

WSR 09-18-093
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)

[Filed September 1, 2009, 12:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-06-080.

Title of Rule and Other Identifying Information: The department is amending chapter 388-554 WAC, Enteral nutrition program.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, Washington 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadef Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on October 27, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than October 28, 2009.

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 DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 27, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by October 6, 2009, 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: **Major Change:** The department is no longer covering orally administered enteral nutrition for clients twenty-one years of age and older.

Other Changes/Updates to the Enteral Nutrition Chapter Include:

- Reorganized the chapter to mirror other recently reorganized medical program chapters.
- Changed references from "MAA" to the "department."
- Clarified when the department will pay for enteral nutrition products.
- Updated the definition for "Women, infants, and children (WIC) program" to match the department of health's current definition.
- Added children's healthcare programs as defined in WAC 388-505-0210 to the list of eligible clients.
- Clarified that "emergency medical only programs" are eligible only when the services are necessary to treat the client's emergency medical condition.
- Removed language that the department would pay separately for oral enteral nutrition for a client who resides in a nursing facility when the client's need for enteral nutrition meets 100% of the client's nutritional needs. Adult family homes, assisted living facilities, boarding homes, or any other residence where the provision of food is part of the per diem rate are required to provide food for their clients.
- Added the "client's caregiver" as a sufficient person for providers to confirm with whether the client's next month's delivery of authorized orally administered

enteral nutrition products is necessary. Current language states that the provider must confirm with the client.

- Clarified that when a client has indicated that he or she is not using the enteral nutrition product as prescribed, in addition to notifying the client's physician, the provider must also document the notification in the client's file.
- Clarified what the department means by a "valid" prescription.
- Clarified that providers must request prior authorization for covered orally administered enteral nutrition products and tube-delivered enteral equipment and related supplies as required in the chapter or when the clinical criteria is not met. Requests for prior authorization must be submitted to the department on DSHS 13-743 form (Oral Enteral Nutrition Worksheet Prior Authorization Request).
- Codified expedited prior authorization (EPA) criteria for oral enteral nutrition for clients twenty years of age and younger.
- Created a new noncovered section (WAC 388-554-800) to include orally administered enteral nutrition for clients twenty-one years of age and older and nonmedical equipment, supplies, and related services, including but not limited to, backpacks, pouches, bags, baskets, or other carrying containers. The department does not pay for these items but needed to codify this.

Reasons Supporting Proposal: This amendment is necessary for the department to fully meet the legislatively mandated appropriation reduction in section 1109, chapter 564, Laws of 2009 (ESHB 1244) for durable medical equipment (DME) for fiscal years 2010-2011 and to further clarify the department's coverage policy for enteral nutrition.

Statutory Authority for Adoption: Section 1109, chapter 564, Laws of 2009 (ESHB 1244), RCW 74.04.050, 74.08.090.

Statute Being Implemented: Section 1109, chapter 564, Laws of 2009 (ESHB 1244).

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: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Maureen Guzman, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-2033.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department analyzed the proposed rule amendments and concludes that they will impose no new costs on small businesses. The preparation of a comprehensive 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 Guzman, Enteral Program Manager, DSHS/HRSA/Division of Healthcare Services, P.O. Box 45506, Olympia, WA 98504-5506, phone (360)

725-2330, fax (360) 586-9727, e-mail guzvam@dshs.wa.gov.

August 27, 2009
Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-04-059, filed 1/28/05, effective 3/1/05)

WAC 388-554-100 Enteral nutrition ((program))—
General. ~~((The medical assistance administration's (MAA's) enteral nutrition program covers the products, equipment, and supplies to provide medically necessary enteral nutrition to eligible medical assistance clients))~~ (1) The department covers the enteral nutrition products, equipment, and related supplies listed in this chapter, according to department rules and subject to the limitations and requirements in this chapter.

(2) The department pays for enteral nutrition products, equipment and related supplies when they are:

(a) Covered;

(b) Within the scope of the eligible client's medical care program;

(c) Medically necessary as defined under WAC 388-500-0005;

(d) Authorized, as required within this chapter, chapters 388-501 and 388-502 WAC, and the department's published billing instructions and numbered memoranda; and

(e) Billed according to this chapter, chapters 388-501 and 388-502, and the department's published billing instructions and numbered memoranda.

(3) The department requires prior authorization for covered enteral nutrition products, equipment and related supplies when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process. The department evaluates requests requiring prior authorization on a case-by-case basis to determine whether they are medically necessary, according to the process found in WAC 388-501-0165.

(4) The department evaluates a request for a service that is in a covered category, but has been determined to be experimental or investigational per WAC 388-531-0550, under the provisions of WAC 388-501-0165.

(5) The department terminates a provider's participation with the department according to chapter 388-502 WAC.

AMENDATORY SECTION (Amending WSR 05-04-059, filed 1/28/05, effective 3/1/05)

WAC 388-554-200 Enteral nutrition ((program))—
Definitions. The following terms and definitions and those found in WAC 388-500-0005 apply to ~~((the enteral nutrition program))~~ this chapter:

"BMI" see **"body mass index."**

"Body mass index (BMI)" ~~((is))~~- A number that shows body weight ((adjusted by)) relative to height, and is calculated using inches and pounds or meters and kilograms.

"Department" - The department of social and health services (DSHS).

"Enteral nutrition" ~~((means))~~- The use of medically necessary nutritional products alone, or in combination with traditional food, when a client is unable to consume enough traditional food to meet nutritional requirements. Enteral nutritional solutions can be given orally or via feeding tubes.

"Enteral nutrition equipment" ~~((means))~~- Durable medical feeding pumps and intravenous (IV) poles used in conjunction with nutrition supplies to dispense formula to a client.

"Enteral nutrition product" ~~((means))~~- Enteral nutrition formulas and/or products.

"Enteral nutrition supplies" ~~((means))~~- The supplies, such as nasogastric, gastrostomy and jejunostomy tubes, necessary to allow nutritional support via the alimentary canal or any route connected to the gastrointestinal system.

"Growth chart" ~~((is))~~- A series of percentile curves that illustrate the distribution of select body measurements (i.e., height, weight, and age) in children published by the Centers for Disease Control and Prevention, National Center for Health Statistics. CDC growth charts: United States. <http://www.cdc.gov/growthcharts/>

"Nonfunctioning digestive tract" ~~((is))~~- Caused by a condition that affects the body's alimentary organs and their ability to break down ((and)), digest, and absorb nutrients.

"Orally administered enteral nutrition products" ~~((means))~~- Enteral nutrition solutions and products that a client consumes orally for nutritional support.

"Tube-delivery" ~~((means))~~- The provision of nutritional requirements through a tube into the stomach or small intestine.

~~((**"WIC program"** (Women, infants and children (WIC) program) is a special supplemental nutrition program managed by the department of health (DOH) that serves to safeguard the health of children up to age five, and low-income pregnant and breastfeeding women who are at nutritional risk by providing them with healthy, nutritious foods to supplement diets, information on healthy eating, and referral to health care.))~~

"Women, infants and children (WIC) program(=)" ~~((See "**WIC program.**")~~ (Also known as WIC program) - A special supplemental nutrition program managed by the department of health (DOH) that serves to safeguard the health of children up to age five and low-income pregnant and breastfeeding women who are at nutritional risk, by providing them with healthy, nutritious foods to supplement diets, information on healthy eating, and referral to health care.

AMENDATORY SECTION (Amending WSR 05-04-059, filed 1/28/05, effective 3/1/05)

WAC 388-554-300 Enteral nutrition ((program))—
Client eligibility. (1) ~~((Clients in the following medical assistance programs are eligible))~~ To receive oral or tube-delivered enteral nutrition products ((and tube-delivered enteral nutrition products and necessary)), equipment, and related supplies, ((subject to the limitations in this chapter and other applicable WAC)) clients must be eligible for one of the following medical assistance programs:

(a) Categorically needy program (CN or CNP);

(b) Categorically needy program - state children's health insurance program (CNP-SCHIP) ((same scope of coverage as CNP));

(c) ((General assistance—Unemployable (GA-U))) Children's healthcare programs as defined in WAC 388-505-0210;

(d) Limited casualty program - Medically needy program (LCP-MNP);

(e) ((Alien emergency medical program—CNP)) General assistance (GAU/ADATSA); and

(f) ((Alien emergency medical program—LCP-MNP)) Emergency medical only programs when the services are necessary to treat the client's emergency medical condition.

(2) ((All clients younger than age twenty-one must be evaluated by a certified dietitian with a current provider number within thirty days of initiation of enteral nutrition products, and periodically (at the discretion of the certified dietitian) while receiving enteral nutrition products. See WAC 388-554-400(2)(h) for provider requirements.

(3) Clients enrolled in an MAA managed care plan are eligible for oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies through that plan. If a client becomes enrolled in a managed care plan before MAA completes the purchase (or rental, if applicable) of prescribed enteral products, necessary equipment and supplies:

(a) MAA rescinds the purchase until the managed care primary care provider (PCP) evaluates the client; and

(b) The managed care plan's applicable reimbursement policies apply to the purchase of the products, equipment, or supplies, or rental of the equipment, as applicable.

(4) To receive orally administered enteral nutrition products, a client must:

(a) Have a valid written physician order from a physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PA-C) for all enteral nutrition products;

(b) When required, have the provider obtain prior authorization as described in WAC 388-554-700;

(c) Meet the conditions in this section and other applicable WAC;

(d) Be able to manage their feedings in one of the following ways:

(i) Independently; or

(ii) With a caregiver who can manage the feedings; and

(e) Have at least one of the following medical conditions, subject to the criteria listed:

(i) Malnutrition/malabsorption as a result of a stated primary diagnosed disease. The client must have:

(A) A weight for length less than or equal to the fifth percentile if the client is younger than age three; or

(B) A body mass index (BMI) of:

(I) Less than or equal to the fifth percentile if the client is older than age three and younger than age eighteen; or

(II) Less than or equal to 18.5 if the client is age eighteen or older.

(ii) Acquired immune deficiency syndrome (AIDS). The client must be in a wasting state and have:

(A) A weight for length less than or equal to the fifth percentile if the client is younger than age three; or

(B) A BMI of:

(I) Less than or equal to the fifth percentile if the client is older than age three and younger than age eighteen; or

(II) Less than or equal to 18.5 if the client is age eighteen or older.

(iii) Amino acid, fatty acid, and carbohydrate metabolic disorders;

(iv) Dysphagia. The client must:

(A) Need to transition from tube feedings to oral feedings or require thickeners to aid swallowing; and

(B) Be evaluated by:

(I) A speech therapist; or

(II) An occupational therapist who specializes in dysphagia.

(v) Chronic renal failure. The client:

(A) Must be receiving dialysis; and

(B) Have a fluid restrictive diet in order to use nutrition bars.

(vi) Malignant cancer(s). The client must be receiving chemotherapy.

(vii) Decubitus pressure ulcers. The client must have:

(A) Stage three or greater decubitus pressure ulcers; and

(B) An albumin level of 3.2 or below.

(viii) Failure to thrive. The client must have a disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment. In addition, the client must have:

(A) A weight for length less than or equal to the fifth percentile if the client is younger than age three;

(B) A BMI of less than or equal to the fifth percentile if the client is at least age three but younger than age eighteen; and

(C) A BMI of less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen or older.

(5) A client is eligible to receive delivery of orally administered enteral nutrition products in quantities sufficient to meet the client's medically authorized needs, not to exceed a one month supply. To receive the next month's delivery of authorized products, the client's record must show documentation of the need to refill the products. See WAC 388-554-400 for provider requirements.

(6) To receive tube-delivered enteral nutrition products, necessary equipment and supplies, a client must:

(a) Have a valid written physician order from a physician, ARNP, or PA-C;

(b) Meet the conditions in this section and other applicable WAC; and

(c) Be able to manage their tube feedings in one of the following ways:

(i) Independently; or

(ii) With a caregiver who can manage the feedings; and

(d) Have at least one of the following medical conditions, subject to the criteria listed:

(i) A nonfunction or disease of the structures that normally permit food to reach the small bowel; or

(ii) A disease or condition of the small bowel that impairs digestion and absorption of an oral diet, either of which requires tube feedings to provide sufficient nutrients to

maintain weight and strength that is properly proportioned to the client's overall health status)) Clients who are enrolled in a department-contracted managed care organization (MCO) must arrange for enteral nutrition products, equipment, and related supplies directly through his or her department-contracted MCO.

(3) For clients who reside in a nursing facility, adult family home, assisted living facility, boarding home, or any other residence where the provision of food is included in the daily rate, oral enteral nutrition products are the responsibility of the facility to provide in accordance with chapters 388-76, 388-97 and 388-78A WAC.

(4) For clients who reside in a state-owned facility (i.e. state school, developmental disabilities (DD) facility, mental health facility, Western State Hospital, and Eastern State Hospital) enteral nutrition products, equipment, and related supplies are the responsibility of the state-owned facility to provide.

(5) Clients who have elected and are eligible to receive the department's hospice benefit must arrange for enteral nutrition products, equipment and related supplies directly through the hospice benefit.

(6) Children who qualify for supplemental nutrition from the women, infants, and children (WIC) program must receive supplemental nutrition directly from that program unless the client meets the limited circumstances in WAC 388-554-500 (1)(d).

AMENDATORY SECTION (Amending WSR 05-04-059, filed 1/28/05, effective 3/1/05)

WAC 388-554-400 Enteral nutrition ((~~program~~))—Provider requirements. (1) ((A provider of all oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies must)) The following providers are eligible to enroll/contract with the department to provide orally-administered enteral nutrition products and tube-delivered enteral nutrition products, equipment, and related supplies:

(a) ((Have a current core provider agreement with the medical assistance administration (MAA); and

(b) Be one of the following provider types:

(i)) Pharmacy provider; or

((ii)) (b) Durable medical equipment (DME) provider.

(2) To ((be paid for oral enteral nutrition products and tube-delivered enteral nutrition products and necessary equipment and supplies, an eligible)) receive payment for orally-administered enteral nutrition products and tube-delivered enteral nutrition products, equipment and related supplies, a provider must:

(a) Meet the requirements in ((WAC 388-502-0020 and other applicable)) chapters 388-501 and 388-502 WAC;

(b) ((Obtain prior authorization (PA), if required, before delivery to the client and before billing MAA. See WAC 388-554-700 for PA requirements)) Provide only those services that are within the scope of the provider's license;

(c) ((Deliver orally administered enteral nutrition products in quantities sufficient to meet a client's medically authorized needs, not to exceed a one-month supply)) Obtain prior

authorization from the department, if required, before delivery to the client and before billing the department;

(d) ((Bill MAA for the authorized products and submit a claim for payment to MAA with a date of service being the same as the shipping date)) Deliver enteral nutritional products in quantities sufficient to meet the client's authorized needs, not to exceed a one-month supply;

(e) Confirm with the client ((and document in the client's record)) or the client's caregiver that the next month's delivery of authorized orally administered enteral nutrition products is necessary ((see WAC 388-554-300(5))) and document the confirmation in the client's file. ((MAA will not reimburse)) The department does not pay for automatic periodic delivery of products;

(f) ((Notify and inform the client's physician if the client has indicated the product is not being used as prescribed)) Furnish clients with new or used equipment that includes full manufacturer and dealer warranties for at least one year; and

(g) ((Keep legible, accurate, and complete charts in the client's record to justify the medical necessity of the items provided and include:

(i) For each item billed, a copy of the prescription. The prescription must:

(A) Be signed and dated by the prescribing physician;

(B) List the client's medical condition and exact daily caloric amount of needed enteral product; and

(C) State the reason why the client is unable to consume enough traditional food to meet nutritional requirements.

(ii) The medical reason the specific enteral product, equipment, and/or supply is prescribed; and

(iii) For a client who meets the women, infants and children (WIC) program's target population as defined in WAC 388-554-200, verification from the WIC program that the client:

(A) Is not eligible for WIC program services;

(B) Is eligible for WIC program services, but nutritional needs exceed the WIC program's maximum per calendar month allotment; or

(C) The WIC program cannot provide the prescribed product.

(h) For a client younger than age twenty-one, retain a copy of each required certified dietitian evaluation, as described in WAC 388-554-300(2).

(3) MAA may recoup any payment made to a provider for authorized enteral nutrition products if the requirements in subsection (2) of this section and other applicable WAC are not met)) Notify the client's physician if the client has indicated the enteral nutrition product is not being used as prescribed and document the notification in the client's file.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-554-500 ((Orally administered)) Covered enteral nutrition products, equipment and related supplies—((Coverage, limitations, and reimbursement)) Orally-administered—Clients twenty years of age and younger only. (1) ((The enteral nutrition program covers and reimburses medically necessary orally administered enteral nutrition products, subject to:

~~(a) Prior authorization requirements under WAC 388-554-700;~~

~~(b) Duration periods determined by the department;~~

~~(c) Delivery requirements under WAC 388-554-400(2); and~~

~~(d) The provisions in other applicable WAC.~~

~~(2) Except as provided in subsection (3) of this section, the department does not pay separately for orally administered enteral nutrition products:~~

~~(a) When a client resides in a state-owned facility (i.e., state school, developmental disabilities (DD) facility, mental health facility, Western State Hospital, and Eastern State Hospital);~~

~~(b) When a client has elected and is eligible to receive the department's hospice benefit, unless both of the following apply:~~

~~(i) The client has a preexisting medical condition that requires enteral nutritional support; and~~

~~(ii) The preexisting medical condition is not related to the diagnosis that qualifies the client for hospice.~~

~~(3) The department pays separately for a client's orally administered enteral nutrition products when the client:~~

~~(a) Resides in a nursing facility;~~

~~(b) Meets the criteria in WAC 388-554-300; and~~

~~(c) Needs enteral nutrition products to meet one hundred percent of the client's nutritional needs.~~

~~(4) The department does not cover or pay for orally administered enteral nutrition products when the client's nutritional need can be met using traditional foods, baby foods, and other regular grocery products that can be pulverized or blenderized and used to meet the client's caloric and nutritional needs.~~

~~(5) The department:~~

~~(a) Determines reimbursement for oral enteral nutrition products according to a set fee schedule;~~

~~(b) Considers medicare's current fee schedule when determining maximum allowable fees;~~

~~(c) Considers vendor rate increases or decreases as directed by the Legislature; and~~

~~(d) Evaluates and updates the maximum allowable fees for oral enteral nutrition products at least once per year.~~

~~(6) The department evaluates a request for orally administered enteral nutrition products that are in excess of the enteral nutrition program's limitations or restrictions, according to the provisions of WAC 388-501-0165 and 388-501-0169.~~

~~(7) The department evaluates a request for orally administered enteral nutrition products that are listed as nonecovered in this chapter according to the provisions of WAC 388-501-0160)) The department covers orally-administered enteral nutrition products only for clients twenty years of age and younger as follows:~~

~~(a) The client's nutritional needs cannot be met using traditional foods, baby foods, and other regular grocery products that can be pulverized or blenderized and used to meet the client's caloric and nutritional needs;~~

~~(b) The client is able to manage their feedings in one of the following ways:~~

~~(i) Independently; or~~

~~(ii) With a caregiver who can manage the feedings; and~~

(c) The client meets one of the following clinical criteria:

(i) Acquired immune deficiency syndrome (AIDS). Providers must obtain prior authorization to receive payment. The client must:

(A) Be in a wasting state;

(B) Have a weight-for-length less than or equal to the fifth percentile if the client is three years of age or younger; or

(C) Have a body mass index (BMI) of:

(I) Less than or equal to the fifth percentile if the client is four through seventeen years of age; or

(II) Less than or equal to 18.5 if the client is eighteen through twenty years of age; or

(D) Have a BMI of:

(I) Less than or equal to twenty-five; and

(II) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(ii) Amino acid, fatty acid, and carbohydrate metabolic disorders.

(A) The client must require a specialized nutrition product; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(iii) Cancer(s).

(A) The client must be receiving chemotherapy and/or radiation therapy or post-therapy treatment;

(B) The department pays for orally-administered nutritional products for up to three months following the completion of chemotherapy or radiation therapy; and

(C) Providers must follow the department's expedited prior authorization process to receive payment.

(iv) Chronic renal failure.

(A) The client must be receiving dialysis and have a fluid restrictive diet in order to use nutrition bars; and

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(v) Decubitus pressure ulcers.

(A) The client must have stage three or greater decubitus pressure ulcers and an albumin level of 3.2 or below; and

(B) Providers must follow the department's expedited prior authorization process to receive a maximum of three month's payment.

(vi) Failure to thrive or malnutrition/malabsorption as a result of a stated primary diagnosed disease.

(A) The provider must obtain prior authorization to receive payment; and

(B) The client must have:

(I) A disease or medical condition that is only organic in nature and not due to cognitive, emotional, or psychological impairment; and

(II) A weight-for-length less than or equal to the fifth percentile if the client is two years of age or younger; or

(III) A BMI of:

(aa) Less than or equal to the fifth percentile if the client is three through seventeen years of age; or

(bb) Less than or equal to 18.5, an albumin level of 3.5 or below, and a cholesterol level of one hundred sixty or below if the client is age eighteen through twenty years of age; or

(IV) Have a BMI of:

(aa) Less than or equal to twenty five; and

(bb) An unintentional or unexplained weight loss of five percent in one month, seven and a half percent in three months, or ten percent in six months.

(vii) Medical conditions (e.g., dysphagia) requiring a thickener.

(A) The client must:

(I) Require a thickener to aid in swallowing or currently be transitioning from tube feedings to oral feedings; and

(II) Be evaluated by a speech therapist or an occupational therapist who specializes in dysphagia. The report recommending a thickener must be in the client's chart in the prescriber's office.

(B) Providers must follow the department's expedited prior authorization process to receive payment.

(d) If four years of age or younger.

(i) The client must:

(A) Have a certified registered dietitian (RD) evaluation with recommendations which support the prescriber's order for oral enteral nutrition products or formulas; and

(B) Have a signed and dated written notification from WIC indicating one of the following:

(I) Client is not eligible for the WIC program; or

(II) Client is eligible for WIC program, but the need for the oral enteral nutrition product or formula exceeds WIC's allowed amount; or

(III) The requested oral enteral nutrition product or formula is not available through the WIC program. Specific, detailed documentation of the tried and failed efforts of similar WIC products, or the medical need for alternative products must be in the prescriber's chart for the client; and

(C) Meet one of the following clinical criteria:

(I) Low birth weight (less than 2500 grams);

(II) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(III) Failure to gain weight on two successive measurements, despite dietary interventions; or

(IV) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(e) If five years of age through twenty years of age.

(i) The client must:

(A) Have a certified RD evaluation, for eligible clients, with recommendations which support the prescriber's order for oral enteral nutrition products; and

(B) Meet one of the following clinical criteria:

(I) A decrease across two or more percentile lines on the CDC growth chart, once a stable growth pattern has been established;

(II) Failure to gain weight on two successive measurements, despite dietary interventions; or

(III) Documented specific, clinical factors that place the child at risk for a compromised nutrition and/or health status.

(ii) Providers must follow the department's expedited prior authorization process to receive payment.

(2) Requests to the department for prior authorization for orally-administered enteral nutrition products must include a completed Oral Enteral Nutrition Worksheet Prior Authorization Request (DSHS 13-743), available for download at:

<http://www1.dshs.wa.gov/msa/forms/eforms.html>. The DSHS 13-743 form must be:

(a) Completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant-certified (PA-C), verifying all of the following:

(i) The client meets the requirements listed in this section;

(ii) The client's physical limitations and expected outcome;

(iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;

(iv) For a client eighteen through twenty years of age, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);

(v) For a client younger than eighteen years of age, the client's growth history and a comparison to expected weight gain, and;

(A) An evaluation of the weight-for-length percentile if the client is three years of age or younger; or

(B) An evaluation of the BMI if the client is four through seventeen years of age.

(vi) The client's medical condition and the exact daily caloric amount of needed enteral nutrition product;

(vii) The reason why the client is unable to consume enough traditional food to meet nutritional requirements;

(viii) The medical reason the specific enteral nutrition product, equipment, and/or supply is prescribed;

(ix) Documentation explaining why less costly, equally effective products or traditional foods are not appropriate;

(x) The number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required; and

(xi) The client's likely expected outcome if enteral nutritional support is not provided.

(b) Written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the enteral nutrition product, equipment, or related supply. This form must not be back-dated; and

(c) Be submitted within three months from the date the prescriber signs the prescription.

(3) Clients twenty years of age and younger must be evaluated by a certified RD within thirty days of initiation of enteral nutrition products and periodically (at the discretion of the certified RD) while receiving enteral nutrition products. The certified RD must be a current provider with the department.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-554-600 (~~Tube-delivered~~) **Covered enteral nutrition products, equipment and related** (~~equipment and~~) **supplies—(Coverage, limitations, and reimbursement)** **Tube-delivered.** (1) (~~The enteral nutrition program covers and reimburses the following, subject to the limitations listed in this section and the provisions in other applicable WAC:~~

(a) Tube-delivered enteral nutrition products;

- (b) Tube-delivery supplies;
 - (c) Enteral nutrition pump rental and purchase;
 - (d) Nondisposable intravenous (IV) poles required for enteral nutrition product delivery; and
 - (e) Repairs to equipment.
- (2) The department covers up to twelve months of rental payments for enteral nutrition equipment. After twelve months of rental, the department considers the equipment purchased and it becomes the client's property.
- (3) The department requires a provider to furnish clients new or used equipment that includes full manufacturer and dealer warranties for one year.
- (4) The department covers only one:
- (a) Purchased pump per client in a five year period; and
 - (b) Purchased nondisposable IV pole per client for that client's lifetime.
- (5) The department's reimbursement for covered enteral nutrition equipment and necessary supplies includes all of the following:
- (a) Any adjustments or modifications to the equipment that are required within three months of the date of delivery. This does not apply to adjustments required because of changes in the client's medical condition;
 - (b) Fitting and set-up; and
 - (c) Instruction to the client or the client's caregiver in the appropriate use of the equipment and necessary supplies.
- (6) A provider is responsible for any costs incurred to have another provider repair equipment if all of the following apply:
- (a) Any equipment that the department considers purchased requires repair during the applicable warranty period;
 - (b) The provider is unable to fulfill the warranty; and
 - (c) The client still needs the equipment.
- (7) If a rental equipment the department considers to have been purchased must be replaced during the warranty period, the department recoups fifty percent of the total amount previously paid toward rental and eventual purchase of the equipment delivered to the client. All of the following must apply:
- (a) The provider is unable to fulfill the warranty; and
 - (b) The client still needs the equipment.
- (8) The department rescinds any authorization for prescribed equipment if the equipment was not delivered to the client before the client:
- (a) Loses medical eligibility;
 - (b) Becomes covered by a hospice agency and the equipment is used in the treatment of the terminal diagnosis or related condition(s);
 - (c) Becomes eligible for a department-contracted managed-care plan; or
 - (d) Dies.
- (9) Except as provided in subsection (10) of this section, the department does not pay separately for tube-delivered enteral nutrition products or necessary equipment or supplies when a client:
- (a) Resides in a state-owned facility (i.e., state school, developmental disabilities (DD) facility, mental health facility, Western State Hospital, and Eastern State Hospital).
 - (b) Has elected and is eligible to receive the department's hospice benefit, unless both of the following apply:

- (i) The client has a preexisting medical condition that requires enteral nutritional support; and
 - (ii) The preexisting medical condition is not related to the diagnosis that qualifies the client for hospice.
- (10) The department pays separately for a client's tube-delivered enteral nutrition products and necessary equipment and supplies when:
- (a) The client resides in a nursing facility;
 - (b) The client meets the eligibility criteria in WAC 388-554-300; and
 - (c) Use of enteral nutrition products meets one hundred percent of the client's nutritional needs.
- (11) The department determines reimbursement for tube-delivered enteral nutrition products and necessary equipment and supplies using the same criteria described in WAC 388-554-500(5).
- (12) The department evaluates a request for tube-delivered enteral nutrition products and necessary equipment and supplies that are in excess of the enteral nutrition program's limitations or restrictions, according to the provisions of WAC 388-501-0165 and 388-501-0169.
- (13) The department evaluates a request for tube-delivered enteral nutrition products and necessary equipment and supplies, that are listed as nonecovered in this chapter, under the provision of WAC 388-501-0160)) The department covers tube-delivered enteral nutrition products, equipment, and related supplies, without prior authorization, for eligible clients regardless of age, as follows:
- (a) When the client meets the following clinical criteria:
 - (i) The client has a valid prescription;
 - (A) To be valid, a prescription must:
 - (I) Be written by a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PA-C);
 - (II) Be written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the supply, equipment, or device. Prescriptions must not be back-dated;
 - (III) Be submitted within three months from the date the prescriber signs the prescription; and
 - (IV) State the specific product requested, diagnosis, estimated length of need (months), and quantity.
 - (ii) The client is able to manage his or her tube feedings in one of the following ways:
 - (A) Independently; or
 - (B) With a caregiver who can manage the feedings; and
 - (iii) The client has at least one of the following medical conditions:
 - (A) A nonfunction or disease or clinical condition that impairs the client's ability to ingest sufficient calories and nutrients from products orally or does not permit sufficient calories and nutrients from food to reach the gastrointestinal tract; or
 - (B) A disease or condition of the small bowel that impairs digestion and absorption of an oral diet, either of which requires tube feedings to provide sufficient nutrients to maintain weight and strength that is properly proportioned to the client's overall health status.
 - (b) With the following limitations:

(i) One purchased pump, per client, in a five-year period; and

(ii) One purchased nondisposable intravenous pole required for enteral nutrition product delivery, per client, per lifetime.

(c) Providers must follow the department's expedited prior authorization process to receive payment.

(2) The department pays for up to twelve months of rental payments for tube-delivered enteral nutrition equipment. After twelve months of rental, the department considers the equipment purchased and it becomes the client's property.

(3) The department pays for replacement parts for tube-delivered enteral nutrition equipment, with prior authorization, when:

(a) Owned by the client;

(b) Less than five years old; and

(c) No longer under warranty.

AMENDATORY SECTION (Amending WSR 05-04-059, filed 1/28/05, effective 3/1/05)

WAC 388-554-700 Enteral nutrition products, equipment and related supplies—~~((Prior))~~ Authorization ~~((requirements))~~. (1) ~~((All requests for oral enteral nutrition products, repairs to equipment, and replacement of necessary supplies for tube-delivery of enteral nutrition products require prior authorization as described in this section. See also WAC 388-501-0165.~~

~~((2) When MAA receives an initial request for prior authorization, the prescription(s) for those items cannot be older than three months from the date MAA receives the request.~~

~~((3) MAA may authorize orally administered enteral nutrition products that are listed in MAA's published issuances, including billing instructions and numbered memoranda, only if medical necessity is established and the provider furnishes all of the following information to MAA:~~

~~((a) A copy of the signed and dated physician order completed by the prescribing physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PA-C), which includes client's medical condition and exact daily caloric amount of prescribed enteral nutrition product;~~

~~((b) Documentation from the client's physician, ARNP, or PA-C that verifies all of the following:~~

~~((i) The client has one of the medical conditions listed in WAC 388-554-300 (4)(e);~~

~~((ii) The client's physical limitations and expected outcome;~~

~~((iii) The client's current clinical nutritional status, including the relationship between the client's diagnosis and nutritional need;~~

~~((iv) For a client age eighteen or older, the client's recent weight loss history and a comparison of the client's actual weight to ideal body weight and current body mass index (BMI);~~

~~((v) For a client younger than age eighteen, the client's growth history and a comparison to expected weight gain, and;~~

~~((A) An evaluation of the weight-for-length percentile if the client is younger than age three; or~~

~~((B) An evaluation of the BMI if the client is older than age three and younger than age eighteen.~~

~~((v) Documentation explaining why less costly, equally effective products or traditional foods are not appropriate (see WAC 388-554-500(4));~~

~~((vi) The client's likely expected outcome if enteral nutritional support is not provided; and~~

~~((vii) Number of days or months the enteral nutrition products, equipment, and/or necessary supplies are required.~~

~~((4) A provider may resubmit a request for prior authorization for oral enteral nutrition products or replacement of necessary supplies for tube-delivery of enteral nutrition products that MAA has denied. MAA requires the provider to include new documentation that is relevant to the request))~~ The department requires providers to obtain authorization for covered orally-administered enteral nutrition products, and tube-delivered enteral equipment and related supplies as required in this chapter and in published department billing instructions and/or numbered memoranda or when the clinical criteria required in this chapter are not met.

(a) For prior authorization (PA), a provider must submit a written request to the department as specified in WAC 388-554-500(2).

(b) For expedited prior authorization (EPA), a provider must establish that the client's condition meets the clinically appropriate EPA criteria outlined in this chapter and in the department's published enteral nutrition billing instructions. The appropriate EPA number must be used when the provider bills the department.

(c) Upon request, a provider must provide documentation to the department showing how the client's condition met the criteria for PA or EPA.

(2) Authorization requirements in this chapter are not a denial of service for the client.

(3) When an oral enteral nutrition product or tube-delivered enteral nutrition equipment or related-supply requires authorization, the provider must properly request authorization in accordance with the department's rules, billing instructions, and numbered memoranda.

(4) When authorization is not properly requested, the department rejects and returns the request to the provider for further action. The department does not consider the rejection of the request to be a denial of service.

(5) The department's authorization does not necessarily guarantee payment.

(6) The department evaluates requests for authorization for covered enteral nutrition products, equipment, and related-supplies that exceed limitations in this chapter on a case-by-case basis in accordance with WAC 388-501-0169.

(7) The department may recoup any payment made to a provider if the department later determines that the service was not properly authorized or did not meet the EPA criteria. Refer to WAC 388-502-0100 (1)(c).

(8) If a fee-for-service client enrolls in a department-contracted MCO before the department completes the purchase or rental of prescribed enteral nutrition products, necessary equipment and supplies:

(a) The department rescinds the authorization of the purchase or rental;

(b) The department stops paying for any equipment on the last day of the month preceding the month in which the client becomes enrolled in the managed care plan; and

(c) The department-contracted MCO determines the client's continuing need for the equipment and is then responsible for the client.

(9) The department rescinds any authorization for prescribed equipment if the equipment was not delivered to the client before the client:

(a) Loses medical eligibility;

(b) Becomes covered by a hospice agency and the equipment is used in the treatment of the terminal diagnosis or related condition(s);

(c) Becomes eligible for a department-contracted managed care plan; or

(d) Dies.

