan must include:

(a) How each finding will be addressed and corrected;

(b) When each correction will be completed;

(c) Who is responsible to make the corrections;

(d) What action will be taken to prevent each finding from reoccurring; and

(e) A monitoring schedule for assessing the effectiveness of the corrective action plan including who is responsible for the monitoring schedule;

(6) If a psychiatric hospital determines there is no need to create a corrective action plan for a particular adverse event, provide a written explanation of the reasons for not creating a corrective action plan;

(7) Complete and submit a root cause analysis report, within forty-five days after confirming an adverse health event has occurred, to the department until the internet-based reporting system is developed and available.

allocation criteria and adjusting the criteria for carryover allocations.

Hearing Location(s): Washington State Housing Finance Commission, 1000 Second Avenue, 28th Floor, Seattle, WA 98104-1406, on December 18, 2008, at 1 p.m.

Date of Intended Adoption: December 18, 2008.

Submit Written Comments to: Steve Walker, 1000 Second Avenue, 28th Floor, Seattle, WA 98104-1406, e-mail steve.walker@wshfc.org, fax (206) 587-5113, by December 17, 2008.

Assistance for Persons with Disabilities: Contact Steve Walker by December 11, 2008, (206) 464-7139.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules amend existing rules which govern the allocation of federal low-income housing tax credits. The changes will align the rules with federal law, streamline the allocation process to permit multiple allocation rounds, limit the number of required allocation criteria and adjust the criteria for carry-over allocations.

Reasons Supporting Proposal: The proposed rule changes align the commission's tax credit program with federal tax law, provide clear direction regarding the allocation criteria to be used by the commission and update and streamline the allocation process for applicants.

Statutory Authority for Adoption: RCW 43.180.040(3).

Statute Being Implemented: RCW 43.180.050.

Rule is necessary because of federal law, Housing and Economic Recovery Act of 2008 (H.R. 3221), Section 3004.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: As noted above, the rules establish the criteria and conditions a tax credit project must satisfy to be awarded federal low-income housing tax credits. The proposed rule change is intended to match federal tax law changes and to update and streamline the commission's allocation procedures.

Name of Proponent: Washington state housing finance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Steve Walker, 1000 Second Avenue, Suite 2700, Seattle, WA 98104-1406, (206) 464-7139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Statement not required under RCW 19.85.030(1) because the proposed rule will not impose "more than minor costs on businesses in an industry."

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328(5), the statute does not apply to this rule adoption because the Washington state housing finance commission is not an agency listed in subsection (5)(a)(i) nor has it voluntarily made the statute applicable to the agency as listed in subsection (5)(a)(ii).

November 5, 2008

Steve Walker, Director
Tax Credit Division

WSR 08-22-091

PROPOSED RULES

HOUSING FINANCE COMMISSION

[Filed November 5, 2008, 8:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-18 [08-18-075] and 08-19 [08-19-075].

Title of Rule and Other Identifying Information: Amendment to existing rules governing the allocation of federal low-income housing tax credits including provision for multiple allocation rounds, limiting the number of required

AMENDATORY SECTION (Amending WSR 01-11-034, filed 5/8/01, effective 6/8/01)

WAC 262-01-130 Tax credit program. (1) Applicants for tax credit shall submit a completed application in the form prescribed by the commission and the required application fee by the deadline or deadlines set by the commission each year. The commission will not accept additional information or material changes to an application except as allowed during a prescribed correction period.

(2) As part of its application, each applicant shall submit, among other things:

(a) Its federal identification number or, if the applicant is an individual, its Social Security number;

(b) Evidence that it has control of all land necessary for completion of the project;

(c) A comprehensive market study of the housing needs of low-income individuals in the area to be served by the project;

(d) If applicable, a relocation plan for residents approved by the appropriate governmental authority;

(e) Evidence that the project is consistent with the applicable state or local consolidated plan;

(f) A written commitment to notify the relevant local public housing authority of the availability of units in the project;

(g) Evidence of the financial capacity and experience of the development team; and

(h) Evidence of the experience of the property management team.

(3)(a) The commission will rank projects proposed by tax credit applicants based upon the degree to which they meet the criteria set forth by the commission in subsection (5) of this section. The commission may decline to consider a project that fails to meet minimum standards established by the commission for such an evaluation.

(b) Notwithstanding applicant characterization, the commission may determine the scope of or otherwise define a "project" or "projects" for purposes of ranking applications and reserving and allocating tax credit.

(4) In order to qualify to receive tax credit, a project shall meet all of the requirements of section 42 of the code.

(5) For the purposes of ranking projects and allocating credit dollar amounts, the commission will give preference to projects that serve the lowest income tenants, that are obligated to serve low-income tenants for the longest periods, and that are located in qualified census tracts and the development of which will contribute to a concerted community revitalization plan. In determining housing priorities, the commission will consider sponsor and project characteristics. The commission will give weight to those projects which, among other things:

(a) Are located in areas of special need as demonstrated by location, population, income levels, availability of affordable housing and public housing waiting lists;

(b) Set aside units for special needs populations, such as large households, the elderly, the homeless and/or the disabled;

(c) Preserve federally assisted projects as low-income housing units;

(d) Rehabilitate buildings for residential use;

(e) Include the use of existing housing as part of a community revitalization plan;

(f) ~~((Are smaller projects;~~

~~(g)))~~ Have received written authorization to proceed as a United States Department of Agriculture - Rural Housing Service multifamily new construction project approved by the commission;

~~((h)))~~ (g) Are historic properties;

~~((i)))~~ (h) Are located in targeted areas;

~~((j)))~~ (i) Leverage public resources;

~~((k)))~~ (j) Maximize the use of credits;

~~((l)))~~ (k) Demonstrate a readiness to proceed;

~~((m)))~~ (l) Serve tenant populations of individuals with children; ~~(and~~

~~(n)))~~ (m) Are intended for eventual tenant ownership; and

(n) Promote energy efficiency.

(6)(a) The commission will reserve at least ten percent of the state housing credit ceiling for a calendar year for projects in which qualified nonprofit organizations have an ownership interest and materially participate in the development and operation of the projects throughout the compliance period, all as described in the code. A qualified nonprofit organization is an organization described in section 501 (c)(3) or (4) of the code, which is determined by the commission not to be affiliated with or controlled by a for-profit organization and one of whose exempt purposes includes the fostering of low-income housing.

(b) The commission may also reserve a portion or portions of its state housing credit ceiling for other types of projects or sponsors.

(7) The commission will determine the amount of tax credit necessary for the project's financial feasibility and viability as a qualified low-income housing project. The commission will not allocate or award to a project more than the minimum amount of tax credit required to ensure a project's financial feasibility and viability.

(8) The commission may:

(a) Restrict the maximum amount of development costs on a per unit basis;

(b) Limit the maximum rehabilitation contingency and the maximum construction contingency;

(c) Restrict the maximum annual amount of tax credit for each low-income housing unit;

(d) Establish a maximum amount of credit an applicant may receive;

(e) Establish a maximum amount of tax credit a project may receive;

(f) Establish maximum developer fees and consultant fees; and

(g) Limit the amount of contractor's profit and overhead.

The commission may also limit the amount of credit received or establish other limits for other reasons.

(9)(a) As a condition of receiving tax credit, an applicant shall enter into agreements with the commission, in forms acceptable to the commission, which contain the terms under which the commission reserves credit for a project and, if applicable, provides a carryover allocation for a project.

(b) As a condition to receiving tax credit, an owner shall enter into an extended use agreement with the commission, in

a form acceptable to the commission, which restricts the use of the project for a minimum of thirty years and which describes the applicable commitments and covenants made by the owner. The extended use agreement shall be recorded in a first lien position as a restrictive covenant running with the land.

(10) In order to qualify for a carryover allocation, an applicant shall demonstrate, among other things, that(=

~~(a) The applicant has either acquired the land or has a long term lease on the land;~~

~~(b)) the applicant's basis in the project is more than ten percent of the applicant's reasonably expected basis in the project(= and~~

~~(c) The applicant has received a conditional commitment for financing)).~~

(11) An applicant that has received a carryover allocation of tax credit shall demonstrate to the commission's satisfaction that the applicant has made substantial progress towards completion of the project.

(12) An applicant shall demonstrate to the commission's satisfaction substantial compliance with all contractual obligations to the commission before the commission issues an Internal Revenue Service low-income housing credit certificate.

(13) Unless the commission makes an exception, a transfer of an interest in a project shall require the prior approval of the commission. A transfer or assignment without the commission's prior approval may result in a cancellation of tax credit for a project.

(14) To participate in the tax credit program, an applicant shall pay all required commission fees and comply with all applicable requirements and deadlines. Failure to do so may result in disqualification or cancellation of the project, application or tax credit reservation, allocation or award.

(15) For purposes of awarding tax credit, certain rules in this section do not apply to tax credit projects financed with tax-exempt bonds.

(16)(a) The commission may perform on-site inspections of projects, interview residents, review residents' applications and financial information, and review an applicant's or an owner's books and records. The applicant or owner shall provide the commission with all requested documentation, including periodic reports and certificates; shall provide the commission access to the project; and shall retain records as required by the code and the extended use agreement.

(b) The commission will monitor compliance of the projects receiving credit with the code and with contractual commitments to the commission. The commission will notify the Internal Revenue Service when instances of noncompliance come to its attention.

WSR 08-22-092

PROPOSED RULES

WASHINGTON STATE PATROL

[Filed November 5, 2008, 8:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-19-107.

Title of Rule and Other Identifying Information: Chapter 212-80 WAC, Fire sprinkler system contractors.

Hearing Location(s): John L. O'Brien Building, Hearing Room A, 504 15th Avenue, Olympia, WA 98504, on December 10, 2008, at 9:00 a.m.

Date of Intended Adoption: December 11, 2008.

Submit Written Comments to: Mr. Chuck Duffy, Office of the State Fire Marshal, P.O. Box 42600, Olympia, WA 98504-2600, e-mail chuck.duffy@wsp.wa.gov, fax (360) 596-3934, by December 10, 2008.

Assistance for Persons with Disabilities: Contact Mr. Chuck Duffy by December 10, 2008, (360) 596-3934.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes modify the existing rules to include sprinkler fitters in the process for obtaining either a certificate of competency or a trainee certificate. In addition, the changes also include the sprinkler fitters into the procedures for investigation of alleged violations as well as the appeals process and the suspension of certifications. Finally, these changes specify the required fees for the certification process.

Statutory Authority for Adoption: RCW 18.270.900.

Statute Being Implemented: Chapter 18.270 RCW.

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

Name of Proponent: Washington state patrol, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mr. Chuck Duffy, General Administration Building, 210 11th Avenue S.W., Olympia, WA 98504, (360) 596-3913.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Economic impact statement was included in the fiscal notes attached to chapter 18.270 RCW.

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

November 3, 2008

John R. Batiste

Chief

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-001 Purpose. The purpose of this regulation is to adopt rules for the licensing of fire protection sprinkler system contractors, the issuance of certificates of competency, trainee certificates, and for the issuance of civil fines and citations as defined in chapters 18.160 and 18.270 RCW.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-005 Applicability. This regulation applies to any and all persons or organizations performing as a fire protection sprinkler contractor and/or certificate of competency holder, with or without the required state licensing and/or certification as defined in chapters 18.160 and 18.270 RCW.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-010 Definitions. The following definitions shall apply to this regulation: "Authority having jurisdiction (AHJ)" means the organization, office, or individual responsible for approving layout drawings, equipment, an installation or a procedure. Usually the AHJ is the building and/or fire official of the city or county in which the job site is located. In certain cases, such as health care facilities, transient accommodations and day care facilities, the AHJ is the city or county building and/or fire official and the chief of the Washington state patrol, through the director of fire protection.

"Certificate" means a certificate of competency granted by the director of fire protection under chapter 18.270 RCW, and is valid within the state and all political subdivisions, and meets all of the requirements for license or certification that may be applied by the political subdivision.

"Citation" means written notification issued by the chief of the Washington state patrol, through the director of fire protection, pursuant to RCW 18.160.040 ~~((to issue))~~ or 18.270.020 of a civil penalty for a violation of any provision of chapters 18.160 or 18.270 RCW. A citation may include, but is not limited to, a description of the violation(s) and a notice of civil penalty assessment.

"Contractor" means any person, corporation, or other entity, licensed under chapter 18.160 RCW, which performs any work covered by the provisions of this chapter.

"Director" means the director of fire protection.

"Director of fire protection" means the state fire marshal and/or his or her authorized representative.

"Dry pipe sprinkler system" means a system employing automatic sprinklers attached to a piping system containing air or nitrogen under pressure, the release of which (as from the opening of a sprinkler) allows the water pressure to open a valve known as a dry pipe valve. The water then flows into the piping system and out to the open sprinkler(s).

"Fire protection sprinkler fitting" means installing, altering, and repairing sprinkler, standpipe, hose, or other hazard systems for fire protection purposes that are an assembly of piping or conduit beginning at the connection to the primary water supply within a building, sprinkler tank heaters, air lines and all tanks and pumps attached thereto.

"Fire protection sprinkler system" means an assembly of underground and/or overhead piping beginning at the connection to the primary water supply, whether public or private, that conveys water with or without other agents to dispersal openings or devices to extinguish, control, or contain fire or other products of combustion. The fire protection sprinkler system (with the exception of residential combination systems) starts at the point where the last nonfire water use is taken from the supply mains. This is the point just down stream of the last tap for domestic or process water, the last water control valve that is required by a city or other authority, or the point where the water can be considered nonflowing.

"Fire pump" means a listed pump supplying water at the flow and pressure required by water based fire protection systems.

"FOR DESIGN ONLY" means a certificate of competency holder only allowed to perform the design of a fire protection sprinkler system consistent with the level of certification he or she holds. In the case of a "State Level U certification," "FOR DESIGN ONLY" merely allows the individual to maintain their certification.

"Formal hearing" means a hearing before a hearings officer where laws, rules, and evidence are presented, considered, and a decision is rendered.

"Hazard" means a condition which could result in injury or death to a person and/or damage to property.

"Hearings request" means the written request for a formal hearing to contest a civil penalty.

"Hose connection" means a combination of equipment provided for connection of a hose to the standpipe system that includes a hose valve with a threaded outlet.

"Inspection" means a visual examination of a fire protection sprinkler system, or portion of the system, to verify that the system appears to be in operating condition, is free from physical damage, and complies with the applicable statutes and regulations adopted by the state.

"Instance" means the number of times a person has been cited for a violation of chapters 18.160, 18.270 RCW, or this chapter. These will be identified as 1st, 2nd, and 3rd instances.

"Journey-level sprinkler fitter" means any person who has been issued a certificate by the director of fire protection as provided by chapter 18.270 RCW.

"Maintenance" means work performed on a fire suppression sprinkler system to keep the equipment operable, or to make repairs.

"Network fire protection sprinkler system" means a type of multipurpose system utilizing a common piping system supplying domestic plumbing fixtures and fire sprinklers as defined by NFPA 13D.

"NFPA" means the National Fire Protection Association.

"NFPA 13D" means, in addition to the definition contained in chapter 18.160 RCW, the inclusion of minor accessory uses such as garages normally found in residential occupancies.

"NFPA 13R" means ~~((whatever))~~ the standard ~~((that is))~~ used by the National Fire Protection Association for the installation and design of fire suppression sprinkler systems in residential occupancies up to and including four stories in height.

"NFPA 13" means ~~((whatever))~~ the standard ~~((that is))~~ used by the National Fire Protection Association for the installation and design of fire suppression sprinkler systems in commercial or high occupancy facilities.

"NFPA 14" means the standard used by the National Fire Protection Association for the installation of standpipe and hose systems.

"NFPA 20" means ~~((whatever))~~ the standard ~~((that is))~~ used by the National Fire Protection Association for the selection and installation of pumps, both centrifugal and positive displacement, that supply liquid for a private fire protection system.

"NFPA 24" means ~~((whatever))~~ the standard ~~((that is))~~ used by the National Fire Protection Association for the

installation of the dedicated underground fire service main of a water based fire protection system.

"NFPA 25" means ~~((whatever))~~ the standard ((that is)) used by the National Fire Protection Association for the inspection, testing, and maintenance of water based fire protection systems.

"NICET" means the National Institute for Certification in Engineering Technologies.

"NITC" means the National Inspection Testing Certification.

"Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of individuals and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations.

"Preaction system" means a sprinkler system employing automatic sprinklers attached to a piping system containing air, which may or may not be under pressure, with a supplemental detection system installed in the same areas as the sprinklers.

"Qualified" shall mean an individual who has demonstrated through education, training, examination, and/or national certifications the competency, skill, and ability necessary to perform any work covered and/or defined by this chapter and chapters 18.160 and 18.270 RCW to the satisfaction of a relevant jurisdiction. In matters of compliance with the licensing and certification requirements of this chapter and chapters 18.160 and 18.270 RCW, the relevant jurisdiction shall be the chief of the Washington state patrol, through the director of fire protection.

"Residential-level sprinkler fitter" means anyone who has been issued a certificate by the director of fire protection limited to installation, maintenance, and repair of the fire protection sprinkler system of residential occupancies as defined by NFPA 13, NFPA 13D and NFPA 13R.

"Revoke" means the chief of the Washington state patrol, through the director of fire protection, shall rescind a company's license or an individual's certification ~~((from them))~~. Such action causes said company or individual to cease any and all work in the sprinkler field in Washington state until such time as the chief of the Washington state patrol, through the director of fire protection, is satisfied with the resolution of the issue which caused the license or certificate to be revoked.

"Standpipe" means the vertical portion of the system piping that delivers the water supply for hose connections, and fire sprinklers on combined systems, vertically from floor to floor. The term standpipe also refers to the horizontal portion of the system piping that delivers the water supply for two or more hose connections, and fire sprinklers on combined systems, on a single level as defined by NFPA 14.

"Standpipe system" means an arrangement of piping, valves, hose connections, and allied equipment installed in a building or structure, with the hose connections located in such a manner that water can be discharged in streams or spray patterns through attached hose and nozzles, for the purpose of extinguishing a fire, thereby protecting a building or structure and its contents in addition to protecting the occupants as defined by NFPA 14.