AMENDATORY SECTION (Amending WSR 05-04-059, filed 1/28/05, effective 3/1/05)

WAC 388-554-800 ~~Noncovered-Enteral nutrition ((program requirements for WIC program eligible clients)) products, equipment, and related-supplies.~~ ~~((Clients who qualify for supplemental nutrition from the women, infants, and children (WIC) program must receive supplemental nutrition through that program. The medical assistance administration (MAA) may cover the enteral nutrition products and supplies for WIC program-eligible clients only when all of the following are met:~~

~~(1) The provider requests prior authorization for the enteral nutrition product or supply;~~

~~(2) Documentation from the WIC program is attached to the request form that verifies:~~

~~(a) The client's enteral nutrition need is in excess of WIC program allocations; or~~

~~(b) The WIC program cannot supply the prescribed product; and~~

~~(3) The client meets the enteral nutrition program requirements in this chapter)) (1) The department does not cover the following:~~

~~(a) Nonmedical equipment, supplies, and related services, including but not limited to, back-packs, pouches, bags, baskets, or other carrying containers; and~~

~~(b) Orally administered enteral nutrition products for clients twenty-one years of age and older.~~

~~(2) An exception to rule (ETR), as described in WAC 388-501-0160, may be requested for a noncovered service.~~

~~(3) When EPSDT applies, the department evaluates a noncovered service, equipment, or supply according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 388-534-0100 for EPSDT rules).~~

NEW SECTION

WAC 388-554-900 Reimbursement—Enteral nutrition products, equipment, and related-supplies. (1) The department:

(a) Determines reimbursement for enteral nutrition products, equipment, and related-supplies according to a set fee schedule;

(b) Considers medicare's current fee schedule when determining maximum allowable fees;

(c) Considers vendor rate increases or decreases as directed by the legislature; and

(d) Evaluates and updates the maximum allowable fees for enteral nutrition products, equipment, and related-supplies at least once per year.

(2) The department's payment for covered enteral nutrition products, equipment and related supplies includes all of the following:

(a) Any adjustments or modifications to the equipment required within three months of the date of delivery. This does not apply to adjustments required because of changes in the client's medical condition;

(b) Instructions to the client and/or caregiver on the safe and proper use of equipment provided;

(c) Full service warranty;

(d) Delivery and pick-up; and

(e) Fitting and adjustments.

(3) If changes in circumstance occur during the rental period, such as death or ineligibility, the department discontinues payment effective on the date of the change in circumstance.

(4) The department does not pay for simultaneous rental and a purchase of any item.

(5) The department does not reimburse providers for equipment that is supplied to them at no cost through suppliers/manufacturers.

(6) The provider who furnishes enteral nutrition equipment to a client is responsible for any costs incurred to have another provider repair equipment if all of the following apply:

(a) Any equipment that the department considers purchased requires repair during the applicable warranty period;

(b) The provider refuses or is unable to fulfill the warranty; and

(c) The client still needs the equipment.

(7) If the rental equipment must be replaced during the warranty period, the department recoups fifty percent of the total amount previously paid toward rental and eventual purchase of the equipment delivered to the client if:

(a) The provider is unwilling or unable to fulfill the warranty; and

(b) The client still needs the equipment.

WSR 09-19-005

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed September 3, 2009, 8:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-168.

Title of Rule and Other Identifying Information: Under a new chapter, transportation benefit district administration, WAC 308-59-505 Assessing transportation benefit district

fees and 308-59-510 Vehicle fee—Transportation benefit district—Exemptions.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on October 29, 2009, at 10:00 a.m.

Date of Intended Adoption: November 24, 2009.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822, by October 27, 2009.

Assistance for Persons with Disabilities: Contact Dale R. Brown by October 27, 2009, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to comply with laws concerning transportation benefit districts.

Reasons Supporting Proposal: New transportation districts have been established and these are rules for administration of this program.

Statutory Authority for Adoption: RCW 46.01.110 and 82.80.140.

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

Name of Agency Personnel Responsible for Drafting: Dale Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Jennifer Dana, 1125 Washington Street S.E., Olympia, WA, (360) 902-3673.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

September 3, 2009

Walt Fahrer

Rules Coordinator

NEW SECTION

WAC 308-59-505 Assessing transportation benefit district fees. All owners of qualified vehicles may be charged a transportation benefit district vehicle fee in accordance with RCW 82.80.140 with reference to vehicles registered under RCW 46.16.0621 and 46.16.070.

NEW SECTION

WAC 308-59-510 Vehicle fee—Transportation benefit district—Exemptions. The following vehicles are exempt from transportation benefit district vehicle fees imposed under chapter 82.80 RCW:

(1) Vehicles with tax code 95 (vehicles taxed as personal property, such as mobile homes);

(2) Vehicles with the following use classes:

(a) C/G (converter gear);

(b) CMB (combination nonpowered);

(c) CMP (campers);

(d) COM (commercial nonpowered);

(e) EX (exempt);

(f) FAR (farm);

(g) FCB (farm combination);

(h) FED (federally owned);

(i) FEX (farm exempt);

(j) H/C (horseless carriage);

(k) H/D (house moving dolly);

(l) LOG (if non powered and used exclusively for hauling logs under RCW 46.16.085);

(m) MOB (mobile home);

(n) PED (moped);

(o) ORV (off road vehicle);

(p) RES (restored and collector vehicles);

(q) SCH (private school);

(r) SNO (snowmobile);

(s) SNX (exempt snowmobile);

(t) TLR (personal use single axle and less than two thousand pounds scale weight); or

(u) TOW (tow trucks);

(3) Vehicles registered under WAC 308-96A-050, (non-resident members of the armed forces);

(4) Vehicles registered under WAC 308-96A-400, (Indian tribes and tribal members);

(5) Vehicles registered under WAC 308-96A-046, (disabled American veterans or former prisoner of war);

(6) Vehicles registered under WAC 308-96A-180, (rental cars);

(7) Passenger motor vehicles registered under WAC 308-96A-175 and 308-96A-176, ride-sharing and transportation needs ride-sharing vehicles;

(8) Vehicles registered under WAC 308-96A-062, Transfer or destruction of honorary consul special license plates; and

(9) Vehicles registered under RCW 46.16.305, Medal of Honor recipients.

WSR 09-19-016

PROPOSED RULES

SECRETARY OF STATE

[Filed September 4, 2009, 8:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-009.

Title of Rule and Other Identifying Information: Amending WAC 434-120-025, to include definitions of annual gross revenue and review; WAC 434-120-045, reference; WAC 434-120-107, clarifying tired [tiered] financial requirements and removing a form; WAC 434-120-110, references; WAC 434-120-140, reference; and WAC 434-120-240, reference.

Hearing Location(s): Office of the Secretary of State, Division of Corporations and Charities, 801 Capitol Way South, Olympia, WA 98504, on October 27, 2009, at 10:00 a.m.

Date of Intended Adoption: October 30, 2009.

Submit Written Comments to: Rebecca Sherrell, Charities Program, P.O. Box 40234, Olympia, WA 98504-0234, e-

mail rsherrell@secstate.wa.gov, fax (360) 664-4250, by November 4, 2009.

Assistance for Persons with Disabilities: Contact Sharon Baker by November 3, 2009, TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to clarify terminology regarding financial reporting requirements and to refer to the rule regarding fees, rather than stating fees in each rule. The anticipated effect is a better understanding by the certified public accountant's community regarding the role an individual CPA plays in the preparation and/or review of required filings within the Charitable Solicitation Act.

Reasons Supporting Proposal: The charities advisory council to the secretary of state has advised that the certified public accountant community requested clarification of terminology in the rules regarding financial reporting requirements.

Statutory Authority for Adoption: RCW 19.09.315, 19.09.540, 43.07.125.

Statute Being Implemented: RCW 19.09.500, 19.09.-540.

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

Name of Agency Personnel Responsible for Drafting: Pamela Floyd, 801 Capitol Way South, Olympia, WA 98504-0234, (360) 725-0310; Implementation: Rebecca Sherrell, 801 Capitol Way South, Olympia, WA 98504-0234, (360) 725-0380; and Enforcement: Jeff Even, Office of Attorney General, 1125 Washington Street S.E., Olympia, WA 98504-40100 [98504-0100], (360) 586-0728.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No additional costs are imposed on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are adopting by reference without material change, Washington state statutes and are not required to do a cost-benefit analysis per RCW 34.05.328 (5)(iii).

September 4, 2009

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-025 Definitions. (1) A "bona fide officer or employee" of a charitable organization is one:

(a) Whose conduct is subject to direct control by such organization;

(b) Who does not act in the manner of an independent contractor in his or her relation with the organization; and

(c) Whose compensation is not computed on funds raised or to be raised.

(2) "Annual gross revenue" means, for any accounting period, the total gross ((receipts)) amounts, including cash or noncash contributions received by or on behalf of a charitable organization from all sources ((of revenue)), without subtracting any costs or expenses.

(3) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable purpose, but does not include any commercial fundraiser, commercial fund-raising entity, commercial coventurer, or any fund-raising counsel, as defined in this section. Churches and their integrated auxiliaries are not charitable organizations, but are subject to RCW 19.09.100 (12), (15), and (18).

(4) "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including but not limited to recreational, environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

(5) "Charitable trust" means any real or personal property right held by an entity or person that is intended to be used for a charitable purpose(s). The trust may be created by will, deed, articles of incorporation, or other governing instrument. It may be express or constructive.

(6) "Commercial coventurer" means a corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, individual, or other entity that:

(a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public; and

(b) Is not otherwise regularly or primarily engaged in making charitable solicitations in this state or otherwise raising funds in this state for one or more charitable organizations; and

(c) Represents to prospective purchasers that if they purchase a good or service from the commercial coventurer, a specified portion of the sales price or a certain sum of money or some other specified thing of value will be donated to a named charitable organization; and

(d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial coventurer itself under its regular commercial name.

(7) "Commercial fund-raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration within this state directly or indirectly solicits or receives contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contributions for such purposes. However, a commercial coventurer, fund-raising counsel, or consultant, as defined by this section,

is not a commercial fund-raiser or commercial fund-raising entity.

(8) "Compensation," means salaries, wages, fees, commissions, or any other remuneration or valuable consideration. Compensation shall not include reimbursement for expenses incurred and documented or noncash awards or prizes, valued at one hundred dollars or less, given annually to each volunteer.

(9) "Contribution" means the payment, donation, promise, or grant, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights.

(10) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation.

(11) "Entity" means an organization, individual or institution with its own existence for legal and/or federal tax purposes. It has the capacity to enter into agreements or contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and to be held responsible for its actions. Entity may include, but is not limited to, an individual, organization, corporation, association, limited liability company, trust, group, partnership, proprietorship, company, estate, agency or unit of state government, person as defined in RCW 1.16.080, or any combination thereof.

For purposes of complying with registration requirements under Washington's Charitable Solicitations Act, "entity" does not include a branch, chapter, unit, affiliate or similar subordinate of another entity if said subordinate:

- (a) Is under the direct supervision and control of the related entity;
- (b) Does not have its own separate existence for the related entity for legal and/or federal tax purposes; and
- (c) The related entity maintains registration under chapter 19.09 RCW.

Regardless of whether or not a subordinate is required to register under the act, it shall comply with the conditions set forth under RCW 19.09.100.

Interpretive note: Notwithstanding other facts that may be indicative of a separate existence for legal and federal tax purposes, a branch, chapter, unit, affiliate or similar subordinate; (i) has its own existence for legal purposes if said subordinate has an organizational structure separate from a related entity; and (ii) has its own existence for federal tax purposes if it has been issued a federal employer identification number separate from a related entity, falls under a central organization's IRS group exemption, has obtained its own federal tax exempt status separate from a related entity, is required to file a separate federal informational return, or is included in a central organization's group return.

(12) "Fund-raising counsel" or "consultant" means any entity or individual who is retained by a charitable organization for a fixed fee or rate, that is not computed on a percentage of funds raised, or to be raised, under a written agreement only to plan, advise, consult, or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fund-raising campaign and who does not solicit contributions or employ, procure, or engage in any compensated person to solicit contributions, and who does not at any time, have custody or control of contributions. A volunteer, employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund-raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund-raising counsel as a result of the advice.

itation of contributions in this state, but who does not manage, conduct, or carry on a fund-raising campaign and who does not solicit contributions or employ, procure, or engage in any compensated person to solicit contributions, and who does not at any time, have custody or control of contributions. A volunteer, employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund-raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund-raising counsel as a result of the advice.

(13) "General public" or "public" means any individual located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(14) "Income-producing assets" means assets that are purchased with the prospect that the assets will generate income or appreciate in the future. In finance, an investment is a monetary asset purchased with the idea that the asset will provide income in the future or appreciate and be sold at a higher price; these investments would include, but are not limited to stocks, bonds or real property.

(15) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(16) "Other employee" of a charitable organization means any person:

- (a) Whose conduct is subject to direct control by such organization;
- (b) Who does not act in the manner of an independent contractor in his or her relation with the organization; and
- (c) Who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable purposes or religious activities.

(17) "Political organization" means those organizations whose activities are subject to chapter 42.17 RCW or the Federal Election Campaign Act of 1971, as amended.

(18) "Religious organizations" means those entities that are not churches or integrated auxiliaries as defined and includes nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, speakers' organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion.

(19) "Renewal date" means the fifteenth day of the fifth month after the close of the organization's fiscal or accounting year.

(20) The "review" as used in WAC 434-120-107(2), means a review of a tax reporting form, including financial presentations included in the tax return, for state reporting purposes in accordance with chapter 19.09 RCW. "Review" does not mean a "review engagement" as defined by the American Institute of Certified Public Accountants (AICPA) Statements of Standards for Accounting and Review Services (SSARS).

(21) "Secretary" means the secretary of state or the secretary's designee, or authorized representative.

~~((21))~~ (22) "Signed" means hand-written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.

~~((22))~~ (23)(a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(i) Any appeal is made for any charitable purpose; or
(ii) The name of any charitable organization is used as an inducement for consummating the sale; or

(iii) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

(b) The solicitation shall be deemed complete when made, whether or not the person making it receives any contribution or makes any sale.

(c) A commercial fund-raiser is considered to solicit or receive contributions from the public directly if contributions are solicited or received by the fund-raiser or by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members.

(d) Contributions are considered to be solicited or received indirectly if they are solicited or received by:

(i) Any organization owned or controlled by the commercial fund-raiser or owned or controlled by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members; or

(ii) Any person or organization, other than the charitable organization for which funds are solicited, with which the commercial fund-raiser as a contractual relationship governing the solicitation or receipt of contributions.

(e) "Solicitation" as defined in RCW 19.09.020~~((21))~~ (18), for the purposes of these regulations, does not include any of the following:

(i) An application or request for application for a grant, contract, or similar funding from any foundation, corporation, governmental agency or similar entity which has an established application and review procedure for reviewing such requests;

(ii) The attempt to sell a service or good which constitutes the basis of the charitable organization's activities under which the federal income tax exemption was granted, or is the primary purpose for the existence of the charitable organization. This includes, but is not limited to, admission to a

theatrical or other performance presented by a charitable organization that is a drama, musical, dance, or similar group and fees for services such as a hospital provides or use of the charitable organization's facilities; or

(ii) Bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-045 Change in status, notification. An entity required to register under chapter 19.09 RCW shall notify the charities program in writing of any changes to its registration pursuant to WAC 434-120-105 and 434-120-215, or any other changes within thirty days after the change.

The organization shall submit changes using the form available from the charities program and the appropriate fee per WAC 434-120-145. ~~((The fee for information changes is ten dollars per submittal of change.))~~

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-107 Audited financial report—Tiered reporting requirements (effective January 1, 2010). (1) Charitable organizations submitting an initial registration, shall meet the financial reporting requirements, specified in RCW 19.09.075 or WAC 434-120-105. If an organization does not file a federal form (990, 990PF, 990EZ, 990T), the organization must complete the solicitation report contained in the form prescribed by the secretary.

(2) Charitable organizations ~~((that have))~~ with more than one million dollars in annual gross revenue averaged over the last three fiscal years, shall have the federal ~~((financial))~~ tax reporting form (990, 990EZ, 990PF or 990T) prepared or reviewed by a certified public accountant or other professional, independent third-party who normally prepares or reviews the federal returns in the ordinary course of their business. ~~((The independent review must be submitted to the secretary in substantially the following form.))~~ If the federal tax form is not signed by a preparer who is so qualified, the charitable organization must, using a reporting form provided by the secretary, confirm that the federal tax form was reviewed by an independent third-party who normally prepares or reviews federal returns in the ordinary course of their business.

~~((Independent Report Form~~

Report For:

Organization Name _____ Charities Registration Number _____
Review of IRS Form _____ (Form Name) For Fiscal/Accounting Year Ending _____

Prepared or Reviewed By:

Name _____
Company _____
Address _____
City, State, Zip _____
Phone _____ E-mail _____

Please check one of the following:

I am a Certified Public Accountant.

I have prepared or been responsible for the preparation of such forms in the ordinary course of my business.

~~I am independent with respect to the affairs of this organization as described by the Internal Revenue Service.~~

~~My review did not include any direct investigation of the accuracy of the information submitted using this form or of the underlying data from which it was prepared.~~

~~Based solely on the form as it was provided to me, I reviewed its completeness and internal consistency to the extent appropriate, based on my professional judgment, giving due consideration to the nature of the activities of the organization. On the basis of this review, I am satisfied that the organization has taken proper care to meet the requirement for entering information on and assembling the form for submission.~~

~~The filing organization is solely responsible for assuring the accuracy of the form and its suitability for the purposes for which it may be submitted.~~

Signature _____

Date _____

Printed Name _____))

(3) Charitable organizations (~~that have~~) with more than three million dollars in annual gross revenue averaged over the last three fiscal years, shall submit an audited financial statement prepared by an independent certified public accountant for the year immediately following ~~((the))~~ any year in which the organization ~~((achieved))~~ achieves a three year average of more than three million dollars. For organizations with more than three million dollars in annual gross revenue averaged over the last three fiscal years, but directly or indirectly receive five hundred thousand dollars or less in cash contributions averaged over the last three fiscal years, the audit requirement is waived. Organizations with five hundred thousand dollars or less in cash contributions averaged over the last three fiscal years shall meet the financial reporting requirements described in subsection (2) of this section. For purposes of meeting the financial requirements in this section, "cash" includes currency, checks, credit card payments, donor advised funds, and electronic fund transfers, but does not include gifts of tangible, real, or personal property or in-kind services.

(4) The secretary may waive the requirement to file audited financial statements prepared by an independent certified public accountant when the organization can demonstrate that they have reached a three year average of more than three million dollars in gross revenue through unusual or nonreoccurring revenue received in a single year without which they would have not met the three year annual gross average threshold.

(5) This rule becomes effective January 1, 2010.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-110 Organizations exempt from filing requirements—Optional filing. (1) Charitable organizations exempt from the filing requirements of this chapter under RCW 19.09.076(1) and WAC 434-120-100 (2)~~((a))~~ (b), (c), or (e) may register with the charities program.

(2) Charitable organizations choosing to register under this section shall register by:

(a) Completing the registration form specified by the secretary; and

(b) Paying the appropriate registration fee ~~((of twenty dollars))~~ per WAC 434-120-145.

(3) Charitable organizations registered under this section may change or update their registration by:

(a) Filing the update with the charities program; and

(b) Paying the ~~((ten-dollar update))~~ appropriate fee per WAC 434-120-145.

(4) Expedited processing under WAC 434-112-080 is available for registrations and updates under this section.

(5) The secretary offers this optional registration because some grant making entities and programs require registration with the charities program.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-140 How and when. (1) Original registration: An entity required to register as a charitable organization shall complete the form described in WAC 434-120-105 and submit it with the fee in WAC 434-120-145 prior to conducting any solicitation.

(2) Annual renewal:

(a) An entity shall renew its charitable registration by no later than the fifteenth day of the fifth month after the end of its fiscal year.

(b) The renewal shall include the same information required for registration as described in WAC 434-120-105 and RCW 19.09.075, except that a determination letter from the Internal Revenue Service need not be attached if it was previously filed. The solicitation report will be based on the most recent filing with the Internal Revenue Service or if the organization does not file with the Internal Revenue Service, the solicitation report will be based on the most recently completed fiscal year. No organization may submit the same fiscal information for two consecutive years.

(c) No change in an entity's fiscal year shall cause the due date of a renewal to be more than one year after the previous registration or renewal. For purposes of renewals that include financial information for a partial year, due to a change of fiscal year, threshold levels for registration and financial statement requirements shall be determined on a prorated basis.

(3) An organization shall notify the charities program of a change in organization name, mailing address, organization structure, principal officer, Washington representative, tax status, fiscal year, or any other information filed under RCW 19.09.075 or WAC 434-120-105.

(4) The organization shall submit changes using the form available from the charities program within thirty days after the change and include the ~~((ten dollar))~~ appropriate fee per WAC 434-120-145.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-160 Fees for late registration. (1) A charitable organization that fails to renew its registration by its renewal date shall pay a late fee of fifty dollars. The charitable organization shall pay an additional fifty dollar late fee for each year, including the current year, that it was not registered under this act, but was required to do so. If the registration has lapsed for a period of more than two years, the entity shall provide solicitation information for the previous two years, and shall reregister as a new charitable organization.

(2) The fees for late registration shall be in addition to the filing fees under WAC 434-120-145, and any other ~~(;)~~ remedies that may be imposed by law, including penalties for soliciting without being registered.

(3) The charitable organization may ask the secretary to waive fees for late registration. The request must include a description of the circumstances that justify a waiver of the late fees. Under special circumstances the secretary may waive fees for late registration that are imposed by these regulations.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-220 Change in status, notification. A commercial fund-raiser shall:

(1) Notify the charities program of a change in organization name, mailing address, principal officer, owner, business structure, Washington representative, fiscal year or any other information filed under RCW 19.09.079 or WAC 434-120-215.

(2) The commercial fund-raiser shall submit changes using the form available from the charities program within thirty days after the change and include the ~~((ten dollar))~~ appropriate fee per WAC 434-120-250.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-240 Contract between a commercial fund-raiser and a charitable organization. (1) A commercial

fund-raiser and charitable organization entering into a contract shall register the contract by completing the contract registration form, attaching a copy of the written contract, and filing the form and contract with the secretary. The contract shall be registered before the commencement of the campaign.

(2) The charitable organization is responsible for registering the contract and paying the appropriate fee per WAC 434-120-250.

~~((3))~~ ~~((The fee for registering a contract under this section is ten dollars.~~

~~((4))~~ Both the contract and registration form shall be signed by the commercial fund-raiser owner or principal and the charitable organization president, treasurer, or comparable officer.

~~((5))~~ (4) In addition to the statutory requirements of RCW 19.09.097, the terms of the contract shall specify who will maintain the donor list.

WSR 09-19-060
PROPOSED RULES
GAMBLING COMMISSION

[Filed September 11, 2009, 2:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-154.

Title of Rule and Other Identifying Information: Amending WAC 230-03-300 Applying for a manufacturer's representative license, 230-03-330 Representing only one employer at a time, and 230-16-001 Manufacturers, distributors, and gambling service suppliers must comply with all requirements.

Hearing Location(s): Lacey Community Center, 6729 Pacific Avenue S.E., Lacey, WA 98503, (360) 491-0857, on November 20, 2009, at 9:00 a.m.

Date of Intended Adoption: November 20, 2009.

Submit Written Comments to: Michelle M. Pardee, P.O. Box 42400, Olympia, WA 98504-2400, e-mail MichelleP@wsgc.wa.gov, fax (360) 486-3625, by November 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by November 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We received a petition for rule change from Gemaco, a manufacturer of gambling equipment, requesting that the restriction prohibiting manufacturer representatives from representing more than one manufacturer be eliminated. In addition, the petitioner requested that distributor representatives also be allowed to represent more than one distributor. Staff proposed the following alternative to the petitioner's request: These three amendments would restore a manufacturer representative's ability to represent more than one manufacturer:

- Clarify that when a person "represents" a manufacturer to sell, promote, or provide the manufacturer's gambling equipment, or supplies, or supervises someone

that does, they must have a manufacturer representative license.

- Allow a licensed manufacturer representative to represent more than one manufacturer at a time. Currently, this rule says a representative must represent only one manufacturer at a time.
- Clarify that manufacturers, distributors, and gambling service suppliers are responsible for ensuring their representatives have a gambling license.

Before the August commission meeting, Gemaco withdrew their petition with the understanding that staff would move forward with restoring a manufacturer representative's ability to represent more than one manufacturer; and research the possibility of removing the restriction that allows distributor representatives to represent only one distributor. Staff will be contacting stakeholders and researching the history of the restriction. Staff will maintain contact with petitioner on this issue.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

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.

September 11, 2009

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

WAC 230-03-300 Applying for a manufacturer's representative license. You must apply for a manufacturer's representative license if you ~~((are employed by a licensed manufacturer to))~~ sell, promote, or provide ~~((that))~~ a manufacturer's gambling equipment, or supplies, or you supervise those who do.

AMENDATORY SECTION (Amending Order 457, filed 3/22/06, effective 1/1/08)

WAC 230-03-330 Representing ~~((only))~~ one ~~((employer at a time))~~ or more licensed businesses. (1) If you are a licensed distributor representative, gambling service supplier representative, or a linked bingo prize provider

representative or applying for ~~((#))~~ one of these representative licenses, you must represent only one licensed ~~((manufacturer,))~~ distributor, gambling service supplier, or linked bingo prize provider at a time.

(2) If you are a licensed manufacturer representative, you may represent more than one licensed manufacturer.

(3) If the owner you ~~((work for))~~ represent owns more than one licensed business, you may represent the owner in all those licensed businesses, including licensed manufacturers, without applying for another representative license.

AMENDATORY SECTION (Amending Order 615, filed 9/17/07, effective 1/1/08)

WAC 230-16-001 Manufacturers, distributors, and gambling service suppliers must ~~((comply with all requirements))~~ ensure representatives are licensed. ~~((Manufacturers, distributors, and gambling service suppliers and their licensed representatives must ensure that their business operations, services, and the gambling equipment they manufacture, distribute, or sell comply with chapter 9.46 RCW and Title 230 WAC.))~~ (1) A licensed manufacturer, distributor, or gambling service supplier must not allow an unlicensed person to sell, promote, or provide its gambling equipment, or supplies, or to supervise those who do, and must take all measures necessary to prevent an unlicensed person from doing so.

(2) A licensed manufacturer must notify us in writing before a manufacturer representative begins representing them.

WSR 09-19-065
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Securities Division)

[Filed September 14, 2009, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-066.

Title of Rule and Other Identifying Information: The securities division is proposing the amendment of the franchise registration rules set forth in chapter 460-80 WAC to take into account the amended franchise disclosure rules adopted by the Federal Trade Commission (FTC) and to adopt the instructions for the preparation of the franchise disclosure document promulgated by the North American Securities Administrators Association, Inc. Further, the division is proposing updates to reflect current practices and filing requirements, to codify several interpretive and policy statements, and to make minor corrections.

Hearing Location(s): State of Washington, Department of Financial Institutions, 150 Israel Road S.W., Room 319, Tumwater, WA 98501, on October 28, 2009, at 1:00 p.m.

Date of Intended Adoption: October 29, 2009.

Submit Written Comments to: Faith L. Anderson, Associate General Counsel, Department of Financial Institutions, Securities Division, P.O. Box 9033, Olympia, WA 98507-

9033, e-mail fanderson@dfi.wa.gov, fax (360) 704-6480, by October 28, 2009.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507-9033, by October 23, 2009, TTY (360) 664-8126 or (360) 902-8824.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities division is proposing amendments to its franchise registration rules set forth in chapter 460-80 WAC in light of the amended franchise disclosure rules adopted by the FTC in 2007 and their preemptive effect on state laws, as well as to better coordinate our rules with other states that regulate the offer and sale of franchises through the adoption of the instructions for the preparation of the franchise disclosure document in the 2008 Franchise Registration and Disclosure Guidelines promulgated by the North American Securities Administrators Association, Inc. The securities division is also proposing to codify several interpretive and policy statements. The proposed amendments to chapter 460-80 WAC include:

- Adoption of the FTC franchise disclosure document as the required format for disclosure;
- Update of the franchise registration application requirements;
- Adoption of new sections to specify franchise registration amendment and renewal requirements; franchise agreement addendum requirement; and the acceptability of guarantees of performance, surety bonds, deferrals and other arrangements in lieu of an impound;
- Repeal of outdated sections on franchise offering circulars and purchase receipts;
- Update of financial statement and franchise disclosure document receipt requirements;
- Codification of interpretive and policy statements concerning the determination of the filing date, the requirements for requesting interpretive and no-action letters, and advertising of franchise via the internet; and
- Other minor updates and corrections.

The text of chapter 460-80 WAC marked to show the proposed amendments is filed with this notice.

Reasons Supporting Proposal: The proposed amendments to chapter 460-80 WAC should be adopted to conform to the amended FTC franchise disclosure requirements, to provide greater uniformity with other states, and to make appropriate updates.

Statutory Authority for Adoption: RCW 19.100.250, 19.100.010, 19.100.030, 19.100.040, 19.100.050, 19.100.070, 19.100.080, 19.100.100, 19.100.110.

Statute Being Implemented: Chapter 19.100 RCW.

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: Department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting: Faith L. Anderson, 150 Israel Road S.W., Olympia, WA 98501, (360) 725-7825; Implementation: Scott Jarvis, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700; and Enforcement: Michael E. Stevenson, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8824.

No small business economic impact statement has been prepared under chapter 19.85 RCW. If any costs are borne by businesses in connection with the proposed rules, these costs will be no more than minor. As such, the agency is not required to prepare a small business economic impact statement under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not one of the agencies listed in RCW 34.05.328.

September 14, 2009

Scott Jarvis
Director

NEW SECTION

WAC 460-80-050 Document filed with the director when received. A document is filed with the director when it is received by the director or by a person as the director designates by rule or order.

NEW SECTION

WAC 460-80-060 Interpretive opinions and no-action letters. The director, in his or her discretion, may honor requests from interested persons for no-action letters and interpretive opinions pursuant to RCW 19.100.250. The following procedures must be followed in requesting a no-action letter or interpretive opinion from the director:

(1) The request must be submitted to the director in writing. The letter should be captioned with the name of the party who will be relying upon the director's response and should indicate that a no-action letter or interpretive opinion is sought.

(2) The requesting letter should cite the particular statutes or rules for which interpretation or no-action is sought.

(3) The names of all involved companies and parties should be disclosed. The director does not issue interpretive or no-action letters relating to unnamed companies or individuals or hypothetical situations, nor on matters of pending, or in preparation for, litigation.

(4) The request should be tailored to resolving the immediate issues and should not attempt to discuss every possible situation that may arise in the future.

(5) The letter should be concise and contain all material facts necessary to resolve the issues at hand. Relevant supporting documents may be included, but are not a substitute for subsection (6) of this section.

(6) It is important that the letter identify the issues at hand, the proposed resolution, and the precedents or other legal authority supporting that position.

The director may decline to respond to letters that are not prepared in accordance with the above listed procedures.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-100 Notice of claim for exemption. Any franchisor or subfranchisor who claims an exemption under RCW 19.100.030 (4)(a) and (b)(i) shall file with the ~~(administrator of the state securities division a statement giving~~

~~notice of such claim for exemption, the name and address of the franchisor or subfranchisor, the name under which the franchisor or subfranchisor is doing business, and a statement setting forth the information upon which the exemption under RCW 19.100.030 (4)(b)(i) is claimed, including the most recent audited financial statement showing compliance with the requirements of RCW 19.100.030 (4)(b)(i)(A))~~ director a completed Annual Notice of Claim of Exemption form along with the fee prescribed in RCW 19.100.240 made payable to the treasurer of the state of Washington.

AMENDATORY SECTION (Amending WSR 92-02-054, filed 12/30/91, effective 1/30/92)

WAC 460-80-108 Exemption for offer and sale to accredited investors pursuant to RCW 19.100.030(5). For the purpose of the exemption of RCW 19.100.030(5), an "accredited investor" shall mean any person who comes within any of the following categories, or who the franchisor reasonably believes comes within any of the following categories, at the time of the sale of the franchise to that person:

(1) Any bank as defined in section 3 (a)(2) of the Securities Act of 1933, or any savings and loan association or other institution as defined in section 3 (a)(5)(A) of the Securities Act of 1933 whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Securities Act of 1933; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2 (a)(48) of that act; any small business investment company licensed by the U.S. Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; any employee benefit plan within the meaning of ~~((Title I of))~~ the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

(2) Any private business development company as defined in section 202 (a)(22) of the Investment Advisers Act of 1940;

(3) Any organization described in section 501 (c)(3) of the Internal Revenue Code, corporation, Massachusetts or similar business trust, or partnership, not formed for the specific purpose of acquiring the franchise offered, with total assets in excess of \$5,000,000;

(4) Any director, executive officer, or general partner of the franchisor of the franchises being offered or sold, or any director, executive officer, or general partner of a general partner of that franchisor;

(5) Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds \$1,000,000;

(6) Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(7) Any trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the franchise offered, whose purchase is directed by a sophisticated person as described in 17 CFR Sec. 230.506 (b)(2)(ii); and

(8) Any entity in which all of the equity owners are accredited investors.

AMENDATORY SECTION (Amending Order SDO-38-80, filed 3/19/80)

WAC 460-80-110 Franchise registration application.

All applications for registration, renewal or amendment of a franchise shall ~~((have as the first page thereof a facing page))~~ be in the form as provided by the ~~((department of licensing))~~ director and ~~((containing))~~ contain the information specified therein. The application for registration, renewal or amendment must be accompanied by the fee prescribed in RCW 19.100.240 made payable ~~((by check))~~ to the treasurer of the state of Washington.

AMENDATORY SECTION (Amending WSR 92-02-054, filed 12/30/91, effective 1/30/92)

WAC 460-80-125 Franchise registration application instructions. The following must be adhered to with respect to all applications for registration, registration renewal or registration amendment:

(1) Completion of application. An application for registration of the offer or sale of franchises shall include the following, all of which shall be verified by means of the prescribed signature page:

(a) ~~((Facing page))~~ Application;

(b) Supplemental information page(s);

(c) ~~((Salesmen))~~ Seller disclosure form;

(d) A copy of the ~~((proposed offering circular))~~ Franchise Disclosure Document.

(2) The following shall be attached to the application:

(a) ~~((A second copy of the proposed offering circular;~~

~~((b) A cross-reference sheet showing the location in the franchise agreement of the information required to be included in the application and in the offering circular. If any item calling for information is inapplicable or the answer thereto is in the negative and is omitted, a statement to that effect shall be made in the cross-reference sheet;~~

~~((c))~~ A consent to service of process; and

~~((d) Two copies))~~ (b) One copy of any advertising to be used in connection with the offer or sale in this state of franchises.

(3) ~~((Definitions:~~

~~((a) "Predecessor," for the purposes of the disclosure required by item 1 in the body of the offering circular, is defined as follows: A "predecessor" of a franchisor is (i) a person the major portion of whose assets have been acquired~~

directly or indirectly by the franchisor, or (ii) a person from whom the franchisor acquired directly or indirectly the major portion of its assets;

~~(b) "Franchise broker," for the purposes of the disclosure required by the cover page and item 2 in the body of the offering circular, is defined as follows: A "franchise broker" is any person engaged in the business of representing a franchisor or subfranchisor in offering for sale or selling a franchise, except anyone whose identity and business experience is otherwise required to be disclosed at item 2 in the body of the offering circular.~~

~~(4)) Disclosure: ((Each disclosure item should be either positively or negatively commented upon by use of a statement which fully incorporates the information required by the item.)) The offering circular shall be prepared in accordance with the Instructions for Preparation of the Franchise Disclosure Document contained in section IV. of the 2008 Franchise Registration and Disclosure Guidelines promulgated by the North American Securities Administrators Association, Inc. (NASAA).~~

~~((5)) (4) Subfranchisors:~~ When the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor; the franchisor, as well as the subfranchisor, shall execute a signature page.

~~((6)) (5) Signing of application:~~ The application shall be signed by an officer or general partner of the applicant; however, it may be signed by another person holding a power of attorney for such purposes from the applicant. If signed on behalf of the applicant pursuant to such power of attorney, the application shall include as an additional exhibit a copy of said power of attorney or a copy of the corporate resolution authorizing the attorney to act.

~~((7)) (6) Manually or digitally signed consent of accountant:~~ All applications shall be accompanied by a manually or digitally signed consent of the independent public accountants for the use of their audited financial statements as such statements appear in the offering circular.

~~((8) Application to amend the registration: An amendment to an application filed either before or after the effective date of registration shall contain only the information being amended identified by item number and shall be verified by means of the prescribed signature page. Each amendment shall be accompanied by a facing page in the form prescribed on which the applicant shall indicate the filing is an amendment and the number of the amendment, if more than one.~~

~~(9) Undersealing of changes: If the registration renewal statement or any amendment to an application for registration alters the text of the offering circular, or of any item, or other document previously filed as a part of the application for registration, the changes in such text shall be indicated by means of undersealing or in some other appropriate manner.)~~

NEW SECTION

WAC 460-80-135 Franchise registration amendment and renewal instructions. An application to renew or amend a franchise registration must comply with the following requirements:

(1) An application for renewal of a franchise registration must be filed with the director no later than fifteen business days prior to the expiration of registration in order to avoid a lapse in registration and the need to file an initial application for registration. If the registration has already expired, the applicant must mark the application as an initial registration and pay the fee required for filing an initial application for registration in RCW 19.100.240.

(2) An amendment to a franchise application is required to be filed as soon as reasonably possible and in any case, before the further sale of any franchise, if a material adverse change in the condition of the franchisor or any of its subfranchisors or any material change in the information contained in its Franchise Disclosure Document should occur.

(3) The following documents must be filed for each amendment or application for renewal of a franchise registration:

(a) A completed application marked amendment or renewal, as applicable. If the application is for renewal, do not mark the amendment boxes on the application even if the documents have been revised since the last filing.

(b) All documents set forth in WAC 460-80-125 required for an initial application with all additions, deletions and other changes to the previously filed documents black-lined. Changes must be clearly marked so that each change is noticed easily. Do NOT use margin balloons or color highlights to show changes. Do not use less than 11 point type for changed text. Use a black-lining system that underlines changes and shows deletions by a strike through.

(c) A clean copy of the updated Franchise Disclosure Document.

(4) If the director requires changes to any documents submitted, the franchisor must file a complete clean copy of the revised Franchise Disclosure Document and any other revised documents, and a black-lined copy of all the revised pages, unless directed otherwise.

AMENDATORY SECTION (Amending Order SDO-38-80, filed 3/19/80)

WAC 460-80-140 Financial statements. ~~((a) Financial statements required to be filed in connection with an application for registration or renewal of an offer or sale of a franchise shall be prepared in accordance with generally accepted accounting principles as set forth in rules as adopted pursuant to chapter 460-60A WAC etc. Such financial statements should be audited by a certified public accountant having the same qualifications and restrictions as those set forth in WAC 460-60A-100, except where the particular form or this section permits the use of unaudited statements for interim periods.~~

~~(b) In extraordinary cases the director may waive the requirement for audited statements if the statements have been prepared by an independent certified public accountant or independent public accountant and the director is otherwise satisfied as to the reliability of such statements and as to the ability of the franchisor to perform future commitments. Such waiver will ordinarily be granted only upon a showing that the franchisor has not had prior audited statements; that the close of the most recent or current fiscal year is so near~~

the time of filing of the application that it would be unreasonably costly or impractical to provide audited statements with the application; and that audited statements will be furnished within a reasonable time after the end of the most recent or current fiscal year. In such cases the director may impose an impound condition and such other conditions and restrictions as in his discretion may be appropriate.

(e) The use of unaudited financial statements as provided in these rules does not relieve the applicant or any person from any liability for false and misleading statements contained in such financial statements.) The Franchise Disclosure Document must include financial statements that comply with the instructions for Item 21 of the Franchise Disclosure Document, 16 CFR § 465.5(u).

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-195 Approval is not an endorsement.

The filing of the application for registration or the effectiveness of the registration does not constitute a finding by the director that any document filed under ~~((this act))~~ the Franchise Investment Protection Act, chapter 19.100 RCW, is true, complete and not misleading. Neither any such fact nor the fact that an exemption is available for a transaction means that the director has passed in any way upon the merits or qualification of, or recommended or given approval to any person, franchise or transaction.

AMENDATORY SECTION (Amending Order SDO-38-80, filed 3/19/80)

WAC 460-80-300 Receipt of offering circular.

~~((prospective purchaser of a franchise))~~ person that sells a franchise that is registered or required to be registered pursuant to RCW 19.100.020 shall ((sign a)) ensure that the Franchise Disclosure Document and other required documents are delivered to each offeree in accordance with RCW 19.100.080 and shall obtain a signed receipt ((in substantially the following form that they have received the offering circular and that they received the same before signing the receipt and completing the sale.

ACKNOWLEDGEMENT OF RECEIPT OF OFFERING CIRCULAR BY PROSPECTIVE FRANCHISEE FROM
~~(NAME OF FRANCHISOR)~~

The undersigned, personally and/or as an officer or partner of the proposed franchisee, does hereby acknowledge receipt of "the franchise offering circular for prospective franchisees required by the state of Washington" including all exhibits attached thereto, to wit: ~~(List exhibits to be attached, including, but not limited to, financial statements, franchise agreement, lease agreements, etc.)~~ I acknowledge that I received the offering circular at least 48 hours prior to signing this receipt and completing the sale.

Dated:

.....
individually and/or as an officer

or partner of:
a (..... corporation)
(..... partnership))

therefore in the form prescribed by the director.

NEW SECTION

WAC 460-80-305 Franchise agreement addendum.

Every franchisor registered or required to be registered pursuant to RCW 19.100.020 shall, in each sale of a franchise in Washington, conform its franchise agreement to the Franchise Investment Protection Act, chapter 19.100 RCW, and the rules adopted thereunder or include in its franchise agreement or Franchise Disclosure Document an addendum concerning the applicability of the Franchise Investment Protection Act, chapter 19.100 RCW. The addendum shall be in the form prescribed by the director.

AMENDATORY SECTION (Amending WSR 95-08-015, filed 3/24/95, effective 4/24/95)

WAC 460-80-315 Washington ((uniform franchise offering circular)) Franchise Disclosure Document.

To implement the offering circular and disclosure requirements of RCW 19.100.030 (4)(a) and 19.100.040, the director adopts the ~~((Uniform Franchise Offering Circular (UFOC) as amended))~~ requirements for preparing the contents of a Franchise Disclosure Document set forth in sections III. and VII. of the 2008 Franchise Registration and Disclosure Guidelines promulgated by the North American Securities Administrators Association, Inc. (NASAA) ((on April 25, 1993)).

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-400 Impounds.

The director may, by rule or order, require as a condition to the effectiveness of the registration the impound of franchise fees if he or she finds that such requirement is appropriate to protect ~~((the))~~ prospective franchisees.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-410 Imposition of impound.

In a case where the applicant has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training or other items included in the offering, the director ~~((or administrator))~~ may impose as a condition to the registration of a franchise offering an impoundment of the franchise fees and other funds paid by the franchisee or subfranchisor until no later than the time of opening of the franchise business.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-440 Depository.

Funds subject to an impound condition shall be placed in a separate trust account

with a ~~((national))~~ bank ~~((located in Washington or a Washington bank or)),~~ trust company, or an independent escrow agent acceptable to the director. A ~~((written consent))~~ copy of the ~~((depository to act in such capacity))~~ impound agreement shall be filed with the director.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-450 Release of impounds. The director will authorize the depository to release to the franchisor such amounts of the impounded funds applicable to a specified franchisee (or subfranchisor) upon a showing that the franchisor has fulfilled its obligations under the franchise agreement, or that for other reasons the impound is no longer required for protection of franchisees.

~~((An application for an order of))~~ A request to the director ~~((authorizing))~~ to authorize the release of impounds to the franchisor shall ~~((be verified and shall))~~ contain the following:

~~((a))~~ (1) A statement of the franchisor that all required proceeds from the sale of franchises have been placed with the depository in accordance with the terms and conditions of the impound ~~((condition))~~ agreement.

~~((b))~~ (2) A statement of the depository signed by an appropriate officer setting forth the aggregate amount of impounds placed with the depository.

~~((c))~~ (3) The names of each franchisee (or subfranchisor) and the amount held in the impound for the account of each franchisee (or subfranchisor).

~~((d))~~ (4) A statement by the franchisee that the franchisor has performed his obligations under the franchise contract.

~~((e))~~ (5) Such other information as the director may require in a particular case.

NEW SECTION

WAC 460-80-460 Guarantee of performance, deferrals and other arrangements. In lieu of an impound under RCW 19.100.050, the director may accept a guarantee of the franchisor's performance under the franchise agreement by the franchisor's parent or affiliate, a surety bond, an agreement to defer payment of the franchise fee, or other arrangements to protect the interests of a franchisee acceptable to the director. Any such agreements must be in the form and content prescribed by the director.

AMENDATORY SECTION (Amending Order 11, filed 3/3/72)

WAC 460-80-500 Advertising—Filing requirement—Timing. All advertising to be used to offer a franchise, subject to the registration requirement, for sale must be filed in the office of the director at least ~~((7))~~ seven days prior to the publication ~~((and all advertising shall be subject to the following statement of policy:~~

~~((a) An advertisement should not contain any statement or inference that a purchase of a franchise is a safe investment or that failure, loss or default is impossible or unlikely, or that earnings or profits are assured.~~

~~((b) An advertisement should not normally contain a projection of future franchisee earnings unless such projection is (i) based on past earnings records of all franchisees operating under conditions, including location, substantially similar to conditions affecting franchises being offered (ii) for a reasonable period only and (iii) is substantiated by data which clearly supports such projections.~~

~~((c) An advertisement should normally contain the name and address of the person using the advertisement.~~

~~((d) If the advertisement contains any endorsement or recommendation of the franchises by any public figure, whether express or implied (for example, by the inclusion of such person's photograph or name in the advertisement), full disclosure shall be made of any compensation or other benefit given or promised by the franchisor or any person associated with the franchisor to such person, directly or indirectly. The disclosure required in this subsection (d) shall be made in the same document containing the advertisement or, if such advertisement is presented on radio or television, as a part of the same program, without any intermission or other intervening material.~~

~~((e) Any advertisement which refers to an exemption from or reduction in taxation under any law should be based on an opinion of counsel, and the name of such counsel should be stated in the advertisement)).~~

NEW SECTION

WAC 460-80-510 Advertising—Contents. All advertising to be used to offer a franchise, subject to the registration requirement, for sale is subject to the following limitations:

(1) An advertisement shall not contain any statement or inference that a purchase of a franchise is a safe investment or that failure, loss, or default is impossible or unlikely, or that earnings or profits are assured.

(2) An advertisement should not normally contain a projection of future franchisee earnings unless such projection is:

(a) Based on past earnings records of all franchisees operating under conditions, including location, substantially similar to conditions affecting franchises being offered;

(b) For a reasonable period only; and

(c) Is substantiated by data which clearly supports such projections.

(3) An advertisement should normally contain the name and address of the person using the advertisement.

(4) If the advertisement contains any endorsement or recommendation of the franchises by any public figure, whether express or implied (for example, by the inclusion of such person's photograph or name in the advertisement), full disclosure shall be made of any compensation or other benefit given or promised by the franchisor or any person associated with the franchisor to such person, directly or indirectly. The disclosure required in this subsection shall be made in the same document containing the advertisement or, if such advertisement is presented on radio or television, as a part of the same program, without any intermission or other intervening material.

(5) Any advertisement which refers to an exemption from or reduction in taxation under any law should be based on an opinion of counsel, and the name of such counsel should be stated in the advertisement.

NEW SECTION

WAC 460-80-520 Advertising—Internet advertising and trade shows. "Advertisement" as defined under RCW 19.100.010 includes, in addition to the items expressly set forth in that provision, communications on the internet and at trade shows in connection with an offer or sale of a franchise.

NEW SECTION

WAC 460-80-530 Advertising—Exception from filing requirement for internet advertising not directed into this state. Internet advertising of a franchise offering that is required to be registered in this state is not subject to the requirements for filing advertisements set forth in RCW 19.100.100 so long as the following conditions are satisfied:

(1) The franchisor discloses to the director the uniform resource locator ("URL") address or similar address or device identifying the location of the internet advertising:

(a) On the cover page of the Franchise Disclosure Document included with an application for registration that is effective in the state of Washington; or

(b) On a notice filed with the director within five business days after publication; and

(2) The internet advertising is not directed to any person in the state of Washington by, or on behalf of, the franchisor or anyone acting with the franchisor's knowledge.

NEW SECTION

WAC 460-80-540 Advertising—Exception from franchise registration for internet advertisements not directed into this state. The offer or sale of a franchise via the internet is not subject to registration pursuant to RCW 19.100.020 where:

(1) The offer is made pursuant to an available and perfected exemption from franchise registration; or

(2) If the franchise is not registered or exempt:

(a) The internet offer indicates, directly or indirectly, that the franchises are not being offered to residents of Washington;

(b) The internet offer is not otherwise specifically directed to any person in this state by, or on behalf of, the franchisor or anyone acting with the franchisor's knowledge; and

(c) No franchises are sold in Washington by, or on behalf of, the franchisor until the offering is registered and declared effective and the Washington Franchise Disclosure Document has been delivered to the offeree before the sale and in compliance with the Franchise Investment Protection Act, chapter 19.100 RCW.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 460-80-310 Offering circular.

WAC 460-80-430 Purchase receipts.

WSR 09-19-100

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2009-08—Filed September 21, 2009, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-133.

Title of Rule and Other Identifying Information: Medicare supplement policy or certificates rules as found in chapter 284-66 WAC.

Hearing Location(s): Office of the Insurance Commissioner, 5000 Capitol Boulevard, Tumwater, WA, on October 27, 2009, at 11:00 a.m.

Date of Intended Adoption: October 28, 2009.

Submit Written Comments to: Meg Jones, P.O. Box 40258, Olympia, WA 98504, e-mail megj@oic.wa.gov, fax (360) 586-3109, by October 26, 2009.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by October 26, 2009, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Public Law 110-275, the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), directed states to adopt the NAIC model law for medicare supplement policies so that insurers and carriers can sell and issue such policies or certificates in the state. The proposed rules comply with the provisions of MIPPA, and set forth the new standards for medicare supplement policies issued after June 1, 2010, and the consumer protections associated with replacing policies issued before that date.

Reasons Supporting Proposal: These proposed rules explain the standards and criteria required for the medicare supplement market, so that insurers and carriers can continue to sell and issue such policies after June 1, 2010.

Statutory Authority for Adoption: RCW 48.02.060 (3)(a), 48.66.041, 48.66.165.

Statute Being Implemented: RCW 48.66.030, 44.66.-035, 48.66.041.

Rule is necessary because of federal law, Public Law 110-275, Medicare Improvements for Patients and Providers Act of 2008.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Meg Jones, 5000 Capitol Boulevard, Tumwater, WA 98501, (360) 725-7170; Implementation and Enforcement: Beth

Berendt, 5000 Capitol Boulevard, Tumwater, WA 98501, (360) 725-7117.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The amendments and the new sections being added to chapter 284-66 WAC implement federally mandated requirements for the sale of medicare supplement policies in the state of Washington. Under RCW 34.05.328 (5)(b)(iii), agencies are not required to prepare a small business economic impact statement when the rule adopts without material change federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. The rules adopt the requirements of MIPPA without material change, making RCW 34.05.028 [34.05.328] inapplicable to this rule making. See, RCW 34.05.328 (5)(b)(iii).

September 21, 2009

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2004-08, filed 8/4/05, effective 9/4/05)

WAC 284-66-030 Definitions. For purposes of this chapter:

(1) "Applicant" means:

(a) In the case of an individual medicare supplement insurance policy, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement insurance policy, the proposed certificateholder.

(2) "Certificate" means any certificate delivered or issued for delivery in this state under a group medicare supplement insurance policy regardless of the situs of the group master policy.

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

(4) "Issuer" includes insurance companies, fraternal benefit societies, health care service contractors, health maintenance organizations, and any other entity delivering or issuing for delivery medicare supplement policies or certificates.

(5) "Direct response issuer" means an issuer who, as to a particular transaction, is transacting insurance directly with a potential insured without solicitation by, or the intervention of, a licensed insurance agent.

(6) "Disability insurance" is insurance against bodily injury, disablement or death by accident, against disablement resulting from sickness, and every insurance relating to disability insurance. For purposes of this chapter, disability insurance includes policies or contracts offered by any issuer.

(7) "Health care expense costs," for purposes of WAC 284-66-200(4), means expenses of a health maintenance organization or health care service contractor associated with the delivery of health care services that are analogous to incurred losses of insurers.

(8) "Policy" includes agreements or contracts issued by any issuer.

(9) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

(10) "Premium" means all sums charged, received, or deposited as consideration for a medicare supplement insurance policy or the continuance thereof. An assessment or a membership, contract, survey, inspection, service, or other similar fee or charge made by the issuer in consideration for the policy is deemed part of the premium. "Earned premium" means the "premium" applicable to an accounting period whether received before, during or after that period.

(11) "Prestandardized medicare supplement benefit plan," "prestandardized benefit plan" or "prestandardized plan" means a group or individual policy of medicare supplement insurance issued prior to January 1, 1990.

(12) "Replacement" means any transaction where new medicare supplement coverage is to be purchased, and it is known or should be known to the proposing agent or other representative of the issuer, or to the proposing issuer if there is no agent, that by reason of the transaction, existing medicare supplement coverage has been or is to be lapsed, surrendered or otherwise terminated.

~~((+2))~~ (13) "Secretary" means the Secretary of the United States Department of Health and Human Services.

(14) "1990 standardized medicare supplement benefit plan" means a group or individual policy of medicare supplement insurance issued on or after January 1, 1990, and prior to June 1, 2010, and includes medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the issuer at the request of the insured.

(15) "2010 standardized medicare supplement benefit plan" or "2010 plan" means a group or individual policy of medicare supplement insurance with an effective date for coverage on or after June 1, 2010.

AMENDATORY SECTION (Amending Matter No. R 2006-13, filed 2/26/07, effective 3/29/07)

WAC 284-66-063 Benefit standards for policies or certificates issued or delivered after June 30, 1992 and before June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General standards. The following standards apply to medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A medicare supplement policy or certificate may not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within three months before the effective date of coverage.

(b) A medicare supplement policy or certificate must provide that benefits designed to cover cost sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible, copayment or coinsurance amounts. Premiums may be modified to correspond with such changes.

(c) A medicare supplement policy or certificate may not provide for termination of coverage of a spouse solely

because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

~~((e))~~ (d) Each medicare supplement policy must be guaranteed renewable and:

(i) The issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(ii) The issuer may not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(iii) If the medicare supplement policy is terminated by the group policyholder and is not replaced as provided under ~~((e))~~ (d)(v) of this subsection, the issuer must offer certificateholders an individual medicare supplement policy that (at the option of the certificateholder) provides for continuation of the benefits contained in the group policy, or provides for benefits that otherwise meet the requirements of this subsection.

(iv) If an individual is a certificateholder in a group medicare supplement policy and the individual terminates membership in the group, the issuer must offer the certificateholder the conversion opportunity described in (c)(iii) of this subsection, or at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(v) If a group medicare supplement policy is replaced by another group medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy must offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

~~((d))~~ (e) Termination of a medicare supplement policy or certificate must be without prejudice to any continuous loss that began while the policy was in force, but the extension of benefits beyond the period that the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of medicare Part D benefits will not be considered in determining a continuous loss.

~~((e))~~ (f) If a medicare supplement policy or certificate eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug Improvement and Modernization Act of 2003, the modified policy or certificate is deemed to satisfy the guaranteed renewal requirements of this section.

~~((f))~~ (g)(i) A medicare supplement policy or certificate must provide that benefits and premiums under the policy or certificate must be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four months) that the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within ninety days after the date the individual becomes entitled to the assistance.

(ii) If the suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the

policy or certificate must be automatically reinstated effective as of the date of termination of the entitlement if the policyholder or certificateholder provides notice of loss of the entitlement within ninety days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(iii) Each medicare supplement policy must provide that benefits and premiums under the policy will be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy must be automatically reinstated (effective as of the date of loss of coverage within ninety days after the date of the loss).

~~((g))~~ (h) Reinstatement of the coverages~~(s)~~:

(i) May not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Must provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of the suspension. If the suspended medicare supplement policy or certificate provided coverage for outpatient prescription drugs, reinstatement of the policy for medicare Part D enrollees must be without coverage for outpatient prescription drugs and must otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

(iii) Must provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(2) If an issuer makes a written offer to the medicare supplement policyholders or certificateholders of one or more of its plans, to exchange his or her standardized plan to a 2010 standardized plan during a specified period, the offer and subsequent exchange must comply with the following requirements:

(a) An issuer need not provide justification to the commissioner if the insured replaces a 1990 standardized policy or certificate with a 2010 standardized policy or certificate.

(b) An issuer may not apply new preexisting condition limitations or a new incontestability period to the replacement policy for those benefits contained in the former exchanged policy or certificate of the insured, but may apply preexisting condition limitations of no more than three months to any benefits contained in the new 2010 standardized policy or certificate that were not contained in the former exchanged policy.

(c) The new policy or certificate must be offered to all policyholders or certificateholders within a given plan, except where the offer or issue would be in violation of state or federal law.

(3) Standards for basic ("core") benefits common to benefit plans A-J. Every issuer must make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other medicare

supplement insurance benefit plans in addition to the basic "core" package, but not in place of the basic "core" package.

(a) Coverage of Part A medicare eligible expenses for hospitalization to the extent not covered by medicare from the sixty-first day through the ninetieth day in any medicare benefit period;

(b) Coverage of Part A medicare eligible expenses incurred for hospitalization to the extent not covered by medicare for each medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the medicare hospital inpatient coverage including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Coverage under medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(e) Coverage for the coinsurance amount, or in the case of hospital; outpatient department services paid under a prospective payment system, the copayment amount, of medicare eligible expenses under Part B regardless of hospital confinement, subject to the medicare Part B deductible;

((3)) (4) Standards for additional benefits. The following additional benefits must be included in medicare supplement benefit plans "B" through "J" only as provided by WAC 284-66-066.

(a) Medicare Part A deductible: Coverage for all of the medicare Part A inpatient hospital deductible amount per benefit period.

(b) Skilled nursing facility care: Coverage for the actual billed charges up to the coinsurance amount from the twenty-first day through the one hundredth day in a medicare benefit period for posthospital skilled nursing facility care eligible under medicare Part A;

(c) Medicare Part B deductible: Coverage for all of the medicare Part B deductible amount per calendar year regardless of hospital confinement.

(d) Eighty percent of the medicare Part B excess charges: Coverage for eighty percent of the difference between the actual medicare Part B charge as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved Part B charge.

(e) One hundred percent of the medicare Part B excess charges: Coverage for all of the difference between the actual medicare Part B charge as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved Part B charge.

(f) Basic outpatient prescription drug benefit: Coverage for fifty percent of outpatient prescription drug charges, after a two hundred fifty dollar calendar year deductible, to a maximum of one thousand two hundred fifty dollars in benefits received by the insured per calendar year, to the extent not covered by medicare. The outpatient prescription drug bene-

fit may not be included for sale or issuance in a medicare supplement policy after December 31, 2005.

(g) Extended outpatient prescription drug benefit: Coverage for fifty percent of outpatient prescription drug charges, after a two hundred fifty dollar calendar year deductible to a maximum of three thousand dollars in benefits received by the insured per calendar year, to the extent not covered by medicare. The outpatient prescription drug benefit may not be included for sale or issuance in a medicare supplement policy after December 31, 2005.

(h) Medically necessary emergency care in a foreign country: Coverage to the extent not covered by medicare for eighty percent of the billed charges for medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, that would have been covered by medicare if provided in the United States and that began during the first sixty consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars, and a lifetime maximum benefit of fifty thousand dollars. For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(i) Preventive medical care benefit: Coverage for the following preventive health services not covered by medicare:

(i) An annual clinical preventive medical history and physical examination that may include tests and services from (ii) of this subsection and patient education to address preventive health care measures.

(ii) Preventive screening tests or preventive services, the selection and frequency that is determined to be medically appropriate by the attending physician.

Reimbursement must be for the actual charges up to one hundred percent of the medicare-approved amount for each service, as if medicare were to cover the service as identified in *American Medical Association Current Procedural Terminology (AMA CPT)* codes, to a maximum of one hundred twenty dollars annually under this benefit. This benefit may not include payment for any procedure covered by medicare.

(j) At-home recovery benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

(i) For purposes of this benefit, the following definitions apply:

(A) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(B) "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide, or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(C) "Home" means any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by medicare. A hospital or skilled nursing facility is not considered the insured's place of residence.

(D) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four hours in a twenty-four hour period of services provided by a care provider is one visit.

(ii) Coverage requirements and limitations.

(A) At-home recovery services provided must be primarily services that assist in activities of daily living.

(B) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by medicare.

(C) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits may not exceed the number of medicare approved home health care visits under a medicare approved home care plan of treatment.

(II) The actual charges for each visit up to a maximum reimbursement of forty dollars per visit.

(III) One thousand six hundred dollars per calendar year.

(IV) Seven visits in any one week.

(V) Care furnished on a visiting basis in the insured's home.

(VI) Services provided by a care provider as defined in this section.

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(VIII) At-home recovery visits received during the period the insured is receiving medicare approved home care services or no more than eight weeks after the service date of the last medicare approved home health care visit.

(iii) Coverage is excluded for: Home care visits paid for by medicare or other government programs; and care provided by family members, unpaid volunteers, or providers who are not care providers.

((4)) (5) Standardized medicare supplement benefit plan "K" must consist of the following:

(a) Coverage of one hundred percent of the Part A hospital coinsurance amount for each day used from the sixty-first through the ninetieth day in any medicare benefit period;

(b) Coverage of one hundred percent of the Part A hospital coinsurance amount for each medicare lifetime inpatient reserve day used from the ninety-first through the one hundred fiftieth day in any medicare benefit period;

(c) Upon exhaustion of the medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Medicare Part A deductible: Coverage for fifty percent of the medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in (j) of this subsection;

(e) Skilled nursing facility care: Coverage for fifty percent of the coinsurance amount for each day used from the twenty-first day through the one hundredth day in a medicare benefit period for post-hospital skilled nursing facility care eligible under medicare Part A until the out-of-pocket limitation is met as described in (j) of this subsection;

(f) Hospice care: Coverage for fifty percent of cost sharing for all Part A medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in (j) of this subsection;

(g) Coverage for fifty percent, under medicare Part A or B, of the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulation) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in (j) of this subsection;

(h) Except for coverage provided in (i) of this subsection, coverage for fifty percent of the cost sharing otherwise applicable under medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in (j) of this subsection;

(i) Coverage of one hundred percent of the cost sharing for medicare Part B preventive services after the policyholder pays the Part B deductible; and

(j) Coverage of one hundred percent of all cost sharing under medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under medicare Parts A and B of four thousand dollars in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

((5)) (6) Standardized medicare supplement benefit plan "L" must consist of the following:

(a) The benefits described in subsection (4)(a), (b), (c) and (i) of this section;

(b) The benefit described in subsection (4)(d), (e), (f) and (h) of this section but substituting seventy-five percent for fifty percent; and

(c) The benefit described in subsection (4)(j) of this section but substituting two thousand dollars for four thousand dollars.

NEW SECTION

WAC 284-66-064 Benefit standards for policies or certificates issued or delivered on or after June 1, 2010.

No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a medicare supplement policy or certificate unless it complies with these benefit standards. Benefit standards applicable to medicare supplement policies or certificates issued before June 1, 2010, remain subject to the requirements of WAC 284-66-060 and 284-66-063.

(1) General standards. The following standards apply to medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition. The policy or certificate

may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within three months before the effective date of coverage.

(b) A medicare supplement policy or certificate must provide that benefits designed to cover cost sharing amounts under medicare will be changed automatically to coincide with any changes in the applicable medicare deductible, copayment or coinsurance amounts. Premiums may be modified to correspond with such changes.

(c) No medicare supplement policy or certificate may provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured other than the nonpayment of premium.

(d) Each medicare supplement policy shall be guaranteed renewable and:

(i) The issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(ii) The issuer may not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(iii) If the medicare supplement policy is terminated by the group policyholder and is not replaced as provided under (d)(v) of this subsection, the issuer shall offer certificateholders an individual medicare supplement policy which, at the option of the certificateholder:

(A) Provides for continuation of the benefits contained in the group policy; or

(B) Provides for benefits that otherwise meet the requirements of this subsection.

(iv) If an individual is a certificateholder in a group medicare supplement policy and the individual terminates membership in the group, the issuer must:

(A) Offer the certificateholder the conversion opportunity described in (d)(iii) of this subsection; or

(B) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(v) If a group medicare supplement policy is replaced by another group medicare supplement policy purchased by the same policyholder, the issue of the replacement policy must offer coverage to all persons covered under the old group policy on its date of termination.

(vi) Termination of a medicare supplement policy or certificate must be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of medicare Part D benefits will not be considered in determining a continuous loss.

(vii)(A) A medicare supplement policy or certificate must provide that benefits and premiums under the policy or certificate are suspended at the request of the policyholder or certificateholder for the period not to exceed twenty-four months in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if

the policyholder or certificateholder notifies the issuer of the policy or certificate within ninety days after the date the individual becomes entitled to assistance.

(B) If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstated, effective as of the date of termination of entitlement within ninety days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement.

(C) Each medicare supplement policy must provide that benefits and premiums under the policy must be suspended for any period that may be provided by federal regulation at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act. If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy must be automatically reinstated effective as of the date of loss of coverage if the policyholder provides notice of loss of coverage within ninety days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

(viii) Reinstitution of coverages as described in this section:

(A) Must not provide for any waiting period with respect to treatment of preexisting conditions;

(B) Must provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and

(C) Must provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(2) Every issuer of medicare supplement insurance benefit plans A, B, C, D, F, F with high deductible, G, M, and N must make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other medicare supplement insurance plans in addition to the basic core package, but not in lieu of it.

(a) Coverage of Part A medicare eligible expenses for hospitalization to the extent not covered by medicare from the 61st day through the 90th day in any medicare benefit period.

(b) Coverage of Part A medicare eligible expenses incurred for hospitalization to the extent not covered by medicare for each medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Coverage under medicare Parts A and B for the reasonable cost of the first three pints of blood or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations;

(e) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of medicare eligible expenses under Part B regardless of hospital confinement, subject to the medicare Part B deductible.

(f) Coverage of cost sharing for all Part A Medicare eligible hospice care and respite care expenses.

(3) The following additional benefits must be included in medicare supplement benefit Plans B, C, D, F, F with high deductible, G, M, and N as provided by WAC 284-66-066:

(a) Coverage for one hundred percent of the medicare Part A inpatient hospital deductible amount per benefit period.

(b) Coverage for fifty percent of the medicare Part A inpatient hospital deductible amount per benefit period.

(c) Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a medicare benefit period for posthospital skilled nursing facility care eligible under medicare Part A.

(d) Coverage for one hundred percent of the medicare part B deductible amount per calendar year regardless of hospital confinement.

(e) Coverage for all of the difference between the actual medicare Part B charges as billed, not to exceed any charge limitation established by the medicare program or state law, and the medicare-approved Part B charge.

(f) Coverage to the extent not covered by medicare for eighty percent of the billed charges for medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by medicare if provided in the United States and which care began during the first sixty consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars and a lifetime maximum benefit of fifty thousand dollars. For purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

AMENDATORY SECTION (Amending Matter No. R 2006-13, filed 2/26/07, effective 3/29/07)

WAC 284-66-066 Standard medicare supplement benefit plans. Standard medicare supplement benefit plans issued for delivery prior to June 1, 2010, must comply with this section.

(1) An issuer must make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic "core" benefits, as defined in WAC 284-66-063(2) of this regulation.

(2) No groups, packages, or combinations of medicare supplement benefits other than those listed in this section may be offered for sale in this state, except as permitted in WAC 284-66-066(7) and in WAC 284-66-073.

(3) Benefit plans must be uniform in structure, language, designation, and format to the standard benefit plans "A" through "L" listed in this subsection and conform to the definitions in WAC 284-66-030 and 284-66-040. Each benefit must be structured according to the format provided in WAC 284-66-063 (2), (3), (4) or (5) and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement, and overall content of benefit.

(4) An issuer may use, in addition to the benefit plan designations required in subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized medicare supplement benefit plan "A" must be limited to only the basic ("core") benefits common to all benefit plans, as defined in WAC 284-66-063(2).

(b) Standardized medicare supplement benefit plan "B" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible as defined in WAC 284-66-063 (3)(a).

(c) Standardized medicare supplement benefit plan "C" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, medicare Part B deductible and medically necessary emergency care in a foreign country as defined in WAC 284-66-063 (3)(a), (b), (c), and (h), respectively.

(d) Standardized medicare supplement plan "D" consists of only the following: The core benefit, as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and the at-home recovery benefit as defined in WAC 284-66-063 (3)(a), (b), (h), and (j), respectively.

(e) Standardized medicare supplement benefit plan "E" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined in WAC 284-66-063 (3)(a), (b), (h), and (i), respectively.

(f) Standardized medicare supplement benefit plan "F" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred percent of the medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in WAC 284-66-063 (3)(a), (b), (c), (e), and (h), respectively.

(g) Standardized medicare supplement benefit high deductible plan "F" consists of only the following: One hundred percent of covered expenses following the payment of the annual high deductible plan "F" deductible. The covered expenses include the core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, the medicare Part B deductible, one hundred percent of the medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in WAC 284-66-063 (3)(a), (b), (c), (e) and (h) respectively. The annual high deductible plan "F" deductible must consist of out-of-pocket expenses, other than premiums, for services

covered by the medicare supplement plan "F" policy, and must be in addition to any other specific benefit deductibles. The annual high deductible plan "F" deductible is one thousand seven hundred thirty dollars for 2005, and is based on the calendar year. The deductible will be adjusted annually by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars.

(h) Standardized medicare supplement benefit plan "G" consists of only the following: The core benefit as defined at WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, eighty percent of the medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in WAC 284-66-063 (3)(a), (b), (d), (h), and (j), respectively.

(i) Standardized medicare supplement benefit plan "H" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as defined in WAC 284-66-063 (3)(a), (b), (f), and (h), respectively. The outpatient prescription drug benefit may not be included in a medicare supplement policy sold after December 31, 2005.

(j) Standardized medicare supplement benefit plan "I" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, one hundred percent of the medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as defined in WAC 284-66-063 (3)(a), (b), (e), (f), (h), and (j), respectively. The outpatient prescription drug benefit may not be included in a medicare supplement policy sold after December 31, 2005.

(k) Standardized medicare supplement benefit plan "J" consists of only the following: The core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, medicare Part B deductible, one hundred percent of the medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as defined in WAC 284-66-063 (3)(a), (b), (c), (e), (g), (h), (i), and (j), respectively. The outpatient prescription drug benefit may not be included in a medicare supplement policy sold after December 31, 2005.