"State certified fire sprinkler system inspection and testing technician" (ITT) means a state certificate of competency holder who is qualified to inspect and/or test NFPA 13D, 13R, or 13, wet and dry pipe fire protection systems per the definition of fire protection sprinkler system in this chapter. However, testing of other fire protection systems such as preaction, deluge, foam, or fire pump and maintenance of any type of system defined under this chapter or chapter 18.160 RCW shall be performed only by contractors who are also qualified and licensed to design and install that type of system or fire pump being tested or maintained.

"State fire marshal" means the director of fire protection or his/her authorized representative.

"State Level ((†)) 1 certification" means a certificate of competency holder who is qualified to prepare layout drawings, install, inspect, test, maintain, or service an NFPA 13D fire protection sprinkler system or any part of such a system.

"State Level ((†)) 1 licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the design, installation, service, maintenance, and/or inspection of a NFPA 13D fire protection sprinkler system or any part of such a system.

"State Level ((‡)) 2 certification" means a certificate of competency holder who is qualified to prepare layout drawings, install, inspect, test, maintain, or service an NFPA 13D and/or an NFPA 13R fire protection sprinkler system or any part of such a system.

"State Level ((‡)) 2 licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the design, installation, service, maintenance, and/or inspection of a NFPA 13D and/or a NFPA 13R fire protection sprinkler system or any part of such a system.

"State Level ((‡‡)) 3 certification" means a certificate of competency holder who is qualified to prepare layout drawings, install, inspect, maintain, or service an NFPA 13D, NFPA 13R, NFPA 13, or all other systems per the definition of fire protection sprinkler system in chapter 18.160 RCW.

"State Level ((‡‡)) 3 licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the design, installation, service, maintenance, and/or inspection of a NFPA 13D, NFPA 13R, NFPA 13, or all other systems per the definition of a fire protection sprinkler system in chapter 18.160 RCW.

~~("State certified fire sprinkler system inspection and testing technician" ("ITT") means a state certificate holder who is qualified to inspect and/or test NFPA 13D, 13R, or 13, wet and dry pipe fire protection systems per the definition of fire protection sprinkler system in this chapter. However, testing of other fire protection systems such as preaction, deluge, foam, or fire pump and maintenance of any type of system defined under this chapter or chapter 18.160 RCW shall be performed only by contractors who are also qualified and licensed to design and install that type of system or fire pump.)~~

"State level inspection and testing contractor licensing" means a sprinkler contracting company licensed by the chief

of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the inspection or testing of a wet or dry pipe NFPA 13((---))D, NFPA 13((---))R, NFPA 13, or other systems per the definition of a fire protection sprinkler system in chapter 18.160 RCW. However, the testing and maintenance of fire protection systems such as preaction, deluge, foam, or fire pumps, shall be performed only by contractors who are also qualified and licensed to design and install that type of system or fire pump being tested or maintained.

"State Level U certification" means a certificate of competency holder who is qualified to certify the installation of the underground portions of fire protection sprinkler systems in conformance with recognized standards adopted by the director of fire protection.

"State Level U licensing" means a sprinkler contracting company licensed by the chief of the Washington state patrol, through the director of fire protection, to contract and/or offer to bid on the installation of the underground portions of fire protection sprinkler systems in conformance with the recognized standards adopted by the chief of the Washington state patrol, through the director of fire protection.

"Suspend" means the chief of the Washington state patrol, through the director of fire protection, holds a license or certificate inactive until such time as the chief of the Washington state patrol, through the director of fire protection, feels confident that the company or individual is in compliance with the requirements of this chapter and chapters 18.160 and 18.270 RCW.

"Testing" means a procedure used to determine the status of a system as intended by conducting periodic physical checks on water-based fire protection systems such as ((waterflow)) water flow tests, fire pump tests, alarm tests, and trip tests of dry pipe, deluge, or preaction valves. These tests follow up on the original acceptance test at intervals specified in the appropriate chapter of NFPA 25.

"Trainee" means a person who has been issued a training certificate by the chief of the Washington state patrol, through the director of fire protection, who is learning the fire protection sprinkler fitting trade under the supervision of a journey-level sprinkler fitter or residential sprinkler fitter working in his or her specialty.

"Type" means the classification of violation as minimal, moderate, and severe. These are identified as Types I, II, and III respectively.

"Violation" means any action, general or specific, inconsistent with the intent and letter of chapters 18.160 and 18.270 RCW and ((this chapter and)) shall be further defined as:

(a) "Minimal violation" means a Type I violation which poses a minor hazard or threat to life and property in the event of a fire.

(b) "Moderate violation" means a Type II violation which poses a significant hazard or threat to life or property in the event of a fire.

(c) "Severe violation" means a Type III violation which poses a substantial hazard or threat to life or property in the event of a fire.

"Wet pipe sprinkler system" means a sprinkler system employing automatic sprinklers attached to a piping system

containing water and connected to a water supply so that water discharges immediately when any sprinkler is opened by heat from a fire.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-015 Compliance. All fire sprinkler system contractors, certificate of competency holders, ((and persons)) or trainees, designing, installing, inspecting, testing or maintaining((, or servicing)) fire protection sprinkler systems or any part of such a system shall comply with the provisions of this regulation.

EXCEPTIONS:

(1) Federal, state, and local government employees, or insurance inspectors when acting in their official capacities.

(2) A person or organization acting under court order.

(3) A person or organization that sells or supplies products or materials to a licensed fire protection sprinkler system contractor.

(4) A registered professional engineer acting solely in a professional capacity.

(5) ((A properly qualified and/or trained employee of a licensed fire protection sprinkler system contractor performing duties for the contractor. Said qualifications and/or training to be consistent with the level of work performed by the licensed fire protection sprinkler system contractor.)) A person issued a certificate of competency by the Washington state department of labor and industries, under chapter 18.106 RCW, as a journeyman plumber installing a residential network fire protection sprinkler system connected to potable water who works for a contractor as defined herein.

(6) An owner/occupier of a single-family residence performing his or her own installation in that residence. It is the intent of this subsection that builders or contractors will not install their own sprinkler systems in single-family residences under their ownership which they plan to sell, lease, or rent.

(7) ((A)) A full-time employee, or owner of a facility ((or owner)) who is qualified to the satisfaction of the local authority having jurisdiction to perform inspection and testing of fire protection sprinkler systems in said facility.

(8) An employee of a licensed electrical contractor installing or testing only the electronic signaling devices of a fire sprinkler system.

(9) A person, licensed by the Washington state department of health, under chapter 246-292 WAC, as a certified backflow assembly tester, performing testing and maintenance of backflow assemblies.

(10) A person licensed by the Washington state department of health, under chapter 246-292 WAC, as a certified backflow assembly tester, and also licensed by the Washington state department of labor and industries, under chapter 18.106 RCW, as a backflow specialty plumber performing repairs of backflow assemblies in accordance with chapter 246-290 WAC.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-018 License and certification requirements. Only a company or individual licensed as a fire protection sprinkler systems contractor, who has at least one designer on staff certified by the chief of the Washington state patrol, through the director of fire protection, can bid, offer to bid, contract, or perform the designing, installation, inspection, testing, maintenance, and/or servicing of a fire protection sprinkler system.

EXCEPTIONS: A company or individual licensed as an inspection and testing contractor, whose staff performing the work of inspection and/or testing of a fire protection sprinkler system have all been certified by the chief of the Washington state patrol, through the director of fire protection, as described in this chapter, can bid, offer to bid, contract, or perform only the testing and inspection of a fire protection sprinkler system - excluding preaction, deluge, or foam systems or systems with fire pumps.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-020 Right of appeal. Any person who is aggrieved by the chief of the Washington state patrol, through the director of fire protection, suspending or revoking the privilege of a licensed fire protection sprinkler system contractor or the certificate of a certificate of competency holder to engage in fire protection sprinkler system business, may appeal to the director within thirty days of the date of the order.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-023 Authority having jurisdiction. (1) Fire protection sprinkler systems shall meet the approval of the authority having jurisdiction. This includes plans, specifications, calculations, contractor's materials and test certificates, and final approval.

(2) In certain types of occupancies the authority having jurisdiction may be the chief of the Washington state patrol, through the director of fire protection, and the building and/or fire official of the city or county in which the installation is located. Generally these dual responsibilities occur in health care facilities, transient accommodations, and day care facilities.

(3) It is the responsibility of the certificate of competency holder to ascertain which agency or agencies have jurisdiction. If there is a question, the certificate of competency holder should contact the chief of the Washington state patrol, through the director of fire protection.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-028 License and certificate posting. Each license and certification issued under this regulation must be posted in a conspicuous place in the fire protection sprinkler system contractor's place of business. The wallet card issued to a designer or journey-level or residential sprinkler fitter certificate of competency holder, trainee, and/or an inspection and testing technician under this chapter will be maintained with the certified individual it was issued to and available for review at any time.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-043 Qualifications for preparation of layout drawings, installations, inspections, testing, or maintenance(,or servicing). ((+)) Only licensed fire protection sprinkler system contractors shall execute contracts for the design, installation, inspection, testing, or maintenance(,or servicing) of fire protection sprinkler systems or any part of such a system in the state of Washington.

EXCEPTIONS:

(1) A company or individual licensed as an inspection and testing contractor, whose staff performing the work of inspection and testing of a fire protection sprinkler system have all been certified by the chief of the Washington state patrol, through the director of fire protection, as described in this chapter, can bid, offer to bid, contract, or perform only the testing and inspection of a fire protection sprinkler system - excluding preaction, deluge, or foam systems or systems with fire pumps.

(2) Only licensed contractors who have achieved at least State Level U licensure shall execute contracts for the installation, inspection, or maintenance ((and/or servicing)) of the underground portions of fire protection sprinkler systems in the state of Washington.

(3) Only licensed fire protection sprinkler contractors who have achieved at least State Level ((H)) 1 licensure shall execute contracts for the installation, inspection, testing, or maintenance ((and/or servicing)) of NFPA 13D fire protection sprinkler systems or any part of such a system in the state of Washington.

(4) Only licensed fire protection sprinkler contractors who have achieved at least State Level ((H)) 2 licensure shall execute contracts for the installation, inspection, testing, or maintenance ((and/or servicing)) of NFPA 13D or NFPA 13R fire protection sprinkler systems or any part of such a system in the state of Washington.

(5) Only licensed fire protection sprinkler contractors who have achieved at least State Level ((H)) 3 licensure shall execute contracts for the installation, inspection, testing, maintenance and/or servicing of NFPA 13D, NFPA 13R, NFPA 13, and all other systems per the definition of fire protection sprinkler system in chapter 18.160 RCW or any part of such a system in the state of Washington.

(6) Only those certificate of competency holders who have achieved State Level U certification shall supervise and/or certify the installation of underground supplies to fire protection sprinkler systems. To achieve State Level U certi-

fication, persons shall satisfactorily complete an examination administered by the chief of the Washington state patrol, through the director of fire protection.

(7) Only those certificate of competency holders who have achieved at least State Level ((H)) 1 certification shall supervise and/or certify the preparation of layout drawings, installation, inspection, testing, maintenance, ((~~servicing~~)) or the installation of NFPA 13D fire protection sprinkler systems or any part thereof. To achieve State Level ((H)) 1 certification, persons shall hold a current NICET Level 2 classification or satisfactorily complete an examination administered by the chief of the Washington state patrol, through the director of fire protection.

(8) Only those certificate of competency holders who have achieved at least State Level ((H)) 2 certification shall supervise and/or certify the preparation of layout drawings, installation, inspection, testing, maintenance, ((~~servicing~~)) or the installation of NFPA 13D and NFPA 13R fire protection sprinkler systems or any part thereof. To achieve State Level ((H)) 2 certification, persons shall hold a current NICET Level 2 classification.

(9) Only those certificate of competency holders who have achieved at least State Level ((H)) 3 certification shall supervise and/or certify the preparation of layout drawings, installation, inspection, testing, maintenance, ((~~servicing~~)) or the installation of NFPA 13D, NFPA 13R, NFPA 13, and all other systems per the definition of fire protection sprinkler system in chapter 18.160 RCW or any part thereof. To achieve State Level ((H)) 3 certification, persons shall hold a current NICET Level 3 or 4.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-058 Fire protection sprinkler contractor license not transferable. A license issued under this regulation is not transferable.

EXCEPTIONS:

Should a currently licensed fire protection sprinkler contractor merge or form another company, that license can be reissued to the newly formed/incorporated company provided:

- (1) The principal officers of the licensed company remain the same;
- (2) Continues, takes over, or otherwise reestablishes the bond required by chapter 18.160 RCW for licensing;
- (3) Continues to perform fire protection sprinkler contractor work as defined by chapter 18.160 RCW;
- (4) Employs ((#)) certificate of competency holders of the appropriate levels; and
- (5) Meets the criteria necessary for licensing as a fire protection sprinkler contracting company as defined by chapter 18.160 RCW.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-063 Contractor responsibilities, design certificate of competency holder employment. (1) A fire protection sprinkler system contractor shall have at least one

full time design certificate of competency holder, consistent with the license level, employed to conduct business.

(2) If a design certificate of competency holder should leave the employment of the fire protection sprinkler system contractor, and the contractor has no other design certificate of competency holder on staff, the contractor shall have six months or until the expiration of the current license, whichever occurs last, to submit a new application. In order to be issued a new license, the contractor shall identify a new design certificate of competency holder who, at the time of application, shall be either an owner or full-time employee of that fire protection sprinkler business.

(3) If such application is not received by the chief of the Washington state patrol, through the director of fire protection and a new license issued within the allotted time, the chief of the Washington state patrol, through the director of fire protection, shall revoke the license of the fire protection sprinkler system contractor.

(4) The fire protection sprinkler system contractor may only complete the active phase of existing work in progress which has been approved by the authority having jurisdiction, and may not receive new approvals from the authority having jurisdiction without a design certificate holder's number on the documents. Installation can continue on approved design plans, however, the contractor's material and test certificate for the system must be stamped by a certificate of competency holder in the full-time employ of the installing contractor.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-068 License renewals. (1) All licensed fire protection sprinkler system contractors desiring to continue to be licensed shall secure from the chief of the Washington state patrol, through the director of fire protection, prior to January 1 of each year a renewal license upon payment of the fee as prescribed by the chief of the Washington state patrol, through the director of fire protection.

(2) Application for renewal shall be upon a form prescribed by the chief of the Washington state patrol, through the director of fire protection, and the license holder shall furnish the information required by the chief of the Washington state patrol, through the director of fire protection.

(3) Failure of any license holder to secure his or her renewal license within sixty days after the expiration date shall constitute sufficient cause for the chief of the Washington state patrol, through the director of fire protection, to suspend the license.

(4) The chief of the Washington state patrol, through the director of fire protection, may restore a license that has been suspended. In addition to other provisions of this regulation, any of the following will constitute cause for the chief of the Washington state patrol, through the director of fire protection, not to restore a license that has been suspended:

- (a) Nonreceipt of payment of all delinquent fees;
- (b) Nonreceipt of a late charge and/or application fee;
- (c) Failure to comply with the bonding requirements of chapter 18.160 RCW; and

(d) Failure to obtain or show evidence of having a full time employee certified as a design certificate of competency holder of the appropriate level as defined by chapter 18.160 RCW.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-073 Prorated license fees. The initial license fee shall be prorated based upon the portion of the year such license is in effect. This is allowed only once in the history of the company.

EXCEPTIONS: Any contracting company who attempts to license as a fire sprinkler contracting company after performing work covered by this chapter and chapter 18.160 RCW shall be required to pay the full annual licensing fees, in addition to any penalties assessed by the chief of the Washington state patrol, through the director of fire protection, for unlicensed operation(s).

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-078 Contractor surety bonds. (1) The chief of the Washington state patrol, through the director of fire protection, shall not issue a license under this regulation unless:

(a) The fire protection sprinkler system contractor, to be licensed as a Level ((H)) 3 or Level "U" fire protection sprinkler system contractor, files with the chief of the Washington state patrol, through the director of fire protection, a surety bond executed by a surety company authorized to do business in the state of Washington, in the sum of ten thousand dollars, conditioned to compensate third-party losses caused by the acts of the principal or the principal's servant, officer, agent, or employee in conducting the business registered or licensed under this regulation; or

(b) The fire protection sprinkler system contractor, to be licensed for Level ((H)) 1 and/or Level ((H)) 2 systems or a contractor to be licensed as an inspection and testing contractor, files with the chief of the Washington state patrol, through the director of fire protection, a surety bond executed by a surety company authorized to do business in the state of Washington, in the sum of six thousand dollars, conditioned to compensate third-party losses caused by the acts of the principal or the principal's servant, officer, agent, or employee in conducting the business registered or licensed under this regulation.

(2) Upon approval by the chief of the Washington state patrol, through the director of fire protection, property or cash may substitute for a surety bond provided the value matches the appropriate level of bonding required for the level of work to be performed. The value of property shall be determined by an appraiser selected by the chief of the Washington state patrol, through the director of fire protection. All appraisal fees shall be paid by the fire protection sprinkler system contractor.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-083 Stamps for NFPA 13D, 13R, and 13 systems. (1) Sprinkler system plans, calculations, and contractors' materials and test certificates submitted to the authority having jurisdiction shall be stamped pursuant to subsection (3) of this section.

(2) At least one set of approved plans and calculations, containing information as specified in subsection (3) of this section, shall be maintained on the job site while the work is being performed.

(3) Stamps shall be issued by the chief of the Washington state patrol, through the director of fire protection, and shall contain the name and certification number of the design certificate of competency holder, name and license number of the holder's employer, the expiration date of the current certificate, a place for the signature of the design certificate of competency holder and the date of the signature. On all plans the stamp shall be easily recognizable and visible.

(4) An original stamp and signature shall appear on each page of plans, on the cover sheet of hydraulic calculations and on all test certificates for fire protection sprinkler systems submitted to the authority having jurisdiction.