(l) Standardized medicare supplement benefit high deductible plan "J" consists of only the following: One hundred percent of covered expenses following the payment of the annual high deductible plan "J" deductible. The covered expenses include the core benefit as defined in WAC 284-66-063(2), plus the medicare Part A deductible, skilled nursing facility care, medicare Part B deductible, one hundred percent of the medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventative medical care benefit and at-home recovery benefit as defined in WAC 284-66-063 (3)(a), (b), (c), (e), (g), (h), (i) and (j) respectively.

The annual high deductible plan "J" deductible must consist of out-of-pocket expenses, other than premiums, for services covered by the medicare supplement plan "J" policy, and must be in addition to any other specific benefit deductibles. The annual deductible is one thousand seven hundred thirty dollars for 2005, and is based on the calendar year. The deductible will be adjusted annually by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars. The outpatient prescription drug benefit may not be included in a medicare supplement policy sold after December 31, 2005.

(6) Make-up of two medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA):

(a) Standardized medicare supplement benefit plan "K" consists of only those benefits described in WAC 284-66-063(4).

(b) Standardized medicare supplement benefit plan "L" consists of only those benefits described in WAC 284-66-063(5).

(7) New or innovative benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of medicare supplement policies. After December 31, 2005, the innovative benefits may not include an outpatient prescription drug benefit.

NEW SECTION

WAC 284-66-067 Standard medicare supplement plans issued for delivery on or after June 1, 2010. No policy or certificate delivered or issued for delivery in this state on or after June 1, 2010, as a medicare supplement policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to medicare supplement policies and certificates issued before June 1, 2010, remain subject to the requirements of WAC 284-66-066.

(1)(a) An issuer must make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic or core benefits, as defined in WAC 284-66-064.

(b) If an issuer makes available any of the additional benefits described in WAC 284-66-064 or offers standardized benefit Plan K or L as described in subsection (5) of this section, then the issuer shall make available to each prospective policyholder and certificateholder, in addition to a policy form or certificate form with only the basic or core benefits as described in (a) of this section, a policy form or certificate form containing either standardized benefit Plan C or standardized benefit Plan F.

(2) No groups, packages or combinations of medicare supplement benefits other than those listed in this section may be offered for sale in this state, except as may be permitted in WAC 284-66-064 and 284-66-073.

(3) Benefit plans must be uniform in structure, language, designation and format to the standard benefit plans listed in this section and conform to the definitions in this chapter. Each benefit must be structured in accordance with the format found in WAC 284-66-064 or in the case of Plans K or L, in subsection (5) of this section, and list the benefits in the order shown. For purposes of this section, "structure, language and format" means style, arrangement and overall content of a benefit.

(4) In addition to the benefit plan designations required in subsection (3) of this section, an issuer may use other designations to the extent permitted by law.

(5) Make-up of 2010 Standardized Benefit Plans:

(a) Standardized medicare supplement benefit Plan A may include only the basic core benefits as defined in WAC 284-66-064.

(b) Standardized medicare supplement benefit Plan B may include only the basic core benefit as defined in WAC 284-66-064 plus one hundred percent of the medicare part A deductible as defined in WAC 284-66-064.

(c) Standardized medicare supplement benefit Plan C may include only the basic core benefit as defined in WAC 284-66-064 plus one hundred percent of the medicare Part A deductible, skilled nursing facility care, one hundred percent of the medicare Part B deductible and medically necessary emergency care in a foreign country as defined in WAC 284-66-064.

(d) Standardized medicare supplement benefit Plan D may include only the basic core benefits as defined in WAC 284-66-064 plus one hundred percent of the medicare Part A deductible, skilled nursing facility care and medically necessary emergency care in a foreign country as defined in WAC 284-66-064.

(e) Standardized medicare supplement regular Plan F may include only the basic core benefit as defined in WAC 284-66-064 plus one hundred percent of the medicare Part A deductible, the skilled nursing facility care, one hundred percent of the medicare Part B deductible, one hundred percent of the medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in WAC 284-66-064.

(f) Standardized medicare supplement Plan F with high deductible may include only one hundred percent of covered expenses following the payment of the annual deductible set forth in (f)(ii) of this subsection.

(i) The basic core benefit as defined in WAC 284-66-064 plus one hundred percent of the medicare Part A deductible, skilled nursing facility care, one hundred percent of the medicare Part B deductible, one hundred percent of the medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in WAC 284-66-064.

(ii) The annual deductible in Plan F with high deductible must consist only of out-of-pocket expenses, other than premiums, for services covered by regular Plan F and must be in addition to any other specific benefit deductibles. The basis for the deductible must be one thousand five hundred dollars

and will be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars.

(g) Standardized medicare supplement benefit Plan G may include only the basic core benefit as defined in WAC 284-66-064, plus one hundred percent of the medicare Part A deductible, skilled nursing facility care, one hundred percent of the medicare part B excess charges and medically necessary emergency care in a foreign country as defined in WAC 284-66-064.

(h) Standardized medicare supplement benefit Plan K is mandated by the Medicare Prescription Drug Improvement and Modernization Act of 2003, and may include only the following:

(i) Coverage of one hundred percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any medicare benefit period;

(ii) Coverage of one hundred percent of the Part A hospital coinsurance amount for each medicare lifetime inpatient reserve day used from the 91st through the 150th day in any medicare benefit period;

(iii) Upon exhaustion of the medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent of the medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system rate or other appropriate medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the insurer's payment as payment in full and may not bill the insured for any balance;

(iv) Coverage for fifty percent of the medicare part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in (h)(x) of this subsection;

(v) Skilled nursing facility care coverage for fifty percent of the coinsurance amount for each day used from the 21st day through the 100th day in a medicare benefit period for posthospital skilled nursing facility care eligible under medicare Part A until the out-of-pocket limitation is met as described in (h)(x) of this subsection;

(vi) Coverage for fifty percent of cost sharing for all Part A medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in (h)(x) of this subsection;

(vii) Coverage for fifty percent under medicare Part A or B of the reasonable cost of the first three pints of blood or equivalent quantities of packed red blood cells as defined under federal regulations unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in (h)(x) of this subsection;

(viii) Except for coverage provided in (h)(ix) of this subsection, coverage for fifty percent of the cost sharing otherwise applicable under medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in (h)(x) of this subsection;

(ix) Coverage of one hundred percent of the cost sharing for medicare part B preventive services after the policyholder pays the part B deductible; and

(x) Coverage of one hundred percent of all cost sharing under medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under medicare Parts A and B of four thousand dollars in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(i) Standardized medicare supplement Plan L as mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 may include only the following:

(i) The benefits described in (h)(i) through (vi) and (ix) of this subsection; and

(ii) The benefit described in (h)(i) through (vi) and (vii) of this subsection but substituting seventy-five percent for fifty percent; and

(iii) The benefit described in (h)(x) of this subsection but substituting two thousand dollars for four thousand dollars.

(j) Standardized medicare supplement Plan M may include only the basic core benefit as defined in WAC 284-66-064, plus fifty percent of the medicare Part A deductible, skilled nursing facility care and medically necessary emergency care in a foreign country as defined in WAC 284-66-064.

(k) Standardized medicare supplement Plan N may include only the basic core benefit as defined in WAC 284-66-064, plus one hundred percent of the medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in subsection (3) of this section, with copayments in the following amounts:

(i) The lesser of twenty dollars or the medicare coinsurance or copayment for each covered health care provider office visit, including visits to medical specialists Part B; and

(ii) The lesser of fifty dollars or the medicare Part B coinsurance of copayment for each covered emergency room visit, however this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a medicare Part A expense.

(6) An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include only benefits that are appropriate to medicare supplement insurance, are new or innovative, are not otherwise available, and are cost-effective. Approval of new or innovative benefits must not adversely impact the goal of medicare supplement simplification. New or innovative benefits may not include an outpatient prescription drug benefit. New or innovative benefits may not be used to change or reduce ben-

efits, including a change of any cost-sharing provision, in any standardized plan.

AMENDATORY SECTION (Amending Matter No. R 2004-08, filed 8/4/05, effective 9/4/05)

WAC 284-66-080 Outline of coverage required. (1)

Issuers must provide an outline of coverage to all applicants at the time an application is presented to the prospective applicant and, except for direct response policies and certificates, must obtain an ~~((acknowledgement))~~ acknowledgment of receipt of the outline from the applicant.

(2) The "outline of coverage," ~~((must be completed in substantially the form))~~ is set forth ((in WAC 284-66-092)) on the commissioner's web site, and incorporated by reference herein in this rule. The issuer's form of outline of coverage must be completed in substantially the form set forth on the commissioner's web site, and filed with the commissioner before being used in this state.

(3) If an outline of coverage is provided at the time of application and the medicare supplement policy or certificate is issued on a basis that would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(4) The outline of coverage provided to applicants set forth in this section consists of four parts: A cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage must be in the language and format prescribed in WAC 284-66-092 in no less than twelve point type. All plans A-~~(E)~~ N must be shown on the cover page, and the plan(s) that are offered by the issuer must be prominently identified. Premium information for plans that are offered must be shown on the cover page or immediately following the cover page and must be prominently displayed. The premium and mode must be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant must be illustrated.

(5) Where inappropriate terms are used, such as "insurance," "policy," or "insurance company," a fraternal benefit society, health care service contractor, or health maintenance organization must substitute appropriate terminology.

AMENDATORY SECTION (Amending Order 92-25, filed 12/10/92, effective 1/10/93)

WAC 284-66-232 Form for medicare supplement refund calculation.

MEDICARE SUPPLEMENT REFUND CALCULATION FORM
FOR CALENDAR YEAR _____

TYPE _____
For the State of _____

SMSBP(w) _____

Washington Policy or Certificate Form No(s) _____
 Company Name _____
 NAIC Group Code _____ NAIC Company Code _____
 Person Completing This Exhibit _____
 Title _____ Telephone Number _____

Line	(a) Earned Premium (x)	(b) Incurred Claims (y)
1. Current Year's Experience a. Total (all policy years) b. Current year's issues (z) c. Net (for reporting purposes = 1a - 1b)		
2. Past Years' Experience (All Policy Years)		
3. Total experience (Net Current Year + Past Years' Experience)		
4. Refunds Last year (Excluding Interest)		
5. Previous Since Inception (Excluding Interest)		
6. Refunds Since Inception (Excluding Interest)		
7. Benchmark Ratio Since Inception (SEE WORKSHEET FOR RATIO 1)		
8. Experienced Ratio Since Inception Total Actual Incurred Claims (line 3, col b) Total Earned Premium (line 3, col a) - Refunds Since Inception (line 6) = Ratio 2		
9. Life Years Exposed Since Inception If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.		
10. Tolerance Permitted (obtained from credibility table)		
11. Adjustment to incurred Claims for Credibility Ratio 3 = Ratio 2 + Tolerance If Ratio 3 is more than benchmark ratio (ratio 1), a refund or credit to premium is not required. If Ratio 3 is less than the benchmark ratio, then proceed.		
12. Adjust Incurred Claims = [Total Earned Premium (line 3, col. a) - Refunds Since Inception (line 6)] X Ratio 3 (line 11)		
13. Refund = Total Earned Premiums (line 3, col a) - Refunds Since Inception (line 6) - Adjusted Incurred Claims (line 12) Benchmark Ratio (Ratio 1) If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.		

Medicare Supplement Credibility Table

Life Year Exposed Since Inception	Tolerance
10,000+	0.0%
5,000 - 9,999	5.0%
2,500 - 4,999	7.5%
1,000 - 2,499	10.0%
500 - 999	15.0%

Medicare Supplement Credibility Table

Life Year Exposed Since Inception	Tolerance
If Less than 500	No credibility

MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR CALENDAR YEAR _____

TYPE _____ SMSBP(w) _____
 For the State of _____
 Washington Policy or Certificate Form No(s). _____
 Company Name _____
 NAIC Group Code _____ NAIC Company Code _____
 Person Completing This Exhibit _____
 Title _____ Telephone Number _____

- (w) "SMSBP" = Standardized Medicare Supplement Benefit Plan
- (x) Includes modal loadings and fees charged.
- (y) Excludes Active Life Reserves.
- (z) This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios"

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

 Signature

 Name - Please Type

 Title

 Date

WORKSHEET #1 - INDIVIDUAL POLICIES

REPORTING FORM FOR TIME CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES FOR CALENDAR YEAR _____

TYPE _____ SMSBP (P) _____
 FOR THE STATE OF WASHINGTON _____
 Washington Policy or Certificate Form No. _____
 Company Name _____
 NAIC Group Code _____ NAIC Company Code _____
 Address _____
 Person Completing This Exhibit _____
 Title _____ Telephone Number _____

(a) Year	(b) Earned Premium	(c) Factor	(d) (b) x (c)	(e) Cumulative Loss Ratio	(f) (d) x (e)	(g) Factor	(h) (b) x (g)	(i) Cumulative Loss Ratio	(j) (h) x (i)	(o) Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
((15)) 15+ ¹		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

FN for 15+¹: To include the earned premium for all years prior to as well as the 15th year prior to the current year.

- Benchmark Ratio Since Inception: $(1 + n) / (k + m)$:
- (a): Year 1 is the current calendar year - 1
Year 2 is the current calendar year - 2 (etc.)
(Example: If the current year is 1991, then:
Year 1 is 1990; Year 2 is 1989; etc.)
 - (b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.
 - (c): These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the ((~~cumulative~~) cumulative) loss ratio displayed on this worksheet. They are shown here for informational purposes only.
 - (d): "SMSBP" = ((Standardized) Standardized) Medicare Supplement Benefit Plan
- k = Total of Column "d"
l = Total of Column "f"
m = Total of Column "h"
n = Total of Column "j"

WORKSHEET #1 - GROUP POLICIES

REPORTING FORM FOR TIME CALCULATION OF
BENCHMARK RATIO SINCE INCEPTION
FOR GROUP POLICIES
FOR CALENDAR YEAR _____

TYPE _____ SMSBP (P) _____
 FOR THE STATE OF WASHINGTON _____
 Washington Policy or Certificate Form No. _____
 Company Name _____
 NAIC Group Code _____ NAIC Company Code _____
 Address _____
 Person Completing This Exhibit _____
 Title _____ Telephone Number _____

(a) Year	(b) Earned Premium	(c) Factor	(d) (b) x (c)	(e) Cumulative Loss Ratio	(f) (d) x (e)	(g) Factor	(h) (b) x (g)	(i) Cumulative Loss Ratio	(j) (h) x (i)	(o) Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63

(a) Year	(b) Earned Premium	(c) Factor	(d) (b) x (c)	(e) Cumulative Loss Ratio	(f) (d) x (e)	(g) Factor	(h) (b) x (g)	(i) Cumulative Loss Ratio	(j) (h) x (i)	(o) Policy Year Loss Ratio
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.8
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
((+5)) 15+		4.175		0.567		8.684		0.838		0.89
Total:			(k):		(l):		(m):		(n):	

FN for 15+: To include the earned premium for all years prior to as well as the 15th year prior to the current year.

- Benchmark Ratio Since Inception: $(1 + n) / (k + m)$: (b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.
- (a): Year 1 is the current calendar year - 1
Year 2 is the current calendar year - 2 (etc.)
(Example: If the current year is 1991, then:
Year 1 is 1990: Year 2 is 1989; etc.)
- (p) "SMSBP" = ((Standardized)) Standardized Medicare Supplement Benefit Plan

- k = Total of Column "d"
l = Total of Column "f"
m = Total of Column "h"
n = Total of Column "j"

(o): These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the ((cumulative)) cumulative loss ratio displayed on this worksheet. They are shown here for informational purposes only.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Matter No. R 2004-08, filed 8/4/05, effective 9/4/05)

WAC 284-66-243 Filing and approval of policies and certificates and premium rates. (1) An issuer may not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner according to the filing requirements and procedures prescribed by the commissioner.

(2) ~~((An issuer must file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state that the policy or certificate was issued.~~

~~((3))~~ An issuer may not use or change premium rates for a medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner according to the filing requirements and procedures prescribed by the commissioner.

~~((4))~~ ~~((3))~~(a) Except as provided in (b) of this subsection, an issuer may not file for approval more than one form of a policy or certificate of each type for each standard medicare supplement benefit plan.

(b) An issuer may offer, with the approval of the commissioner, up to four additional policy forms or certificate forms of the same type for the same standard medicare supplement benefit plan, one for each of the following cases:

- (i) The inclusion of new or innovative benefits;
- (ii) The addition of either direct response or agent marketing methods;
- (iii) The addition of either guaranteed issue or underwritten coverage;
- (iv) The offering of coverage to individuals eligible for medicare by reason of disability. The form number for products offered to enrollees who are eligible by reason of disability must be distinct from the form number used for a corresponding standardized plan offered to an enrollee eligible for medicare by reason of age.

(c) For the purposes of this section, a "type" means an individual policy, a group policy, an individual medicare SELECT policy, or a group medicare SELECT policy.

~~((5))~~ ~~((4))~~(a) Except as provided in (a)(i) of this subsection, an issuer must continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the commissioner. A policy form or certificate form is not considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve months.

(i) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty days before discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer may no longer offer for sale the policy form or certificate form in this state.

(ii) An issuer that discontinues the availability of a policy form or certificate form under (a)(i) of this subsection, may not file for approval a new policy form or certificate form of the same type for the same standard medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of medicare supplement business to another issuer is considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology is considered a discontinuance under (a) of this subsection, unless the issuer complies with the following requirements:

(i) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in that the revised rating methodology and resultant rates differ from the existing rating methodology and resultant rates.

(ii) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential that is in the public interest.

~~((6))~~ (5)(a) Except as provided in (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard medicare supplement benefit plan must be combined for purposes of the refund or credit calculation prescribed in WAC 284-66-203.

(b) Forms assumed under an assumption reinsurance agreement may not be combined with the experience of other forms for purposes of the refund or credit calculation.

~~((7))~~ (6) An issuer may set rates only on a community rated basis or on an issue-age level premium basis for policies issued prior to January 1, 1996, and may set rates only on a community rated basis for policies issued after December 31, 1995.

(a) For policies issued prior to January 1, 1996, community rated premiums must be equal for all individual policyholders or certificateholders under a standardized medicare

supplement benefit form. Such premiums may not vary by age or sex. For policies issued after December 31, 1995, community rated premiums must be set according to RCW 48.66.045(3).

(b) Issue-age level premiums must be calculated for the lifetime of the insured. This will result in a level premium if the effects of inflation are ignored.

~~((8))~~ (7) All filings of policy or certificate forms must be accompanied by the proposed application form, outline of coverage form, proposed rate schedule, and an actuarial memorandum completed, signed and dated by a qualified actuary as defined in WAC 284-05-060. In addition to the actuarial memorandum, the following supporting documentation must be submitted to demonstrate to the satisfaction of the commissioner that rates are not excessive, inadequate, or unfairly discriminatory and otherwise comply with the requirements of this chapter:

(a) Anticipated loss ratios stated on a calendar year basis by duration for the period for which the policy is rated. Filings of future rate adjustments must contain the actual calendar year loss ratios experienced since inception, both before and after the refund required, if any and the actual loss ratios in comparison to the expected loss ratios stated in the initial rate filing on a calendar year basis by duration if applicable;

(b) Anticipated total termination rates on a calendar year basis by duration for the period for which the policy is rated. The termination rates should be stated as a percentage and the source of the mortality assumption must be specified. Filings of future rate adjustments must include the actual total termination rates stated on a calendar year basis since inception;

(c) Expense assumptions including fixed and percentage expenses for acquisition and maintenance costs;

(d) Schedule of total compensation payable to agents and other producers as a percentage of premium, if any;

(e) A complete specimen copy of the compensation agreements or contracts between the issuer and its agents, brokers, general agents, as well as the contracts between general agents and agents or others whose compensation is based in whole or in part on the sale of medicare supplement insurance policies. The agreements must demonstrate compliance with WAC 284-66-350 (where appropriate);

(f) Other data necessary in the reasonable opinion of the commissioner to substantiate the filing.

AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

WAC 284-66-323 Form for reporting multiple medicare supplement policies and certificates.

Medicare Supplement Regulation

FORM FOR REPORTING
MEDICARE SUPPLEMENT POLICIES

Company Name: _____

Address: _____

Phone Number: _____

Due: March 1, annually

The purpose of this form is to report the following information on each resident of this state (~~who has in force~~) with more than one medicare supplement policy or certificate in force. The information is to be grouped by individual policyholder.

Policy and Certificate #

Date of Issuance

Signature

Name and Title (please type)

Date

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 284-66-092 Form of "outline of coverage."
- WAC 284-66-247 Interim rate and form filing requirements for standardized plans H, I and J and pre-standardized plans that include outpatient prescription drug benefits.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by October 26, 2009, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to develop rules to establish the application process to obtain a discount health plan organization license and to establish reporting and record-keeping requirements. These rules will implement chapter 175, Laws of 2009 (SSB 5480) the Washington Health Care Discount Plan Organization Act that became effective July 26, 2009.

Anticipated Effects: The proposed rules will inform and clarify for discount health plan organizations the application process for obtaining a discount plan organization license, and requirements for reporting and record keeping.

Reasons Supporting Proposal: Chapter 175, Laws of 2009 (SSB 5480) requires that discount health plan organizations obtain a license from the office of insurance commissioner to transact business in Washington state. Prior to the legislation, discount health plan organizations were unregulated and had no disclosure or marketing standards to ensure consumer protection. This resulted in increasing numbers of consumer complaints.

Statutory Authority for Adoption: RCW 48.02.060, section 18, chapter 175, Laws of 2009.

Statute Being Implemented: Section 18, chapter 175, Laws of 2009.

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: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7040; Implementation: Jim Odiorne, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7214; and

**WSR 09-19-101
PROPOSED RULES**

**OFFICE OF
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2009-10—Filed September 21, 2009, 11:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-16-004.

Title of Rule and Other Identifying Information: Health care discount plan organization standards.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on October 27, 2009, at 10:00 a.m.

Date of Intended Adoption: October 30, 2009.

Submit Written Comments to: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, e-mail donnad@oic.wa.gov, fax (360) 586-3109, by October 26, 2009.

Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. With one exception, the new requirements proposed in R 2009-10 health care discount plan organizations represent only minor costs to the businesses being regulated.

The sole potential exception, the requirement in proposed WAC 284-38-020 (3) and (4) that requires an affiliate of a parent entity to "specifically segregate and report the applicant's financial results as required by the commissioner," applies only to affiliates; these firms do not meet the law's definition of small business.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Donna Dorris, P.O. Box 40258, Olympia WA 98504-0258, phone (360) 725-7040, fax (360) 586-3109, e-mail donnad@oic.wa.gov.

September 21, 2009

Mike Kreidler
Insurance Commissioner

Chapter 284-38 WAC

HEALTH CARE DISCOUNT PLAN ORGANIZATION STANDARDS

NEW SECTION

WAC 284-38-005 Purpose. These regulations implement provisions of chapter 175, Laws of 2009, and create the processes and procedures for licensing a discount plan organization.

NEW SECTION

WAC 284-38-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

"Applicant" means any discount plan organization applying for a license under these regulations, and includes a discount plan organization or person holding a license or other form of authority from another state to operate as a discount plan organization.

"Application" means the written request for a license and the information required by the commissioner to obtain a license to transact discount plan business.

"License" means the license issued by the commissioner required to transact discount plan business under these regulations.

"Renewal application" means the renewal application under these regulations.

NEW SECTION

WAC 284-38-015 Licensing forms and filing procedures. (1) An applicant applying for a new license or a licensed discount plan organization applying for license renewal must complete and file all required forms. All forms, including the application form, the renewal form, and the

annual report form required by this regulation are available on the commissioner's web site at www.insurance.wa.gov. Applicants must fully complete and file only forms approved by the commissioner.

(2) If a licensed discount plan organization fails to file the renewal application or the renewal application fee sooner than ninety days before its license expires, the license will expire on its expiration date and the discount plan organization must complete and file a new application and pay the fee for a new license.

(3) Upon the expiration of a discount plan organization's license, all operations must be immediately suspended, including any advertising, marketing, solicitation, enrollment, and renewal of contracts or other activities specified under these regulations.

(4) Annual report filing requirements:

(a) Licensed discount plan organizations are not required to prepare a separate annual report filing or pay the annual report fee if they file the information required for their annual report at the time they file their renewal application, but only if they do so prior to the March 31st deadline for filing the annual report.

(b) If a licensed discount plan organization does not include its annual report information with its renewal application, it must file an annual report with the commissioner prior to the March 31st deadline for filing an annual report. If the renewal application is due after March 31st, a licensed discount plan organization must file an annual report by March 31st, and may not defer filing the annual report on the basis that it plans to include the annual report information with its renewal.

(5) Any discount plan organization that has transacted or is transacting discount plan business to which the regulation applies prior to or as of July 26, 2009, must complete and file the commissioner's required application form along with all other required forms and information, on or before January 26, 2010. If a discount plan organization does not apply for a license as specified by the commissioner on or before October 26, 2009, it must discontinue operations after January 26, 2010, unless the commissioner has issued the license by January 26, 2010.

NEW SECTION

WAC 284-38-020 Audited financial statements. (1) All audited financial statements filed with the commissioner under these regulations must:

(a) Be prepared in accordance with generally accepted auditing principles;

(b) Be certified by an independent certified public accountant; and

(c) Meet the standards and requirements of WAC 284-07-100 through 284-07-230 to the extent reasonably applicable, provided, that WAC 284-07-100 (5), (6), and (7) shall not apply to discount plan organizations; and provided further, that discount plan organizations shall not be required to file any report, letter, or other document required to be filed with the commissioner by WAC 284-07-100 through 284-07-230 with the National Association of Insurance Commissioners (NAIC).

(2) All audited financial statements filed with an annual report under this regulation shall cover the same fiscal period as the discount plan organization's annual report.

(3) Unless an applicant has the commissioner's written permission, the applicant's own most recent financial statements audited by an independent certified public accountant must accompany the application. An applicant granted prior permission by the commissioner to substitute its parent company's audited financial statements for the financial statements of the applicant must specifically segregate and report the applicant's financial results as required by the commissioner.

(4) Unless a licensed discount plan organization has the commissioner's written permission, the licensee must include its own most recent financial statements audited by an independent certified public accountant with its renewal application or the annual report filed with the commissioner. A discount plan organization granted prior permission by the commissioner to substitute its parent company's audited financial statements for the financial statements of the applicant must specifically segregate and report the discount plan organization's financial results as required by the commissioner.

(5) If the commissioner determines there is good cause for a delay, the commissioner may grant an extension of time to file the audited financial statement. Discount plan organizations or applicants must submit a written request for an extension of time to file the audited financial statement at least ten business days prior to the filing deadline.

NEW SECTION

WAC 284-38-025 Indemnity requirements for discount plan organizations. (1) A discount plan organization providing a surety bond to protect the financial interests of Washington members must name the state of Washington as the obligee, but the bond will be for the benefit of the Washington members who have purchased the discount plan.

(2) All surety bonds obtained by discount plan organizations for the purpose of complying with their financial responsibility under this section must operate to ensure Washington consumers provision of all terms of their discount plan membership, including refunds.

(3) A discount plan organization, in lieu of a surety bond, may provide a deposit in trust with the commissioner to protect the financial interests of Washington members as set forth in chapter 175, Laws of 2009.

(a) The deposit in trust must be in cash or other investments specifically authorized and eligible for investment pursuant to chapter 48.13 RCW.

(b) All deposits and withdrawals must be made by using forms found on the commissioner's web site at www.insurance.wa.gov.

NEW SECTION

WAC 284-38-030 Discount plan organization—General requirements for records availability and form and report filing. (1) All discount plan organization records and reports must be maintained at the discount plan organization's principal business address and are subject to review by the

commissioner's representatives during the discount plan organization's usual and customary business hours.

(2) The commissioner may require discount plan organizations to provide copies of discount plan organization documents, records, and reports in lieu of making the records available for on-site review.

(3) All records, reports, notices, or other documents required by this regulation must be transmitted electronically in Adobe Acrobat PDF format.

(4) A discount plan organization must respond promptly to any inquiry from the insurance commissioner relative to the business of a discount plan organization. A lack of response within fifteen business days from the receipt of an inquiry will be considered untimely. A response must be in writing, unless otherwise indicated in the inquiry.

WSR 09-19-106

PROPOSED RULES

ATTORNEY GENERAL'S OFFICE

[Filed September 21, 2009, 1:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06/02/2009 [09-12-109].

Title of Rule and Other Identifying Information: The attorney general proposed amending WAC 44-10-010 Definitions, 44-10-020 Designation of manufacturer contract, 44-10-031 Effect of request for arbitration filing, 44-10-040 Attorney general screening of arbitration requests, 44-10-050 Assignment to board, 44-10-060 Powers and duties of arbitration special master, 44-10-070 Manufacturer's statement, 44-10-080 Manufacturer's option to request a viewing of motor vehicle, 44-10-090 Arbitration fee, 44-10-100 Subpoenas, 44-10-110 Scheduling of arbitration hearings, 44-10-120 Withdrawal, 44-10-150 Settlement of dispute, 44-10-170 Powers and duties of arbitrators, 44-10-180 The arbitration hearing, 44-10-200 The arbitration decision, 44-10-221 Resale documents—Attorney general procedures, 44-10-222 Manufacturer duties upon receipt of a returned vehicle, 44-10-300 Imposition of fine for manufacturer noncompliance with an arbitration decision, and 44-10-310 Request for review of imposition of fine.

Hearing Location(s): Office of the Attorney General, 800 Fifth Avenue, Suite 2000, Seattle, WA 98104, attendance through webinar connection by request to lemon@atg.wa.gov Subject: Rulemaking Webinar Request, on November 6, 2009, at 10:00 a.m.

Date of Intended Adoption: December 11, 2009.

Submit Written Comments to: Paul N. Corning, Lemon Law Administrator, Office of the Attorney General, 800 Fifth Avenue, Suite 2000, Seattle, WA 98104, e-mail lemon@atg.wa.gov Subject: "Rule Making Comments", fax (206) 464-6451 ATTN: Paul N. Corning, by 5:00 p.m., November 2, 2009.

Assistance for Persons with Disabilities: Contact Paul N. Corning by November 2, 2009, TTY (800) 833-6384 WA Relay Service or (206) 464-6372.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 44-10-010,

adding definition of "manufacturer dispute program" for clarification of existing rules, WAC 44-10-020, adding "e-mail" to designated contact information provided by a manufacturer, WAC 44-10-031, updating a citation and clarify effect of filing a claim, WAC 44-10-040, updating to reflect new statutory procedures regarding review and acceptance or rejection of consumer requests for arbitration, WAC 44-10-050, updating to reflect new statutory procedures regarding assignment of requests for arbitration to the new motor vehicle arbitration board, WAC 44-10-060 (1)-(3), updating and adding clarifications to reflect new statutory procedures regarding requests for special master arbitrator hearings, WAC 44-10-070 and 44-10-080, editorial clarifications without change to effect, WAC 44-10-090, updating to reflect statutory change ending fee collection from out of state consumers, WAC 44-10-100 (1) and (3), updating to reflect statutory changes regarding board duties, allowing use of e-mail, WAC 44-10-110, updating to reflect statutory change allowing use of e-mail, WAC 44-10-120, editorial clarification without change to effect, WAC 44-10-150, update reflecting statutory change regarding board duties, WAC 44-10-170, editorial clarification without change to effect, WAC 44-10-180, clarification without change to effect, WAC 44-10-200 (1), (1)(a)(iii) and (d), (2), (3)(a), (3)(a)(ii), (c), (e), (f), (g), and (6), editorial clarifications without change to effect, updating to reflect new statutory procedures regarding issuance of arbitration decisions, allowing use of e-mail, motor home manufacturer distribution of liability, and manufacturer liability, WAC 44-10-221, editorial clarification without change to effect regarding resale documents for vehicles reacquired under chapter 19.118 RCW through manufacturer dispute programs, WAC 44-10-222, clarification without change to effect, establishing directions relating to a new statutory requirement for manufacturers to obtain title to certain manufacturer reacquired new motor vehicles, and alternative placement location of a disclosure windshield display, WAC 44-10-300 and 44-10-310, updating reflecting statutory change allowing use of e-mail.

Statutory Authority for Adoption: RCW 19.118.080(2), 19.118.061.

Statute Being Implemented: Chapter 19.118 RCW.

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

Name of Proponent: Attorney General Rob McKenna, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Paul N. Corning, Seattle, Washington, (206) 464-6372; and Enforcement: Doug Walsh, Sr., AAG, Seattle, Washington, (206) 464-6388.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency expects these rule modifications to have no negative small business impact. The proposed modifications to existing rules do not impose any new or additional costs on any business or industry beyond those associated with minimum compliance with statutory obligations pursuant to chapter 19.118 RCW.

The proposed changes to chapter 44-10 WAC:

- Reflect enacted statutory changes to chapter 19.118 RCW.
- Do not apply to small businesses.

- Will not impose any additional costs or impose more than minor costs on businesses in an industry.
- Are intended to increase clarity of existing rules without change to effect.
- Will increase clarity and internal agency procedural efficiencies.

For a copy of the complete economic compliance analysis, please contact Paul N. Corning, Lemon Law Administrator, 800 Fifth Avenue, Suite 2000, Seattle, WA 98104, call (206) 464-6372, e-mail lemon@atg.wa.gov Subject Line: "Rule Making - CR 102 SBEI."

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(1) [(i)], this agency is not an agency mandated to comply with RCW 34.05.328.

Pursuant to RCW 34.05.328 (5)(b)(ii), these proposed rule changes in whole or part relate only to internal governmental operation: WAC 44-10-040, 44-10-050, 44-10-060, 44-10-100(1), 44-10-170, 44-10-200 (1), (1)(a)(iii), (2), (e), and (f), and 44-10-221.

Pursuant to RCW 34.05.328 (5)(b)(iv), these proposed rule changes in whole or part clarify language of a rule without changing its effect: WAC 44-10-010, 44-10-031, 44-10-070, 44-10-080, 44-10-120, 44-10-170, 44-10-180, 44-10-200 (1)(a)(iii), (3)(a), (3)(a)(ii), (c), (e), (f), and (g), 44-10-221, and 44-10-222.

Pursuant to RCW 34.05.328 (5)(b)(iii) and (v), these proposed rule changes in whole or part adopt without material change Washington state statutes and/or have content that is explicitly and specifically dictated by statute: WAC 44-10-020, 44-10-031, 44-10-040, 44-10-050, 44-10-070, 44-10-080, 44-10-090, 44-10-100 (1) and (3), 44-10-110, 44-10-200 (1), (1)(a)(iii) and (d), (2), (3)(a), (3)(a)(ii), (c), (e), (g), and (6), 44-10-222, 44-10-300, and 44-10-310.

August 27, 2009

Rob McKenna

Attorney General

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-010 Definitions. Terms, when used in this chapter, shall have the same meaning as terms used in chapter 19.118 RCW. The following definitions shall supplement or aid in the interpretation of the definitions set forth in chapter 19.118 RCW.

"Arbitration special master" means the individual or group of individuals selected by the board to hear and decide special issues timely brought before the board.

"Attorney general" or "attorney general's office" means the person duly elected to serve as attorney general of the state of Washington and delegates authorized to act on his or her behalf.

"Board" or "arbitration board" means the new motor vehicle arbitration board established by the attorney general pursuant to RCW 19.118.080.

"Intervening transferor" means any person or entity which receives, buys or otherwise transfers the returned new motor vehicle prior to the first retail transfer, sale or lease

subsequent to being repurchased or replaced by the manufacturer.

"Lemon Law administration" means the section within the attorney general's office, consumer protection division, designated by the attorney general to be responsible for the implementation of chapter 19.118 RCW and related rules.

"Lemon Law resale documents" refers to the following:

~~((+))~~ (a) "Lemon Law resale windshield display" means a document created and provided by the attorney general which identifies that: ~~((+))~~ (i) The vehicle was reacquired by the manufacturer after a determination, settlement or adjudication of a dispute; ~~((b))~~ (ii) the vehicle has one or more nonconformities or serious safety defects, or was out-of-service thirty or more days due to diagnosis or repair of one or more nonconformities; and ~~((e))~~ (iii) the defects or conditions causing the vehicle to be reacquired by the manufacturer.

~~((2))~~ (b) "Lemon Law resale disclosure": Means a document created and provided by the attorney general which identifies that: ~~((a))~~ (i) The vehicle was reacquired by the manufacturer after a settlement, determination or adjudication of a dispute; ~~((b))~~ (ii) the vehicle has one or more nonconformities or serious safety defects, or was out-of-service thirty or more days due to diagnosis or repair of one or more nonconformities; and ~~((e))~~ (iii) the defects or conditions causing the vehicle to be reacquired by the manufacturer. The document will provide space for the manufacturer to indicate if each nonconformity or serious safety defect has been corrected and is warranted by the manufacturer.

~~((3))~~ (c) "Notice of out-of-state disposition of a reacquired vehicle" refers to a document created and provided by the Lemon Law administration which requires the manufacturer, agent or dealer to identify the destination state and the dealer, auction, other person or entity to whom the manufacturer sells or otherwise transfers the reacquired vehicle when the vehicle is taken to another state for any disposition, including: Resale, transfer or destruction.

"Manufacturer dispute program" means a program offered by a manufacturer to owners or lessees of vehicles covered by or previously covered by the manufacturer's warranty to resolve complaints or claims: (a) Established in substantial compliance with the applicable provision of Title 16, Code of Federal Regulations Part 703; (b) where the basis of the program's standards for decision making are substantially equivalent to chapter 19.118 RCW; (c) where the basis of the program's standards for decision making are identified as some or all of the provisions of chapter 19.118 RCW; or (d) references the "Lemon Law" in a manner suggesting or inferring that chapter 19.118 RCW is the program's basis for the decision making, determining remedies or has been approved by the attorney general.

"Person" includes every natural person, firm, partnership, corporation, association, or organization.

"Settlement" means ~~((the resolution of a dispute, under chapter 19.118 RCW;))~~ an agreement between ((the)) a consumer and a manufacturer ((after the new motor vehicle arbitration board has accepted the consumer's request for arbitration and which results in the manufacturer reacquiring the new motor vehicle directly or indirectly through an agent or a motor vehicle dealer. Settlement includes a consumer's

~~acceptance of a decision or award for repurchase or replacement of a vehicle issued by a manufacturer sponsored dispute resolution program where the basis of the program's standards decision making are specifically related to, or identified as, some or all of the provisions of chapter 19.118 RCW and which))~~ to resolve a claim under chapter 19.118 RCW after a request for arbitration has been assigned to the arbitration board and where the agreement results in the manufacturer reacquiring ((the)) a new motor vehicle directly or indirectly, through an agent or a motor vehicle dealer.

"Similar law of another state" refers to the law of another state which creates remedies for a manufacturer's failure to conform a vehicle to its warranty and under which the vehicle was reacquired by the manufacturer.

AMENDATORY SECTION (Amending WSR 96-03-155, filed 1/24/96, effective 2/24/96)

WAC 44-10-020 Designation of manufacturer ~~((contract [contact]))~~ contact. (1) A new motor vehicle manufacturer shall submit, in writing, to the Attorney General's Office, Lemon Law administration the name, address, e-mail or electronic address and telephone number of an individual designated by the manufacturer to receive notices related to the arbitration program, service of subpoenas, and other correspondence from the attorney general related to the manufacturer's duties and responsibilities set forth in chapter 19.118 RCW.

(2) Where a manufacturer's production or distribution system is accomplished through more than one division or region, the manufacturer may designate an individual for a division or region for the purpose of receiving notices related to the arbitration program, service of subpoenas, and other correspondence from the attorney general related to the manufacturer's duties and responsibilities set forth in chapter 19.118 RCW.

(3) The manufacturer is responsible for providing written notice to the attorney general of its replacement of the designated individual or changes to the related address and telephone number.

(4) If no individual is designated or an insufficient address is provided all notices shall be sent to the corporate headquarters of the manufacturer.

AMENDATORY SECTION (Amending WSR 96-03-155, filed 1/24/96, effective 2/24/96)

WAC 44-10-031 Effect of request for arbitration filing. (1) A request for arbitration is deemed to have been received within the thirty month ~~((limitation identified))~~ manufacturer mandatory arbitration participation period established in RCW 19.118.090((2)) (3), if it:

(a) Is received by the Office of the Attorney General within thirty months from the date of original delivery of the new motor vehicle to a consumer at retail; and

(b) Identifies the consumer and the new motor vehicle which is the subject of the requested arbitration.

(2) The thirty month manufacturer mandatory arbitration participation period is extended by the number of days during which a consumer's request for arbitration is under review by the attorney general.

(3) The thirty month manufacturer mandatory arbitration participation period is extended by the number of days during the period after a consumer's request for arbitration accepted by the Lemon Law administration for assignment to the arbitration board, through the date when:

(a) The attorney general or the board is notified by the consumer that the request for arbitration is withdrawn;

(b) The attorney general or the board is notified by the consumer that the dispute has been resolved;

(c) The consumer rejects the arbitration decision; or

(d) Compliance occurs with an arbitration award that was accepted by the consumer.

(4) If the attorney general finds that a request is not complete, the thirty month ((limitation)) manufacturer mandatory arbitration participation period will resume ((running)) three business days after the date the attorney general mails notice of incompleteness to the consumer or the day following delivery of e-mail notice if requested by the consumer.

AMENDATORY SECTION (Amending WSR 96-03-155, filed 1/24/96, effective 2/24/96)

WAC 44-10-040 Attorney general screening of arbitration requests. ~~((1) After a request for arbitration has been received, the attorney general shall review the form for completeness.~~

~~(2) The attorney general will screen the request for arbitration and supporting documentation to determine whether the request appears timely, complete and to comply with the jurisdictional requirements of chapter 19.118 RCW.~~

~~(a) If a request appears to be untimely or not in compliance with the jurisdictional requirements of chapter 19.118 RCW the attorney general will reject the request for arbitration and notify the consumer of the reason for the rejection.~~

~~(b) A request will be considered complete if the information required by the request form is provided in full or if the consumer provides a reasonable explanation for the absence of any supporting documentation.~~

~~(c) If a request is not complete, the attorney general will notify the consumer of any procedures or information required to complete the request.~~

~~(3) A consumer request that is based on a problem which does not manifest itself, is intermittent or unconfirmed shall not preclude an attorney general determination of the appearance of jurisdiction for purposes of initial screening. However, this section shall not preclude a party from raising jurisdictional issues at the arbitration hearing or subsequent court proceedings.)~~ (1) The attorney general will review a request for arbitration and supporting documentation for a statement of claim and appearance of jurisdiction within the authority established pursuant to chapter 19.118 RCW, timeliness, and completeness of the form and accompanying documents.

(2) The attorney general will reject a request for arbitration that is incomplete, untimely, or if there is reason to believe that the claim is frivolous, fraudulent, filed in bad faith, res judicata or beyond the authority of chapter 19.118 RCW.

A request for arbitration based on an alleged defect that does not manifest when inspected or tested, is intermittent or unconfirmed shall not preclude an attorney general determi-

nation of the appearance of jurisdiction and a statement of claim for purposes of initial screening.

(3) Nothing in this section precludes a party from raising jurisdictional or factual issues at the arbitration hearing or subsequent court proceedings.

(4) A request for arbitration will be considered complete when the information required by the request form is provided in full with copies of specified documents or if the consumer provides a reasonable explanation for the absence of any supporting documentation.

(5) If a request for arbitration is rejected, the attorney general will notify the consumer of the reason for the rejection and any procedures or information required to complete the request.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-050 Assignment to board. ~~((1) After initial screening by the attorney general, all requests for arbitration which appear to be timely, complete and to have met the jurisdictional requirements of chapter 19.118 RCW shall be assigned to the board which will record the date it receives the assignment in the request for arbitration file.~~

~~(2) The board must determine if it will accept the request for arbitration or reject the request for arbitration, for the reasons set forth in RCW 19.118.090, within three business days after the attorney general has forwarded the request for arbitration to the board.~~

~~(3) The board shall record the date of acceptance or rejection of the request for arbitration. The acceptance of the request shall commence the running of the forty-five calendar day period in which a hearing must be conducted.~~

~~(4) Upon acceptance of a request, the board shall immediately notify the Lemon Law administration. A notice of acceptance for arbitration will be sent to the consumer and manufacturer by certified mail/return receipt requested and shall inform the parties that a hearing shall be held within forty-five calendar days. The parties shall be sent formal notice of the actual hearing date by certified mail/return receipt requested, at least ten calendar days before the hearing. The designated manufacturer contact shall be sent a copy of the consumer's request and a manufacturer's statement form with the notice of acceptance.)~~ (1) Review by the attorney general, a request for arbitration appearing to be timely, complete and to have met the jurisdictional requirements of chapter 19.118 RCW will be assigned to the board.

(2) A notice that the request has been assigned to the board to be scheduled for an arbitration hearing will be sent to the consumer and manufacturer by certified mail or e-mail if requested by a party. The designated manufacturer contact will be sent a copy of the consumer's request for arbitration and a manufacturer's statement form with the notice of assignment.

(3) Upon receipt of a request for arbitration from the attorney general, the board will record the date it receives the assignment in the request for arbitration record and immediately notify the Lemon Law administration.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-060 Powers and duties of arbitration special master. (1) An arbitration special master may be appointed by the arbitration board to hear and decide preliminary and post-hearing issues (~~((which are))~~) within the arbitration board's authority. Requests for an arbitration special master (~~((may))~~) must be made in writing by (~~((either))~~) a party to the Lemon Law administration. The request will be reviewed by the program manager to determine whether issues identified in the special master request will be resolved by the program manager, forwarded to the board or denied. Post-hearing arbitration special masters and the program manager shall not resolve matters previously presented in the arbitration hearing and addressed in the arbitration decision except for clarification, or extend the time for compliance beyond the time necessary to hear and notify the parties of a decision about the issues in dispute or requiring clarification.

(2) Issues which may be decided by the program manager or arbitration special master include but are not limited to: Motions to quash or limit the scope of subpoenas, disputes related to requests to view the vehicle, disputes relating to an arbitration award including specification of the award amounts which could not have been or were not resolved at the arbitration hearing or matters necessary for compliance with the arbitration decision such as: Time and place for compliance, condition of the vehicle to be returned, clarification or recalculation of refund amounts or a determination that an offered vehicle is reasonably equivalent to the vehicle being replaced. The program manager or the arbitration special master may conduct telephonic conferences with a party or parties, as appropriate, and may request additional written information in order to rule on issues.

(3) (~~((An))~~) The program manager or the arbitration special master shall not extend the forty day period during which the manufacturer must comply with the arbitration decision except where the program manager or arbitration special master makes a finding that:

(a) The (~~((dispute))~~) issues identified in the special master request could not have been brought (~~((to the board))~~) allowing sufficient time to conclude compliance within the forty day compliance period; and

(b) If the manufacturer made the request for a special master, the manufacturer's position in the dispute is supported by the special master's decision.

(4) Arbitration special masters shall sign a written oath prior to their appointment as arbitration special master attesting to their impartiality. There shall be no ex parte communication initiated by a party with an arbitration special master.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-070 Manufacturer's statement. (1) The manufacturer shall provide information relevant to the resolution of the dispute to the consumer and board on a form created by the Lemon Law administration. The manufacturer's statement form shall be completely answered and shall include, but not be limited to, the following information:

(a) A statement of any affirmative defenses, and any legal or factual issues to be raised at the hearing. Any issues or affirmative defenses not raised in a timely manufacturer's statement or other documents (~~((filed))~~) not provided to the consumer and submitted to the board prior to the hearing may be excluded or limited by the arbitrator at the hearing; except as provided in WAC 44-10-080(6).

(b) The name, title, and business address of any person(s) the manufacturer plans to call as witnesses or from whom affidavits or written testimony will be presented;

(c) A statement identifying the year, make, model, options, color and any other significant information pertaining to the vehicle or vehicles it intends to offer as a reasonably equivalent replacement vehicle if the consumer prevails and requests replacement. If the manufacturer believes in good faith that replacement is impossible, or unreasonable, or cannot be provided timely pursuant to compliance requirements the manufacturer must raise such issue in its statement.

(2) The manufacturer must exercise its option to request a viewing of the consumer's motor vehicle by including a request to view the vehicle in the manufacturer's statement.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-080 Manufacturer's option to request a viewing of motor vehicle. (1) A manufacturer may request a viewing of the vehicle to aid in preparation of its defense. The request for a viewing of the vehicle must be indicated in the manufacturer's statement.

(2) The manufacturer and the consumer shall (~~((attempt to))~~) arrange a mutually agreeable time and location for such viewing. If after reasonable good faith attempts to arrange a viewing, a mutually agreeable time and location is not established, the manufacturer may request the Lemon Law administration program manager to set a time and location for viewing.

(3) Upon receipt of a request to set a viewing, the Lemon Law administration program manager shall establish a time and location for viewing that is reasonably convenient for the parties. The location may be the consumer's residence if other locations are not reasonably convenient for the parties(~~((s))~~). The consumer must be present during the viewing, unless the consumer expressly waives in writing the right to be present.

(4) The viewing is not meant to be another attempt to repair the vehicle and no repair procedures shall be conducted.

(5) The manufacturer may perform limited nonrepair diagnostic examinations and inspection procedures, such as test driving the vehicle or attaching a testing device to the vehicle. The results of any diagnostic procedures or data gathered as a result of such procedures shall be supplied to the consumer as soon as it is available.

(6) If the viewing of the vehicle reveals any affirmative defenses or legal or factual issues not previously raised in the manufacturer's statement or consumer's request for arbitration, either party may file amendments with the Lemon Law administration within three business days of the viewing, or, no later than three business days prior to the hearing date, whichever is earlier.

AMENDATORY SECTION (Amending WSR 96-03-155, filed 1/24/96, effective 2/24/96)

WAC 44-10-090 Arbitration fee. ~~((+))~~ A three dollar arbitration fee shall be collected by the new motor vehicle dealer or lease company from the consumer at completion of the sale or lease of a new motor vehicle except for a transaction with a consumer who is not a resident of this state and who does not intend to register the vehicle in this state. No fee shall be collected where the purchase, lease or transfer is made to a party other than a consumer.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-100 Subpoenas. (1) A party's request for a subpoena to be issued ~~((on behalf of the board))~~ must be received by the Lemon Law administration with the consumer's request for arbitration or the manufacturer's statement to be considered. A consumer may submit a request for a subpoena within three business days of receipt of a manufacturer's statement. The ~~((board))~~ attorney general shall make a determination of whether the documents and records sought by the party are reasonably related to the dispute ~~((and notify the Lemon Law administration of the determination))~~.

(2) A subpoena issued by the attorney general shall identify the party causing the issuance of the subpoena, designate that the subpoena is issued by the attorney general pursuant to RCW 19.118.080, state the purpose of the proceeding, and command the person to whom it is directed to produce at the time and place set in the subpoena the designated documents or records under his or her control.

(3) Service of the subpoena may be made be certified mail, return receipt requested, e-mail if requested by a party or by overnight express delivery.

(4) A person to whom a subpoena is directed may submit a written request to suspend or limit the terms of the subpoena to the Lemon Law administration within five business days of receipt of the subpoena and shall notify the party who requested the subpoena, of the request to suspend or limit it. The request must be accompanied by a short statement setting forth the basis for the request. The Lemon Law administration program manager may suspend or modify the subpoena or shall assign the request to be heard at the arbitration hearing.

(5) Where the Lemon Law administration program manager upholds or modifies the subpoena, the responding person or party shall comply with the date set in the subpoena or within five business days, whichever is greater.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-110 Scheduling of arbitration hearings. The board has the authority to schedule the arbitration hearing at its discretion. The Lemon Law administration shall notify the parties of the date, time and place by certified letter mailed at least ten calendar days prior to the hearing. Hearings may be scheduled during business hours, Monday through Thursday evenings, or Saturdays. If for any reason an arbitration hearing must be rescheduled, the board or the

Lemon Law administration shall promptly notify the parties by mail, e-mail if requested by a party or telephone.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-120 Withdrawal. A consumer may withdraw a request for arbitration at any time.

A first withdrawal shall be granted without prejudice ~~((; although))~~. Upon notice to the Lemon Law administration of withdrawal, the thirty month period ~~((in which the consumer must submit a request for))~~ manufacturer mandatory arbitration participation period shall resume running. A consumer who has withdrawn may resubmit the claim for arbitration. However, if the consumer withdraws the second request, the withdrawal shall be considered a withdrawal with prejudice and the consumer shall not be allowed to resubmit the claim for arbitration.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-150 Settlement of dispute. (1) Both parties shall notify the Lemon Law administration of a resolution for settlement of the dispute after the request for arbitration has been ~~((accepted by))~~ assigned to the arbitration board. The Lemon Law administration shall verify the terms of the settlement or resolution. The disclosure of terms is for statutorily required record keeping only. The settlement or agreement to otherwise resolve the dispute is not subject to approval by the board or the attorney general.

(2) Notice of settlement or agreement to resolve the dispute shall be treated procedurally as if the consumer had withdrawn from the arbitration process, as set forth in WAC 44-10-120.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-170 Powers and duties of arbitrators. (1) Arbitrators shall have the duty to conduct fair and impartial hearings, to take all necessary actions to avoid delay in the disposition of proceedings, to maintain order, and to meet the sixty day time frame required by RCW 19.118.090 for the rendering of a decision. They shall have all powers necessary to meet these ends including, but not limited to, the power:

(a) To consider any and all evidence offered by the parties which the arbitrator deems necessary to an understanding and determination of the dispute;

(b) To regulate the course of the hearings and the conduct of the parties, their representatives and witnesses;

(c) To schedule vehicle inspection by the technical experts, if deemed necessary, at such time and place as the arbitrator determines;

(d) To continue the arbitration hearing to a subsequent date if, at the initial hearing, the arbitrator determines that additional information is necessary in order to render a fair and accurate decision. Such continuance shall be held within ten calendar days of the initial hearing;

(e) To impose sanctions for failure of a party to comply with a subpoena pursuant to RCW 19.118.080 (2)(b);

(f) To calculate and order the joint liability for compliance obligations of motor home manufacturers, when applicable, as part of ~~((an))~~ arbitration decisions when ordering repurchase or replacement of a new motor vehicle.

(2) The board is responsible for the assignment of arbitrators to arbitration hearings. The selection and assignment of arbitrators is not subject to the approval of either party.

(3) Arbitrators must not have a personal interest in the outcome of any hearing, nor be acquainted with any of the participants except as such acquaintance may occur in the hearing process, nor hold any prejudice toward any party. Arbitrators shall not be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle. Arbitrators shall maintain their impartiality throughout the course of the arbitration proceedings.

(a) An arbitrator shall sign a written oath prior to the commencement of each arbitration hearing to which he or she has been assigned, attesting to his or her impartiality in that case.

(b) There shall be no direct communication between the parties and the arbitrators other than at the arbitration hearing. Any other oral or written communications between the parties and the arbitrators shall be channeled through the board. Any prohibited contact shall be reported by the arbitrators to the board and noted in the case record.

AMENDATORY SECTION (Amending WSR 96-03-155, filed 1/24/96, effective 2/24/96)

WAC 44-10-180 The arbitration hearing. (1) The conduct of the hearing shall encourage a full and complete disclosure of the facts.

(2) Arbitrators may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent people in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(3) The consumer shall present his or her evidence and witnesses, then the manufacturer shall present its evidence and witnesses.

(4) Each party may question the other after each presentation, and may question each witness after testimony. The arbitrator may question any party or witness at any time.

(5) The arbitrator shall ensure that a tape recording record of the hearing is maintained.

(6) The arbitrator shall administer an oath or affirmation to each individual who testifies.

(7) The hearing procedure contemplates that both parties will be present. However, either party may offer written testimony only ~~((, as long as))~~ if the board and ~~((the other party are informed of such and))~~ other parties are in receipt of that evidence prior to the day of the hearing.

(8) A party may request presentation of its case by telephone.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-200 The arbitration decision. (1) The arbitration board shall issue the decision in each case to the

Lemon Law administration within sixty calendar days of ~~((acceptance))~~ receipt of the request for arbitration:

(a) All decisions shall be written, in a form to be provided by the Lemon Law administration, dated and signed by the arbitrator, and sent by certified mail to the parties;

(b) The date on which the board provides the arbitration decision to the Lemon Law administration shall determine compliance with the sixty day requirement to issue an arbitration decision;

(c) The written decision shall contain findings of fact and conclusions of law as to whether the motor vehicle meets the statutory standards for refund or replacement;

(i) If the consumer prevails and has elected repurchase of the vehicle, the decision shall include the statutory calculations used to determine the monetary award;

(ii) If the consumer prevails and has elected replacement of the vehicle, the decision shall identify or describe a reasonably equivalent replacement vehicle and any refundable incidental costs;

(iii) If the consumer prevails and the manufacturer ~~((is))~~ and the consumer have been represented by counsel, the decision shall include a description of the awarded reasonable costs and attorneys' fees incurred by the consumer in connection with board proceedings.

Reasonable costs and attorneys' fees shall be determined by the arbitrator based on an affidavit of costs and fees prepared by the consumer's attorney and submitted no later than the conclusion of the arbitration hearing. The affidavit may be amended for post-hearing costs and fees. The amended affidavit of costs and fees must be delivered to the manufacturer's designated representative by certified mail or personal service and a copy submitted to the Lemon Law administration by the consumer's attorney within thirty days of the consumer's acceptance of the decision but in no case after a manufacturer's compliance with a decision;

(d) Upon receipt of the board's decision, the Lemon Law administration will distribute it to the parties by certified mail or e-mail if requested by a party.

(2) Upon request of a party, an arbitrator shall make factual findings and modify the offset total where the wear and tear on those portions of the motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space is significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer's use of the motor home in an arbitration decision awarding repurchase or replacement of a new motor vehicle ~~((originally purchased or leased at retail after June 30, 1998))~~. An arbitrator will consider the actual amount of time that portions of the motor home were in use as dwelling, office or commercial space. The arbitrator shall not consider wear and tear resulting from:

(a) Defects in materials or workmanship in the manufacture of the motor home including the dwelling, office or commercial space;

(b) Damage due to removal of equipment pursuant to RCW 19.118.095 (1)(a); or

(c) Repairs.

The modification to the reasonable offset for use may not result in the addition or reduction of the offset for use calculation by more than one-third. The modification shall be

specified as a percentage for reduction or addition to the offset calculation. The modification to the reasonable offset for use shall apply to the offset calculation at the time of repurchase or replacement of the motor home.

(3)(a) ~~((H))~~ A motor home manufacturer is independently liable for compliance with a decision awarding repurchase or replacement of the motor home if the manufacturer:

(i) Has met or exceeded the reasonable number of attempts to diagnose or repair the vehicle as set forth in RCW 19.118.041 (3)(a) or (b); or

(ii) Is responsible for sixty or more applicable days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the motor home manufacturer is independently liable for compliance with a decision awarding repurchase or replacement of the motor home.

(b) If a motor home manufacturer has not met the criteria set forth in (a)(i) and (ii) of this subsection, but has contributed to the combined total of sixty or more days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the manufacturer is jointly liable with the other liable motor home manufacturers for compliance with a decision awarding repurchase or replacement of the motor home.

(c) If a motor home manufacturer has met or exceeded the reasonable number of attempts to diagnose or repair the vehicle as set forth in RCW 19.118.041 (3)(a) ~~((H))~~, (b), or (c) and the manufacturer, together with one or more other motor home manufacturers, contributed to a combined total of sixty or more days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the motor home manufacturer is jointly and severally liable for compliance with a decision awarding repurchase or replacement of the motor home.

(d) In a decision awarding repurchase or replacement of a motor home, and that allocates compliance liability, an arbitrator will identify the motor home manufacturer's minimum percentage of contribution to compliance with the award. In determining the allocation of liability among jointly liable motor home manufacturers, the arbitrator will consider a motor home manufacturer's contribution to the total number of applicable days out of service as a factor.

(e) When applicable as set forth in RCW 19.118.-090~~((S))~~ (6), the arbitrator must allocate liability for the consumer's costs and attorneys' fees among the liable motor home manufacturers represented by counsel. The arbitrator will specify the liable motor home manufacturer's minimum percentage of contribution to compliance with the award. The motor home manufacturer's minimum percentage of contribution for the consumer's costs and attorneys' fees may be different from the minimum percentage of contribution of the motor home manufacturer's compliance obligation due to other liable motor home manufacturers' lack of representation by counsel.

(f) An ~~((arbitrator))~~ arbitration decision must specify ~~((the decision))~~ that the lack of compliance, late or delayed compliance, or the filing of an appeal by another liable motor home manufacturer will not affect a motor home manufacturer's independent liability for compliance with a decision awarding repurchase or replacement of the motor home.

(g) ~~((At the conclusion of the arbitration hearing regarding a motor home purchased or leased after June 30, 1998;))~~ A motor home manufacturer may present testimony and other evidence regarding the allocation of liability for compliance with arbitration decisions awarding repurchase or replacement of the motor home. If the motor home manufacturers agree amongst themselves to terms for the allocation of liability for compliance obligations, the arbitrator must include the terms in the arbitration decisions awarding repurchase or replacement of the motor home if the terms are consistent with the arbitration decisions, specific, complete and not otherwise contrary to chapter 19.118 RCW.

(4) Included with the copy of the arbitration decision sent to the consumer shall be a form to be completed by the consumer, indicating acceptance or rejection of the decision and general information to the consumer explaining the consumer's right to appeal the decision to superior court. The consumer must return the form to the Lemon Law administration within sixty calendar days from the date of the consumer's receipt of the decision or the decision will be deemed to have been rejected as of the sixty-first day.

(5) The consumer shall have one hundred twenty calendar days from the date of the rejection of the decision to file a petition of appeal in superior court. At the time of filing an appeal, the consumer shall deliver by certified mail or by personal service a conformed copy of the petition to the attorney general.

(6) If the consumer accepts a decision which awards repurchase or replacement, the Lemon Law administration shall send a copy of the form completed by the consumer indicating acceptance to the manufacturer by certified mail ~~((for the board to))~~ or e-mail if requested by the manufacturer and shall include a manufacturer's intent form.

A verification of compliance form shall be sent to the consumer by the Lemon Law administration. The verification of compliance form shall be completed and returned to the Lemon Law administration by the consumer upon the manufacturer's compliance with the decision.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-221 Resale documents—Attorney general procedures. (1) When a vehicle has been determined by the new motor vehicle arbitration board, or has been adjudicated in a superior or appellate court of this state, as having one or more nonconformities or serious safety defects that have been subject to a reasonable number of attempts by the manufacturer to conform the vehicle to the warranty:

(a) The Lemon Law administration will provide the manufacturer with the "Lemon Law resale documents" necessary to resell or otherwise transfer the vehicle together with instructions regarding compliance with RCW 19.118.061 and applicable rules;

(b) The Lemon Law administration will provide the manufacturer with the required documents by certified mail at the conclusion of the period pursuant to RCW 19.118.-090(9) for a manufacturer to file an appeal or upon notice from the manufacturer of receipt of the vehicle, whichever occurs first.

(2) When a vehicle is the subject of a "settlement" under chapter 19.118 RCW:

(a) The Lemon Law administration will provide the manufacturer with the "Lemon Law resale documents" necessary to resell or otherwise transfer the vehicle together with instructions regarding compliance with the RCW 19.118.061 and applicable rules;

(b) The Lemon Law administration will provide the manufacturer with the required documents by certified mail or express mail upon notice of the settlement by the parties ~~((or upon receipt from a manufacturer sponsored dispute resolution program of a decision or award, and notice of the consumer's acceptance of the award for repurchase or replacement of a vehicle where the basis of the program's decision-making standards are specifically related to or identified as some or all of the provisions of chapter 19.118 RCW and which will result in the manufacturer reacquiring the new motor vehicle directly, through an agent or a motor vehicle dealer));~~

(c) The Lemon Law administration will provide the manufacturer with the required "Lemon Law resale documents" and instructions regarding compliance with this section by certified or express mail upon notice of the consumer's acceptance of a decision or award for repurchase or replacement of the consumer's vehicle from a manufacturer dispute program.

(3) When a vehicle is the subject of final determination, adjudication or settlement under a "similar law of another state":

(a) The Lemon Law administration will provide the manufacturer, agent, motor vehicle dealer or other transferor with the resale documents necessary to resell or otherwise transfer the vehicle together with instructions regarding compliance with this section;

(b) The Lemon Law administration will provide the manufacturer, agent, motor vehicle dealer or other transferor with the resale documents by certified mail upon receiving a written request for Lemon Law resale documents, which includes a description of the defects or conditions causing the vehicle to be reacquired by the manufacturer.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-222 Manufacturer duties upon receipt of a returned vehicle. The manufacturer must:

(1) Notify the Lemon Law administration and the department of licensing upon receipt of the vehicle from the consumer due to a determination, adjudication or settlement pursuant to chapter 19.118 RCW and chapter 44-10 WAC.

(2) Correct and warrant a serious safety defect and execute the appropriate section of the Lemon Law resale documents identifying corrections made to serious safety defect and nonconformities.

(3) Within sixty days of receipt of the vehicle submit a title application identifying corrections made to serious safety defect and nonconformities to the department of licensing in this state for title to the motor vehicle.

(4) Attach the "Lemon law resale windshield display," as provided by the Lemon Law administration, to the lower center of the front windshield or window on the driver's side of

the vehicle in a manner so as to be readily visible from the exterior of the vehicle.

~~((3) Correct and warrant a serious safety defect.~~

~~(4) Notify the Lemon Law administration and the department of licensing of correction of a nonconformity or serious safety defect and execute the appropriate section of the Lemon Law resale documents.))~~

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-300 Imposition of fine for manufacturer noncompliance with an arbitration decision.

(1) Pursuant to RCW 19.118.090, the Lemon Law administration program manager may impose a fine against a manufacturer if, after forty calendar days from the manufacturer's receipt of notice of consumer's acceptance of an arbitration decision, the manufacturer has not complied with the decision, notwithstanding any arbitration special master hearing or findings. Notice of the imposition of fine shall be to the manufacturer by certified mail, e-mail if requested by the manufacturer or personal service.

(2) A fine against the manufacturer for noncompliance may be imposed according to the following schedule for each day after the forty day calendar period:

DAYS 1 THROUGH 10	\$ 300.00 PER DAY
DAYS 11 THROUGH 20	\$ 500.00 PER DAY
DAYS 21 THROUGH 30	\$ 700.00 PER DAY
DAYS 31 AND ON	\$1000.00 PER DAY

The foregoing fines shall accrue until the manufacturer complies or until one hundred thousand dollars has accrued, whichever occurs first.

AMENDATORY SECTION (Amending WSR 02-12-093, filed 6/4/02, effective 7/5/02)

WAC 44-10-310 Request for review of imposition of fine.

(1) The manufacturer shall have ten days from the date of receipt of notice of imposition of fine to request a review of imposition of fine. The manufacturer's request for review of imposition of fine shall be sent to the Lemon Law administration in writing and shall state the reasons for the manufacturer's noncompliance with the arbitrator's decision within the forty calendar day period.

(2) Upon receipt of a request for review of imposition of fine, the Lemon Law administration shall have ten days to conduct a review or request additional information from the parties or other persons regarding manufacturer noncompliance.

(3) The review shall be limited to determining whether the manufacturer has shown by clear and convincing evidence that any delay or failure of the manufacturer to comply within forty calendar days following the manufacturer's receipt of notice of consumer's acceptance was beyond the manufacturer's control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. No other issues shall be considered in the review.

(4) The Lemon Law administration shall issue a written review determination which shall be delivered to the manu-

facturer by certified mail, e-mail if requested by the manufacturer or personal service.

(5) If it is determined that the manufacturer's noncompliance was beyond the manufacturer's control or was acceptable to the consumer as evidenced by a written statement from the consumer, the imposition of fine shall be rescinded. The imposition of fine shall be affirmed where the manufacturer has failed to show clear and convincing evidence as required by WAC 44-10-310(3). If the imposition of fine is affirmed, the manufacturer shall be liable for a fine according to the schedule specified in WAC 44-10-300(2) including all days during the pendency of review under this section and until compliance with the arbitrator's decision or until one hundred thousand dollars has accrued, whichever comes first.

(6) If a fine is rescinded under WAC 44-10-310(5) the Lemon Law administration program manager may impose a fine against the manufacturer where the manufacturer fails to comply with the agreement between the manufacturer and the consumer, or when the manufacturer fails to comply immediately after the circumstances no longer exist which made compliance beyond the control of the manufacturer. Notice of such fine shall be by certified mail, e-mail if requested by the manufacturer or ((personnel)) personal service to the manufacturer and shall be imposed according to the schedule in WAC 44-10-300(2), and imposition of such fine is subject to review by the Lemon Law administration upon request of the manufacturer under WAC 44-10-310.

WSR 09-19-109

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 08-13—Filed September 21, 2009, 5:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-15-171.

Title of Rule and Other Identifying Information: This proposal will establish new chapter 173-441 WAC, Reporting emissions of greenhouse gases. This new rule will implement RCW 70.94.151 in which the 2008 legislature directed the department of ecology (ecology) to adopt rules establishing a mandatory reporting system for emissions of greenhouse gases (GHGs) for owners or operators of:

1. A fleet of onroad motor vehicles that as a fleet emit at least 2,500 metric tons of GHGs annually in the state; or
2. A stationary source, a mobile source for transportation of people or cargo, or a combination of these stationary and mobile sources that emit at least 10,000 metric tons of GHGs annually in the state.

Hearing Location(s): Washington Department of Ecology, Eastern Regional Office, 4601 North Monroe Street, Spokane, WA 99205, on November 3, 2009, at 6:00 p.m.; and at the Washington Department of Ecology, Headquarters Building, 300 Desmond Drive S.E., Lacey, WA 98503, on November 5, 2009, at 6:00 p.m.

Date of Intended Adoption: January 20, 2010.

Submit Written Comments to: Nancy Pritchett, P.O. Box 47600, Olympia, WA 98504-7600, e-mail nancy.pritchett@ecy.wa.gov, fax (360) 407-7534, by 5:00 p.m., November 12, 2009.

Assistance for Persons with Disabilities: Contact Tami Dahlgren at (360) 407-6830 by October 27, 2009, 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 proposal is to adopt, as directed in chapter 70.94 RCW, a mandatory GHG reporting rule. The proposal will establish new chapter 173-441 WAC.