(5) Plans and calculations for "underground only" portions of fire protection sprinkler systems submitted to the authority having jurisdiction by a State Level U licensed fire protection sprinkler contractor shall be stamped by either a licensed professional engineer registered in the state of Washington or the appropriate level certificate of competency holder and the State Level U certificate of competency holder employed by the submitting contractor.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-088 Contractor's materials and test certificates. (1) The design certificate of competency holder shall complete the contractor's material and test certificate(s), affix his/her certificate of competency stamp, and forward the certificate(s) to the authority having jurisdiction.

(2) Contractor's material and test certificate forms shall be of such form as accepted or approved by the chief of the Washington state patrol, through the director of fire protection.

(3) The authority having jurisdiction shall require an approved flow test of heads as part of the approval of NFPA 13R and NFPA 13D fire protection sprinkler systems.

(4) The authority having jurisdiction and the building owner shall retain copies of the contractor's materials and test certificate for a minimum of five years.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-093 Certificate of competency certification for Level 1 design, Level U, Level 2, and Level 3. To become a certificate of competency holder under this regulation, an applicant must either:

(1) For State Level 1 design certification, have satisfactorily passed with a final score of eighty percent or better an

examination administered by the chief of the Washington state patrol, through the director of fire protection, or show evidence of passing the National Institute for Certification in Engineering Technologies element requirements for Level 2 certification in fire protection system layout design.

(2) For State Level U certification, have satisfactorily passed with a final score of eighty percent or better an examination administered by the chief of the Washington state patrol, through the director of fire protection.

(3) Be a registered professional engineer acting solely in a professional capacity. Such engineer shall comply with all other requirements of this regulation including payment of fees, completion of the application process, and supplying the director of fire protection with proof that the applicant holds a current, valid state of Washington registration as a professional engineer. Upon completion of the above requirements, the engineer will be granted an equivalency certificate to that of State Level ~~(III)~~ 3 design certification; or

(4) Present a copy of a current certificate from the National Institute for Certification in Engineering Technologies showing that the applicant has achieved the classification. State Level 2 certification requires a minimum certification from the National Institute for Certification in Engineering Technologies of Level 2 in the field of fire protection automatic sprinkler system layout or better. State Level 3 certification requires either Engineering Technician, Level 3 or Senior Engineering Technician, Level 4 in the field of fire protection automatic sprinkler system layout.

(5) The chief of the Washington state patrol, through the director of fire protection, may accept equivalent proof of qualification in lieu of the examination requirements.

(6) Proof of competency to the satisfaction of the chief of the Washington state patrol, through the director of fire protection, is mandatory.

(7) Every applicant for a certificate of competency shall fulfill the requirements established by the chief of the Washington state patrol, through the director of fire protection, under chapters 18.160 and 18.270 RCW.

NEW SECTION

WAC 212-80-096 Certificate of competency certification for journey-level sprinkler fitter, residential sprinkler fitter, and trainees. (1) For journey-level sprinkler fitter certification, the applicant must provide evidence to the chief of the Washington state patrol, through the director of fire protection, on forms provided by the director, of at least eight thousand hours of trade related fire protection sprinkler fitting experience, pay an examination fee and satisfactorily pass an examination provided by the director.

(2) For residential sprinkler fitter certification, the applicant must provide evidence to the chief of the Washington state patrol, through the director of fire protection, on a form provided by the director, of at least four thousand hours of trade related fire protection sprinkler fitting experience, or residential sprinkler fitting, pay an examination fee and satisfactorily pass an examination provided by the director.

(3) For a training certificate the applicant shall provide evidence to the chief of the Washington state patrol, through the director of fire protection, on forms provided by the direc-

tor, of trade related employment by a fire protection sprinkler contractor.

EXCEPTIONS:

(a) Provided the application for a journey level sprinkler fitter certificate of competency is made prior to ninety days after the adoption of this chapter, the director, in lieu of the examination requirements of the applicant for a certificate of competency, may accept as satisfactory evidence of competency and qualification an affidavit attesting that the applicant has completed at least eight thousand hours employment as a journey-level sprinkler fitter.

(b) Provided the application for a residential level sprinkler fitter certificate of competency is made prior to ninety days after the adoption of this chapter, the director, in lieu of the examination requirements of the applicant for a certificate of competency, may accept as satisfactory evidence of competency and qualification an affidavit attesting that the applicant has completed at least four thousand hours employment as a residential-level sprinkler fitter.

(4) Proof of competency to the satisfaction of the chief of the Washington state patrol, through the director of fire protection, is mandatory.

(5) Every applicant for a certificate of competency shall fulfill the requirements established by the chief of the Washington state patrol, through the director of fire protection, under chapters 18.160 and 18.270 RCW.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-098 Applications/fees for certificate of competency. (1) Every applicant for a certificate of competency shall apply to the chief of the Washington state patrol, through the director of fire protection, on application forms provided and pay the fees required.

(2) The chief of the Washington state patrol, through the director of fire protection, shall deny renewal of a certificate if the certificate is in revoked or suspended status.

(3) There are two separate fees, including the application fee and the certification fee. The application fee is only charged once when an individual makes the initial application for any of the certificates specified in this section.

(4) Prorated fees shall only be allowed for the initial certificate. Renewals or reinstatements shall not be prorated. The prorated amount shall be calculated using the number of months remaining in the certification cycle.

(5) Renewal timelines:

(a) Levels 1, 2 and 3 design, Level U installer, and Level ITT certificates shall be renewed annually.

(b) Journey-level fire sprinkler fitter, residential fire sprinkler fitter, or temporary fire sprinkler fitter certificates shall be renewed biannually.

(6) Certificate of competency fees for journey-level fire sprinkler fitter, residential fire sprinkler fitter, or temporary fire sprinkler fitter certificates shall be:

(a) Initial application (one time fee) \$100.00;

(b) Certification and renewal of certification \$100.00;

(c) Reinstatement of certificate (no proration permitted) \$100.00.

(7) Certificate fees are nonrefundable once the certificate has been issued.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-103 Temporary design certificate of competency. (1) The chief of the Washington state patrol, through the director of fire protection, may issue a temporary design certificate of competency to an applicant who, in his or her judgment, will satisfactorily perform as a certificate of competency holder under the provisions of this regulation.

(2) The temporary design certificate of competency shall remain in effect for a period of one year. If the temporary certificate of competency holder provides evidence to the chief of the Washington state patrol, through the director of fire protection, of testing with NICET in the previous year, the temporary certificate of competency may be renewed two times.

(3) In no case shall a person hold a temporary design certificate of competency for more than three years, either cumulative or consecutive.

(4) To convert from a temporary design certificate of competency to a regular design certificate of competency, a person shall:

(a) Within three years from the initial issuance of the temporary design certificate of competency, apply for a regular design certificate of competency; and

(b) Complete the requirements specified in this regulation and chapter 18.160 RCW.

(5) An individual having a temporary design certificate of competency shall not be exempt from taking an examination to acquire a regular design certificate of competency.

(6) Prior to the expiration of the temporary design certificate of competency at the end of the three-year period, the temporary design certificate of competency holder shall make application for a regular design certificate of competency. Upon expiration of the temporary certificate of competency at the end of the three-year period, if the holder has not met the requirements of subsection (4) of this section, the holder shall cease all activities associated with the holding of a design certificate of competency.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-113 Certificate of competency employment. (1) In no case shall a certificate of competency holder be employed full time by more than one fire protection sprinkler system contractor at the same time.

(2) If the certificate of competency holder should leave the employment of the fire protection sprinkler system contractor, he or she shall notify the chief of the Washington state patrol, through the director of fire protection, within thirty days of his or her last day of employment.

(3) Should any individual who meets the criteria to be a design certificate of competency holder as defined by this chapter and chapter 18.160 RCW wish to be certified to perform design work only, he or she may request to work as a "FOR DESIGN ONLY" certificate of competency holder. This

certification can also be utilized to maintain state certification, as in the case of the State Level U certification.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-118 Certificate of competency renewals. (1) ~~((AH))~~ Level 1, 2, 3, U, or I.T. certificate of competency holders who desire to maintain a current certificate shall, prior to January 1 of each year, apply for renewal to the chief of the Washington state patrol, through the director of fire protection, on the appropriate form along with the required fee as prescribed by the chief of the Washington state patrol, through the director of fire protection.

(2) Journeyman fitter and residential fitter certificate of competency holders, and trainees who desire to maintain a current certificate shall, prior to January 1 of every other year, apply for renewal to the chief of the Washington state patrol, through the director of fire protection, on the appropriate form along with the required fee as prescribed by the chief of the Washington state patrol, through the director of fire protection. Applications for renewal shall not be made more than ninety days prior to the expiration date of the certificate.

(a) Trainees applying for a journeyman fitter certificate of competency shall provide an affidavit showing a minimum of eight thousand hours in fire protection sprinkler fitting experience on a form prescribed by the director of fire protection.

(b) Trainees applying for a residential fire sprinkler fitter certificate of competency shall provide an affidavit showing four thousand hours in fire protection sprinkler fitting experience in residential fitting on a form prescribed by the director of fire protection.

(3) Application for renewal forms shall be provided by the chief of the Washington state patrol, through the director of fire protection, upon request, and the certificate holder or trainee shall furnish the information required by the chief of the Washington state patrol, through the director of fire protection.

~~((3))~~ (4) The chief of the Washington state patrol, through the director of fire protection, may suspend the Level 1, 2, 3, or I.T. certificate of competency for failure to apply for a renewal certificate of competency within sixty days after the expiration date.

~~((4))~~ (5) The chief of the Washington state patrol, through the director of fire protection, may ~~((:))~~ upon the receipt of payment of all delinquent fees and a late charge, restore a Level 1, 2, 3, U, or I.T. certificate of competency that had been suspended.

(6) Journeyman sprinkler fitter and residential sprinkler fitter certificate of competency holders, and trainees who desire to maintain a current certificate shall, prior to January 1 of every other year, apply for renewal to the chief of the Washington state patrol, through the director of fire protection, on the appropriate form along with the required fee as prescribed by the chief of the Washington state patrol, through the director of fire protection.

(7) Failure of a trainee, journeyman sprinkler fitter, or residential sprinkler fitter certificate of competency holder, to

renew their certificate before its expiration date of December 31 of every other year, shall result in the applicant having to:

(a) File application with the chief of the Washington state patrol, through the director of fire protection, on a form provided by the director.

(b) Pay an examination fee to the chief of the Washington state patrol, through the director of fire protection.

(c) Successfully pass the written examination required by this chapter.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-123 Voluntary relinquishment of certificates of competency. (1) A certificate of competency holder, or trainee, may voluntarily relinquish his or her certificate of competency to the chief of the Washington state patrol, through the director of fire protection. This includes temporary design certificate of competencies that have not been in effect for more than three consecutive and/or accumulative years.

(2) The relinquishment is effective when the certificate is received by the chief of the Washington state patrol, through the director of fire protection.

(3) After relinquishing the certificate of competency, he or she shall not be known as a certificate of competency holder or trainee and shall desist from the practice thereof.

(4) Within two years from the time of relinquishment of the certificate of competency, he or she may again qualify for a certificate of competency, with the approval of the chief of the Washington state patrol, through the director of fire protection, by the payment of the required fee.

(5) If two or more years have elapsed, he or she shall return to the status of a new applicant.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-128 Certificate of competency prorated fees. The initial certificate of competency or trainee fee shall be prorated based upon the portion of the year such certificate of competency is in effect, prior to renewal on January 1.

EXCEPTIONS: Any individual who attempts to certify with the chief of the Washington state patrol, through the director of fire protection, after performing work covered by (~~this chapter and~~) chapters 18.160 and 18.270 RCW shall be required to pay the full annual certification fees, in addition to any penalties assessed by the chief of the Washington state patrol, through the director of fire protection, for uncertified operation(s).

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-140 Inspection and testing license not transferable. A license issued under this regulation is not transferable.

EXCEPTIONS:

Should a currently licensed inspection and testing contractor merge or form another company, that license can be reissued to the newly formed/incorporated company provided:

(1) The principal officers of the licensed company remain the same;

(2) Continues, takes over, or otherwise reestablishes the bond required by chapter 18.160 RCW for licensing;

(3) Continues to perform inspection and testing contractor work as defined by chapter 212-80 WAC;

(4) Employs at least one full-time inspection and testing technician; and

(5) Meets the criteria necessary for licensing as an inspection and testing contracting company as defined by chapter 212-80 WAC.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-155 Sprinkler system inspection and testing contractor—Prorated fees. The initial license fee shall be prorated based upon the portion of the year such license is in effect. This is allowed only once in the history of the company.

EXCEPTIONS: Any sprinkler system inspection and testing contracting company who is required to be licensed as a sprinkler system inspection and testing contractor with the chief of the Washington state patrol, through the director of fire protection, after performing work covered by this chapter and chapter 18.160 RCW shall be required to pay the full annual licensing fee, in addition to any penalties assessed by the chief of the Washington state patrol, through the director of fire protection, for unlicensed operation(s).

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-195 Inspection and testing technician—Prorated fees. The initial inspection and testing technician fee shall be prorated based upon the portion of the year such certification is in effect, prior to renewal on January 1.

EXCEPTIONS: Any individual who attempts to certify with the chief of the Washington state patrol, through the director of fire protection, as an inspection and testing technician after performing work covered by this chapter and chapter 18.160 RCW shall be required to pay the full annual certification fees, in addition to any penalties assessed by the chief of the Washington state patrol, through the director of fire protection, for uncertified operation(s).

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-200 Suspension or revocation of licenses. (1) The chief of the Washington state patrol, through the director of fire protection, may refuse to issue or renew or may suspend or revoke the privilege of a licensed fire protection sprinkler system contractor or the license of an inspection and testing contractor to engage in the fire protection sprinkler system business or may establish penalties as prescribed by Washington state law for any of the following reasons:

(a) Gross (~~(incompetency)~~) incompetence or gross negligence in the preparation of layout drawings, installation, repair, alteration, testing, maintenance, inspection, (~~(service)~~) or addition to fire protection sprinkler systems.

(b) Conviction of a felony.

(c) Fraudulent or dishonest practices while engaging in the fire protection sprinkler systems business.

(d) Use of false evidence or misrepresentation in an application for a license.

(e) Permitting his or her license to be used in connection with the installation of any system when such installation is not under his or her supervision, or in violation of this regulation.

(f) Knowingly violating any provisions of this regulation or chapter 18.160 RCW.

(2) The chief of the Washington state patrol, through the director of fire protection, shall revoke the license of a licensed fire protection sprinkler system contractor or an inspection and testing contractor who engages in the fire protection sprinkler system business while the license is suspended.

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-205 Suspension or revocation of certificates. (1) The chief of the Washington state patrol, through the director of fire protection, may refuse to issue or renew or may suspend or revoke the privilege of a certificate of competency holder as defined in RCW 18.160.101(1) or (~~(of a state certified fire sprinkler system inspection and testing technician, as defined in WAC 212-80-010,)~~) chapter 18.270 RCW to engage in the fire protection sprinkler system business or may establish penalties as prescribed by Washington state law for any of the following reasons:

(a) Gross (~~(incompetency)~~) incompetence or gross negligence in the preparation of layout drawings, installation, repair, alteration, testing, maintenance, inspection, (~~(service)~~) or addition to fire protection sprinkler systems.

(b) Conviction of a felony.

(c) Fraudulent or dishonest practices while engaging in the fire protection sprinkler systems business.

(d) Use of false evidence or misrepresentation in an application for a certificate of competency.

(e) Permitting his or her certificate to be used in connection with the preparation of any layout drawings, installation, testing, maintenance, inspection, (~~(service)~~) or certification of any system when such activity is not under his or her supervision, or in violation of this regulation.

(f) Knowingly violating any provisions of this regulation or chapters 18.160 or 18.270 RCW.

(2) The chief of the Washington state patrol, through the director of fire protection, shall revoke the certificate of a certificate of competency holder, trainee, or a state certified fire sprinkler inspection and testing technician who engages in the fire protection sprinkler system business while the certificate of competency or trainee certificate is suspended.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-210 Imposing citations and civil penalties. The chief of the Washington state patrol, through the director of fire protection, may impose civil penalties and/or fines to any licensed company or certified individual who violates any provision of chapters 18.160, 18.270 RCW, or this chapter. Moreover, the chief of the Washington state patrol, through the director of fire protection, may impose the civil penalties and/or fines listed herein to any unlicensed company or uncertified individual who operates in the state of Washington as a licensed company and/or certified individual.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-215 Citations and penalties. (1) These rules establish the basis and process by which the citations and penalties will be determined and issued for violations of chapters 18.160, 18.270 RCW, and/or chapter 212-80 WAC.

(2) Each violation is classified and penalties assessed according to the violation type and instance as defined by this chapter.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-220 General rules of citations and penalties. (1) These rules establish civil penalty criteria for violation Types I, II, and III and the instances for each type of violation.

(2) These rules apply to persons who violate the intent, chapter, and requirements of chapters 18.160, 18.270 RCW, and/or chapter 212-80 WAC.

(3) Each separate instance of noncompliance with chapters 18.160 and 18.270 RCW and/or chapter 212-80 WAC shall be considered a separate violation.

(4) Each day the violation continues may be considered a separate violation.

(5) In addition to the issuance of citations and/or penalties, the chief of the Washington state patrol, through the director of fire protection, may also revoke, suspend, and/or deny the renewal of any license or certificate issued under chapters 18.160 and 18.270 RCW to person(s) and/or company(ies) who fails to pay any penalties assessed under these rules. Such action does not preclude the chief of the Washington state patrol, through the director of fire protection, from assessing further violations for unlicensed and/or uncertified operations.

(6) The penalty for each violation shall range from \$0.00 to \$5,000.00 per day per violation per occurrence.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-225 Violation types, instances, and penalty assessments. (1) Penalties shall be assessed according to the violation type.

(2) The violation types are as follows:

- (a) Minimal - Type I;
- (b) Moderate - Type II; and
- (c) Severe - Type III.