Reasons Supporting Proposal: The state of Washington has taken several steps to begin responding to climate change. Executive Order 07-02 established goals for the statewide reduction of emissions of GHGs within Washington over the next several decades as one of the methods of addressing climate change. The 2007 legislature passed chapter 80.80 RCW establishing statutory goals for statewide reductions in GHGs and setting a GHG emissions performance standard for baseload electric power generation. E2SHB 2815, passed by the 2008 legislature as part of the governor's climate change framework and primarily codified in chapters 70.235 and 70.94 RCW, requires the state to meet the emissions reductions goals established in 2007 and includes additional actions to reduce emissions of GHGs and build a clean energy economy. One element of this legislation is a requirement for owners or operators of large mobile sources and large stationary sources of GHGs to begin reporting emissions, beginning with 2009 emissions reported in 2010. Ecology is directed by statute to adopt rules to develop and implement a reporting system for those entities required to report. Establishing an inventory of GHG emissions will support future policy initiatives to meet the emissions reductions established in RCW 70.235.020.

Statutory Authority for Adoption: E2SHB 2815, codified primarily in chapters 70.235 and 70.94 RCW.
 Statute Being Implemented: Chapter 70.94 RCW.
 Rule is not necessitated by federal law, federal or state court decision.
 Name of Proponent: Department of ecology, air quality program, governmental.
 Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Pritchett, Lacey, Washington, (360) 407-6082.
 A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Note: Due to size limitations relating to the filing of documents with the code reviser, the small business economic impact statement (SBEIS) does not contain the appendices that further explain ecology's analysis. Additionally, it does not contain the raw data used in this analysis, or all of ecology's analysis of this data. However, this information is being placed in the rule-making file, and is available upon request. A full analysis of compliance costs is available in the associated cost-benefit analysis for this rule.

Executive Summary: Ecology is proposing a rule to require reporting of GHG emissions from sources in the state

(chapter 173-441 WAC). The proposed rule requires reporting of emissions from:

- Sites and fleets of aircraft, marine vessels, and rail equipment with direct emissions over 10,000 metric tons CO₂e (carbon dioxide-equivalent) of GHG emissions per year.
- Fleets of onroad vehicles emitting over 2,500 metric tons CO₂e of GHG emissions per year.

Ecology has analyzed the degree of disproportionate impact of the proposed rule on small business, and concluded that a disproportionate impact does exist. While yearly compliance costs for the largest 10% of businesses are expected to be up to \$0.48 per employee, compliance costs for small businesses are expected to be at least \$5.65 per employee. Even at the most conservative margin, small business costs per employee may be twelve times as large as for the largest businesses.

Ecology took various measures, within the scope of the authorizing statutes, to reduce this disproportionate burden, including:

- De minimis simplified estimation methods that make it easier for emitters to comply with the proposed rule. Ecology capped emissions permitted to use simplified estimation methods, to protect the integrity of the threshold, and to be fair to smaller emitters.
- A lower percentage of total program costs will be paid by small emitters, aiding the group of small emitters as a whole.
- Some of the smallest emitters are likely to be fleet operators - ecology concentrated outreach and calculation tool assistance for those reporters.
- Developed a simplified estimation method for on-road fleets that greatly reduces data tracking. Also expanded simplified estimation methods for on-road refrigerants.
- Provided flexibility in quantification method tier selection to reduce capital and operational costs. Allowing methods with default calculation factors.
- Phased in reporting threshold, with a threshold of 25,000 metric tons CO₂e of GHG emissions for first year.
- Included recently passed enforcement discretion for first time paperwork violations (expanded to include large and small businesses).
- Used latest reporting date possible under statute (October 31) to facilitate data gathering and compliance.

Ecology estimated that the costs and payments created by the proposed rule will likely reduce manufacturing-related employment primarily in sectors subject to the proposed rule, while increasing service-sector employment as a result of employee wages earned in compliance with the rule being spent in the local economy. This balancing results in the following expected range of job impacts across the state economy, for all sizes of business.

- Compared to the proposed federal rule, ecology's proposed rule may result in the loss of two jobs, up to a gain of eleven jobs.
- Compared to no reporting required, ecology's proposed rule may result in the loss of one job, up to a gain of twenty-one jobs.

Chapter 1: Background: Ecology is proposing a rule to require reporting of GHG emissions from certain sources in the state.

Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined the proposed rule, chapter 173-441 WAC, has a disproportionate impact on small business. Therefore, ecology included cost-minimizing features in the rule where it is legal and feasible to do so.

This document provides the public with an overview of the methods ecology used to perform its analysis, and the features of the rule and rule-development process specifically addressing small business needs. Small businesses are defined as those with fifty or fewer employees.

Due to size limitations relating to the filing of documents with the code reviser, the SBEIS does not contain the appendices that further explain ecology's analysis. Additionally, it does not contain the raw data used in this analysis, or all of ecology's analysis of this data. However, this information is being placed in the rule-making file, and is available upon request. A full analysis of compliance costs is available in the associated cost-benefit analysis for this rule.

Chapter 2: Compliance Costs for Washington Businesses: Quantified Costs of the Proposed Rule to Sites and Fleets of Aircraft, Marine Vessels, and Rail Equipment Emitters.

Ecology estimated the quantifiable costs of the proposed rule to the regulated community by determining expected reporters, and estimating the range of compliance costs for each industry. Due to uncertainty over the true long-run baseline for comparison, ecology compared the proposed rule's impacts to two baselines: The proposed federal GHG reporting rule at the time of this publication, and the existing regulatory context of no regulation.

Coverage Under the Proposed Federal Rule: Ecology expects the proposed federal reporting rule to capture emissions from the largest industrial emitters. Ecology developed an estimate of the number of Washington state sites impacted by the federal reporting rule, based on reported fuel consumption and business output. Ecology developed a list of seventy-eight specific reporters that likely emit over the federal threshold of 25,000 metric tons CO₂e per year, from industrial processes covered by the federal rule (Washington department of ecology, 2009).

Based on the relative proportions of reporters to nonreporters at the national level (Environmental Protection Agency (EPA), 2009), ecology assumed one hundred businesses in Washington would need to determine whether they are reporters under the proposed federal rule. This number is highly conservative, base[d] on ecology's knowledge of the industries reporting under the proposed federal rule, and those industries in Washington state. However, ecology chose this estimate based on the proportion of reporters to nonreporters in the United States as a whole.

Coverage Under No Reporting: Under the existing regulatory scheme, no regulations exist enforcing reporting of GHG emissions. This is the regulatory context of the proposed rule at the time of this publication. There are no existing costs or benefits under the no reporting scenario, as there are no compliance requirements.

Coverage Under the Proposed Rule: Ecology expects coverage under the proposed rule to include several manufacturing, commercial, and utility sites, including those reporting under the federal reporting rule. In addition, ecology expects the proposed rule to cover significant mobile sources of aircraft, marine vessel, and rail equipment emissions. The proposed rule's lower reporting threshold and broader base (compared to the proposed federal rule) is expected to include more reporters, largely because of the lower threshold itself, but also to a minor extent because of broader inclusion of indirect, biomass, and on-site emissions types that will add to basic industrial process emissions.

Ecology's proposed rule requires reporting of indirect emissions as well, but only once the reporting threshold is exceeded. Therefore, indirect emissions reporting is not expected to affect the number of reporters or the number of assessments of whether to report, but increases what is required of reporters.

Based on the energy intensity of different production activities, and employment size of firms as a proxy for operation size, ecology estimated that about three hundred forty sites and nonroad mobile sources (aircraft, marine vessels, and rail equipment) in the state are likely to be required to report under the proposed rule (Washington state employment security department. Workforce Explorer; Nicholas Institute for Environmental Policy Solutions, 2007; and Energy Information Administration, 2002). This includes seventy-eight sites expected to report under the federal rule, if applicable. Ecology expects that some remaining sites and nonroad mobile sources in the state, in manufacturing, utility, and commerce fields will need to determine their reporting status, but will not need to report. Ecology estimated there are about three thousand remaining possible emitters that may need to determine reporting status, in industries regulated by the proposed rule (Employment security, 2009).

Within the three hundred forty estimated reporters, ecology also determined that thirty-six emitters were likely to report mobile emissions from marine vessels, while another twenty two were possible, though less likely to become reporters. For rail emissions, ecology determined that eight emitters were likely reporters under the proposed rule, while another six were possible reporters. For aircraft emissions, ecology determined that five emitters were likely reporters, while another ten were possible reporters. For emissions from nonroad fleets of mobile sources, ecology assumed the number of "possible" reporters discussed above was a conservative estimate of potential nonreporters, totaling thirty eight.

Cost Estimation - Reporters for Sites and Fleets of Aircraft, Marine Vessels, and Rail Equipment: Ecology developed a list of likely reporters, by site or fleet of nonroad mobile sources, under the proposed rule. For each of these operations, ecology developed an estimated facility compliance cost by industry, on-site vehicle compliance cost, and/or mobile fleet of aircraft, rail equipment, and marine vessels

compliance cost, if applicable. Ecology estimated a range of compliance costs, tied to labor and capital costs developed by the EPA for its regulatory impact analysis for the proposed federal rule (EPA, 2009).

For those emitters likely reporting under the proposed federal rule, as well, ecology included cost estimates for only additional reporting of indirect emissions, biomass, and limited on-site vehicle emissions.

Results - Compared to Proposed Federal Rule: Based on its analysis of compliance costs for sites and fleets of nonroad mobile sources, ecology estimated total annualized compliance costs of \$2 million to \$4.5 million, relative to the proposed federal rule. See the associated cost-benefit analysis for a breakdown of compliance costs.

Results - Compared to No Reporting: Based on its analysis of compliance costs for sites and fleets of nonroad mobile sources, ecology estimated total annualized compliance costs of \$2.5 million to \$6.4 million, relative to no reporting required. See the associated cost-benefit analysis for a breakdown of compliance costs.

Cost Estimation - Nonreporters for Sites and Fleets of Aircraft, Marine Vessels, and Rail Equipment: Based on the industries impacted in ecology's cost analysis for reporters, ecology assumed approximately three thousand sites and fleets of nonroad mobile sources in the state would need to determine what action to take in compliance with the rule, but would not need to report. Ecology followed the EPA's assumptions on the labor required to determine reporting status (EPA, 2009).

Results - Compared to the Proposed Federal Rule OR to No Reporting: The range of site-level fleet-level (for nonroad mobile source fleets) costs for nonreporters was determined to be \$150 to \$300 per nonreporter. Ecology annualized this cost over twenty years, and estimated an annualized cost of \$13 - \$44. Summed across all nonreporters determining reporting status, this is a total annual compliance cost of thirty-nine thousand to one hundred thirty-two thousand. See the associated cost-benefit analysis for a breakdown of compliance costs.

Although the above annualized cost is a relatively small portion of overall expected compliance costs, ecology emphasizes that many nonreporters would be able to determine reporting status through attendance of a free workshop, or through a phone call with ecology staff. The implicit cost of labor and time in this scenario is similar to the annualized cost estimated above.

Cost Estimation - Reporting Fees - Sites and Fleets of Aircraft, Marine Vessels, and Rail Equipment: Ecology estimated that program costs will be three hundred thirty-five thousand per year.

To allocate reporter fees across fleets, small emitters, and large emitters, ecology followed the language in the proposed rule. Ecology broke the budget down into a flat fee (20% of the estimated total program cost), and additional fee paid only by stationary and combined source (not fleet) reporters pay. In turn, the 80% of the fee was broken down into 50% paid by large emitters, and 30% paid by small emitters. Ecology then divided the total fees to be paid by reporters to estimate that:

- On-road fleet reporters pay only the flat fee of \$105 per year.
- Small sites and fleets of nonroad mobile sources will pay a flat fee, plus a variable fee, totaling \$643 per year.
- Large sites and fleets of nonroad mobile sources will pay a flat fee plus a variable fee, totaling \$2,500 per year.

These are estimated values based on the expected annual costs of the program at the time of this publication. If the realized composition of reporters and nonreporters differs from ecology's assumptions, or program costs change, actual fees may differ.

Results - Compared to the Proposed Federal Rule OR to No Reporting: Ecology multiplied the estimated fees for small and large sites and nonroad mobile sources, by the numbers of expected reporters. The total fees paid by sites and fleets of aircraft, marine vessels, and rail equipment reporters would be two hundred ninety-five thousand.

Quantified Costs of the Proposed Rule to Fleets of On-Road Motor Vehicles: Ecology determined which fleets in the state were likely fleet reporters under the proposed rule. This determination was based on the best information available on the number of vehicles in a fleet, and for some fleets, the types of vehicles in the fleet (department of licensing, 2009).

Based on its analysis of fleet size and composition, ecology determined that approximately four hundred fleets would likely be required to report emissions under the proposed rule. The remaining nearly six hundred identified fleets in the state are expected to incur only the costs of determining whether to report.

Cost Estimation - Fleets of On-Road Motor Vehicles: For reporting fleets, ecology estimated costs based on EPA's estimated reporting burden for the SmartWay Transport Partnership (EPA, 2009b). The SmartWay program is a voluntary program that requires many of the same reporting information and data as the proposed rule, as well as using a similar calculation and reporting format.

The base cost used by ecology for reporting emissions from a simple fleet (one type of vehicle) is the reporting cost based on the SmartWay analysis. To reflect the increasing complexity of reporting emissions from multiple vehicle sizes, types, and uses, ecology assumed conservatively there were no economies of scale, and that the reporting cost would be incurred additively for each type of vehicle reported. This is a highly conservative estimate, since ecology expects considerable economies of scale in understanding regulation, data gathering, calculations, and reporting. Ecology did not quantify a more likely estimate in this case, because it was not possible to confidently quantify the degree to which economies of scale will take place.

For those expected reporters that did not have data available on vehicle types, ecology assumed the cost distribution was the same as the distribution across other reporters, and assigned costs accordingly. Across all reporters (those with known vehicle types, and those without vehicle type data), annualized fleet-level costs ranged from \$254 to \$1,527.

For nonreporters, ecology assumed only basic planning and calculation tasks were necessary for determining report-

ing status. To maintain consistency with other mobile emissions nonreporters (aircraft, marine, and rail emitters) ecology assumed that fleet nonreporters would incur the same costs as other mobile nonreporters (EPA, 2009). Ecology calculated annual fleet-level costs for nonreporters between \$150 and \$500, or an annualized equivalent of \$13 to \$44.

Results - Compared to the Proposed Federal Rule OR to No Reporting: Summing across all reporters and nonreporters of on-road vehicle fleet emissions, ecology estimated the proposed rule will have a direct compliance cost of \$0.6 million to \$0.8 million, per year.

Cost Estimation - Reporting Fees - Fleets of On-Road Motor Vehicles: Ecology estimated that total fees across all expected reporters will be \$335 thousand per year. To allocate reporter fees across fleets, small emitters, and large emitters, ecology followed the language in the proposed rule. Ecology broke the budget down into a flat fee (20% of the estimated total program cost), and additional fee paid only by stationary and combined source (not fleet) reporters pay.

Results - Compared to the Proposed Federal Rule OR to No Reporting: On-road fleet reporters are required to pay only the flat fee under the proposed rule. Ecology then divided the total on-road fleet fees to be paid by reporters to estimate that on-road fleet reporters will pay a flat fee of \$105 per year. Multiplied by approximately four hundred on-road fleet reporters, this is over forty thousand per year.

See the associated cost-benefit analysis for this rule for a full discussion of cost estimation.

Chapter 3: Quantification of Cost Ratios: Ecology estimated that the proposed rule - relative to the baseline of the proposed federal reporting rule - generates the following quantifiable costs:

- Costs to operators of GHG sources, combinations of sources, air, rail, and marine emissions of \$2.9 million - \$6.6 million, including reporters and nonreporters.
- Costs to operators of on-road vehicle fleets of \$0.6 million - \$0.8 million, including reporters and nonreporters.
- Reporter fees of three hundred thirty-five thousand, funding the reporting program.

Relative to a baseline of no reporting required, ecology estimated the proposed rule generates the following quantifiable costs:

- Costs to operators of GHG sources, combinations of sources, air, rail, and marine emissions of \$3.4 million - \$7.5 million, including reporters and nonreporters.
- Costs to operators of on-road vehicle fleets of \$0.6 million - \$0.8 million, including reporters and nonreporters.
- Reporter fees of three hundred thirty-five thousand, funding the reporting program.

These quantitative values represent the costs of equipment, supplies, labor, professional services, administrative costs, and other labor and capital costs of the proposed rule relative to the baseline.

These costs are not uniformly spread across businesses, especially as pertains to business size. Ecology matched industries and, where possible, individual businesses with employment numbers (ESD, 2009; Hoovers, 2009). Ecology then determined the interaction between compliance costs and business size.

Based on the interaction of business size and compliance costs, ecology determined:

1. Which businesses or subsets of industries are required to comply with the proposed rule, and incur costs.
2. Which businesses are small, and which businesses comprise the largest 10% of impacted businesses.

Ecology divided each site's or fleet's compliance costs by the number of employees there. Ecology then averaged these cost-to-employment ratios for the small business group, and the large business group.

Ecology calculated the broadest range possible for the average annualized cost per employee as \$6.43 to \$30,927 for small businesses impacted by the proposed rule. The average annualized cost per employee for the largest 10% of businesses was calculated to be 0.08 cents to \$10.

Most of the range of average costs per employee for small businesses is higher than the range for the largest businesses, although the ranges overlap between \$6.43 and \$10.

A contributing factor to the largest possible average annual costs per employee, for small businesses, is the appearance in the data of sole proprietorships that own large businesses. When a range of employment was available for a business, ecology conservatively chose the smallest employment number available, as not to underrepresent small businesses in the data. This contributed to the largest small business costs per employee. Ecology believes a single-employee reporter is highly unlikely to exist under the proposed rule, and the appearance of sole proprietorships in the data is a result of conservative data usage, and data limitations.

A sole proprietorship is made additionally unlikely by the high likelihood that small reporters will have smaller emissions and less complicated calculations, making compliance costs or costs to determine whether to report smaller.

Irrespective of the possible existence of a sole proprietorship, ecology calculated disproportionate costs per employee, and concluded that the proposed rule will likely impose disproportionate costs on small business. Ecology included cost-mitigating components in the proposed rule to reduce this disproportionate impact. This small business cost mitigation is further described in the next chapter.

Chapter 4: Actions Taken to Reduce Small Business Impacts: Ecology took a number of actions in the proposed rule, to reduce the disproportionate impacts on small businesses. It is important to note that small businesses are likely to be low emitters. Aspects of the proposed rule that attempt to reduce the disproportionate compliance costs to small businesses include:

- De minimis simplified estimation methods that make it easier for emitters to comply with the proposed rule. Ecology capped emissions permitted to use simplified estimation methods, to protect the integrity of the threshold, and to be fair to smaller emitters.

- A lower percentage of total program costs will be paid by small emitters, aiding the group of small emitters as a whole.
- Some of the smallest emitters are likely to be fleet operators - ecology concentrated outreach and calculation tool assistance for those reporters.
- Developed a simplified estimation method for on-road fleets that greatly reduces data tracking. Also expanded simplified estimation methods for on-road refrigerants.
- Provided flexibility in quantification method tier selection to reduce capital and operational costs. Allowing methods with default calculation factors.
- Phased in reporting threshold, with a threshold of 25,000 metric tons CO₂e of GHG emissions for the first year.
- Included recently passed enforcement discretion for first time paperwork violations (expanded to include large and small businesses).
- Used latest reporting date possible under statute (October 31) to facilitate data gathering and compliance.

Chapter 5: Small Business Involvement: Ecology attempted to identify potential reporters, including small businesses, and invite them to technical assistance workshops help throughout the state. This also informed smaller reporters about the rule and led to many one-on-one technical assistance contacts between potential reporters and ecology staff. Ecology identified on-road motor vehicle fleets as a potential source of small business reporters due to the lower threshold, and concentrated outreach in this area early in the process. Ecology also developed free tools to help these reporters determine if they triggered the threshold. Ecology's stakeholder meetings were open to the public, and the agency e-mailed updates and invitations to all parties that expressed interest in the rule, including small businesses.

Chapter 6: NAICS Codes of Impacted Industries: Ecology expects the proposed rule to impact a broad range of industries. Table 1 presents the NAICS codes of those industries. For industry groups with all subindustries possibly impacted, ecology has listed only the 3-digit group code.

Table 1: NAICS Codes Likely Impacted by the Proposed Rule					
221	2212	3329	4413	5152	5629
311	2213	3331	4441	5171	6111
321	2361	3332	4442	5172	6112
322	2362	3339	4451	5179	6215
324	2371	3341	4471	5221	6216
325	2372	3345	4521	5222	6219
327	2373	3359	4529	5234	6221
332	2379	3361	4539	5239	6241
335	2381	3364	4543	5241	6242
336	2382	3366	4811	5311	6244
481	2383	3371	4821	5312	7127
482	2389	4231	4831	5321	7223
483	3112	4233	4841	5322	8114

492	3114	4234	4842	5324	8121
562	3115	4235	4851	5411	8123
622	3116	4236	4852	5413	8129
1111	3118	4237	4853	5416	8131
1112	3119	4238	4855	5417	8133
1113	3121	4239	4859	5418	8134
1114	3211	4241	4882	5419	
1119	3219	4242	4883	5511	
1121	3222	4244	4884	5612	
1133	3241	4245	4885	5613	
1151	3254	4246	4889	5615	
2111	3255	4247	4921	5616	
2122	3256	4248	4931	5617	
2123	3273	4249	5111	5619	
2131	3311	4411	5112	5621	
2211	3323	4412	5151	5622	

Chapter 7: Impact on Jobs: Ecology used the Washington state office of financial management's 2002 Washington input-output model (OFM-IO) to estimate the proposed rule's first-round impact on jobs across the state. This methodology estimates the impact as reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Compliance costs incurred by an industry, or industries, are entered in the OFM-IO model as decreases in spending and investment.

Ecology grouped total expected annualized costs by industry, and calculated a total present value cost over twenty years to each industry group. Ecology used a nominal discount rate of 7%, and accounted for expected inflation as the average inflation over the last decade. Compliance costs do not disappear, however, once spent by businesses; they are earned as wages or capital income by employees and suppliers performing GHG analysis and reporting. Those funds cycle into the economy, as well.

Table 2 summarizes the estimated job impacts over twenty years resulting from the proposed rule.

Baseline: Proposed Federal Rule	
Low cost	2 jobs lost (manufacturing losses offsetting service and retail gains)
High cost	11 jobs created (service sector and retail gains offsetting manufacturing losses)
Baseline: No-Reporting	
Low cost	1 job lost (manufacturing losses offsetting service and retail gains)
High cost	21 jobs created (service sector and retail gains offsetting manufacturing losses)

References: EIA, Energy Information Administration (2002). Manufacturing Energy Consumption Survey. Table

6.4 Manufacturing fuel consumption by Manufacturing Industry and Employment Size.

E2SHB 2815. Adopted 2008 legislative session, and codified primarily in chapters 70.235 and 70.94 RCW.

EPA (2009). Regulatory Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions Proposed Rule (GHG Reporting), Final Report. http://www.epa.gov/climatechange/emissions/downloads/GHG_RIA.pdf.

EPA (2009). Supporting Statement for EPA Information Collection Request Number 2265.01 "Information Collection Activities Associated with the SmartWay Transport Partnership." Exhibit 1.

Federal Register (2008). Docket ID No. EPA-HQ-OAR-2008-0508. Environmental Protection Agency proposed a federal GHG reporting rule.

Nicholas Institute for Environmental Policy Solutions (2007). Size Thresholds for GHG Regulation: Who Would be Affected by a 10,000 ton CO₂ Emission Rule.

State of Washington, office of the governor (2007). Executive Order 07-02, Washington climate change challenge.

Ecology (2009). Significant Sources of Greenhouse Gas Emissions in Washington. http://www.ecy.wa.gov/climate-change/docs/20090520_GHGsources.pdf.

A copy of the statement may be obtained by contacting Kasia Patora, Department of Ecology, Economic and Regulatory Research, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail kasia.patora@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kasia Patora, Department of Ecology, Economic and Regulatory Research, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail kasia.patora@ecy.wa.gov.

September 21, 2009

Polly Zehm

Deputy Director

Chapter 173-441 WAC

REPORTING EMISSIONS OF GREENHOUSE GASES

NEW SECTION

WAC 173-441-010 Purpose. The purpose of this rule is to develop a comprehensive inventory of greenhouse gas emissions in Washington state by establishing a reporting system for emissions of greenhouse gases, as required in chapter 70.94 RCW. An inventory of greenhouse gas emissions will support the legislature's intent to limit and reduce emissions of greenhouse gases consistent with the emissions reductions requirements established in RCW 70.235.020.

NEW SECTION

WAC 173-441-020 Consistency with federal regulations. Should the federal government adopt rules sufficient to track progress toward the emissions reductions required by RCW 70.235.020, the department must amend this chapter,

as necessary, to seek consistency with the federal rules to ensure duplicate reporting is not required. It is the department's intent that the reporting requirements of this chapter be consistent with any federal greenhouse gas emission reporting requirements to the extent required by RCW 70.94.151.

NEW SECTION

WAC 173-441-030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

"Activity data" means information collected and used to calculate greenhouse gas emissions. Examples include but are not limited to: Fuel use, fuel properties, electricity consumption, mileage, location, duration of operation, and number of emission units.

"Aircraft" means any vehicle for transporting people or cargo by air, including, but not limited to, airplanes, helicopters, and airships. Any mobile equipment carried on or moved by aircraft and capable of emitting greenhouse gases while in transit, including but not limited to: Air conditioning units, refrigeration units, and auxiliary power units, is considered to be part of the aircraft.

"Auxiliary power unit" means equipment carried on or moved by a mobile source whose purpose is to provide energy during locomotion for functions other than propulsion.

"Biomass" means plants or parts of plants, animal waste, or any product made of either of these, and includes wood and wood products, agricultural residues and wastes, biologically derived organic matter found in municipal and industrial wastes, landfill gas, bioalcohols, spent pulping liquor, sludge gas, and animal- or plant-derived oils, and fuels derived from biomass.

"Capital lease" means a lease that transfers substantially all the risks and rewards of ownership to the lessee and is accounted for as an asset on the balance sheet of the lessee, as described in the Statement of Financial Accounting Standards 13, Accounting for Leases, issued November 1976. Also known as a finance lease or financial lease.

"Carbon dioxide equivalents" or "CO₂e" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

"Certification" or "certify" means a written and signed certification statement by the designated representative that, based on information and belief formed after reasonable inquiry, the reported emissions are true, accurate, complete, free of material misstatement, and comply with the requirements of this chapter.

"Department" means department of ecology.

"Designated representative" means the person authorized by the reporter of an emissions source to represent and legally bind the reporter and to be responsible for certifying and submitting greenhouse gas emissions reports under this chapter. The designated representative must be an individual having responsibility for the overall operation of the emissions source such as the position of the plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having

overall responsibility for environmental matters for the company.

"Direct emissions" means emissions of greenhouse gases from sources of emissions, including stationary combustion sources, mobile combustion emissions, process emissions, and fugitive emissions.

"Emissions report" or "greenhouse gas emissions report" means the report of total emissions of greenhouse gases prepared by the reporter each year and submitted electronically to the department to meet the reporting requirements of this chapter.

"Finance lease" means the same as capital lease.

"Fleet of aircraft" means a collection of all aircraft operating in Washington state with a common owner or operator. Aircraft that operate exclusively within the boundaries of a specific site are considered part of the emissions from that site and not part of the fleet of aircraft.

"Fleet of marine vessels" means a collection of all marine vessels operating in Washington state with a common owner or operator. Marine vessels that operate exclusively within the boundaries of a specific site are considered part of the emissions from that site and not part of the fleet of marine vessels.

"Fleet of nonroad mobile sources" means a collection of each fleet of aircraft, fleet of marine vessels, and fleet of rail equipment operating in Washington state used for the transportation of people or cargo with a common owner or operator. Aircraft and marine vessels that operate exclusively within the boundaries of a specific site are considered part of the emissions from that site and not part of the fleet of nonroad mobile sources.

"Fleet of on-road motor vehicles" means a collection of all on-road motor vehicles operating in Washington state with a common owner or operator. On-road motor vehicles that operate exclusively within the boundaries of a specific site are considered part of the emissions from that site and not part of the fleet of on-road motor vehicles.

"Fleet of rail equipment" means a collection of all rail equipment operating in Washington state with a common owner or operator. All rail equipment operating in Washington state, including rail equipment operating exclusively in a single rail yard or other restricted location, is considered part of the fleet of rail equipment instead of being part of a site.

"Fugitive emissions" means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Global warming potential" or "GWP" means the ratio of radiative forcing (degree of warming to the atmosphere) that would result from the emission of one unit of a given greenhouse gas compared to one unit of carbon dioxide (CO₂). See Tables 100.2 and 100.3 in WAC 173-441-100(6).

"Greenhouse gas" and "greenhouse gases" includes carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆).

"Hydrofluorocarbons" or "HFCs" means a class of greenhouse gases primarily used as refrigerants, consisting of hydrogen, fluorine, and carbon.

"Intergovernmental Panel on Climate Change" or "IPCC" means the scientific intergovernmental body set up

by the World Meteorological Organization (WMO) and by the United Nations Environment Programme (UNEP).

"Indirect emissions" means emissions of greenhouse gases associated with the purchase of electricity, heating, cooling, or steam.

"Marine vessel" means any vessel for transporting people or cargo by sea or freshwater, including, but not limited to, tugboats and cargo, passenger, fishing, military, personal, and special purpose ships and boats. Any mobile equipment carried on or moved by a marine vessel and capable of emitting greenhouse gases while in transit, including, but not limited to, air conditioning units, refrigeration units, and auxiliary power units, is considered to be part of the marine vessel.

"Material misstatement" means one or more inaccuracies identified during the certification process that result in the total emissions of greenhouse gases reported being outside the ninety-five percent accuracy required under this chapter. The ninety-five percent accuracy in total emissions of greenhouse gases reported is required for all reporters.

"Mobile source" means any on-road motor vehicle, aircraft, marine vessel, or rail equipment used for the transportation of people or cargo.

"Nonroad mobile source" means any aircraft, marine vessel, or rail equipment used for the transportation of people or cargo.

"On-road motor vehicles" means any self-propelled vehicle required to be licensed for operation on the roads of Washington state. Any mobile equipment carried on or moved by an on-road motor vehicle and capable of emitting greenhouse gases while in transit, including, but not limited to, air conditioning units, refrigeration units, and auxiliary power units, is considered to be part of the on-road motor vehicle.

"Operating lease" means a lease that does not transfer the risks and rewards of ownership to the lessee and is not recorded as an asset in the balance sheet of the lessee as described in the Statement of Financial Accounting Standards 13, Accounting for Leases, issued November 1976.

"Operational control" means the authority to introduce and implement operating, environmental, health, and safety policies. When this authority is shared, the holder of the business license to operate the site, fleet of on-road motor vehicles, or fleet of nonroad mobile sources is considered to have operational control.

"Owner or operator" means any person who owns, leases, operates, controls, or supervises a source of emissions, as defined in this chapter.

"Perfluorocarbons" or "PFCs" means a class of greenhouse gases consisting on the molecular level of carbon and fluorine.

"Process emissions" means the emissions from industrial processes (e.g., cement production, ammonia production) involving chemical or physical transformations other than fuel combustion. For example, the calcination of carbonates in a kiln during cement production or the oxidation of methane in an ammonia process results in the release of process CO₂ emissions to the atmosphere. Emissions from fuel combustion to provide process heat are not part of process emissions, whether the combustion is internal or external to the process equipment.

"Rail equipment" means mobile equipment operating on a track, including, but not limited to: Locomotives, multiple units, railcars, rolling stock, railroad cars, and refrigerator cars. Any mobile equipment carried on or moved by rail equipment and capable of emitting greenhouse gases while in transit, including, but not limited to, air conditioning units, refrigeration units, and auxiliary power units, is considered to be part of the rail equipment.

"Reporter" means the owner or operator of an emissions source responsible for submitting an emissions report under the requirements of this chapter.

"Site" means all sources of emissions located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right of way, under common operational control and having the same first two digits of the Standard Industrial Classification (SIC) or same first three digits of the North American Industry Classification System (NAICS) code. Operators of military installations may classify such installations as more than a single site based on distinct and independent functional groupings within contiguous or adjacent military properties. Unless listed below, emissions from all mobile sources that operate exclusively within the boundaries of a site are part of that site. The following systems are considered a single site:

(a) All of an owner or operator's transmission or distribution pipelines and associated emitting units in Washington state are considered a single site;

(b) All of an owner or operator's electric transmission and distribution lines, substations, switch yards, and associated equipment in Washington state are considered a single site; and

(c) All rail equipment, including rail equipment operating exclusively in a single rail yard or other restricted location, is part of the fleet of rail equipment and not part of a site.

"Source" or "emissions source" or "source of emissions" means:

(a) Any stationary source of greenhouse gas emissions; or

(b) Any mobile source of greenhouse gas emissions that is used for the transportation of people or cargo.

"Stationary source" means any building, structure, facility, or installation that emits or may emit greenhouse gases.

"The Climate Registry" or "TCR" means the 501(c)3 nonprofit organization incorporated in Washington, D.C., March 14, 2007, with the purpose of setting consistent and transparent standards to calculate, verify and publicly report greenhouse gas emissions in North America.

"Tier" means an emission quantification method designated as acceptable in WAC 173-441-100, 173-441-110, or 173-441-500 through 173-441-800, or through petition according to WAC 173-441-120. Simplified estimation methods as described in WAC 173-441-130 are not considered tiered methods. If multiple tiers of emission quantification methods are available for a source or greenhouse gas, then the tiers are ranked alphabetically in order of preference from highest to lowest. If available, "Tier A" designates the preferred, or highest tier; "Tier B" represents an alternative second-highest tier; and "Tier C" represents the least preferred, or lowest tier. All methods adopted through the peti-

tion process in WAC 173-441-120 are designated as "Tier D" methods. In some cases there may be multiple tiers for a given source or greenhouse gas with the same letter designation (such as A1 and A2). Tiers with the same letter designation are considered equivalently ranked for the given source or greenhouse gas.

Note: Emission quantification methods described in IPCC documents use a numerical tier classification system that ranks the tiers from lowest to highest (example: Tier 3 is designated as preferred or higher than Tier 1).

"Total emissions of greenhouse gases" means all direct emissions and all indirect emissions.

"Transportation of people or cargo" or "transporting people or cargo" means movement of one or more people and/or raw or processed materials or commercial goods.

"Unified Business Identifier number" means a unique number that is assigned to a business by the Corporations Division of the Washington secretary of state or from the Washington state department of licensing.

"Waters of the state" means all of the lakes, rivers, ponds, streams, inland waters, harbors, salt waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, including coastal waters within three nautical miles seaward of the mean low-water mark of the coast of Washington.

NEW SECTION

WAC 173-441-040 Applicability. (1) **Reporting thresholds.** Chapter 173-441 WAC reporting requirements apply to:

(a) **Source or combination of sources of emissions.** The owner or operator of a source or combination of sources of emissions located in Washington state that has combined direct emissions from all sites and fleets of nonroad mobile sources of at least ten thousand metric tons of greenhouse gases in a calendar year, expressed as CO₂e; provided, that the phasing provisions in WAC 173-441-060 apply to the reporting of emissions occurring during 2009, 2010, and 2011; and

(b) **Fleet of on-road motor vehicles.** The owner or operator of a fleet of on-road motor vehicles that has direct emissions of at least two thousand five hundred metric tons of greenhouse gases in a calendar year in Washington state, expressed as CO₂e. The reporting threshold for emissions from fleets of on-road motor vehicles is not phased in and emissions must be reported according to subsection (2)(c) of this section for 2009 emissions reported in 2010 and subsequent years.

(2) **Meeting reporting thresholds.** An owner or operator must use the process established below to determine if the direct emissions meet the applicable reporting threshold.

(a) **Reporting emissions from intrastate, interstate, and international travel.** When determining if the direct emissions meet the applicable thresholds in subsection (1)(a) or (b) of this section, the owner or operator must include the direct emissions generated in Washington state from intrastate, interstate, and international mobile sources.

(b) **Source or combination of sources of emissions.** An owner or operator of a source or combination of sources of

emissions must determine if its direct emissions meet the reporting threshold established in subsection (1)(a) of this section using the following methods:

(i) **Quantification methods.** An owner or operator of a source or combination of sources of emissions within Washington state must use the methods in WAC 173-441-100 when determining if direct emissions of greenhouse gases from these sources of emissions meet the applicable CO₂e annual reporting threshold.

(ii) **Mobile sources.** An owner or operator must include emissions from nonroad mobile sources when applying the CO₂e annual reporting threshold, including, but not limited to, emissions from its: Fleet of aircraft, fleet of marine vessels, fleet of rail equipment, and mobile sources that operate exclusively within the boundaries of a single site. An owner or operator must not include emissions from its fleet of on-road motor vehicles that operate beyond the boundaries of a single site when applying the CO₂e annual reporting threshold.

(iii) **Reporting emissions from intrastate, interstate, and international nonroad mobile sources.** An owner or operator must use the methods in WAC 173-441-080 to determine which emissions are generated within Washington state from intrastate, interstate, and international mobile sources when determining if a fleet of nonroad mobile sources meets the reporting threshold established in subsection (1)(a) of this section.

(iv) **Reporting total emissions of greenhouse gases.** Once an owner or operator determines that the direct emissions meet the reporting threshold for a source or combination of sources of emissions, the owner or operator must report the total emissions of greenhouse gases from those sources including direct emissions from fleets of on-road motor vehicles.

(c) **Fleet of on-road motor vehicles.** An owner or operator of a fleet of on-road motor vehicles must determine if the direct emissions meet the reporting threshold established in subsection (1)(b) of this section using the following methods:

(i) **Quantification methods.** An owner or operator of a fleet of on-road motor vehicles must use the methods in WAC 173-441-110 when determining if direct emissions of greenhouse gases from a fleet of on-road motor vehicles meet the two thousand five hundred metric tons of CO₂e annual reporting threshold.

(ii) **Aggregation of on-road motor vehicles.** An owner or operator of a fleet of on-road motor vehicles must combine the direct emissions of greenhouse gases from all on-road motor vehicles that operate beyond the boundaries of a single site when determining if the fleet of on-road motor vehicles meets the two thousand five hundred metric tons of CO₂e reporting threshold.

(iii) **Reporting emissions from intrastate, interstate, and international on-road motor vehicles.** An owner or operator must use the methods in WAC 173-441-080(2) to determine which emissions are generated within Washington state from intrastate, interstate, and international on-road motor vehicles when determining if a fleet of on-road motor vehicles meets the two thousand five hundred metric tons of CO₂e reporting threshold.

(iv) **Reporting emissions of greenhouse gases.** If direct emissions generated in Washington state from a fleet of on-road motor vehicles meet the two thousand five hundred metric tons of CO₂e annual reporting threshold, the direct emissions of greenhouse gases generated in Washington state from the fleet must be reported.

NEW SECTION

WAC 173-441-050 Reporting responsibility. The owner or operator with operational control of an emissions source during the reporting period is the reporter and is responsible for submitting an emissions report under the requirements of this chapter. For the purposes of this rule, an owner or operator meeting one or more of the following conditions is deemed to have operational control of the emissions source:

(1) **Operational control and shared authority.** The owner or operator has operational control if it has the authority to introduce and implement operating, environmental, health, and safety policies. If this authority is shared between two or more owners or operators, the holder of the business license to operate the site, fleet of on-road motor vehicles, or fleet of nonroad mobile sources is considered to have operational control.

(2) **Leased sources of emissions.** Under a capital, finance, or operating lease, the lessee of an emissions source has operational control and is responsible for reporting the emissions.

(3) **Short term rentals.** For purposes of this chapter, leases or rental agreements of less than one year duration are considered short term rentals. Under a short term rental, the owner or operator of the rental company has operational control and is responsible for reporting emissions from the emissions source.

NEW SECTION

WAC 173-441-060 Phasing in the applicability of the reporting requirements for a source or combination of sources of emissions. The applicability of the reporting threshold for a source or combination of sources of emissions subject to the reporting threshold in WAC 173-441-040 (1)(a), is phased in as specified below. Refer to Table 060.1 of this section for a summary of the phasing schedule established in this section.

(1) **Phasing not applicable for fleets of on-road motor vehicles.** The reporting threshold for emissions from fleets of on-road motor vehicles is not phased in and emissions must be reported according to WAC 173-441-040 (2)(c) for 2009 emissions reported in 2010 and subsequent years.

(2) **Reporting 2009 emissions in 2010.** The thresholds and reporting requirements for 2009 emissions reported in 2010 are specified below. Refer to Figure 060.1 of this section for a flow chart of how to apply the reporting thresholds for 2009 emissions reported in 2010.

(a) **Reporting threshold for 2009 emissions reported in 2010.** For 2009 emissions reported in 2010, the reporting threshold for sources other than fleets of on-road motor vehi-

cles is twenty-five thousand metric tons of direct emissions, expressed as CO₂e.

(b) **Threshold determination for 2009 emissions reported in 2010.** When determining whether the reporting threshold in (a) of this subsection is met, an owner or operator with multiple sites or fleets of nonroad mobile sources within Washington state must calculate the direct emissions for each site and fleet of nonroad mobile sources separately. Each site or fleet of nonroad mobile sources that has direct emissions of at least twenty-five thousand metric tons of CO₂e is subject to the reporting requirements of this chapter. For 2009 emissions reported in 2010, an owner or operator is not required to report emissions from a site or fleet of nonroad mobile sources with direct emissions less than twenty-five thousand metric tons of CO₂e.

(i) **Sites.** For 2009 emissions reported in 2010, when determining whether the direct emissions of a site meet the twenty-five thousand metric tons of CO₂e reporting threshold, an owner or operator must include the direct emissions from any source or combination of sources located on the site, including all mobile sources that operate exclusively within the boundaries of the site.

(ii) **Fleet of marine vessels.** For 2009 emissions reported in 2010, when determining whether the direct emissions of a fleet of marine vessels meet the twenty-five thousand metric tons of CO₂e reporting threshold, an owner or operator must include the direct emissions from all marine vessels operating in Washington state beyond the boundaries of a single site.

(iii) **Fleet of rail equipment.** For 2009 emissions reported in 2010, when determining whether the direct emissions of a fleet of rail equipment meet the twenty-five thousand metric tons of CO₂e reporting threshold, an owner or operator must include the direct emissions from all rail equipment operating in Washington state.

(iv) **Fleet of aircraft.** For 2009 emissions reported in 2010, emissions from intrastate, interstate, and international fleets of aircraft are not required to be reported.

(v) **Intrastate, interstate, and international mobile sources.** An owner or operator must use the methods in WAC 173-441-080 to determine which emissions are generated within Washington state from intrastate, interstate, and international nonroad mobile sources when determining if a fleet of nonroad mobile sources meet the reporting threshold established in (a) of this subsection.

(c) **Reporting total emissions of greenhouse gases.** Once an owner or operator determines that the direct emissions from a site or fleet of nonroad mobile sources meet the reporting threshold established in (a) of this subsection, the owner or operator is responsible for reporting its total emissions of greenhouse gases from the site or fleet of nonroad mobile sources.

(d) **Report consistency requirements for 2009 emissions reported in 2010.** For 2009 emissions reported in 2010, the report consistency requirements in WAC 173-441-090 do not apply.

(3) **Reporting 2010 emissions in 2011.** The thresholds and reporting requirements for 2010 emissions reported in 2011 are specified below. Refer to Figure 060.1 of this sec-

tion for a flow chart showing how to apply the reporting thresholds for 2010 emissions reported in 2011.

(a) **Reporting threshold for 2010 emissions reported in 2011.** For 2010 emissions reported in 2011, the reporting threshold for sources other than fleets of on-road motor vehicles is ten thousand metric tons of direct emissions, expressed as CO₂e.

(b) **Threshold determination for 2010 emissions reported in 2011.** An owner or operator with multiple sites or fleets of nonroad mobile sources within Washington state must calculate the direct emissions for each site and fleet of nonroad mobile sources separately. Each site or fleet of nonroad mobile sources that has direct emissions of at least ten thousand metric tons of CO₂e is subject to the reporting requirements of this chapter. For 2010 emissions reported in 2011, an owner or operator is not required to report emissions from a site or fleet of nonroad mobile sources with direct emissions less than ten thousand metric tons of CO₂e.

(i) **Sites.** For 2010 emissions reported in 2011, when determining whether the direct emissions of a site meet the ten thousand metric tons of CO₂e reporting threshold, an owner or operator must include the direct emissions from any source or combination of sources of emissions located on the site, including all mobile sources that operate exclusively within the boundaries of the site.

(ii) **Fleet of marine vessels.** For 2010 emissions reported in 2011, when determining whether the direct emissions of a fleet of marine vessels meet the ten thousand metric tons of CO₂e reporting threshold, an owner or operator must include the direct emissions from all marine vessels operating in Washington state beyond the boundaries of a single site.

(iii) **Fleet of rail equipment.** For 2010 emissions reported in 2011, when determining whether the direct emissions of a fleet of rail equipment meet the ten thousand metric tons of CO₂e reporting threshold, an owner or operator must include the direct emissions from all rail equipment operating in Washington state.

(iv) **Fleet of aircraft.** For 2010 emissions reported in 2011, emissions from intrastate, interstate, and international fleets of aircraft are not required to be reported.

(v) **Intrastate, interstate, and international mobile sources.** An owner or operator must use the methods in WAC 173-441-080 to include emissions generated within Washington state from intrastate, interstate, and international nonroad mobile sources when determining if a fleet of nonroad mobile sources meets the reporting threshold established in (a) of this subsection.

(c) **Reporting total emissions of greenhouse gases.** Once an owner or operator determines that the direct emissions from a site or fleet of nonroad mobile sources meet the reporting threshold established in (a) of this subsection, the owner or operator is responsible for reporting its total emissions of greenhouse gases from the site or fleet of nonroad mobile sources.

(d) **Report consistency.** For 2010 emissions reported in 2011, the report consistency requirements in WAC 173-441-090 do not apply.

(4) **Reporting 2011 emissions in 2012.** The thresholds and reporting requirements for 2011 emissions reported in 2012 are specified below. Refer to Figure 060.1 of this sec-

tion for a flow chart of how to apply the reporting thresholds for 2011 emissions reported in 2012.

(a) **Reporting threshold for 2011 emissions reported in 2012.** For 2011 emissions reported in 2012 the reporting threshold for sources other than fleets of on-road motor vehicles is ten thousand metric tons of direct emissions, expressed as CO₂e.

(b) **Threshold determination for 2011 emissions reported in 2012.** An owner or operator with multiple sites or fleets of nonroad mobile sources within Washington state must calculate the direct emissions for each site and fleet of nonroad mobile sources separately. Each site or fleet of nonroad mobile sources that has direct emissions of at least ten thousand metric tons of CO₂e is subject to the reporting requirements of this chapter. For 2011 emissions reported in 2012, an owner or operator is not required to report emissions from a site or fleet of nonroad mobile sources with direct emissions less than ten thousand metric tons of CO₂e.

(i) **Sites.** For 2011 emissions reported in 2012, when determining whether the direct emissions of a site meet the ten thousand metric tons of CO₂e reporting threshold, an owner or operator must include the direct emissions from any source or combination of sources of emissions located on the site, including all mobile sources that operate exclusively within the boundaries of the site.

(ii) **Fleet of marine vessels.** For 2011 emissions reported in 2012, when determining whether the direct emissions of a fleet of marine vessels meet the ten thousand metric tons of CO₂e reporting threshold, an owner or operator must include the direct emissions from all marine vessels operating in Washington state beyond the boundaries of a single site.

(iii) **Fleet of rail equipment.** For 2011 emissions reported in 2012, when determining whether the direct emissions of a fleet of rail equipment meet the ten thousand metric tons of CO₂e reporting threshold, an owner or operator must include the direct emissions from all rail equipment operating in Washington state.

(iv) **Fleet of aircraft.** For 2011 emissions reported in 2012, emissions from intrastate, interstate, and international fleets of aircraft are not required to be reported.

(v) **Intrastate, interstate, and international mobile sources.** An owner or operator must use the methods in WAC 173-441-080 to determine which emissions are generated within Washington state from intrastate, interstate, or international nonroad mobile sources when determining if a fleet of nonroad mobile sources meets the reporting threshold established in (a) of this subsection.

(c) **Reporting total emissions of greenhouse gases.** Once an owner or operator determines that the direct emissions from a site or fleet of nonroad mobile sources meet the reporting threshold established in (a) of this subsection, the owner or operator is responsible for reporting its total emissions of greenhouse gases from the site or fleet of nonroad mobile sources.

(d) **Report consistency.** For 2011 emissions reported in 2012 and subsequent years, the report consistency requirements in WAC 173-441-090 do apply.

(5) **Reporting 2012 emissions in 2013 and reporting in subsequent years.** The thresholds and reporting requirements for 2012 emissions reported in 2013 and for each year

after are specified below. Refer to Figure 060.2 of this section for a flow chart showing how to apply the reporting thresholds beginning with 2012 emissions reported in 2013.

(a) **Reporting threshold for 2012 emissions reported in 2013 and all future reporting years.** For 2012 emissions reported in 2013 and all future reporting years the reporting threshold for sources other than fleets of on-road motor vehicles is ten thousand metric tons of direct emissions, expressed as CO₂e.

(b) **Threshold determination for 2012 emissions reported in 2013 and all future reporting years.** Beginning with 2012 emissions reported in 2013 and for all future years, an owner or operator must combine direct emissions from all sites and fleets of nonroad mobile sources located in Washington state when determining whether the direct emissions meet the ten thousand metric tons of CO₂e reporting threshold.

(i) **Intrastate aircraft.** Beginning with 2012 emissions reported in 2013, an owner or operator of intrastate aircraft, defined as aircraft with flights that have both the takeoff and landing located inside Washington state must:

(A) Include direct emissions of greenhouse gases from the intrastate aircraft when determining if the combined

direct emissions from sites and fleets of nonroad mobile sources meet the reporting threshold of ten thousand metric tons of greenhouse gases per year, expressed as CO₂e; and

(B) Report the total emissions of greenhouse gases from the intrastate aircraft if the reporting threshold is met.

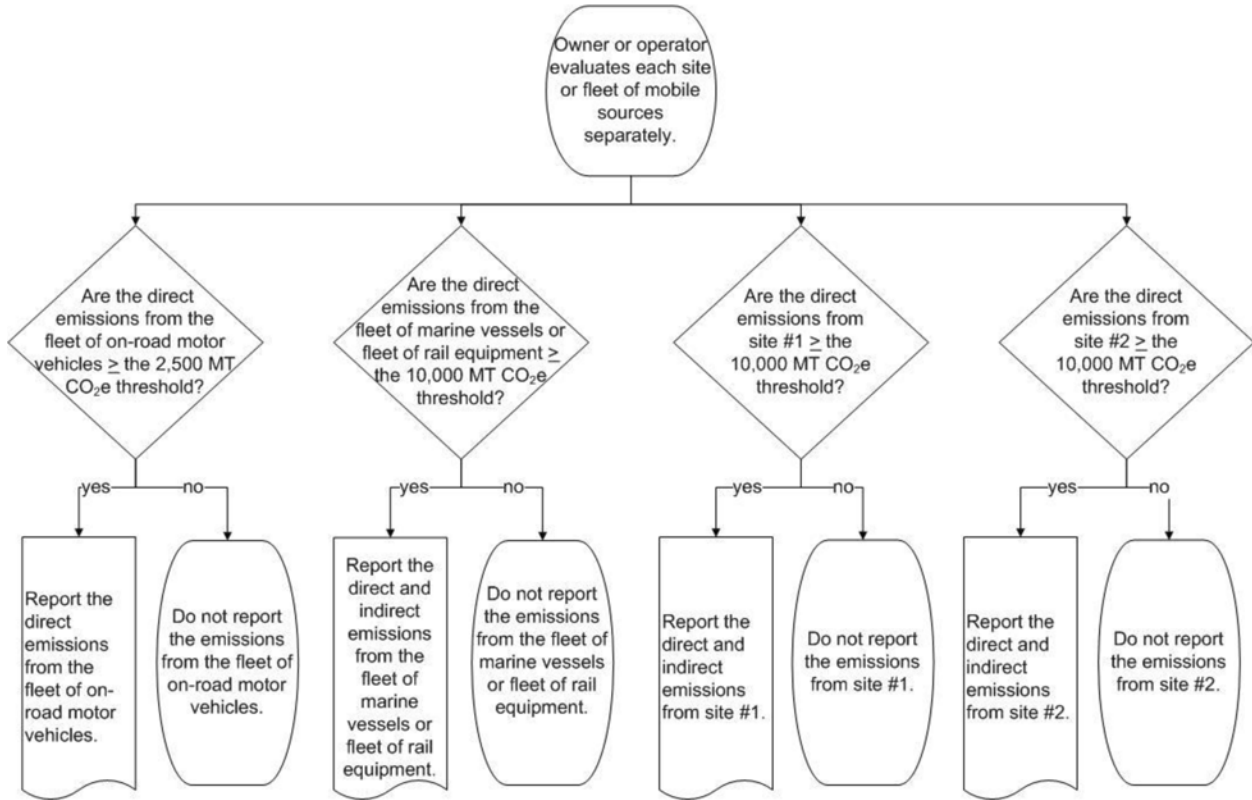
(ii) **Intrastate, interstate, or international nonroad mobile sources.** An owner or operator must use the methods in WAC 173-441-080 to determine which emissions are generated within Washington state from intrastate, interstate, or international nonroad mobile sources when determining if a fleet of nonroad mobile sources meets the reporting threshold established in (a) of this subsection.

(c) **Reporting total emissions of greenhouse gases.** Once an owner or operator determines that the combined direct emissions from all sites and fleets of nonroad mobile sources meet the reporting threshold established in (a) of this subsection, the owner or operator is responsible for reporting its total emissions of greenhouse gases, including emissions generated within Washington state from its fleet of on-road motor vehicles operating beyond the boundaries of a single site.

Table 060.1. Phasing Schedule for a Source or Combination of Sources of Emissions

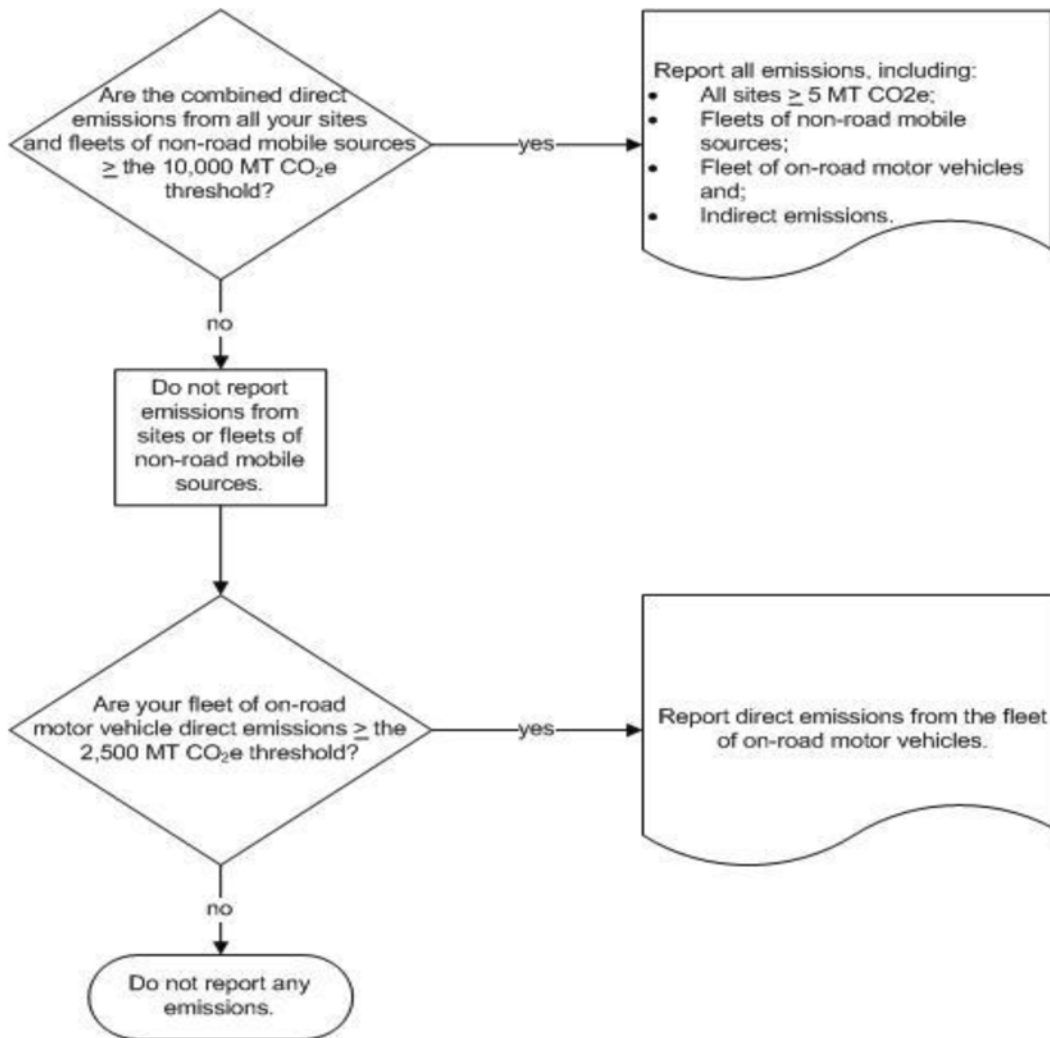
Draft Rule Subsection	Emissions Year	Application of Reporting Threshold	Reporting Threshold for a Source of Emissions
WAC 173-441-060(2)	2009 (2010 report)	Each site or fleet of nonroad mobile sources	≥ 25,000 MT CO ₂ e of direct emissions
		Fleets of on-road motor vehicles	≥ 2,500 MT CO ₂ e of direct emissions
WAC 173-441-060(3)	2010 (2011 report)	Each site or fleet of nonroad mobile sources	≥ 10,000 MT CO ₂ e of direct emissions
		Fleets of on-road motor vehicles	≥ 2,500 MT CO ₂ e of direct emissions
WAC 173-441-060(4)	2011 (2012 report)	Each site or fleet of nonroad mobile sources	≥ 10,000 MT CO ₂ e of direct emissions
		Fleets of on-road motor vehicles	≥ 2,500 MT CO ₂ e of direct emissions
WAC 173-441-060(5)	2012 (2013 report) and subsequent years	Combined direct emissions from all sites and fleets of nonroad mobile sources	≥ 10,000 MT CO ₂ e of direct emissions
		Fleets of on-road motor vehicles	≥ 2,500 MT CO ₂ e of direct emissions

Figure 060.1. Applying Reporting Thresholds for 2009 Emissions Reported in 2010*, 2010 Emissions Reported in 2011, and 2011 Emissions Reported in 2012



* NOTE: For 2009 emissions to be reported in 2010, replace 10,000 MT CO₂e with 25,000 MT CO₂e.

Figure 060.2. Applying Reporting Thresholds for 2012 Emissions Reported in 2013 and All Future Reporting Years



NEW SECTION

WAC 173-441-065 Deferred reporting requirements for owners or operators of interstate or international mobile sources. Owners or operators are not required to report emissions from flights of interstate or international commercial aircraft for which either the takeoff or landing occur outside Washington state. Emissions from intrastate aircraft must be reported beginning with 2012 emissions reported in 2013 as described in WAC 173-441-060(5).

NEW SECTION

WAC 173-441-070 Reporting requirements when direct emissions of greenhouse gases fall below reporting thresholds. The following reporting requirements apply when direct emissions of greenhouse gases fall below the applicable reporting threshold in WAC 173-441-040:

(1) **Submitting a written petition to end reporting requirements.** A reporter may submit a written petition to

the department to end the reporting requirements under this chapter when there is a change in operations that results in the permanent reduction of direct emissions below the applicable reporting threshold or when the emissions source permanently ceases operations. The petition must include a detailed description of the change in operations, supporting data to document the permanent change or cessation in operations, documentation of the emissions after the change in operations, and any other information as requested by the department. If the petition is not approved by the department, the reporting requirements in subsection (2) of this section apply when direct emissions of greenhouse gases fall below the applicable reporting threshold. An approval or denial issued by the department in response to a written petition filed under this subsection is a determination appealable to the pollution control hearings board per RCW 43.21B.110 (1)(h).

(2) **Reporting requirements when direct emissions of greenhouse gases fall below the applicable reporting**

threshold. Unless the reporter has received an approval to end reporting requirements pursuant to subsection (1) of this section, the reporter must continue to submit an annual emissions report when greenhouse gas emissions change such that the direct emissions fall below the applicable annual reporting threshold in WAC 173-441-040. The reporter must continue to submit an annual emissions report until direct emissions are below the applicable reporting threshold for a minimum of three consecutive years. When direct emissions are below the applicable reporting threshold for three consecutive years, the reporter is not subject to the reporting requirements of this chapter until direct emissions exceed the applicable threshold in any future calendar year.

NEW SECTION

WAC 173-441-080 Determining if greenhouse gas emissions from mobile sources occur in Washington state. An owner or operator of mobile sources must use the following methods consistently throughout its organization and over time to determine if its emissions occur in Washington state. Emissions that occur while a mobile source is in port, hotelling, or idling are considered to occur in the state in which the mobile source is located at the time of the activity and are the responsibility of the owner or operator of the mobile source.

(1) **Determining if greenhouse gas emissions from mobile sources that operate exclusively within the boundaries of a single site occur in Washington state.** If a mobile source operates exclusively within the boundaries of a single site, then the greenhouse gas emissions from the mobile sources are part of the emissions of the site. All rail equipment operating in Washington state, including rail equipment operating exclusively in a single rail yard or other restricted location, is considered part of the fleet of rail equipment instead of being part of a site.

(2) **Determining if greenhouse gas emissions from on-road motor vehicles occur in Washington state.** An owner or operator of on-road motor vehicles must use the following methods to determine if its greenhouse gas emissions occur in Washington state. An owner or operator may use a combination of Method 1 and Method 2 to determine if emissions occur in Washington state provided that all vehicles from the same vehicle size class use the same method and that the methods are applied consistently throughout the fleet of on-road motor vehicles and over time.

(a) **Method 1: Miles traveled within Washington state by the on-road motor vehicles.** Assign emissions to Washington state based on the documented location of miles the on-road motor vehicle travels inside the state. The owner or operator may report activity data based on mileage location information, or prorate activity data based on the ratio of miles traveled inside of Washington state to the total miles traveled by the interstate or international fleet of on-road motor vehicles; or

(b) **Method 2: Fuel transferred to on-road motor vehicles within Washington state.** Assign emissions to Washington state based on the documented location of fuel transfers to on-road motor vehicles. The owner or operator may report activity data based on fuel transfer location infor-

mation, or prorate activity data based on the ratio of fuel transferred to on-road motor vehicles inside of Washington state to the total fuel transferred to the interstate or international fleet of on-road motor vehicles. Fuel purchase location can be used to document fuel transfer location if the refueling location is the point of purchase of the fuel; or

(c) **Method 3: All emissions generated by on-road motor vehicles licensed in Washington state.** Assign all of the on-road motor vehicle's emissions to Washington state if the on-road motor vehicle is licensed in Washington state. Do not report emissions from on-road motor vehicles registered outside the state of Washington. Method 3 must not be combined with Method 1 or Method 2. The owner or operator may only use Method 3 if mileage location or fuel transfer location is not available due to limitations imposed by rental agreements.

(3) **Determining if greenhouse gas emissions from aircraft occur in Washington state.** An owner or operator must assign a flight's greenhouse gas emissions to Washington state if both the takeoff and landing are located inside Washington state. For flights with multiple legs, each leg must be evaluated as a unique flight.

(4) **Determining if greenhouse gas emissions from marine vessels occur in Washington state.** An owner or operator of marine vessels must use the appropriate method or methods from the list below to determine if its greenhouse gas emissions occur in Washington state. The methods must be applied in the order in which they are listed. Figure 080.1 of this section shows a graphical representation of the reporting area for marine vessels.

(a) **Intrastate marine vessel voyages.** If a marine vessel's arrival and departure points are both inside the waters of the state, then the owner or operator must assign the voyage's greenhouse gas emissions to Washington state.

(b) **Marine vessel voyages transiting Puget Sound.** If a marine vessel transits Puget Sound, the Strait of Juan de Fuca, Haro Strait, or the Strait of Georgia then the owner or operator must assign to Washington state the greenhouse gas emissions occurring in those waters if the point of arrival or last departure is within the waters of the state of Washington. The reportable emissions occurring in Puget Sound are defined as all activities between the point of arrival or last departure and three nautical miles west of the mean low-water mark of Cape Flattery for the Strait of Juan de Fuca, 48°40'00" N latitude for Haro Strait, or 49°00'00" N latitude for the Strait of Georgia. The international border marks the western limit of the reporting area for the Strait of Georgia and Boundary Pass. Figure 080.2 of this section shows a graphical representation of the reporting area for marine vessels in Puget Sound.

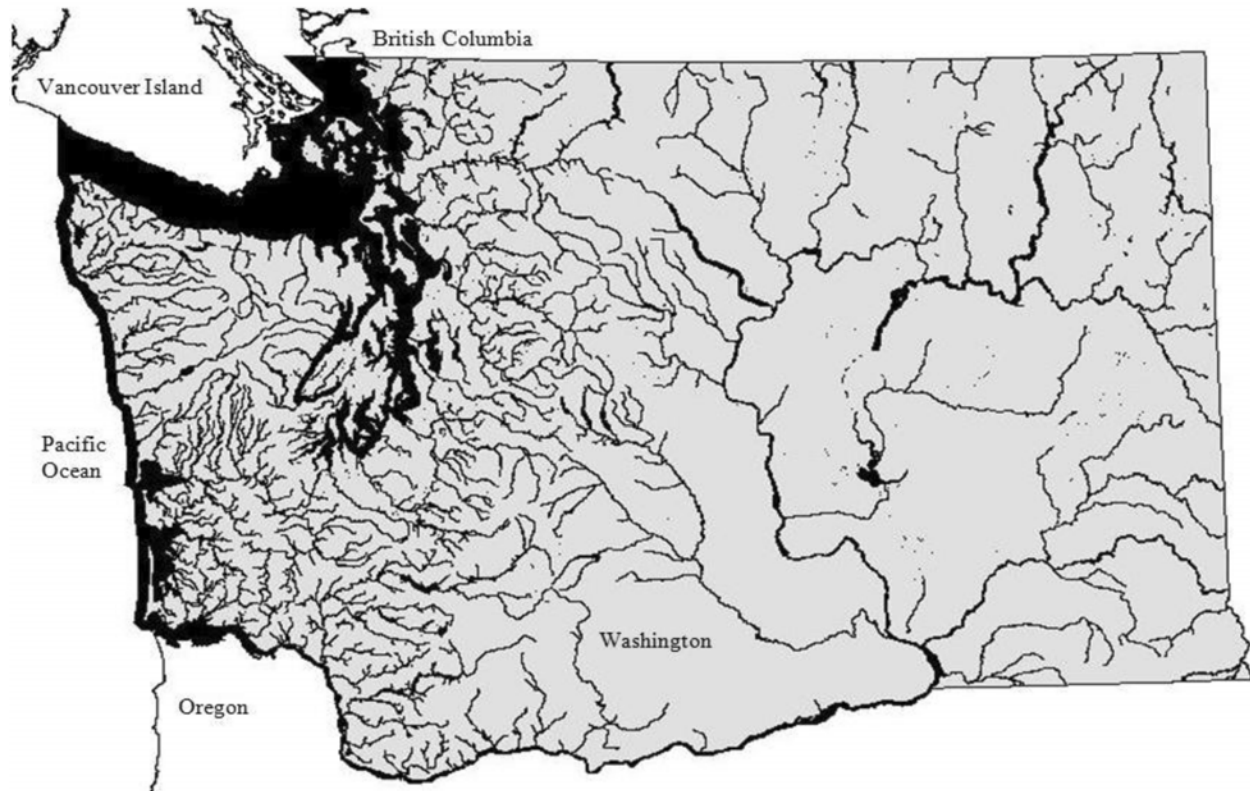
(c) **Marine vessel voyages in rivers that form the state border.** If a marine vessel operates in a river that forms a border of Washington, then the owner or operator must assign to Washington state half of the greenhouse gas emissions occurring in the stretch of the river located on the border of Washington state beginning three nautical miles downstream of the river mouth. The owner or operator must assign to Washington state all of the emissions occurring in any stretch of river located completely in Washington state. The owner or operator may report activity data based on hours of

operation information, or prorate activity data based on the ratio of hours operated exclusively inside of the waters of the state to the total hours operated on the voyage.