(3) The instances are as follows:

(a) 1st - The first time the individual, person, and/or company is in violation of chapters 18.160 or 18.270 RCW and/or chapter 212-80 WAC in any one calendar year, regardless of the number of individual violations or the duration of them;

(b) 2nd - The second time the individual, person, and/or company is in violation of chapters 18.160 or 18.270 RCW and/or chapter 212-80 WAC in any one calendar year, regardless of the number of individual violations or the duration of them; and

(c) 3rd - The third time the individual, person and/or company is in violation of chapters 18.160 or 18.270 RCW and/or chapter 212-80 WAC in any one calendar year, regardless of the number of individual violations or the duration of them.

(4) In the event of a fourth instance in any one calendar year, that company and/or individual will no longer be allowed to work in the sprinkler field in the state of Washington. This decision may be appealed, pursuant to RCW 74.20A.320.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-245 Penalty adjustments. (1) The assessment of adjustment of penalties for amounts other than those set by chapters 18.160 or 18.270 RCW shall be done only by the chief of the Washington state patrol, through the director of fire protection, through a hearings process either formally or informally.

(2) The assessment of penalties for not being in conformance with chapters 18.160 or 18.270 RCW and/or chapter 212-80 WAC may be made only after considering:

- (a) The gravity and magnitude of the violation.
- (b) The person's previous record.

(c) Such other considerations as the chief of the Washington state patrol, through the director of fire protection, may consider appropriate.

(3) During a formal hearing or informal conference, the chief of the Washington state patrol, through the director of fire protection, may modify or adjust the citation, cited violations, and/or penalties assessed in order to meet the requirements of these rules and to ensure uniformity and consistency in their application statewide.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-250 Payment of civil penalty. (1) The penalty shall be paid to the chief of the Washington state patrol, through the director of fire protection, within twenty-eight days after an order assessing a civil penalty becomes final by operation of law or on an appeal.

(2) The attorney general may bring an action in the name of the chief of the Washington state patrol, through the director of fire protection, in the superior court of Thurston County or of any county in which the violator may do business to collect any penalty imposed under chapter 18.160 or 18.270 RCW.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-255 Type I (minimal) violations. (1) Type I violations are subject to penalties ranging from a warning to two hundred dollars a day depending upon the instance and in accordance with chapter 212-80 WAC.

(2) Examples of Type I violations include, but are not limited to:

(a) Failing to inform the chief of the Washington state patrol, through the director of fire protection, of the loss of their primary certificate of competency holder, as required by RCW ((18.160.40)) 18.160.040.

(b) Failing to have the certificate of competency holder stamp plans, calculations, and/or test certificates.

(c) Allowing an employee to certify, install, inspect, test and/or maintain, ((and/or service)) water based fire sprinkler systems or equipment contrary to NFPA codes, standards, or manufacturers' specifications without specific written permission from the local authority having jurisdiction.

(d) Working without a permit, or permission to do so, by the local authority having jurisdiction.

AMENDATORY SECTION (Amending WSR 05-05-006, filed 2/4/05, effective 3/7/05)

WAC 212-80-260 Type II (moderate) violations. (1) Type II violations are subject to penalties ranging from two hundred dollars to five hundred dollars a day depending upon instance and in accordance with chapter 212-80 WAC.

(2) Examples of Type II violations include, but are not limited to:

(a) Performing work on a sprinkler system where the employee's certificate of competency holder under RCW ((18.160.40)) 18.160.040 or chapter 18.270 RCW does not have a current or valid license.

(b) Working without the appropriate level of license or certificate of competency.

(c) Permitting his or her license to be used in connection with the preparation of any technical drawings that have not been prepared by him or her personally, or under their direct supervision.

(d) Working with an expired license or permit (more than ninety days).

AMENDATORY SECTION (Amending WSR 05-17-099, filed 8/16/05, effective 9/16/05)

WAC 212-80-265 Type III (serious) violations. (1) Type III violations are subject to penalties ranging from five hundred dollars to five thousand dollars a day depending on instance and in accordance with chapter 212-80 WAC.

(2) Examples of Type III violations include, but are not limited to:

(a) Demonstrating gross ~~((incompetency))~~ incompetence or gross negligence in the preparation of technical drawings, the installation, inspection, testing, maintenance, repair, alteration, ~~((service,))~~ and/or addition to a fire sprinkler system.

(b) Allowing an employee to demonstrate gross ~~((incompetency))~~ incompetence or gross negligence in the installation, inspection, testing, maintenance, repair, alteration, ~~((service))~~ and/or addition to a fire sprinkler system.

(c) Charging a customer for fire sprinkler work not performed.

(d) Offering to contract for fire sprinkler work without a certificate of competency holder, as described in RCW 18.160.040.

(e) Allowing an employee to falsify any fire sprinkler tags, labels, or inspection reports.

(f) Working without a certified full-time certificate of competency holder on staff, or, in the case of an inspection and testing contractor, allowing any employee not certified by the chief of the Washington state patrol, through the director of fire protection, as an inspection and testing technician.

(g) Falsifying an application or document submitted to the chief of the Washington state patrol, through the director of fire protection, to obtain a sprinkler contractor license or certificate of competency.

(h) Committing three or more Level II offenses within a three year period either as a company, through an employee of the company, through an employee acting as a certificate of competency holder for the company, and/or any combination thereof.

(i) Permitting his or her license to be used in connection with the stamping of any test certificates for work performed by someone other than his or her full-time employees.

Submit Written Comments to: Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 586-0127, by December 9, 2008.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497, no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.140 requires that forest land values be adjusted annually by a statutory formula contained in RCW 84.33.140(3). The proposed rule adjusts the table of forest land values in Washington as required by statute. County assessors will use these published land values for property tax purposes in 2009.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: RCW 84.33.140 requires that the values provided in this rule be adjusted each year.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.140.

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

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

Name of Agency Personnel Responsible for Drafting: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #300, Olympia, WA, (360) 570-3230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the rule and the proposed amendments do not impose any requirements or burdens that are not already specifically required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The content/values set in this rule are explicitly and specifically dictated by statute. Such rules are not subject to RCW 34.05.328.

November 5, 2008

Alan R. Lynn

Rules Coordinator

**WSR 08-22-098
PROPOSED RULES
DEPARTMENT OF REVENUE**

[Filed November 5, 2008, 10:30 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 458-40-540 Forest land values—2009.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on December 9, 2008, at 10:00 a.m.

Date of Intended Adoption: December 23, 2008.

AMENDATORY SECTION (Amending WSR 08-02-063, filed 12/28/07, effective 1/1/08)

WAC 458-40-540 Forest land values—~~((2008))~~ 2009. The forest land values, per acre, for each grade of forest land for the ~~((2008))~~ 2009 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2008)) <u>2009</u> VALUES ROUNDED
1	1	\$(205)) <u>209</u>
	2	((203)) <u>207</u>
	3	((191)) <u>194</u>
	4	((138)) <u>140</u>

LAND GRADE	OPERABILITY CLASS	((2008)) 2009 VALUES ROUNDED
2	1	((172)) 175
	2	((167)) 170
	3	((160)) 163
	4	((115)) 117
3	1	((135)) 137
	2	((131)) 133
	3	((130)) 132
	4	((99)) 101
4	1	((103)) 105
	2	((100)) 102
	3	((99)) 101
	4	((76)) 77
5	1	((75)) 76
	2	((68)) 69
	3	((67)) 68
	4	((46)) 47
6	1	((38)) 39
	2	((35)) 36
	3	((35)) 36
	4	((33)) 34
7	1	17
	2	17
	3	16
	4	16
8	1	1

WSR 08-22-099
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed November 5, 2008, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-19-074.

Title of Rule and Other Identifying Information: WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on December 9, 2008, at 10:00 a.m.

Date of Intended Adoption: December 23, 2008.

Submit Written Comments to: Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 586-0127, by December 9, 2008.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497, no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to apprise timber harvesters of the timber values

used to calculate the timber excise tax. The values in the proposed rule will apply to the first half of 2009.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: The law requires that these stumpage values be updated as of January 1 and July 1 of each year.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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

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

Name of Agency Personnel Responsible for Drafting: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #300, Olympia, WA, (360) 570-3230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 586-0127.

The proposed rule is a significant legislative rule as defined by RCW 34.05.328.

November 5, 2008
 Alan R. Lynn
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-14-085, filed 6/27/08, effective 7/1/08)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) Introduction. This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) Stumpage value tables. The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ~~((July)) January 1 through ((December 31, 2008)) June 30, 2009:~~

~~((TABLE 1—Proposed Stumpage Value Table
 Stumpage Value Area 1
 July 1 through December 31, 2008~~

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽⁴⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$504	\$497	\$490	\$483	\$476
		2	330	323	316	309	302
		3	330	323	316	309	302

~~TABLE 1~~ Proposed Stumpage Value Table
~~Stumpage Value Area 1~~
 July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
		4	316	309	302	295	288
Western Redcedar ⁽²⁾	RC	1	676	669	662	655	648
Western Hemlock ⁽²⁾	WH	1	265	258	251	244	237
		2	265	258	251	244	237
		3	265	258	251	244	237
		4	265	258	251	244	237
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood ⁽⁴⁾	CHW	1	8	7	6	5	4
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Alaska Cedar.

⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.

⁽⁴⁾ Stumpage value per ton.

⁽⁵⁾ Stumpage value per cord.

⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁷⁾ Stumpage value per lineal foot.

~~TABLE 2~~ Proposed Stumpage Value Table
~~Stumpage Value Area 2~~
 July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas Fir	DF	1	\$568	\$561	\$554	\$547	\$540
		2	383	376	369	362	355

~~TABLE 2~~ Proposed Stumpage Value Table
~~Stumpage Value Area 2~~
 July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
		3	374	367	360	353	346
		4	285	278	271	264	257
Western Redcedar ⁽²⁾	RC	1	676	669	662	655	648
Western Hemlock ⁽²⁾	WH	1	311	304	297	290	283
		2	311	304	297	290	283
		3	286	279	272	265	258
		4	286	279	272	265	258
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood ⁽⁴⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Alaska Cedar.

⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.

⁽⁴⁾ Stumpage value per ton.

⁽⁵⁾ Stumpage value per cord.

⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁷⁾ Stumpage value per lineal foot.

**TABLE 3—Proposed Stumpage Value Table
Stumpage Value Area 3**
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$528	\$521
		2	418	411	404	397	390
		3	418	411	404	397	390
		4	294	287	280	273	266
Western Redcedar ⁽³⁾	RC	1	676	669	662	655	648
Western Hemlock ⁽⁴⁾	WH	1	291	284	277	270	263
		2	291	284	277	270	263
		3	277	270	263	256	249
		4	277	270	263	256	249
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas-Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 4—Proposed Stumpage Value Table
Stumpage Value Area 4**
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$450	\$443
		2	423	416	409	402	395
		3	423	416	409	402	395
		4	295	288	281	274	267
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western Redcedar ⁽³⁾	RC	1	676	669	662	655	648
Western Hemlock ⁽⁴⁾	WH	1	299	292	285	278	271
		2	299	292	285	278	271
		3	299	292	285	278	271
		4	299	292	285	278	271
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas-Fir Poles & Piles	DFL	1	698	691	684	677	670
Western Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 5—Proposed Stumpage Value Table
Stumpage Value Area 5**
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$668	\$661	\$654	\$647	\$640
		2	384	377	370	363	356
		3	383	376	369	362	355
		4	294	287	280	273	266
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western-Redcedar ⁽²⁾	RC	1	676	669	662	655	648
Western Hemlock ⁽⁴⁾	WH	1	286	279	272	265	258
		2	286	279	272	265	258
		3	268	261	254	247	240
		4	268	261	254	247	240
Red Alder	RA	1	706	699	692	685	678
		2	637	630	623	616	609
Black Cottonwood	BC	1	29	22	15	8	1
Other Hardwood	OH	1	174	167	160	153	146
Douglas-Fir Poles & Piles	DFL	1	698	691	684	677	670
Western-Redcedar Poles	RCL	1	1353	1346	1339	1332	1325
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 6—Proposed Stumpage Value Table
Stumpage Value Area 6**
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$224	\$217	\$210	\$203	\$196
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western-Redcedar ⁽²⁾	RC	1	664	657	650	643	636
True Firs and Spruce ⁽⁴⁾	WH	1	196	189	182	175	168
Western White Pine	WP	1	239	232	225	218	211
Hardwoods	OH	1	50	43	36	29	22
Western-Redcedar Poles	RCL	1	664	657	650	643	636
Small Logs ⁽⁵⁾	SML	1	30	29	28	27	26
Chipwood ⁽⁵⁾	CHW	1	9	8	7	6	5
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
⁽⁹⁾ Stumpage value per lineal foot.

**TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7**
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$224	\$217	\$210	\$203	\$196
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western Redcedar ⁽³⁾	RC	1	664	657	650	643	636
True Firs and Spruce ⁽⁴⁾	WH	1	196	189	182	175	168
Western White Pine	WP	1	239	232	225	218	211
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	664	657	650	643	636
Small Logs ⁽⁵⁾	SML	1	30	29	28	27	26
Chipwood ⁽⁵⁾	CHW	1	9	8	7	6	5
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.

⁽⁹⁾ Stumpage value per lineal foot.

**TABLE 8—Proposed Stumpage Value Table
Stumpage Value Area 10**
July 1 through December 31, 2008

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$436	\$429	\$422	\$415	\$408
		2	409	402	395	388	381
		3	409	402	395	388	381
		4	281	274	267	260	253
Lodgepole Pine	LP	1	172	165	158	151	144
Ponderosa Pine	PP	1	177	170	163	156	149
		2	121	114	107	100	93
Western Redcedar ⁽³⁾	RC	1	662	655	648	641	634
Western Hemlock ⁽⁴⁾	WH	1	285	278	271	264	257
		2	285	278	271	264	257
		3	285	278	271	264	257
		4	285	278	271	264	257
Red Alder	RA	1	692	685	678	671	664
		2	623	616	609	602	595
Black Cottonwood	BC	1	15	8	1	1	1
Other Hardwood	OH	1	160	153	146	139	132
Douglas-Fir Poles & Piles	DFL	1	684	677	670	663	656
Western Redcedar Poles	RCL	1	1339	1332	1325	1318	1311
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**TABLE 1—Proposed Stumpage Value Table
Stumpage Value Area 1**
January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$288	\$281	\$274	\$267	\$260
		2	288	281	274	264	260
		3	288	281	274	267	260
		4	238	231	224	217	210
Western Redcedar ⁽²⁾	RC	1	651	644	637	630	623
Western Hemlock ⁽³⁾	WH	1	230	223	216	209	202
		2	230	223	216	209	202
		3	230	223	216	209	202
		4	230	223	216	209	202
Red Alder	RA	1	533	526	519	512	505
		2	473	466	459	452	445
Black Cottonwood	BC	1	38	31	24	17	10
Other Hardwood	OH	1	160	153	146	139	132
Douglas-Fir Poles & Piles	DFL	1	692	685	678	671	664
Western Redcedar Poles	RCL	1	1380	1373	1366	1359	1352
Chipwood ⁽⁴⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Alaska-Cedar.
⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁴⁾ Stumpage value per ton.
⁽⁵⁾ Stumpage value per cord.
⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁷⁾ Stumpage value per lineal foot.

**TABLE 2—Proposed Stumpage Value Table
Stumpage Value Area 2**
January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$316	\$309	\$302	\$295	\$288
		2	316	309	302	295	288
		3	316	309	302	295	288
		4	252	245	238	231	224
Western Redcedar ⁽²⁾	RC	1	651	644	637	630	623
Western Hemlock ⁽³⁾	WH	1	222	215	208	201	194
		2	222	215	208	201	194
		3	222	215	208	201	194
		4	222	215	208	201	194
Red Alder	RA	1	533	526	519	512	505
		2	473	466	459	452	445
Black Cottonwood	BC	1	38	31	24	17	10
Other Hardwood	OH	1	160	153	146	139	132
Douglas-Fir Poles & Piles	DFL	1	692	685	678	671	664
Western Redcedar Poles	RCL	1	1380	1373	1366	1359	1352
Chipwood ⁽⁴⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Alaska-Cedar.
⁽³⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁴⁾ Stumpage value per ton.
⁽⁵⁾ Stumpage value per cord.
⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁷⁾ Stumpage value per lineal foot.

TABLE 3—Proposed Stumpage Value Table
Stumpage Value Area 3
 January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$364	\$357	\$350	\$343	\$336
		2	364	357	350	343	336
		3	364	357	350	343	336
		4	316	309	302	295	288
Western Redcedar ⁽³⁾	RC	1	651	644	637	630	623
Western Hemlock ⁽⁴⁾	WH	1	241	234	227	220	213
		2	241	234	227	220	213
		3	241	234	227	220	213
		4	241	234	227	220	213
Red Alder	RA	1	533	526	519	512	505
		2	473	466	459	452	445
Black Cottonwood	BC	1	38	31	24	17	10
Other Hardwood	OH	1	160	153	146	139	132
Douglas-Fir Poles & Piles	DFL	1	692	685	678	671	664
Western Redcedar Poles	RCL	1	1380	1373	1366	1359	1352
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

TABLE 4—Proposed Stumpage Value Table
Stumpage Value Area 4
 January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$365	\$358	\$351	\$344	\$337
		2	365	358	351	344	337
		3	365	358	351	344	337
		4	294	287	280	273	266
Lodgepole Pine	LP	1	155	148	141	134	127
Ponderosa Pine	PP	1	134	127	120	113	106
		2	81	74	67	60	53
Western Redcedar ⁽³⁾	RC	1	651	644	637	630	623
Western Hemlock ⁽⁴⁾	WH	1	276	269	262	255	248
		2	276	269	262	255	248
		3	276	269	262	255	248
		4	276	269	262	255	248
Red Alder	RA	1	533	526	519	512	505
		2	473	466	459	452	445
Black Cottonwood	BC	1	38	31	24	17	10
Other Hardwood	OH	1	160	153	146	139	132
Douglas-Fir Poles & Piles	DFL	1	692	685	678	671	664
Western Redcedar Poles	RCL	1	1380	1373	1366	1359	1352
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

TABLE 5—Proposed Stumpage Value Table
Stumpage Value Area 5
 January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$296	\$289	\$282	\$275	\$268
		2	296	289	282	275	268
		3	296	289	282	275	268
		4	269	262	255	248	241
Lodgepole Pine	LP	1	155	148	141	134	127
Ponderosa Pine	PP	1	135	127	120	113	106
		2	81	74	67	60	53
Western Redcedar ⁽³⁾	RC	1	651	644	637	630	623
Western Hemlock ⁽⁴⁾	WH	1	211	204	197	190	183
		2	211	204	197	190	183
		3	211	204	197	190	183
		4	211	204	197	190	183
Red Alder	RA	1	533	526	519	512	505
		2	473	466	459	452	445
Black Cottonwood	BC	1	38	31	24	17	10
Other Hardwood	OH	1	160	153	146	139	132
Douglas-Fir Poles & Piles	DFL	1	692	685	678	671	664
Western Redcedar Poles	RCL	1	1380	1373	1366	1359	1352
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

TABLE 6—Proposed Stumpage Value Table
Stumpage Value Area 6
 January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$187	\$180	\$173	\$166	\$159
Lodgepole Pine	LP	1	155	148	141	134	127
Ponderosa Pine	PP	1	134	127	120	113	106
		2	81	74	67	60	53
Western Redcedar ⁽³⁾	RC	1	780	773	766	759	752
True Firs and Spruce ⁽⁴⁾	WH	1	164	157	150	143	136
Western White Pine	WP	1	229	222	215	208	201
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	780	773	766	759	752
Small Logs ⁽⁵⁾	SML	1	25	24	23	22	21
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
⁽⁹⁾ Stumpage value per lineal foot.

**TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7**
January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$187	\$180	\$173	\$166	\$159
Lodgepole Pine	LP	1	155	148	141	134	127
Ponderosa Pine	PP	1	134	127	120	113	106
		2	81	74	67	60	53
Western Redcedar ⁽³⁾	RC	1	780	773	766	759	752
True Firs and Spruce ⁽⁴⁾	WH	1	164	157	150	143	136
Western White Pine	WP	1	229	222	215	208	201
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	780	773	766	759	752
Small Logs ⁽⁵⁾	SML	1	25	24	23	22	21
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

- ⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- ⁽²⁾ Includes Western Larch.
- ⁽³⁾ Includes Alaska-Cedar.
- ⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
- ⁽⁵⁾ Stumpage value per ton.
- ⁽⁶⁾ Stumpage value per cord.
- ⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
- ⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
- ⁽⁹⁾ Stumpage value per lineal foot.

**TABLE 8—Proposed Stumpage Value Table
Stumpage Value Area 10**
January 1 through June 30, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$351	\$344	\$337	\$330	\$323
		2	351	344	337	330	323
		3	351	344	337	330	323
		4	280	273	266	259	252
Lodgepole Pine	LP	1	155	148	141	134	127
Ponderosa Pine	PP	1	134	127	120	113	106
		2	81	74	67	60	53
Western Redcedar ⁽³⁾	RC	1	637	630	623	616	609
Western Hemlock ⁽⁴⁾	WH	1	262	255	248	241	234
		2	262	255	248	241	234
		3	262	255	248	241	234
		4	262	255	248	241	234
Red Alder	RA	1	519	512	505	498	491
		2	459	452	445	438	431
Black Cottonwood	BC	1	24	17	10	3	1
Other Hardwood	OH	1	146	139	132	125	118
Douglas-Fir Poles & Piles	DFL	1	678	671	664	657	650
Western Redcedar Poles	RCL	1	1366	1359	1352	1345	1338
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	279	272	265	258	251
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

- ⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- ⁽²⁾ Includes Western Larch.
- ⁽³⁾ Includes Alaska-Cedar.
- ⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
- ⁽⁵⁾ Stumpage value per ton.
- ⁽⁶⁾ Stumpage value per cord.
- ⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
- ⁽⁸⁾ Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber**—Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber**—Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ~~(July) January 1 through (December 31, 2008)~~ June 30, 2009:

**TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10**
~~(July) January 1 through (December 31, 2008)~~ June 30, 2009

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	- \$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	- \$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	- \$50.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7**
~~(July) January 1 through (December 31, 2008)~~ June 30, 2009

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	- \$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	

III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1:	SVA's 1 through 6, and 10	\$0.00
Class 2:	SVA 7	\$0.00

Note: The adjustment will not be allowed on special forest products.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

WSR 08-22-100
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 07-16—Filed November 5, 2008, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-22-088.

Title of Rule and Other Identifying Information: The department of ecology is proposing new rules in chapter 173-345 WAC, Recyclable materials—Transporter and facility requirements. Chapter 173-345 WAC applies to businesses that transport recyclable materials, facilities that recycle solid waste, and material recovery facilities (MRFs), except for those facilities with current solid waste handling permits issued under RCW 70.95.170. The new rules focus on the following: Registration requirements for transporters of recyclable materials; notification and reporting requirements for recycling facilities and MRFs; and penalties for noncompliance with the requirements of this rule.

Hearing Location(s): Washington Department of Ecology, Headquarters Building, 300 Desmond Drive S.E., Lacey, WA, on December 15, 2008, at 1:00 p.m.

Date of Intended Adoption: January 15, 2009.

Submit Written Comments to: Randy Martin, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail rama461@ecy.wa.gov, fax (360) 407-6102, by 5:00 p.m., December 23, 2008.

Assistance for Persons with Disabilities: Contact Michelle Payne by December 8, 2008. Persons with hearing loss, call 711 for Washington relay service. Persons with a speech disability, call (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this chapter is to establish minimum standards for the transportation of recyclable materials; establish notice and reporting standards for solid waste recycling facilities and MRFs; ensure that recyclable materials are not delivered to transfer stations, solid waste incinerators or landfills for disposal; and establish penalties for transporters of recyclable materials, solid waste recycling facilities, and MRFs that do not meet the requirements of this chapter.

Reasons Supporting Proposal: These rules will implement SB 5788, passed by the 2005 legislature.

Statutory Authority for Adoption: Chapter 70.95 RCW and RCW 70.95.400 - [70.95.]430.

Statute Being Implemented: Chapter 70.95 RCW and RCW 70.95.400 - [70.95.]430.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Randy Martin, Olympia, WA, (360) 407-6136.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is exempt from chapter 19.85 RCW because all components of the rule either provide clarification or are dictated by statute or refers readers to another rule. RCW 19.85.025 which refers to RCW 34.05.310 (4)(d) exempts clarifications with-

out changing the effect of the rule and RCW 19.85.025 which refers to RCW 34.05.310 (4)(e) exempts language that is dictated by statute and RCW 19.85.025 which refers to RCW 34.05.310 (4)(c) exempts language that creates a reference to other existing rules.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is exempt from cost-benefit analysis and least burden analysis under RCW 34.05.328 because all components of the rule either provide clarification or are dictated by statute or refers readers to another rule. RCW 34.05.328 (5)(b)(iv) exempts clarifications without changing the effect of the rule and RCW 34.05.328 (5)(b)(v) exempts language that is dictated by statute and RCW 34.05.328 (5)(b)(iii) exempts language that creates a reference to other existing rules.

October 30, 2008
Polly Zehm
Deputy Director

Chapter 173-345 WAC

RECYCLABLE MATERIALS—TRANSPORTER AND FACILITY REQUIREMENTS

NEW SECTION

WAC 173-345-010 Authority and purpose. The purpose of this chapter is to establish minimum standards for the transportation of recyclable materials; establish notice and reporting standards for solid waste recycling facilities; ensure that recyclable materials are not delivered to transfer stations, solid waste incinerators, or landfills for disposal; establish penalties for transporters of recyclable materials, solid waste recycling facilities, and material recovery facilities (MRFs) that do not meet the standards of this chapter.

NEW SECTION

WAC 173-345-020 Applicability. This rule applies to businesses that transport recyclable materials from commercial or industrial generators over the public highways of the state of Washington for compensation that are required to possess a common carrier permit to operate issued by the Washington utilities and transportation commission under chapter 81.80 RCW. This rule also applies to facilities that recycle solid waste and MRFs except for those facilities with current solid waste handling permits issued under RCW 70.95.170. Businesses that transport covered electronic products exclusively for recycling are exempt only from transporter registration and reporting requirements under this rule because these transporters must comply with chapters 70.95N RCW and 173-900 WAC.

NEW SECTION

WAC 173-345-030 Definitions. **"Container"** means a portable device used for the collection, storage and/or transportation of solid waste including, but not limited to, reusable containers, disposable containers, and detachable containers.

"Covered electronic product" or **"CEP"** includes any one of the following four types of products that has been used in Washington state by any covered entity, regardless of original point of purchase:

- (a) Any monitor having a viewable area greater than four inches when measured diagonally;
- (b) A desktop computer;
- (c) A laptop or a portable computer; or
- (d) Any video display device having a viewable area greater than four inches when measured diagonally.

"Covered electronic product" does not include:

- (a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft;
- (b) Monitoring and control instruments or systems;
- (c) Medical devices;
- (d) Products including materials intended for use as ingredients in those products as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts;
- (e) Equipment used in the delivery of patient care in a health care setting;
- (f) A computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; automatic teller machines, vending machines or similar business transaction machines; or
- (g) Hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332(d)(1).

"Department" means the department of ecology.

"Disposal site" means the location where any final treatment, utilization, processing, or deposit of solid waste occurs.

"Energy recovery" means recovery of energy in a useable form from mass burning or refuse-derived fuel incineration, pyrolysis or any other means of using the heat of combustion of solid waste that involves high temperature (>1200 Fahrenheit) processing.

"Facility" means all contiguous land (including buffers and setbacks) and structures, other appurtenances, and improvements to the land used for recycling.

"Incidental" means occurring merely by chance or without intention or calculation.

"Incineration" means reducing the volume of solid wastes by use of an enclosed device using controlled flame combustion.

"Landfill" means a disposal facility or part of a facility at which solid waste is permanently placed in or on land including facilities that use solid waste as a component of fill.

"Material recovery facility" means a facility that collects, compacts, repackages, sorts, or processes for transport source separated solid waste for the purpose of recycling.

"Permit" means an authorization used by the jurisdictional health department which allows a person to perform solid waste activities at a specific location and which includes specific conditions for such facility operations.

"Processing" means an operation to convert a material into a useful product or to prepare it for reuse, recycling, or disposal.

"Recyclable materials" means those solid wastes that are separated for recycling or reused, including but not limited to, papers, metals, glass, that are identified as recyclable material pursuant to a local solid waste management plan.

"Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include collection, compacting, repackaging, and sorting for the purpose of transport.

"Source separated" means the separation of different kinds of solid waste at the place where waste originates.

"Solid waste" or **"wastes"** means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, contaminated soils and contaminated dredged material, and recyclable materials.

"Transfer station" means a permanent, fixed, supplemental collection and transportation facility, used by persons and route collection vehicles to deposit collected solid waste from off-site into a larger transfer vehicle for transport to a solid waste handling facility.

"Transformation" means to change completely or essentially in composition or structure. This could include a change in outward shape, form, or character, nature or function.

"Transporter of recyclable material" means any person or entity that transports source-separated recyclable materials from commercial or industrial generators over the public highways of the state of Washington for compensation, and who is required to possess a common carrier permit to operate from the Washington utilities and transportation commission under chapter 81.80 RCW. Transporters include commercial recycling operations of certified solid waste collection companies regulated under chapter 81.77 RCW.

NEW SECTION

WAC 173-345-040 Collection of solid waste and recyclable materials. All sites where recyclable materials are generated and transported for recycling must provide separate containers for recyclable materials and nonrecyclable materials (solid waste), using collection practices consistent with chapter 173-350 WAC.

NEW SECTION

WAC 173-345-050 Transporter registration. (1) The rule applies to all transporters of recyclable materials as defined in WAC 173-345-030.

(2) For purposes of this rule "transporters" do not include:

(a) Carriers of commercial recyclable materials, when such materials are owned or being bought or sold by the entity or person, and being carried in their own vehicle, when such activity is incidental to the conduct of an entity or person's primary business;

(b) Entities or persons hauling their own recyclables or hauling recyclables they generated or purchased and transported in their own vehicles, including material recovery facilities hauling their own recyclable material;

(c) Nonprofit or charitable organizations collecting and transporting recyclable materials from a buyback center, drop box, or from a commercial or industrial generator of recyclable materials;

(d) City municipal solid waste departments or city solid waste contractors; or

(e) Common carriers permitted under chapter 81.80 RCW whose primary business is not the transportation of recyclable materials.

(3) All transporters of recyclable materials shall register with the department, and possess a common carrier permit issued by the Washington utilities and transportation commission, prior to the transportation of recyclable materials on forms provided by the department.

(4) A transporter of recyclable materials who transports recyclable materials within the state without a transporter registration required by this section is subject to a civil penalty of up to one thousand dollars per violation.

NEW SECTION

WAC 173-345-060 Transporter delivery of recyclable materials. (1) A transporter of recyclable materials may not deliver any recyclable materials for disposal to a transfer station, solid waste incinerator, or landfill.

(2) A transporter of recyclable materials who violates the provisions of this section is subject to a civil penalty of up to one thousand dollars per violation.

NEW SECTION

WAC 173-345-070 Transporter recordkeeping. (1) A transporter of recyclable materials shall keep records of locations and quantities specifically identified to the generator.

(a) Name;

(b) Address;

(c) Service date;

(d) Invoice documenting where recyclables were sold, delivered for processing, or otherwise marketed.

(2) The records must be retained for two years from the date of collection and must be accessible for inspection by the department and the local health department.

(3) Violations of this section subject the transporter of recyclable materials to a civil penalty of up to one thousand dollars per violation.

NEW SECTION

WAC 173-345-080 Recycling and materials recovery facility notification. (1) All material recovery facilities and all facilities that recycle solid waste, except for those facilities with a current solid waste handling permit issued under RCW 70.95.170, must notify the department and the jurisdictional health department in writing within thirty days prior to operation, of the intent to conduct recycling in accordance with this section. Notification must be in writing, and include:

(a) Contact information for the person conducting the recycling activity;

(b) A general description of the recycling activity;

(c) A description of the types of solid waste being recycled; and

(d) A general description of the recycling processes and methods.

(2) Any facility, except product take-back centers, that accepts recyclable materials within the state without first meeting the requirements of subsection (1) of this section, is subject to a civil penalty of up to one thousand dollars per violation.

(3) Facilities exempt from the notification requirements in chapter 173-350 WAC are exempt from the requirements in this section.

NEW SECTION

WAC 173-345-090 Penalties. Any transporter of recyclable materials violating the provisions of WAC 173-345-050, 173-345-060, or 173-345-070, is subject to penalties prescribed in those sections. All recycling facilities and material recovery facilities violating the provisions of WAC 173-345-080 are subject to the penalties prescribed in that section.

NEW SECTION

WAC 173-345-100 Appeals. Any person aggrieved by a penalty of the department may appeal that decision only as provided by applicable law including, but not limited to chapters 43.21B and 34.05 RCW.

WSR 08-22-101

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed November 5, 2008, 10:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-17-120.

Title of Rule and Other Identifying Information: WAC 458-20-279 Clean alternative fuel vehicles and high gas mileage vehicles.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on December 9, 2008, at 1:30 p.m.

Date of Intended Adoption: December 17, 2008.

Submit Written Comments to: Jay M. Jetter, P.O. Box 47453, Olympia, WA 98504-7453, e-mail JayJ@dor.wa.gov, phone (360) 570-6057, fax (360) 586-0127, by December 9, 2008.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497, no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

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

proposing a new rule to explain the requirements of the following:

- The retail sales tax and use tax exemptions for clean alternative fuel vehicles (RCW 82.08.809 and 82.12.809); and
- The retail sales tax and use tax exemptions for high gas mileage vehicles (RCW 82.08.813 and 82.12.813).

These four exemptions are effective from January 1, 2009, until January 1, 2011.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: The rule will provide information about the retail sales and use tax exemptions that take effect on January 1, 2009, for clean alternative fuel vehicles and high gas mileage vehicles.

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

Statute Being Implemented: RCW 82.08.809, 82.08.813, 82.12.809, and 82.12.813.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Jay M. Jetter, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6057; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirement or administrative burden on any small business not already required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule as defined in RCW 34.05.328.

November 5, 2008

Alan R. Lynn

Rules Coordinator

This draft is provided for discussion purposes only to determine what topics a possible proposed rule might address. This discussion draft is under no circumstances to be used to determine a tax liability and/or eligibility for tax exemptions.

[NEW SECTION]

WAC 458-20-279 Clean alternative fuel vehicles and high gas mileage vehicles. (1) Introduction. For the period January 1, 2009 through December 31, 2010 inclusive, RCW 82.08.809 and 82.12.809 provide a retail sales and use tax exemption for new passenger cars, light duty trucks, and medium duty passenger vehicles that are exclusively powered by a clean alternative fuel. For the same period, RCW 82.08.813 and 82.12.813 provide a retail sales and use tax exemption for new passenger cars, light duty trucks, and medium duty passenger vehicles that utilize hybrid technology and have a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon. This section provides additional infor-

mation about the requirements for the exemptions provided by RCW 82.08.809, 82.08.813, 82.12.809, and 82.12.813 ("the exemptions").

(2) Definitions. The following definitions apply throughout this section.

(a) "Clean alternative fuel" means natural gas, propane, hydrogen, or electricity, when used as a fuel in a motor vehicle that meets the California motor vehicle emission standards in Title 13 of the California code of regulations, effective January 1, 2005, and the rules of the Washington state department of ecology. See RCW 82.08.809(3) and 82.12.-809(2).

(b) "Gross vehicle weight rating" is the value specified by the manufacturer as the maximum design loaded weight of a single vehicle. See WAC 173-423-040(4).

(c) "Hybrid technology" means propulsion units powered by both electricity and gasoline. See RCW 82.08.813(3) and 82.12.813(2).

(d) "Light duty truck" is any vehicle certified to the standards in Title 13, CCR, section 1961 (a)(1) rated at 8,500 pounds gross vehicle weight or less, and any other motor vehicle rated at 6,000 pounds gross vehicle weight or less, which is designed primarily for the purposes of transportation of property or is a derivative of such vehicle, or is available with special features enabling off-street or off-highway operation and use. See WAC 173-423-040(8).

(e) "Medium duty passenger vehicle" is any medium duty vehicle with a gross vehicle weight rating of less than 10,000 pounds that is designed primarily for the transportation of persons. The medium duty passenger vehicle definition does not include any vehicle which:

(i) Is an "incomplete truck," i.e., is a truck that does not have the primary load carrying device or container attached; or

(ii) Has a seating capacity of more than twelve persons; or

(iii) Is designed for more than nine persons in seating rearward of the driver's seat; or

(iv) Is equipped with an open cargo area of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for the purpose of this definition.

See WAC 173-423-040(9).

(f) "Medium duty vehicle" is a vehicle with a gross vehicle weight rating of 8,501 to 14,000 pounds. See WAC 173-423-100(2).

(g) "Model year" is the manufacturer's annual production period which includes January 1 of a calendar year. If the manufacturer has no annual production period, "model year" is the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis. See WAC 173-423-040(10).

(h) "New motor vehicle" is any motor vehicle that:

(i) is self-propelled;

(ii) is required to be registered and titled under Title 46 RCW;

(iii) has not been previously titled to a retail purchaser or lessee; and

(iv) is not a vehicle which has been sold, bargained, exchanged, given away, or title transferred from the person who first took title to it from the manufacturer or first importer, dealer, or agent of the manufacturer or importer, and so used as to have become what is commonly known as "secondhand" within the ordinary meaning thereof. See RCW 46.70.011 and RCW 46.04.660.

The model year of the vehicle is not determinative of whether it meets the definition of "new motor vehicle."

(i) "Passenger car" means every motor vehicle except motorcycles and motor-driven cycles designed primarily for transportation of persons and having a design capacity of twelve persons or less. See WAC 173-423-040(13) and RCW 46.04.382.

(3) New passenger cars, light duty trucks, and medium duty passenger vehicles. In order to qualify for the exemptions, the vehicle must meet the definition of "passenger car," "light duty truck," or "medium duty passenger vehicle" in addition to meeting the definition of "new motor vehicle."

(a) Purchases of previously owned clean alternative fuel or high gas mileage vehicles. The exemptions do not apply to purchases of used vehicles, even if they are exclusively powered by clean alternative fuel or utilize hybrid technology and have a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon. The exemptions only apply to new clean alternative fuel or new high gas mileage vehicles purchased between January 1, 2009 and December 31, 2010.

(i) Example 1. Mike purchases a *used* 2007 model year hybrid vehicle from a dealer or private party in 2009. The purchase would not qualify for the exemptions. The exemptions only apply to new vehicles.

(ii) Example 2. Nicole purchases a *new* 2008 model year hybrid vehicle in 2009 from a dealer. This purchase would be exempt (assuming it meets the other requirements). A new vehicle could be any model year as long as it has not been previously titled to a retail purchaser or lessee.

(4) Conversions. For purposes of this rule, a conversion refers to the alteration of an otherwise nonqualifying vehicle exclusively powered by gasoline or diesel into a qualifying vehicle that either: (1) is exclusively powered by clean alternative fuel; or (2) utilizes hybrid technology and has a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon.

(a) Purchases of converted vehicles. The purchase of a new vehicle that is converted prior to or as part of the retail sale to the purchaser and that otherwise satisfies the requirements of the exemptions will qualify for the exemptions. If the conversion is performed after the retail sale, the purchase of the vehicle will not qualify for the exemptions.

(b) Purchases of the service of converting vehicles. While the purchase of a new vehicle converted by the seller prior to or as part of the retail sale to the purchaser qualifies for the exemptions as described in (4)(a) of this section, the purchase of the service of converting a vehicle does not qualify for the exemptions. However, if the seller hires a third party to convert the vehicle, it can give the third party a resale certificate.

(i) **Example 1.** Tom wants to purchase a new nonqualifying vehicle from Dealer but have it converted as a part of the purchase transaction. Dealer hires John's Shop to convert the vehicle for Tom, and Tom purchases the converted vehicle from Dealer. Tom's purchase of the converted vehicle qualifies for the exemptions.

(ii) **Example 2.** Tom purchases a new nonqualifying vehicle from Dealer. Tom then hires John's Shop to convert the vehicle. The purchase of the nonqualifying vehicle does not qualify for the exemptions, even if Dealer delivers the vehicle directly to John's Shop on Tom's behalf for conversion.

(5) Use Tax. The use of a qualifying vehicle by the original title holder is exempt from use tax if the vehicle is purchased between January 1, 2009 and December 31, 2010.

(a) **Example 1.** Will, a Washington resident, purchases a new qualifying vehicle in Oregon from Dealer on February 1, 2009 and returns to Washington in the vehicle on February 2, 2009. Will's use of the vehicle in Washington is exempt from use tax.

(b) **Example 2.** Oliver, an Oregon resident, purchases a new qualifying vehicle from Dealer in Oregon on April 1, 2009. Oliver moves to Washington on May 15, 2009. Oliver's use of the vehicle in Washington is exempt from use tax. Note: In the absence of the exemptions discussed in this section, Oliver's purchase would likely be subject to use tax since his first use of the vehicle in Washington occurred within 90 days of his acquisition and use of the vehicle in another state. See RCW 82.12.0251.

(6) Extended warranties and maintenance agreements. The sale of an extended warranty or maintenance agreement is subject to retail sales tax even though the vehicle itself may qualify for the exemptions. See WAC 458-20-257.

(7) Replacement parts and/or repair services. The sale of replacement parts or repair services is subject to retail sales tax even though the vehicle itself may have qualified for the exemptions. Only the purchase and use of a qualifying vehicle is exempt from retail sales and use tax.

(8) Accessories. Accessories qualify for the exemptions if the accessories are components of the qualifying vehicle at the time of purchase. Accessories purchased after the qualifying vehicle is purchased are subject to retail sales tax.

(9) Leases. A vehicle is exempt from retail sales and use taxes on a lease if the other requirements are met. If the vehicle is new, registered, and titled in the lessee's name between January 1, 2009 and December 31, 2010, the retail sales tax exemption will apply only to amounts due between January 1, 2009 and December 31, 2010. See also WAC 458-20-103 and 458-20-235.

(a) **Example 1.** Alex leases a new hybrid vehicle that he registers and titles on December 8, 2008. None of his lease payments will qualify for the exemptions because the vehicle was registered and titled prior to January 1, 2009.

(b) **Example 2.** Beth leases a new hybrid vehicle that she registers and titles on December 8, 2010. Assuming that the other requirements of the exemptions are met, any amounts due under the lease before January 1, 2011 are exempt from retail sales tax.

(10) Payments made prior to January 1, 2009. Any payment made toward the purchase of an otherwise qualifying vehicle prior to the effective date of the exemptions, January 1, 2009, qualifies for the exemptions if the vehicle sold is titled and registered on or after January 1, 2009, and the purchaser takes possession of the vehicle on or after January 1, 2009. See WAC 458-20-103, 458-20-197, and 458-20-235.

Example. Greg makes a down payment toward the purchase of a new qualifying vehicle on November 7, 2008 but does not actually take possession of the vehicle at the dealership lot until January 2, 2009. The vehicle is titled and registered on January 9, 2009. The down payment is exempt from retail sales tax.

(11) Payments made prior to January 1, 2011. Any payment made toward the purchase of an otherwise qualifying vehicle prior to the expiration date of the exemptions, January 1, 2011, does not qualify for the exemptions if the vehicle sold is titled or registered on or after January 1, 2011, or if the purchaser takes possession of the vehicle on or after January 1, 2011. See WAC 458-20-103, 458-20-197, and 458-20-235.

Example. Craig makes a down payment toward the purchase of a new qualifying vehicle on November 7, 2010 but does not actually take possession of the vehicle at the dealership lot until January 2, 2011. The vehicle is titled and registered on January 11, 2011. The down payment is subject to retail sales tax.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 08-22-102

PROPOSED RULES

DEPARTMENT OF EARLY LEARNING

[Filed November 5, 2008, 11:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-028.

Title of Rule and Other Identifying Information: Chapter 170-292 WAC, Seasonal child care.

Hearing Location(s): Catholic Family and Child Services, 5301 Tieton Drive, Suite C, Yakima, WA 98908-3478, on December 11, 2008, at 3:00 p.m.; and at Skagit Community College, 2405 East College Way, Room N-123, Mount Vernon, WA 98273, on December 17, 2008, at 6:30 p.m.

Date of Intended Adoption: Not earlier than December 22, 2008.

Submit Written Comments to: DEL Rules Coordinator, P.O. Box 40970, Olympia, 98504-0970, e-mail rules@del.wa.gov, or fax (360) 413-3482, by 5:00 p.m., December 18, 2008.

Assistance for Persons with Disabilities: Contact rules@del.wa.gov by December 1, 2008, (360) 725-4397.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule revision is not intended to update the entire WAC chap-

ter. A subsequent filing will encompass all other necessary sections. The current proposal will:

- Update WAC number and program name references, mostly changing chapter 388-292, 388-290 WAC references to chapter 170-292 and 170-290 WAC respectively, and changing references from DSHS to DEL where appropriate.
- Adding a new definition of "eligible children" as a result of a recent federal program clarification. This program change is the result of a recent federal clarification of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.
- Establish the process for eligibility waivers, and
- Make other editing changes and clarifications that would not change the effect of the rules.

Note: The department will be filing an additional proposal to continue revisions to this chapter described in the preproposal statement of inquiry (CR-101 notice) filed as WSR 07-19-028.

Reasons Supporting Proposal: The proposed rules will ensure all parties have updated and accurate information that reflect the latest programmatic changes to the seasonal child care subsidy program.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Statute Being Implemented: Chapter 265, Laws of 2006, chapter 43.215 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Section 501, chapter 265, Laws of 2006, transferred responsibilities for seasonal child care from DSHS to the department of early learning, making many references in these rules to DSHS laws, rules and programs obsolete.

Name of Proponent: Department of early learning, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jenny Lemstrom, P.O. Box 40970, Olympia, WA 98504-0970, (360) 725-4673.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A. Under RCW 19.85-025 and 34.05.310(4) a small business economic impact statement is not required for rules that:

1. Adopt without material change requirements of federal or state statutes or rule. The proposed new definition of "eligible child" adopts the requirements of federal law 8 U.S.C. 1642 without material change. The department received a clarification of this law from the United States Department of Health and Human Services on May 2, 2008, which is available online at <http://www.acf.hhs.gov/programs/ccb/law/guidance/current/pi2008-01/pi2008-01.htm>; or

2. Only correct typographical errors, make address or name changes, or clarify language of the rule without changing its effect. Other sections of the proposal update name references from: DSHS to DEL, Title 388 WAC to Title 170 WAC, and related program names. Several WAC sections are amended, and a new definitions section is proposed to

clarify the language of, but not change, other current program requirements.

B. The department has determined that a small business economic impact statement is not required for new WAC 170-292-0180 Eligibility waivers. Costs of complying with the rule - if any - to affected small businesses would not be more than "minor" as defined in RCW 19.85.020. Implementation of eligibility waivers may result in increased revenue for seasonal child care contractors and child care providers that may offset incidental administrative costs.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not prepared. Under RCW 34.05.328 (5)(a)(i), the department of early learning is not listed among the agencies to which the requirements of RCW 34.05.328 applies.

October 27, 2008
Jone M. Bosworth, JD
Director

AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0001 Introduction. The seasonal child care program helps eligible families who are seasonally employed in agriculturally related work to access licensed, culturally and developmentally appropriate child care. Families access this child care subsidy program through contracted community agencies. To be eligible, families must meet income and program guidelines and must not be currently receiving temporary assistance to needy families (TANF). The seasonal child care program prioritizes services for families who are not eligible for working connections child care. The program is subject to available funds and creates waiting lists when budget limits occur.

All references in this chapter to sections within chapters 388-292 and 388-290 WAC are changed to refer to corresponding sections within chapters 170-292 and 170-290 WAC.

NEW SECTION

WAC 170-292-0002 Program definitions. For seasonal child care (SCC):

(1) "Administrative hearing" means a hearing where you say you don't agree with a decision the department of early learning (DEL) made, and you ask for the decision to be reviewed. An administrative law judge, who is a lawyer employed by the state of Washington, decides if the department of early learning's action was correct. The rules for DEL administrative hearings are in chapter 170-03 WAC.

(2) "Adverse action" means an action to lower or stop your SCC subsidies.

(3) "Application interview date" means the first date you meet with the "authorizing worker" to see if you are eligible for subsidy benefits.

(4) "Authorizing worker" is a contractor with the department of early learning. The authorizing worker looks at DEL's rules and the family information and decides if the family is eligible for child care subsidies. The authorizing worker explains the seasonal child care program rules to you.

(5) "Child care plan" means a state form filled out by the authorizing worker. The child care plan tells the parent and the provider that subsidy benefits are approved, when the subsidy benefits begin and when benefits stop, and how many hours a day benefits are approved.

(6) "Copayment" means the amount you owe your provider for child care each month.

(7) "Contact the SCC contractor" means to call or come into the contractor's office to ask for SCC benefits.

(8) "DEL" or "the department" means the department of early learning.

(9) "Eligible children" means children who are legally residing in the country as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), are living in Washington state, and are:

- (a) Age twelve or younger; or
- (b) Less than age nineteen, and:
 - (i) Have a verified special need, according to WAC 170-290-0220; or
 - (ii) Are under court supervision.

(10) "Eligibility requirements" mean the rules in chapter 170-292 WAC describing how a family can get seasonal child care benefits.

(11) "Family" or "families" mean those defined in WAC 170-292-0010 who are the seasonal child care family unit.

(12) "Primary wage earner" means the parent in the two-parent household who earned more income than the other parent in the last twelve months.

- (13) "Providers" mean:
- (a) Child care centers and family child care homes licensed or certified by the department of early learning; or
 - (b) Seasonal day camps that have a contract with the department of early learning to provide subsidized child care.

(14) "Overpayment" means money owed to the department because you or your provider:

- (a) Received child care subsidy benefits when you or the provider was not eligible; or
- (b) Received more child care subsidy benefits than you or the provider should have received.

(15) "Nonstandard hour bonus" means a payment to a child care provider when the provider cares for a child forty-five hours or more per month during these time periods:

- (a) Monday - Friday before 6:00 a.m. or after 6:00 p.m.;
- (b) Anytime Saturday or Sunday; and
- (c) Official state holidays.

(16) "SCC contractor" means the agency that DEL has contracted to meet with families to see if they are eligible for the seasonal child care program. SCC contractors are located in several communities across the state. SCC contractors are responsible to follow the SCC rules that DEL has established.

(17) "Seasonally available labor" means labor that is available only in a specific season during part of the calendar year. The labor is directly related to the cultivation, production, harvesting or processing of fruit trees or crops.

(18) "State rate" is the current maximum amount paid for child care subsidies. The rate paid is the provider's rate or the state maximum rate, whichever is lower. State rate information can be found on the DEL web site at: <http://www.del.wa.gov/>.

(19) A "supervisor" means the person who manages the authorizing worker.

(20) "Temporary assistance to needy families (TANF)" is a federal program that gives assistance to qualified families with children.

(21) "Underpayment" means money the state owes to you or the provider because the department did not pay for benefits you were eligible to receive.

(22) "Waiting lists" means a list of families waiting for seasonal child care subsidies when funding is not available to meet the requests from all eligible families.

(23) "We" or "us" means the seasonal child care contractor or the department of early learning.

(24) "Weekend care" means child care on Saturday or Sunday, that is authorized to support the parents' work schedule.

(25) "Working connections child care (WCCC)" is a child care subsidy program that helps parents who are working, looking for work or in specific training programs. The department of social and health services decides who is eligible for WCCC child care benefits. DEL is in charge of the program rules.

(26) "You" or "your" in this chapter refers to the family member applying for or receiving seasonal child care benefits.

AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0010 How is my family size defined for SCC program eligibility purposes? (~~For SCC program eligibility purposes,~~) We determine your family size (~~is defined~~) by reviewing the individuals who live together in the same household as follows:

(1) If you are:	We count the following individuals as part of the family for SCC program eligibility:
(a) A single parent, including a minor parent, living independently or residing in her/his parent's home with her/his children;	You and your children.
(b) Unmarried parents living together who have at least one mutual child;	Both parents and all their children living in the household.
(c) Unmarried parents living together with no mutual children;	Each parent and their own children, as separate families.
(d) Married parents living together;	Both parents and all their children living in the household.
(e) A person with parental control as defined in WAC (388-292-0005) <u>170-292-0005</u> (1)(c) through (i);	Only the children and their income.

(1) If you are:	We count the following individuals as part of the family for SCC program eligibility:
(f) A parental figure who is out of the household because of employment requirements(-);	The parents and the children. All other family rules in this section apply.
(g) A parent who is voluntarily out of the household for reasons other than employment, such as visiting a family member.	<u>You, the absent parent and the children.</u>
(h) A family member who is out of the household because of employer requirements, such as working in a different community, and is expected to return to the household.	<u>You, the absent individual, and the children. Subsection (1)(b) and (d) of this section apply.</u>
(2) If your household includes siblings of the children requiring care who are:	All family rules in this section apply. In addition, we count the sibling as part of the family for SCC program eligibility (unless they are a parent themselves), as follows:
(a) Eighteen year olds who are enrolled in secondary education or general equivalency diploma (GED) program.	The eighteen year olds until they turn nineteen or complete high school/GED, whichever comes first.
(b) Twenty year olds, or less, who are participating in a program through the school district's special education department under RCW 28A.155.0202.	The sibling participating in the approved program up to twenty-one years of age.

AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0025 What additional criteria does my family need to meet to be eligible for SCC program subsidies? Additional eligibility criteria for SCC program subsidies requires that your family:

- (1) Live in Washington state;
- (2) Not be receiving TANF;
- (3) Have ((a)) an eligible child age twelve or younger, or a child with verified special needs age eighteen or younger;
- (4) Have a primary wage earner who was employed in seasonally available agricultural related work for eleven months or less with any one employer in the previous twelve months; and
- (5) Fifty percent or more of a family's earned income for the previous twelve months is derived from seasonally available agricultural work as defined in WAC 388-292-0020.

AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0110 ((What additional SCC program subsidy payments can be authorized?)) Additional seasonal child care payments. ((The following additional SCC program subsidy payments may be authorized for your approved activities, if justified by your employer verification:

- (1) "~~Extended hour child care~~" may be authorized, for families whose fluctuating overtime work schedules require more than ten hours per day, up to a maximum of one hundred twenty hours per month. Care is authorized at the provider's usual and customary rate for the time needed—or at the DSHS maximum hourly subsidy rate represented in the chart below, whichever is less.

CHILD CARE CENTER				
Centers in Benton, Walla Walla and Whitman Counties paid at Region 6 rates				
	Infants (under 12 months)	Toddler (12 to 29 months)	Preschool (30 months to 5 years)	School-age (5 to 12 years)
Region 1	\$4.00	\$3.90	\$3.22	\$3.22
Region 2	\$4.25	\$3.60	\$3.48	\$2.75
Region 3	\$4.30	\$4.39	\$3.75	\$4.50
Region 6	\$4.64	\$3.75	\$3.27	\$3.25
FAMILY HOMES				
Region 1	\$2.67	\$2.50	\$2.38	\$2.50
Region 2	\$3.00	\$2.78	\$2.50	\$2.88
Region 3	\$3.50	\$3.00	\$2.89	\$3.33

(2) "Additional hour child care" may be authorized, for families whose nonfluctuating work schedules require more

than ten hours of care per day, at the provider's usual and customary rate for the time needed—or at the DSHS maximum

half-day subsidy rate, whichever is less (under WAC 388-290-0200 and 388-290-0205).

(3) "Weekend child care" may be authorized at rates under WAC 388-290-0200 and 388-290-0205 if child care is needed more than five days a week.) To decide if you are eligible for additional SCC payments, the authorizing worker compares the provider's rate to the state rate and authorizes care at the lower rate for:

(1) Half-day when care occurs less than five hours per day; or

(2) Full-day when care occurs five or more hours per day; or

(3) Over ten hours per day when care is needed.

AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0115 ((If I am determined eligible for the SCC program,)) When ((does my)) do child care ((subsidy begin?)) subsidies start? ((Your SCC program subsidy will begin according to the following situations:

(1) If you are determined eligible before your employment starts, your subsidy begins on the first day of your job that your children are in approved child care;

(2) If you are determined eligible after your job begins because:

(a) You requested an appointment before your job started but were denied one, your subsidy begins on the first day of your job that your children were in approvable child care;

(b) You did not provide all necessary documents when requested, your subsidy begins on the first day after you are determined eligible for the program, that you work and your children are in authorized child care.

(c) You did not request an appointment until after your job began, your subsidy begins on the first day after you are determined eligible for the program, that you work and your children are in authorized child care.) (1) The SCC contractor authorizes child care subsidies when:

(a) You turn in all your eligibility paperwork to the SCC contractor;

(b) The authorizing worker determines you are eligible for the program; and

(c) You start your children in care with an approved child care provider.

(2) After the authorizing worker decides you are eligible, the date the subsidy begins depends upon when you applied and when you turn in all the paperwork needed:

(a) If you apply before your job starts, benefits start:

(i) The day your job starts when you turn in your paperwork within fourteen days after starting your job; or

(ii) The day after you turn in your paperwork, when you turn in your paperwork fifteen to twenty-nine days after your job starts.

(b) If you turn in your paperwork thirty days after your job starts, your application is denied.

(c) If you apply and are currently working, benefits start:

(i) The day you contact the SCC contractor if you turn in your paperwork within fourteen days after your application interview date; or

(ii) The day after you turn in your paperwork, if you turn in your paperwork fifteen to twenty-nine days after your application interview date.

(d) If you turn in your paperwork thirty or more days after your application interview, your application is denied. You must reapply to see if you are eligible for benefits.

AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0140 ((How are my SCC program subsidies reauthorized and when may they continue?)) Keeping SCC program benefits. (1) ((Your SCC program subsidies are reauthorized by the SCC program authorizing worker who reviews your SCC program eligibility and)) At least every six months, the SCC contractor decides if you can keep getting subsidies. You get subsidy benefits for less than six months when:

(a) Your employer says you might be working less than six months; or

(b) Your child or children may not be age eligible for the next six months because of their age. See WAC 170-292-0025.

(2) The authorizing worker will:

(a) ((Request information related to your continued eligibility, prior to the end date of your current SCC program eligibility period;

(b)) Review ((the requested)) your updated information; and

((e) Determine)) (b) Decide if you are ((still)) eligible ((according to DSHS established criteria)) again.

((2) Your SCC program subsidies may continue if) (3) After a decision is made that you are eligible, the date the subsidy begins depends on when you turned in all the paperwork needed. Your benefits will begin again:

(a) ((You meet all program, income and work criteria for the SCC program as described in chapter 388-292 WAC;

(b) Your provider is eligible for payment under WAC 388-292-0085-)) On the day after your eligibility period ended, if you contact us within ten days and turn all your paperwork in within twenty-nine days of the eligibility ending; or

(b) On the day after you contact the SCC contractor, if you:

(i) Contact the SCC contractor more than ten days after your eligibility period ended; and

(ii) Turn all your paperwork in between eleven and twenty-nine days after your eligibility period ended.

(c) Your application for SCC subsidy benefits is denied when you do not contact the SCC contractor and turn all your paperwork in within thirty days after your previous eligibility period ends. You must reapply to see if you are eligible for benefits.

AMENDATORY SECTION (Amending WSR 06-16-130, filed 8/1/06, effective 8/1/06)

WAC 170-292-0160 ((When might a child care provider receive an)) Licensed or certified provider or DEL contracted seasonal day camp overpayments((?)), (1) ((A child care provider may receive a vendor overpayment notice

when they receive ineligible payments. This includes payments for:

- (a) Child care that was not provided;
- (b) Services that are not allowed; or
- (c) Child care that is not supported by the provider's attendance records.

(2) The provider's overpayment is written by DSHS and the child care provider is expected to pay it back.

(a) Overpayments are written starting the date that child care subsidies were over paid.

(b) DSHS reduces the overpayment by the amount of an underpayment when applicable.)) DEL charges a SCC overpayment to your provider when your provider:

(a) Billed and was paid for SCC services they did not provide;

(b) Is required to keep attendance records under WAC 170-295-7030, 170-296-0520, and 170-151-460 and the provider does not have attendance records that meet licensing requirements. DEL accepts for attendance verification only attendance records meeting WAC requirements;

(c) Billed and was paid for:

(i) More than they are eligible to bill; or

(ii) Services not allowed;

(d) Billed and was paid, and the provider is not eligible based on WAC 170-292-0085; or

(e) Cared for a child outside their licensed allowable age range without a waiver approved by DEL under chapter 170-151 or 170-295 WAC.

(2) DEL or the SCC contractor may request documentation from your provider before DEL establishes an overpayment. Your provider has fourteen calendar days to supply any requested documentation.

NEW SECTION

WAC 170-292-0180 Eligibility waivers. (1) In individual cases, DEL may decide there is a good reason to not follow an eligibility requirement. When we do this it is called a waiver. DEL may waive a specific requirement when the federal rules (45 CFR Part 98 & 99) allow the waiver, if you work with the authorizing worker to:

- (a) Explain why you need the waiver; and
- (b) Show you have no other way of meeting your child care needs.

(2) You must tell the authorizing worker your family circumstances. The authorizing worker sends the waiver request to DEL.

(3) DEL approves a waiver request if:

- (a) You have a good reason and no other choices exist;
- (b) The waiver is allowable under federal rules; and
- (c) There are enough SCC program funds available to allow the request.

(4) DEL can approve all or part of your request of the waiver.

(5) The DEL director or designee must approve or deny the waiver request.

(6) If DEL denies your request for a waiver, you do not have appeal rights to an administrative hearing under chapter 34.05 RCW or 170-03 WAC.

WSR 08-22-103

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed November 5, 2008, 11:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-16-133.

Title of Rule and Other Identifying Information: The department intends to amend WAC 388-76-10120 License—Must be denied, 388-76-10125 License—May be denied, 388-76-10955 Remedies—Department must impose remedies, and 388-76-10960 Remedies—Department may impose remedies.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on December 9, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 10, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 9, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by November 25, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule making is to clarify requirements on when a license must and may be denied and when the department may and must impose remedies. The impact of the proposed rule is to make the rule clearer, easier to read, understand, and apply.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: Chapter 70.128 RCW.

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: Maureen Lally, P.O. Box 45600, Olympia, WA 98513, (360) 725-3204; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department determined that the amendments result in no new costs as defined in RCW 19.85.030. As a result, the preparation of a small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Maureen Lally, Program Manager,

P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail lallyma@dshs.wa.gov.
 October 31, 2008
 Stephanie E. Schiller
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10120 License—Must be denied. ((The department must deny a license if the department finds any person or entity unqualified as follows:

(1) ~~Has a history of prior violations of chapter 70.128 RCW or any law regulating residential care facilities within the past five years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department;~~

(2) ~~When providing care or services to children or vulnerable adults:~~

(a) ~~Has been found to be in significant noncompliance with federal or state regulations; or~~

(b) ~~Had a license for the care of children or vulnerable adults suspended or revoked.~~

(3) ~~For a period of twenty years after a provider surrendered or relinquished an adult family home license after notification of the department's intention to deny, suspend, not renew or revoke, in lieu of appealing the department's action;~~

(4) ~~Been enjoined from operating a facility for the care and services of children or adults;~~

(5) ~~A stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW;~~

(6) ~~Had a revocation or suspension of a license for the care of children or adults;~~

(7) ~~Had a revocation, cancellation, suspension or nonrenewal of:~~

(a) ~~A Medicaid or Medicare provider agreement by the contracting agency; or~~

(b) ~~Any agreement with a public agency for the care and treatment of children or vulnerable adults, when the action was taken by the public agency.~~

(8) ~~Been convicted of any crime listed in RCW 43.43.830 or 43.43.842;~~

(9) ~~Been found by a court:~~

(a) ~~In a protection proceeding under chapter 74.34 RCW to have abandoned, neglected, abused, or financially exploited a vulnerable adult; or~~

(b) ~~In a domestic relations proceeding under Title 26 RCW to have sexually or physically abused, neglected or exploited any minor.~~

(10) ~~Been found in any final decision issued by a disciplinary board to have:~~

(a) ~~Sexually or physically abused, neglected or exploited any minor or a person with a developmental disability; or~~

(b) ~~Abandoned, abused, neglected or financially exploited any vulnerable adult.~~

(11) ~~Been found in any final decision by any federal or state agency or department to have abandoned, neglected, abused or financially exploited a vulnerable adult;~~

(12) ~~Found in any dependency action under RCW 13.34.030 (5)(b) to have sexually or physically abused, neglected or exploited any minor;~~

(13) ~~The home is currently licensed:~~

(a) ~~As a boarding home; or~~

(b) ~~To provide care for children in the same home, unless:~~

(i) ~~It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;~~

(ii) ~~The applicant provides satisfactory evidence to the department of the home's capacity to meet the needs of children and adults residing in the home; and~~

(iii) ~~The total number of persons receiving care and services in the home does not exceed the number permitted by the licensed capacity of the home.~~

(14) ~~If the provider or entity representative has not successfully completed a department approved forty eight hour adult family home administration and business planning class)) The department must not grant a license until the applicant has successfully completed a department-approved forty-eight hour adult family home administration and business planning class.~~

(2) The department must deny a license if the department finds that it has been less than twenty years since the applicant surrendered or relinquished an adult family home license after receiving notice that the department intended to deny, suspend, not renew or revoke the license.

(3) The department must deny a license if the department finds that the applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has been convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime under subsections (3)(c) and (3)(d), below:

(c) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(d) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(e) Has been found in any final decision issued by a disciplining authority to have abused, neglected, exploited, or abandoned a minor or vulnerable adult;

(f) Is listed on a state registry with a finding of abuse, neglect, financial exploitation, or abandonment of a minor or vulnerable adult; or

(g) Has been the subject of a finding or conclusion by a court of law, or any comparable state or federal law, that the

individual abused, neglected, financially exploited or abandoned a minor or vulnerable adult. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW.

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 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10125 License—May be denied. ((The department may deny a license if the department finds any person or entity unqualified as follows:

- (1) ~~Been convicted of a crime:~~
 - (a) ~~As defined under RCW 43.43.830 or 43.43.842;~~
 - (b) ~~Relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842;~~
 - (c) ~~A felony against a person if the conviction reasonably relates to the competency of the person to own or operate an adult family home;~~
 - (d) ~~Involving a firearm used in the commission of a felony or in any act of violence against a person; or~~
 - (e) ~~Engaged in illegally selling or distributing drugs illegal use of drugs or excessive use of alcohol within the past five years without the evidence of rehabilitation.~~
- (2) ~~Found by a court in a protection proceeding under chapter 74.34 RCW to have abandoned, abused, neglected, or financially exploited a vulnerable adult;~~
- (3) ~~Found in a final decision issued by a disciplinary board to have sexually or physically abused, neglected or exploited any minor person or a person with a developmental disability or to have abused or financially exploited any vulnerable adult;~~
- (4) ~~Found in any dependency action under RCW 13.34.030(5) to have sexually abused, neglected or exploited any minor or to have physically abused any minor;~~
- (5) ~~Found in a court in a domestic relations proceeding under Title 26 RCW to have:~~
 - (a) ~~Sexually abused, neglected or exploited any minor or to have physically abused any minor; or~~
 - (b) ~~Committed an act of domestic violence toward a family or household member.~~
- (6) ~~Had sanction, corrective, or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;~~
- (7) ~~Obtained or attempted to obtain a license by fraudulent means or misrepresentation;~~
- (8) ~~Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application or in any matter under investigation by the department;~~
- (9) ~~Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;~~
- (10) ~~Willfully prevented or interfered with or failed to cooperate with any inspection, investigation or monitoring visit made by the department;~~
- (11) ~~Failed or refused to comply with:~~

(a) ~~A condition imposed on a license or a stop placement order; or~~

(b) ~~The applicable requirements of chapters 70.128, 70.129, 74.34 RCW or this chapter.~~

(12) ~~Misappropriated property of a resident;~~

(13) ~~Denied a license or license renewal to operate a facility that was licensed to care for children or vulnerable adults;~~

(14) ~~Exceeded licensed capacity in the operation of an adult family home;~~

(15) ~~Operated a facility for the care of children or adults without a license or revoked license;~~

(16) ~~Relinquished or returned a license in connection with the operation of any facility for the care of children or adults, or did not seek license renewal following written notification of the licensing agency's intention of denial, suspension, cancellation or revocation of a license;~~

(17) ~~Had resident trust funds or assets of an entity providing care to children or vulnerable adults seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;~~

(18) ~~Failed to meet financial obligations as the obligations fell due in the normal course of business, thereby impeding the ability to provide care and services to residents;~~

(19) ~~Refused to permit authorized department representatives to interview residents or to have access to resident records or home;~~

(20) ~~Interfered with a long term care ombudsman or department staff in the performance of his or her duties; or~~

(21) ~~Found to be in noncompliance with the requirements established in chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations)) The department may deny a license if the department finds that the applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or major-ity owner of the applying entity:~~

(1) Has been convicted of:

(a) Simple assault, theft in third degree, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(b) Forgery or theft in the second degree and more than five years has passed since conviction

(c) Any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home; or

(d) A crime involving a firearm used in commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a license denial under WAC 388-76-10120;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed;

(6) Has a history of prior violations of chapter 70.128 RCW or any law regulating residential care facilities that

resulted in revocation, suspension, or nonrenewal of a license;

(7) Has been enjoined from operating a facility for the care and services of children or adults;

(8) Has had a Medicaid or Medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state Medicaid agency;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;

(12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(13) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement order; or

(b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations.

(15) Misappropriated property of a resident, unless such action requires a license denial under WAC 388-76-10120;

(16) Exceeded licensed capacity in the operation of an adult family home;

(17) Operated a facility for the care of children or adults without a license or with a revoked license;

(18) In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intended to deny, suspend, or revoke the license, unless such action requires a license denial under WAC 388-76-10120;

(19) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(20) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(21) Has failed to meet personal financial obligations;

(22) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties;

(23) Has not demonstrated financial solvency or management experience in its currently licensed homes, or has not demonstrated the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential

impact of vehicular traffic related to the operation of the homes; or

(24) The home is currently licensed:

(a) As a boarding home; or

(b) To provide care for children in the same home, unless:

(i) It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;

(ii) The applicant provides satisfactory evidence to the department of the home's capacity to meet the needs of children and adults residing in the home; and

(iii) The total number of persons receiving care and services in the home does not exceed the number permitted by the licensed capacity of the home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10955 Remedies—Department must impose remedies. ((The department must impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950 has:

(1) A history of prior violations of chapter 70.128 RCW or any law relating to residential care facilities within the past five years that resulted in revocation, suspension, or non-renewal of a license or contract with the department;

(2) When providing care or services to children or vulnerable adults:

(a) Been found to be in significant noncompliance with federal or state regulations; or

(b) Had a license for the care of children or vulnerable adults suspended or revoked.

(3) Been enjoined from operating a facility for the care and services of children or adults;

(4) A stipulated finding of fact, conclusion of law, an agreed order, finding of fact, conclusion of law, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW;

(5) Had a revocation or suspension of a license for the care of children or adults;

(6) Had a revocation, cancellation, suspension or nonrenewal of:

(a) A Medicaid or Medicare provider agreement by the contracting agency; or

(b) Any agreement with a public agency for the care and treatment of children or vulnerable adults, when the action was taken by the public agency.

(7) Been convicted of any crime listed in RCW 43.43.830 or 43.43.842;

(8) Been found by a court:

(a) In a protection proceeding under chapter 74.34 RCW to have abandoned, neglected, abused, or financially exploited a vulnerable adult; or

(b) In a domestic relations proceeding under Title 26 RCW to have sexually or physically abused, neglected or exploited any minor.

~~(9) Been found in any final decision issued by a disciplinary board to have:~~

~~(a) Sexually or physically abused, neglected or exploited any minor or a person with a developmental disability; or~~

~~(b) Abandoned, abused, neglected or financially exploited any vulnerable adult.~~

~~(10) Found in any dependency action under RCW 13.34.030 (5)(b) to have sexually or physically abused, neglected or exploited any minor; or~~

~~(11) Failed to pay the annual licensing fee)) (1) The department must impose a remedy or remedies if:~~

~~(a) The department substantiates a complaint involving harm to a resident and violation of an applicable law or rule; or~~

~~(b) It has been less than twenty years since the adult family home provider surrendered or relinquished an adult family home license after receiving notice that the department intended to deny, suspend, or revoke the license.~~

~~(2) The department must impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:~~

~~(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;~~

~~(b) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;~~

~~(c) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;~~

~~(d) Has been found in any final decision issued by a disciplining authority to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult;~~

~~(e) Has been convicted of a crime in federal court or in the court of any other state, and the department determines that the conviction is equivalent to a conviction under subsection (2)(b) or (2)(c) above;~~

~~(f) Is listed on a state registry with a finding of abuse, neglect, financial exploitation, or abandonment of a minor or vulnerable adult; or~~

~~(g) Has been the subject of a finding or conclusion by a court of law that the individual abused, neglected, financially exploited, or abandoned a minor or vulnerable adult. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW.~~

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10960 Remedies—Department may impose remedies. ((The department may impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950 has:

(1) Been convicted of a crime:

(a) As defined under RCW 43.43.830 or 43.43.842;

(b) Relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842;

(c) Or a felony against a person if the conviction reasonably relates to the competency of the person to own or operate an adult family home;

(d) Involving a firearm used in the commission of a felony or in any act of violence against a person;

(e) Or engaged in illegally selling or distributing drugs, illegal use of drugs or excessive use of alcohol within the past five years without the evidence of rehabilitation.

~~(2) Been found by a court in a protection proceeding under chapter 74.34 RCW to have abandoned, abused, neglected, or financially exploited a vulnerable adult;~~

~~(3) Been found in a final decision issued by a disciplinary board to have sexually or physically abused, neglected or exploited any minor person or a person with a developmental disability or to have abused or financially exploited any vulnerable adult;~~

~~(4) Been found in any dependency action under RCW 13.34.030(5) to have sexually abused, neglected or exploited any minor or to have physically abused any minor;~~

~~(5) Been found in a court domestic relations proceeding under Title 26 RCW to have:~~

~~(a) Sexually abused, neglected or exploited any minor or to have physically abused any minor;~~

~~(b) Committed an act of domestic violence toward a family or household member.~~

~~(6) Had a sanction, corrective, or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;~~

~~(7) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;~~

~~(8) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application or in any matter under investigation by the department;~~

~~(9) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;~~

~~(10) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation or monitoring visit made by the department;~~

~~(11) Failed or refused to comply with:~~

~~(a) A condition imposed on a license or a stop placement order;~~

~~(b) The applicable requirements of chapters 70.128, 70.129, 74.34 RCW or this chapter.~~

~~(12) Misappropriated property of a resident;~~

~~(13) Been denied a license or license renewal to operate a facility that was licensed to care for children or vulnerable adults;~~

~~(14) Exceeded licensed capacity in the operation of an adult family home;~~

~~(15) Operated a facility for the care of children or adults without a license or revoked license;~~

~~(16) Relinquished or returned a license in connection with the operation of any facility for the care of children or adults, or did not seek license renewal following written noti-~~

fication of the licensing agency's intention of denial, suspension, cancellation or revocation of a license;

(17) ~~Had resident trust funds or assets of an entity providing care to children or vulnerable adults seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;~~

(18) ~~Failed to meet financial obligations as the obligations fell due in the normal course of business, thereby impeding the ability to provide care and services to residents;~~

(19) ~~Refused to permit authorized department representatives to interview residents or to have access to resident records or home;~~

(20) ~~Interfered with a long-term care ombudsman or department staff in the performance of his or her duties; or~~

(21) ~~Found to be in noncompliance with the requirements established in chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations))~~ The department may impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:

(1) Has been convicted of:

(a) Any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home; or

(b) A crime involving a firearm used in the commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused, or financially exploited a vulnerable adult, unless such decision requires imposition of a remedy under WAC 388-76-10955;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed;

(6) Has a history of violations of chapter 70.128 RCW, or any law regulating residential care facilities, that resulted in revocation, suspension, or nonrenewal of a license with the department;

(7) Has been enjoined from operating a facility for the care and services of children or adults;

(8) Has had a Medicaid or Medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state Medicaid agency;

(9) Has been the subject of a sanction, corrective, or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;

(12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(13) Willfully prevented, interfered with, or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement order; or

(b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or any other applicable laws.

(15) Misappropriated property of a resident, unless such action requires a remedy under WAC 388-76-10955;

(16) Exceeded licensed capacity in the operation of an adult family home;

(17) Operated a facility for the care of children or adults without a license or with a revoked license;

(18) In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intends to deny, suspend, cancel or revoke the license, unless such action requires imposition of a remedy under WAC 388-76-10955;

(19) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(20) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(21) Has failed to meet personal financial obligations and that failure has resulted in a failure to provide necessary care and services to the residents; or

(22) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties.

WSR 08-22-104

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed November 5, 2008, 11:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-16-132.

Title of Rule and Other Identifying Information: The department is considering amending WAC 388-76-10040 License requirements—Qualified person must live-in or be on-site, 388-76-10080 Application—Co-provider, 388-76-10105 Application—Change of ownership, 388-76-10170 Criminal history background check—Information—Confidentiality—Use restricted, 388-76-10335 Resident assessment topics, 388-76-10645 Resident rights—Quality of life—Reasonable accommodation, and 388-76-11015 Resident protection program—Disputing a preliminary finding.

The department is considering adding new sections WAC 388-76-10036 License requirements—Multiple adult

family home management, 388-76-10173 Disclosure of employee information—Employer immunity—Rebuttable presumption, 388-76-10174 Background checks—Disclosure of information—Sharing of criminal background information by health care facilities, 388-76-10783 Water hazards and bodies of water—Resident safety, and 388-76-10784 Water hazards—Fences, gates and alarms.

The department is considering repealing WAC 388-76-10785 Water hazards—Enclosures and safety devices.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on December 9, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 10, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 9, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 2, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to:

- Clarify requirements and make grammatical and technical corrections.
- Update and add new sections to the AFH WAC to be consistent with relevant statutes.
Highlights of proposed changes:
- Clarified language on qualified persons and multiple adult family home management.
- Removed entity representative references and replaced with entity provider language.
- As a result of legislative changes, added clarifying language regarding domestic partnerships as co-providers and change of ownership.
- Clarified criminal history background inquiry results to include disclosing employee information to be consistent with statutes.
- Clarified resident assessment topics.
- Clarified resident safety around water hazards.
- Clarified what to include in written request for administrative hearing.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: Chapter 70.128 RCW.

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: Maureen Lally, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-3204; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department determined that the amendments result in no more than "minor costs" as defined in RCW 19.85.030. As a result, the preparation of a small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Maureen Lally, Program Manager, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail lallyma@dshs.wa.gov.

October 31, 2008

Stephanie E. Schiller

Rules Coordinator

NEW SECTION

WAC 388-76-10036 License requirements—Multiple adult family home management. When there is more than one home licensed to a provider or entity the adult family home must ensure that:

- (1) Each home has one person responsible for managing the overall delivery of care to all residents in the home;
- (2) The designated responsible person is the provider, entity representative or a qualified resident manager; and
- (3) Each responsible person is designated to manage only one adult family home at a given time.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10040 License requirements—(~~Provider or entity representative residence~~) Qualified person must live-in or be on-site. (1) The adult family home provider or entity representative must either:

- (a) Live in the home; or
- (b) Employ or contract with a qualified resident manager who lives in the home and is responsible for the care and services of each resident at all times(~~or~~ ~~(c) Provide twenty-four hour staffing~~).
- (2) (~~Ensure that~~) Except that the provider, entity representative, or qualified resident manager is exempt from the requirement to live in the home if:
 - (a) The home has twenty-four hour staffing coverage;
 - and
 - (b) A qualified staff person who can make needed decisions is always present in the home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10080 Application—Co-provider. Couples considered legally married or domestic partners under Washington state law:

- (1) May not apply for separate licenses (~~for each spouse~~); and
- (2) May apply jointly as co-providers.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10105 Application—Change of ownership. (1) A change of ownership of an adult family home requires both a new license application and a new license.

(2) A change of ownership occurs when there is a change in:

(a) The provider or entity (~~((representative ultimately responsible for the daily operational decisions of the home))~~ provider); or

(b) Control of an entity provider.

(3) Events which constitute a change of ownership include, but are not limited to:

(a) The form of legal organization of the provider is changed, such as when a provider forms:

(i) A partnership;

(ii) A corporation;

(iii) An association; or

(iv) A dissolution or merger of a licensed entity with another legal organization.

(b) The provider or entity (~~((representative))~~ provider transfers business operations and management responsibility to another party, whether there is a partial or whole transfer of adult family home real property and/or personal property assets.

(c) Two people are both licensed as a married couple or domestic partners to operate an adult family home and an event, such as a separation, divorce, or death results in only one person operating the home.

(d) An event dissolves the partnership, if the provider or entity (~~((representative))~~ provider is in a business partnership.

(e) If the provider or entity (~~((representative))~~ provider is a corporation and the corporation:

(i) Is dissolved;

(ii) Merges with another corporation which is the survivor; or

(iii) Consolidates with one or more corporations to form a new corporation;

(iv) Whether by a single transaction or multiple transactions within a continuous twenty-four month period, transfers fifty percent or more of the stock to one or more:

(A) New or former stockholders; or

(B) Present stockholders each having less than five percent of the stock before the initial transaction.

(f) Any other event or combination of events which results in a substitution of or control of the provider or entity (~~((representative))~~ provider.

(4) The new owner:

(a) Must correct all deficiencies that exist at the time of the ownership change;

(b) Is subject to the provisions of chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations;

(c) Must obtain a new license from the department before the transfer of ownership; and

(d) Must not begin operation of the adult family home as the new owner, provider or entity (~~((representative))~~ provider until the department has granted the license.

(5) The home must notify each resident, in writing at least thirty days before the effective date of the ownership change.

(6) If a currently licensed provider or entity (~~((representative))~~ provider seeking to change ownership wants the department to give priority to processing an application to minimize or prevent disruption of residents that live in the existing home, the applicant must:

(a) Make the request to the department in writing, including the reason for changing the (~~((location))~~ ownership of the home; and

(b) Explain how or why the reason for the change is beyond the control of the home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10170 Criminal history background check—Information—Confidentiality—Use restricted. The adult family home must:

(1) Establish and implement procedures that ensure:

(a) All disclosure statements, background inquiry applications, responses, related information, and all copies are kept in a confidential and secure manner;

(b) All background inquiry results and disclosure statements are used for employment purposes only;

(c) Background inquiry results and disclosure statements are not disclosed to any person except:

(i) The person about whom the home made the disclosure or background inquiry;

(ii) Licensed facilities, an employer of an authorized program, or an in-home services agency employer identified in WAC 388-76-10173;

(iii) Authorized state and federal employees; and

(~~((iii))~~) (iv) The Washington state patrol auditor.

(2) Keep a record of inquiry results for eighteen months after the date an employee either quits or is terminated.

NEW SECTION

WAC 388-76-10173 Disclosure of employee information—Employer immunity—Rebuttable presumption. (1) A provider of the following, who discloses information about a former or current employee to the prospective employer of the following, is presumed to act in good faith and is immune from civil and criminal liability for such disclosure or its consequences:

(a) Boarding homes licensed under chapter 18.20 RCW;

(b) Nursing homes licensed under chapter 18.51 RCW;

(c) Adult family homes licensed under chapter 70.128 RCW;

(d) An employer of a program authorized under RCW 71A.12.040(10); or

(e) An in-home services agency employer of a program licensed under chapter 70.127 RCW.

(2) The immunity provided in this section only applies if the disclosure relates to:

(a) The employee's ability to perform his or her job;

(b) The diligence, skill or reliability with which the employee carried out the duties of his or her job; or

(c) Any illegal or wrongful act committed by the employee when related to his or her ability to care for a vulnerable adult.

(3) For the purposes of this section:

(a) The presumption of good faith may only be rebutted by a showing of clear and convincing evidence that the information disclosed by the provider was knowingly false or made with reckless disregard for the truth of the information disclosed.

(b) Should the employee successfully rebut the presumption of good faith standard in court, the employee shall be entitled to recover reasonable attorneys' fees against the employer.

NEW SECTION

WAC 388-76-10174 Background checks—Disclosure of information—Sharing of criminal background information by health care facilities. In accordance with RCW 43.43.832 a health care facility may share criminal background information with other health care facilities. For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) A health care facility may, upon request from another health care facility, share copies of completed criminal background inquiry information.

(2) A health care facility may share completed criminal background inquiry information only if:

(a) The health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application; and

(c) The criminal background information is no more than two years old.

(3) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(4) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, after the completion date of their most recent criminal background inquiry:

(a) Cannot rely on the applicant's previous employer's criminal background inquiry information; and

(b) Must request a new criminal background inquiry pursuant to RCW 43.43.830 through 43.43.842.

(5) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this section.

(6) Health care facilities must send and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10335 Resident assessment topics. ~~((+))~~ For the purposes of this section, "body care" means:

~~((a))~~ How the resident performs with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet; and

~~((b))~~ Dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC.

~~((2))~~ Body care includes:

~~((a))~~ Foot care if the resident is diabetic or has poor circulation; or

~~((b))~~ Changing bandages or dressings when sterile procedures are required.

~~((3))~~ The adult family home must ensure that each resident's assessment includes the following minimum information:

~~((+))~~ (1) Recent medical history;

~~((b))~~ (2) Current prescribed medications, and contraindicated medications, including but not limited to, medications known to cause adverse reactions or allergies;

~~((e))~~ (3) Medical diagnosis reported by the resident, the resident representative, family member, or by a licensed medical professional;

~~((+))~~ (4) Medication management:

~~((+))~~ (a) The ability of the resident to be independent in managing medications;

~~((+))~~ (b) The amount of medication assistance needed;

~~((+))~~ (c) If medication administration is required; or

~~((+))~~ (d) If a combination of the elements in ~~((+))~~ (a) through ~~((+))~~ (c) above is required.

~~((e))~~ (5) Food allergies or sensitivities;

~~((+))~~ (6) Significant known behaviors or symptoms that may cause concern or require special care, including:

~~((+))~~ (a) The need for and use of medical devices;

~~((+))~~ (b) The refusal of care or treatment; and

~~((+))~~ (c) Any mood or behavior symptoms that the resident has had within the last five years.

~~((g))~~ (7) Cognitive status, including an evaluation of disorientation, memory impairment, and impaired judgment;

~~((h))~~ (8) History of depression and anxiety;

~~((+))~~ (9) History of mental illness, if applicable;

~~((+))~~ (10) Social, physical, and emotional strengths and needs;

~~((+))~~ (11) Functional abilities in relationship to activities of daily living including:

~~((+))~~ (a) Eating;

~~((+))~~ (b) Toileting;

~~((+))~~ (c) Walking;

~~((+))~~ (d) Transferring;

~~((+))~~ (e) Positioning;

~~((vi))~~ Specialized body care;

- ~~((vii))~~ ~~(f)~~ Personal hygiene;
- ~~((viii))~~ ~~(g)~~ Dressing; and
- ~~((ix))~~ ~~(h)~~ Bathing.
- ~~((4))~~ ~~(12)~~ Preferences and choices about daily life that are important to the resident, including but not limited to:
 - ~~((i))~~ ~~(a)~~ The food that the resident enjoys;
 - ~~((ii))~~ ~~(b)~~ Meal times; and
 - ~~((iii))~~ ~~(c)~~ Sleeping and nap times.
- ~~((m))~~ ~~(13)~~ ~~(Preferences for)~~ ~~Activities~~~~(and~~
~~(n)~~ ~~A preliminary service plan).~~

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10645 Resident rights—Quality of life—Reasonable accommodation. The adult family home must ensure each resident:

- (1) Receives reasonable accommodation to meet the needs and preferences of the resident, except when the reasonable accommodation endangers the health or safety of the individual or other residents; and
- (2) Has the ability to share a double room with his or her spouse or domestic partner when both spouses or domestic partners consent to the arrangement.

NEW SECTION

WAC 388-76-10783 Water hazards and bodies of water—Resident safety. The adult family home must protect each resident:

- (1) From risks associated with water hazards or bodies of water of any depth at the home; and
- (2) When accompanying or escorting the resident at other locations where there are water hazards or bodies of water of any depth.

NEW SECTION

WAC 388-76-10784 Water hazards—Fences, gates and alarms. For any adult family home newly licensed after July 1, 2007 or any currently licensed adult family home that adds or modifies a new or existing water hazard after July 1, 2007 must:

- (1) Comply with this section and the requirements of the:
 - (a) International Residential Code (IRC); and
 - (b) Washington state amendments to the International Residential Code (IRC).
- (2) Enclose water hazards over twenty four inches deep with:
 - (a) Fences and gates at least forty-eight inches high; and
 - (b) Audible alarms when doors, screens, and gates that directly lead to or surround the water hazard, are opened.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11015 Resident protection program—Disputing a preliminary finding. (1) The individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident may request an administrative

hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date written on the notice of the preliminary finding.

(4) The written request for a hearing must include:
~~(a))~~ ~~the individual's full legal name~~~~(and~~ current mailing address and should include:

- (a) The individual's telephone number;
- (b) A brief explanation of why the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident disagrees with the preliminary finding;
- (c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign or sign language interpreter or any reasonable accommodation for a disability; and
- (d) The individual's signature.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10785	Water hazards—Enclosures and safety devices.
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