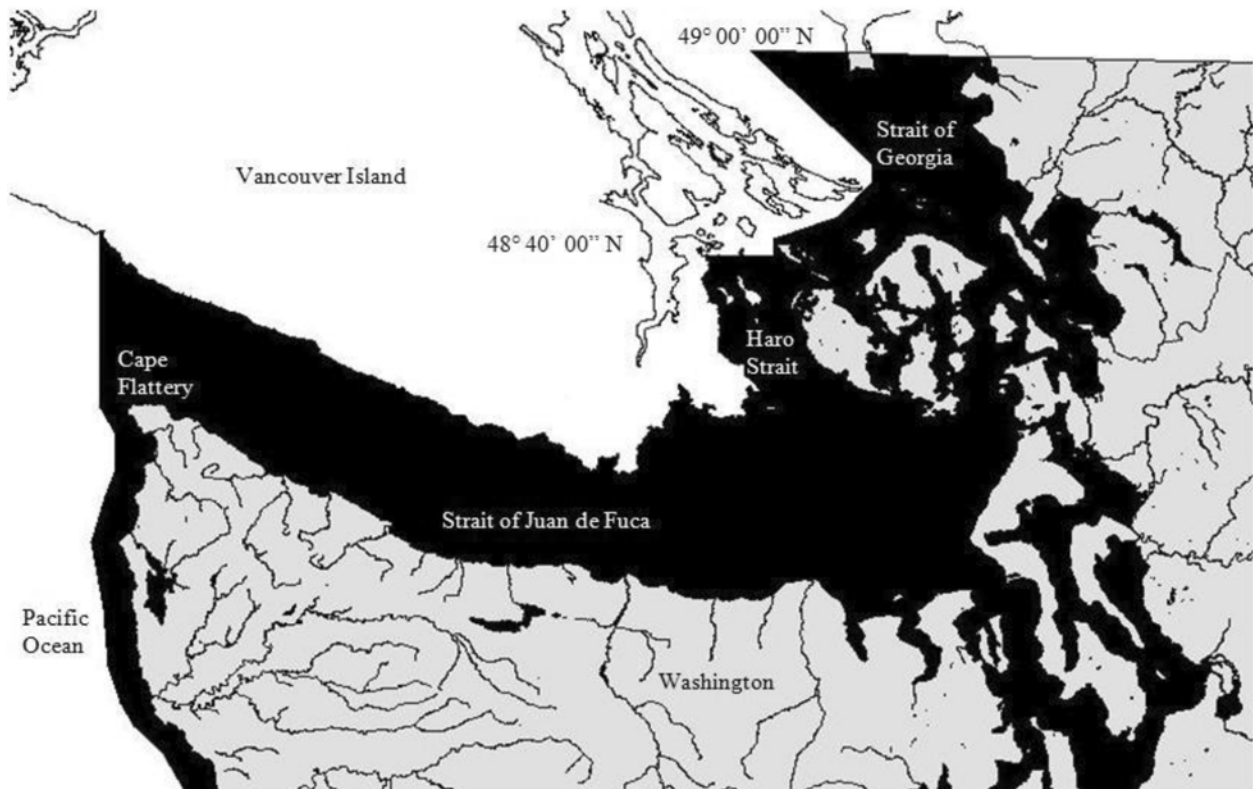
(d) **All other interstate marine vessel voyages.** If either the arrival or departure point is outside of the waters of the state, then the owner or operator must assign to Washington state the greenhouse gas emissions occurring in Wash-

ton state based on the documented hours the voyage occurs inside the waters of the state. The owner or operator may report activity data based on hours of operation information, or prorate activity data based on the ratio of hours operated inside of the waters of the state to the total hours operated on the voyage.

Figure 080.1. Reporting Area for Marine Vessels



Report emissions occurring in the black or gray shaded areas according to the methods outlined in WAC 173-441-080(4).

Figure 080.2. Reporting Area for Marine Vessels in Puget Sound

Report emissions occurring in the black or gray shaded areas according to the methods outlined in WAC 173-441-080(4).

(5) **Determining if greenhouse gas emissions from rail equipment occur in Washington state.** An owner or operator of rail equipment must use the following methods to determine if its emissions occur in Washington state. An owner or operator may use different methods for line haul powered rail equipment, yard powered rail equipment, and unpowered rail equipment, provided that all rail equipment of the same type uses the same method and the methods are applied consistently throughout the fleet of rail equipment and over time.

(a) **Intrastate rail equipment.** Assign all of the rail equipment's greenhouse gas emissions to Washington state if the rail equipment operates exclusively within Washington state.

(b) **Percentage of total gross ton-miles operated within Washington state by the rail equipment.** Assign emissions to Washington state based on the documented gross ton-miles the rail equipment operates inside the state relative to the total gross ton-miles operated by the owner or operator. An owner or operator using this method must prorate activity data based on the ratio of gross ton-miles operated inside of Washington to the total gross ton-miles operated in the United States or North America by the owner or operator. For Class I railroads, data must be consistent with data reported on its annual report to the surface transportation board.

(c) **Hours operated within Washington state by the rail equipment.** Assign emissions to Washington state based on the documented hours the rail equipment operates inside the state. The owner or operator may report activity data based on hours of operation information, or prorate activity data based on the ratio of hours operated inside of Washington to the total hours operated by the interstate or international fleet of rail equipment.

NEW SECTION

WAC 173-441-090 Report consistency. A reporter must consistently report greenhouse gas emissions over time except as follows:

(1) **Switching to a higher tier method.** A reporter may switch to an equivalent or higher tier method provided that the reporter continues to use the new method in subsequent reporting years.

(2) **Switching to a lower tier method.** A reporter must not switch to a lower tier method unless the data required to perform the analysis required in the previously used method is no longer available due to process or organizational changes.

(3) **Adjusting emissions reports from previous years due to a change in methods.** If a reporter makes a change in reporting methodologies that results in a change of five per-

cent or larger in either the reporter's total direct or total indirect CO₂e emissions, then the reporter must adjust emissions reports from all previous years within the document retention period described in WAC 173-441-160 to account for the change. If the activity data needed to use the new method is not available for previous emission years, then the reporter must clearly describe the change in methodology and document the lack of activity data in the emissions report, but is not required to recalculate emissions for previous years. All changes and documentation relating to previous emission years must be submitted as part of the current year's reporting activities and be in accordance with WAC 173-441-150(5). The requirement to adjust emissions reports from previous years due to a change in methods begins with 2011 emissions reported in 2012 and does not apply to 2009 emissions reported in 2010 and 2010 emissions reported in 2011.

(4) **Phasing of report consistency requirements.** For 2009 emissions reported in 2010 and 2010 emissions reported in 2011, the report consistency requirements of this section do not apply. An owner or operator may switch methods during this time. The requirement to adjust emissions reports from previous years due to a change in methods begins with 2011 emissions reported in 2012 and does not apply to 2009 emissions reported in 2010 and 2010 emissions reported in 2011.

NEW SECTION

WAC 173-441-095 Reserved.

NEW SECTION

WAC 173-441-100 Quantification methods for emissions from a source or combination of sources of emissions. Reporters subject to the reporting threshold in WAC 173-441-040 (1)(a) must use the following quantification methods to calculate emissions.

(1) **Simplified estimation methods.** A reporter may use simplified estimation methods for sources that meet the requirements of WAC 173-441-130. Simplified estimation methods are not considered tiered methods, and emissions calculated using simplified estimation methods must be reported separately.

(2) **Alternative quantification methods approved by petition.** A reporter may petition the department to use alternative quantification methods to those specified in subsection (4)(a), (c), or (d) of this section to calculate its direct stationary greenhouse gas emissions. Such alternative quantification methods must be approved by the department prior to reporting and must meet the requirements of WAC 173-441-120.

(3) **Biomass.** All reporters must account for and separately report greenhouse gas emissions from the combustion of biomass.

(a) Emissions of CO₂ from biomass combustion must be calculated using the methodologies in Chapter 12 of *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008). A reporter must use the highest tier possible based on the reporter's existing monitoring systems and available data. A reporter must report CO₂ emissions from fossil

fuel combustion separately from CO₂ emissions from biomass combustion. Emissions of CH₄ and N₂O from biomass combustion are direct emissions and are not treated separately from CH₄ and N₂O from fossil fuel combustion.

(b) For facilities that combust municipal solid waste (MSW), the CO₂ emissions from combusting the biomass portion of MSW (e.g., wood, yard waste, paper products) must be separately calculated and reported as biomass CO₂ emissions using the methodologies found in the California Air Resources Board Regulation for the Mandatory Reporting of Greenhouse Gas Emissions, Section 95125 (h)(2) adopted on December 2, 2008, and codified in the California Code of Regulations at 17 CCR Section 95125 (h)(2).

(4) **Direct emissions of greenhouse gases.** Reporters subject to the reporting threshold in WAC 173-441-040 (1)(a) must use the following quantification methods to calculate direct emissions of greenhouse gases:

(a) **Quantifying direct emissions from stationary combustion.** Unless the department has approved an alternative quantification methodology pursuant to WAC 173-441-120, reporters must use the following quantification methods to calculate direct emissions of greenhouse gases from stationary combustion sources:

(i) All stationary combustion sources except oil refineries must calculate greenhouse gas emissions using one of the tiered methods in Chapter 12 of *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008). A reporter must use the highest tier possible based on the reporter's existing monitoring systems and available data.

(ii) Stationary combustion sources at an oil or petroleum refinery must calculate greenhouse gas emissions using one of the tiered methods in WAC 173-441-510 unless the source is included in WAC 173-441-520 or 173-441-530. A reporter must use the highest tier possible based on the reporter's existing monitoring systems and available data.

(b) **Quantifying direct emissions from mobile sources.** Reporters must use the following quantification methods to calculate direct emissions of greenhouse gases from mobile sources:

(i) **Quantifying direct combustion emissions from nonroad mobile sources.** Direct combustion emissions of greenhouse gases from nonroad mobile sources must be calculated using one of the tiered methods in Chapter 13 of *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008).

(ii) **Quantifying direct fugitive emissions from nonroad mobile sources.** Direct fugitive emissions of greenhouse gases from nonroad mobile sources must be calculated according to the methods described in (d) of this subsection.

(iii) **Quantifying direct combustion emissions from auxiliary power units.** Direct combustion emissions of greenhouse gases from the combustion of fuels in auxiliary power units must be calculated using one of the tiered methods in *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008) Chapter 12 or Chapter 13.

(iv) **Quantifying direct emissions from on-road motor vehicles.** Direct combustion emissions of greenhouse gases from on-road motor vehicles must be calculated according to the methods described in WAC 173-441-110.

(c) **Quantifying direct process emissions.** Unless the department has approved an alternative quantification methodology pursuant to WAC 173-441-120, reporters must use the appropriate methodology referenced in Table 100.1 of

this section to calculate direct emissions of greenhouse gases from physical and chemical processes. A reporter must use the highest tier possible based on the reporter's existing monitoring systems and available data.

Table 100.1. Quantification Methods for Process Emissions

Industry	Reference Methodology
Aluminum	TCR GRP, Appendix E.2: Tier A using plant specific emission factors or Tier B using default factors.
Cement	TCR GRP, Appendix E.4: Clinker Method using Tier A plant specific clinker emission factor.
Iron & steel	TCR GRP, Appendix E.7: Tier A using plant specific carbon content emission factors or Tier B using default carbon content emission factors.
Lime	TCR GRP, Appendix E.8: Tier A1 or Tier A2 using plant specific emission factors; Tier B using default emission factors; or Tier C using default emission factors.
Pulp & paper	TCR GRP, Appendix E.10: Tier A using default stoichiometric emission factors.
Semi-conductor	TCR GRP, Appendix E.12: Tier A, Tier B, or Tier C.
Natural gas extraction, processing, storage, transmission and distribution	WAC 173-441-500.
Hydrogen plant	WAC 173-441-530.
Petroleum refinery	WAC 173-441-520.
Other process emission sources	Use the applicable TCR GRP, Appendix E process emissions methodology. If no TCR process emissions protocol is applicable, contact the department.

(d) **Quantifying direct fugitive emissions.** Unless the department has approved an alternative quantification methodology pursuant to WAC 173-441-120, reporters must use the following quantification methods to calculate direct fugitive emissions of greenhouse gases:

(i) **Fugitive emissions from refrigeration and air conditioning.** Greenhouse gas fugitive emissions from refrigeration and air conditioning must be calculated using Tier A or B methods as given in Chapter 16 of *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008). For stationary sources, a reporter must use the highest tier possible based on the reporter's existing monitoring systems and available data. The tier selection restriction does not apply to refrigeration or air conditioning units that are part of a mobile source. A reporter may use the screening method given in Chapter 16 of *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008) for sources that qualify for simplified estimation methods as described in WAC 173-441-130. The screening method is only considered to be a tiered method when applied to on-road motor vehicles.

(ii) **SF₆ fugitive emissions from electricity transmission and distribution.** SF₆ fugitive emissions from electricity transmission and distribution must be calculated using the methodology referenced in Appendix E.5 of *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008).

(iii) **Fugitive emissions from industrial and municipal wastewater treatment emissions.** Fugitive greenhouse gas emissions from industrial wastewater treatment systems at pulp and paper mills, food processing plants, ethanol production plants, petrochemical facilities, and petroleum refining facilities must be calculated using the methodologies described in WAC 173-441-550. Fugitive greenhouse gas emissions from municipal wastewater treatment systems

must be calculated using the methodologies described in *Local Government Operations Protocol, For the Quantification and Reporting of Greenhouse Gas Emissions Inventories*, Version 1 (September 2008).

(iv) **Fugitive emissions from industrial landfill operations.** Fugitive greenhouse gas emissions, including fugitive methane emissions, from landfill operations must follow the methodologies outlined in WAC 173-441-540.

(v) **Fugitive emissions from coal piles.** Fugitive greenhouse gas emissions from coal piles must be calculated using the methodologies described in WAC 173-441-560.

(vi) **Other fugitive emissions.** Contact the department if there is no quantification methodology listed in this section for a source of fugitive emissions. Some sources of fugitive emissions may qualify for simplified estimation methods as described in WAC 173-441-130.

(5) **Indirect emissions of greenhouse gases.** Reporters must use the following quantification methods to calculate indirect emissions of greenhouse gases:

(a) **Quantifying indirect emissions of greenhouse gases from the use of purchased electricity.** Indirect emissions of greenhouse gases from the purchase and use of electricity must be quantified using one of the following methods. A reporter must use the highest tier possible based on the reporter's existing monitoring systems and available data.

(i) Tier A methodology in *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008) Chapter 14. If the reporter purchases electricity directly from a known electric generation source then the reporter must use generator-specific emission factors; or

(ii) Tier A2 methodology must use the most recent CO₂ utility-specific emission factor (lbs/MWh) calculated and published annually by the Washington state department of commerce from data obtained during the fuel mix disclosure

process required under chapter 19.29A RCW. For the most accurate estimation of the CO₂ utility-specific emission factor, utilities providing data under this fuel mix disclosure process must use the average system mix methodology described in WAC 173-441-800. The reporter must use the CO₂ utility-specific emission factor in combination with the most recent Northwest Power Pool eGRID default factors for methane and nitrous oxide published by the U.S. Environmental Protection Agency; or

(iii) Tier B methodology in *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008) Chapter 14. Tier B must use the most recent Northwest Power Pool eGRID default factors published by the U.S. Environmental Protection Agency.

(b) Quantifying indirect emissions of greenhouse gases from imported steam, district heating, cooling, and electricity from a combined heat and power plant. Reporters must use the following quantification methods to calculate indirect emissions of greenhouse gases from imported steam, district heating, cooling, and electricity from a combined heat and power plant:

(i) Indirect emissions from stationary sources must be calculated using the Tier A or B methods in *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008) Chapters 12, 15, and 16. The determination of Tier A or B is based on the quality of information supplied by the district heating, cooling or cogeneration facility. A reporter must use

the highest tier possible based on the reporter's existing monitoring systems and available data.

(ii) The owner or operator of a cogeneration, district heating, or district cooling plant must provide greenhouse gas emissions information to all purchasers of heating, cooling, or electricity who are reporters under this chapter, upon request from the reporter. The emissions information must be provided in units appropriate for the reporter to use in formulating its annual emissions report. I.e., electricity in units of kg CO₂e/MWh, steam in units of kg CO₂e/1,000 lbs of steam purchased or kg CO₂e/mmBtu of steam, cooling in terms of kg/ton of cooling, etc.

(6) Global warming potential factors for converting emissions of greenhouse gases to CO₂e values. The following global warming potential factors in Table 100.2 and Table 100.3 of this section must be used when converting emissions of greenhouse gases to CO₂e values. To convert to CO₂e values, multiply the quantity of each greenhouse gas in metric tons by the listed GWP. If a refrigerant blend is not listed in Table 100.3 of this section but contains a greenhouse gas listed in Table 100.2 of this section, then use the GWPs in Table 100.2 to calculate the GWP for the blend. To calculate the GWP for the refrigerant blend, take the weighted average by mass of the GWPs of the component substances. If the refrigerant blend contains a substance not listed in Table 100.2 of this section, then use zero for the GWP for that substance when calculating the weighted average.

Table 100.2. Global Warming Potential Factors for Required Greenhouse Gases

Common Name	Formula	Chemical Name	GWP
Carbon dioxide	CO ₂		1
Methane	CH ₄		21
Nitrous oxide	N ₂ O		310
Sulfur hexafluoride	SF ₆		23,900
Hydrofluorocarbons (HFCs)			
HFC-23	CHF ₃	trifluoromethane	11,700
HFC-32	CH ₂ F ₂	difluoromethane	650
HFC-41	CH ₃ F	fluoromethane	150
HFC-43-10mee	C ₅ H ₂ F ₁₀	1,1,1,2,3,4,4,5,5,5- decafluoropentane	1,300
HFC-125	C ₂ HF ₅	pentafluoroethane	2,800
HFC-134	C ₂ H ₂ F ₄	1,1,2,2-tetrafluoroethane	1,000
HFC-134a	C ₂ H ₂ F ₄	1,1,1,2-tetrafluoroethane	1,300
HFC-143	C ₂ H ₃ F ₃	1,1,2-trifluoroethane	300
HFC-143a	C ₂ H ₃ F ₃	1,1,1-trifluoroethane	3,800
HFC-152	C ₂ H ₄ F ₂	1,2-difluoroethane	43*
HFC-152a	C ₂ H ₄ F ₂	1,1-difluoroethane	140
HFC-161	C ₂ H ₅ F	fluoroethane	12*
HFC-227ea	C ₃ HF ₇	1,1,1,2,3,3,3- heptafluoropropane	2,900
HFC-236cb	C ₃ H ₂ F ₆	1,1,1,2,2,3-hexafluoropropane	1,300*
HFC-236ea	C ₃ H ₂ F ₆	1,1,1,2,3,3-hexafluoropropane	1,200*
HFC-236fa	C ₃ H ₂ F ₆	1,1,1,3,3,3-hexafluoropropane	6,300
HFC-245ca	C ₃ H ₃ F ₅	1,1,2,2,3-pentafluoropropane	560
HFC-245fa	C ₃ H ₃ F ₅	1,1,1,3,3-pentafluoropropane	950*
HFC-365mfc	C ₄ H ₅ F ₅	1,1,1,3,3-pentafluorobutane	890*

Common Name	Formula	Chemical Name	GWP
Perfluorocarbons (PFCs)			
Perfluoromethane	CF ₄	tetrafluoromethane	6,500
Perfluoroethane	C ₂ F ₆	hexafluoroethane	9,200
Perfluoropropane	C ₃ F ₈	octafluoropropane	7,000
Perfluorobutane	C ₄ F ₁₀	decafluorobutane	7,000
Perfluorocyclobutane	c-C ₄ F ₈	octafluorocyclobutane	8,700
Perfluoropentane	C ₅ F ₁₂	dodecafluoropentane	7,500
Perfluorohexane	C ₆ F ₁₄	tetradecafluorohexane	7,400

Source: Intergovernmental Panel on Climate Change (IPCC) Second Assessment Report published in 1995, unless no value was assigned in the document. In that case, the GWP values are from the IPCC Third Assessment Report published in 2001 (those marked with *). GWP values are from the Second Assessment Report (unless otherwise noted) to be consistent with international practices. Values are 100-year GWP values.

Table 100.3. Global Warming Potential Factors for Required Refrigerant Blends

Refrigerant Blend	Global Warming Potential	Refrigerant Blend	Global Warming Potential
R-401A	18	R-413A	1,774
R-401B	15	R-414A	0
R-401C	21	R-414B	0
R-402A	1,680	R-415A	25
R-402B	1,064	R-415B	105
R-403A	1,400	R-416A	767
R-403B	2,730	R-417A	1,955
R-404A	3,260	R-418A	4
R-406A	0	R-419A	2,403
R-407A	1,770	R-420A	1,144
R-407B	2,285	R-500	37
R-407C	1,526	R-501	0
R-407D	1,428	R-502	0
R-407E	1,363	R-503	4,692
R-408A	1,944	R-504	313
R-409A	0	R-505	0
R-409B	0	R-506	0
R-410A	1,725	R-507 or R-507A	3,300
R-410B	1,833	R-508A	10,175
R-411A	15	R-508B	10,350
R-411B	4	R-509 or R-509A	3,920
R-412A	350		

Source: ASHRAE Standard 34 via Chapter 16 of *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008)

NEW SECTION

WAC 173-441-110 Quantification methods for on-road motor vehicles. A reporter of emissions from on-road motor vehicles must use the following quantification methods to calculate its emissions.

(1) **Simplified estimation methods.** A reporter may use simplified estimation methods for sources that meet the requirements of WAC 173-441-130(2). Simplified estimation methods are not considered tiered methods, and emissions calculated using simplified estimation methods must be reported separately.

(2) **Biomass.** All reporters must account for and separately report greenhouse gas emissions from the combustion of biomass.

(a) **Quantifying of biomass emissions from on-road motor vehicle fuels with greater than or equal to fifty per-**

cent biomass content. Reporters of emissions from on-road motor vehicle fuels with fifty percent or greater biomass must use the following quantification methods to calculate their greenhouse gas emissions from the combustion of biomass:

(i) A reporter must report the percentage of fuel derived from biomass for all fuels that are fifty percent or more biomass.

(ii) A reporter must adjust the emission factors of any fuel that is fifty percent or more biomass by reporting the fuel in two components. The biomass portion of the fuel must be calculated using the emissions factor for the pure biomass fuel and the nonbiomass portion of the fuel must be calculated using the emissions factor for the corresponding pure nonbiomass fuel found in (c) of this subsection.

(b) **Quantifying of biomass emissions from on-road motor vehicle fuels with less than fifty percent biomass**

content. Reporters of emissions from on-road motor vehicle fuels with less than fifty percent biomass content must use the following quantification methods to calculate their greenhouse gas emissions from the combustion of biomass:

(i) A reporter may report the percentage of fuel derived from biomass for all fuels that are less than fifty percent biomass.

(ii) A reporter may choose to report all emissions as non-biomass for any fuel with less than fifty percent biomass content. Alternately, the reporter may adjust the fuel's emission factors by reporting the fuel in two components. The biomass portion of the fuel may be calculated using the emissions factor for the pure biomass fuel and the nonbiomass portion of the fuel may be calculated using the emissions factor for the corresponding pure nonbiomass fuel found in (c) of this subsection.

(c) **Corresponding fuel types for on-road motor vehicles.** Reporters of emissions from on-road motor vehicles must use the following corresponding fuel types when determining the biomass content of fuels used in on-road motor vehicles:

(i) Biodiesel is considered the biomass fuel corresponding to diesel.

(ii) Ethanol is considered the biomass fuel corresponding to gasoline.

(iii) For all other fuels use the same emissions factors for both biomass and nonbiomass fuel components.

(3) **Direct emissions of greenhouse gases.** Reporters of emissions from on-road motor vehicles must use the following quantification methods to calculate their direct emissions of greenhouse gases:

(a) **Quantifying CO₂ emissions from on-road motor vehicles.** Direct emissions of CO₂ from on-road motor vehicles must be calculated using one of the tiered methods in *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008) Chapter 13.

(b) **Quantifying CH₄ and N₂O emissions from on-road motor vehicles.** Direct emissions of CH₄ and N₂O from on-road motor vehicles must be calculated using one of the tiered methods in *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008) Chapter 13.

(c) **Quantifying fugitive emissions from refrigeration and air conditioning from on-road motor vehicles.** Fugitive emissions from refrigeration and air conditioning from on-road motor vehicles must be calculated using one of the tiered methods in *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008) Chapter 16. The department will accept the screening method located in *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008) Chapter 16 as a tiered method for on-road motor vehicles.

(d) **Quantifying direct combustion emissions from auxiliary power units.** Direct emissions from the combustion of fuels in auxiliary power units that are carried on or moved by on-road motor vehicles must be calculated using one of the tiered methods in *The Climate Registry's General Reporting Protocol*, Version 1.1 (May 2008) Chapter 12 or Chapter 13.

(4) **Converting emissions of greenhouse gases to CO₂e values.** The global warming potential factors found in WAC

173-441-100(6) must be used when converting emissions of greenhouse gases to CO₂e values.

NEW SECTION

WAC 173-441-120 Petitioning the department to use an alternative quantification method to calculate greenhouse gas emissions. A reporter may petition the department to use alternative quantification methods to those specified in WAC 173-441-100 (4)(a), (c), or (d) to calculate its direct stationary greenhouse gas emissions. To be considered by the department, the alternative quantification method must be a well recognized and widely accepted method developed by a body such as the U.S. Environmental Protection Agency, World Resources Institute, Intergovernmental Panel on Climate Change, The Climate Registry, California Air Resources Board, or other similar nationally accepted body. The following requirements apply to the submission, review, and approval or denial of a petition:

(1) **Petition submittal.** A reporter must submit a petition that meets the following conditions before the department may review the petition and issue a determination.

(a) **Timing.** A reporter must submit a complete petition no later than one hundred eighty days prior to the emissions report deadline established in WAC 173-441-140. Such petition must include sufficient information, as described in (b) of this subsection, for the department to determine whether the proposed alternative quantification method will provide emissions data sufficient to meet the reporting requirements of RCW 70.94.151. The department will notify the reporter within thirty days of receipt of a petition of any additional information the department requires to approve the proposed quantification methods in the petition. The department will issue a determination within sixty days of receiving a complete petition. If a petition is under review by the department at the time an annual emissions report is due under WAC 173-441-140, the reporter must submit the emissions report using the quantification methods approved under this chapter at the time of submittal of the emissions report.

(b) **Content.** The petition must include, at a minimum, the following information to be considered a complete petition:

(i) Reporter identification information including reporter name(s), business name(s), business mailing address(es), and the Washington state Unified Business Identifier(s);

(ii) Location address, mailing address if different from the reporter address, North American Industrial Classification System (NAICS) primary and secondary codes, the EPA Facility Site ID (if applicable), and geographic coordinates of the site or sites where the reporter proposes to use the alternative quantification method;

(iii) A copy of the alternative quantification method, including the author(s), source of the method, the other greenhouse gas reporting programs that use the method, and whether the method meets the approval criteria described in subsection (2)(a) of this section;

(iv) A detailed analysis of how the alternative quantification method will provide reported emissions that are accurate, consistent, and comparable;

(v) A detailed description of which emissions will be covered by the proposed alternative quantification method and how emissions not covered by the proposed alternative quantification method will be calculated and reported;

(vi) Any other supporting data or information as requested by the department as described in subsection (2) of this section; and

(vii) The petition must be signed and dated by the designated representative.

(2) **Review of the petition by the department.** The alternative quantification method must be approved by the department prior to use by the reporter. The department will issue a determination within sixty days of receiving a complete petition.

(a) **Approval criteria.** In evaluating petitions for alternative quantification methods for approval, the department must consider whether the methods:

(i) Are established by a nationally or internationally recognized body in the field of greenhouse gas emissions reporting;

(ii) Were subject to public comment and peer review in their development; and

(iii) Calculate all sectors of greenhouse gas emissions required to be reported under RCW 70.94.151. In the event that a proposed alternative quantification method does not include a sector of required greenhouse gas emissions, e.g., calculation of indirect emissions, the reporter must use the quantification methods specified in subsection (4) of this section to calculate those emissions.

(b) **Approval of a petition to use quantification methods developed by the U.S. Environmental Protection Agency.** The department will approve a complete petition to use a quantification method in the U.S. Environmental Protection Agency's proposed rule, found in 40 CFR Part 98, as proposed at 74 Fed. Reg. 16447 (April 10, 2009). All other provisions within this section still apply, with the exception of subsection (1)(b)(iii) and (iv) of this section.

(3) **Report consistency.** After receiving approval of the petition by the department, the reporter is subject to the report consistency requirements of WAC 173-441-090 beginning with calendar year 2011 emissions reported in 2012.

(4) **Calculating emissions not included in alternative quantification method.** A reporter must report all sectors of greenhouse gas emissions for which reporting is required under RCW 70.94.151. If an approved alternative quantification method does not include quantification methods for sectors of emissions required to be reported under RCW 70.94.151, then the reporter must use a method described in WAC 173-441-100, 173-441-110, 173-441-500 through 173-441-800, 173-441-130(2), or approved for the reporter by the department in a separate petition to calculate and report those emissions.

(5) **Appeal of determination.** An approval or denial issued by the department in response to a written petition filed under this subsection is a determination appealable to the pollution control hearings board per RCW 43.21B.110 (1)(h).

NEW SECTION

WAC 173-441-130 Exclusion de minimis and simplified estimation methods. A reporter may use the following exclusion de minimis and simplified estimation methods when reporting its emissions.

(1) **Exclusion de minimis.** A reporter may choose not to report emissions from sites or units that meet the following requirements:

(a) **Site level exclusion de minimis.** A reporter may choose not to report emissions from any site with total emissions of greenhouse gases less than five metric tons of CO₂e. The five metric ton limit must be applied separately to direct emissions and indirect emissions.

(i) **Direct emissions.** A reporter may choose not to report direct emissions from any site with total direct emissions less than five metric tons of CO₂e per year.

(ii) **Indirect emissions.** A reporter may choose not to report indirect emissions from any site with total indirect emissions less than five metric tons of CO₂e per year.

(b) **Unit level exclusion de minimis.** A reporter may choose not to report emissions from the following emission units:

(i) **Stationary stand alone refrigeration units.** A reporter may choose not to report direct emissions from any stationary stand alone refrigeration unit with a combined refrigerator and freezer manufacturer rated capacity less than or equal to sixty cubic feet. Except, emissions from all refrigeration units that are carried on or moved by a mobile source capable of operating while in transit, connected to another refrigeration unit, or have had its refrigerant system serviced within the reporting year must be reported regardless of capacity.

(ii) **Stationary stand alone air conditioning units.** A reporter may choose not to report direct emissions from any stationary stand alone air conditioning unit with a manufacturer rated cooling capacity less than or equal to ten thousand Btus per hour. Except, emissions from all air conditioning units that are carried on or moved by a mobile source capable of operating while in transit, connected to another air conditioning unit, or have had its refrigerant system serviced within the reporting year must be reported regardless of capacity.

(2) **Simplified estimation methods.** A reporter may use simplified estimation methods to calculate emissions from one or more sources or greenhouse gases that do not exceed the limits established in (a) through (c) of this subsection. Simplified estimation methods are an alternative to the quantification methods specified in WAC 173-441-100, 173-441-110, or approved by the department pursuant to WAC 173-441-120, and permit a reporter to develop its own untiered quantification methodologies. Simplified estimation methods must use upper-bound assumptions that err on the side of overestimating rather than underestimating emissions.

(a) **Direct emissions.** A reporter may use simplified estimation methods for the direct emissions of one or more sources or greenhouse gases that collectively emit no more than five percent of its total direct emissions, expressed as CO₂e.

(b) **Indirect emissions.** A reporter may use simplified estimation methods for the indirect emissions of one or more sources or greenhouse gases that collectively emit no more than five percent of its total indirect emissions, expressed as CO₂e.

(c) **Combining simplified estimation methods from direct emissions and indirect emissions.** A reporter must account for direct emissions and indirect emissions separately when applying the five percent simplified estimation methods limit for sources or greenhouse gases. The combined total direct emissions and indirect emissions calculated using simplified estimation methods must not exceed ten thousand metric tons CO₂e.

(d) **Reporting.** The reporter must separately identify and include in the emissions report the emissions from sources calculated using simplified estimation methods.

NEW SECTION

WAC 173-441-140 Emissions reporting and certification schedule. The following emissions reporting and certification schedule applies to all reporters subject to the reporting requirements of this chapter.

(1) The designated representative must certify the greenhouse gas emissions report for any fleet of on-road motor vehicles or source or combination of sources meeting the applicable reporting threshold established in WAC 173-441-040. The designated representative must submit the certified report to the department by October 31st for the previous calendar year emissions, beginning in 2010 for 2009 calendar year emissions.

(2) **New emissions sources.** Owners or operators of new emissions sources that begin operations after January 1st of any calendar year must report emissions beginning with the first month of operation through the end of the first calendar year. Each subsequent annual emissions report must cover emissions for the full calendar year.

NEW SECTION

WAC 173-441-150 Report content and submission requirements. A reporter subject to the requirements of this chapter must submit an annual greenhouse gas emissions report, certified by the designated representative, to the department's registry of greenhouse gas emissions. The reporter must submit the emissions report according to the schedule established in WAC 173-441-140. Reporters must report emissions separately for each site, fleet of nonroad mobile sources, or fleet of on-road mobile vehicles. The department will accept a greenhouse gas emissions report only if the report is certified by the designated representative.

(1) **General information.** A reporter must report the following information for each site, fleet of nonroad mobile sources, or fleet of on-road motor vehicles:

(a) Reporter identification information including reporter name(s), business name(s), business mailing address(es), and the Washington state Unified Business Identifier(s);

(b) Designated representative contact name, mailing address, and telephone number(s);

(c) Identification information including the name of each site, fleet of nonroad mobile sources, fleet of on-road motor vehicles, and the associated North American Industrial Classification System (NAICS);

(d) An owner or operator with multiple sites, fleets of nonroad mobile sources, and/or fleets of on-road motor vehicles that are required to report under this chapter must report the emissions from all of these sources under one account. The account must include the corporate identification, including business name, mailing address, and business identifiers. The owner or operator must describe the organizational relationship between each site, fleet of nonroad mobile sources, and/or fleet of on-road motor vehicles;

(e) Name and contact information including mailing address and telephone number of the person primarily responsible for preparing the emissions report;

(f) Submittal information including reporting year and the date of submittal;

(g) Quantification methods employed for each source, including disclosure of all relevant assumptions made, data sources used, identification of any changes to the data, inventory boundary, and methods or other relevant factors relative to this or a prior-year report;

(h) Document if the reporter uses the exclusion de minimis provision in WAC 173-441-130(1);

(i) Identify sources and greenhouse gases calculated using simplified estimation methods and the resulting annual emissions quantities of each greenhouse gas, expressed in metric tons and CO₂e quantity expressed in metric tons; and

(j) A signed and dated certification statement provided by the designated representative.

(2) **Mobile sources.** A reporter must report the following information for mobile sources of emissions, in addition to the general reporting requirements under subsection (1) of this section:

(a) A reporter must report the following information for fleets of on-road motor vehicles:

(i) Fleet characteristic information and activity data including, but not limited to, fuel use and fuel type;

(ii) Annual greenhouse gas combustion emission quantities by fuel type or activity type, expressed in metric tons of each greenhouse gas. Emission quantities from biomass must be reported separately;

(iii) Annual greenhouse gas emission quantities of fugitive emissions expressed in metric tons of each greenhouse gas including, but not limited to, those from refrigeration, air conditioning, or other auxiliary units; and

(iv) Annual total emissions of greenhouse gases expressed in metric tons of CO₂e.

(b) A reporter of emissions from fleets of nonroad mobile sources operating beyond the boundaries of a single site must report total emissions of greenhouse gases from each fleet of nonroad mobile sources that is subject to the reporting requirements of this chapter. Emissions from each fleet of aircraft, fleet of marine vessels, and fleet of rail equipment must be reported separately. For each fleet of nonroad mobile sources identified, the reporter must report the following information:

(i) Fleet characteristic information and activity data including, but not limited to, fuel use and fuel type;

(ii) Annual greenhouse gas combustion emission quantities by fuel type or activity type, expressed in metric tons of each greenhouse gas. Emission quantities from biomass must be reported separately;

(iii) Annual greenhouse gas emission quantities of fugitive emissions expressed in metric tons of each greenhouse gas, including, but not limited to, those from refrigeration, air conditioning, or other auxiliary units;

(iv) Annual indirect emissions quantities of greenhouse gases, expressed in metric tons of CO₂e, associated with the purchase of electricity, steam, heating, or cooling; and

(v) Annual total emissions of greenhouse gases expressed in metric tons of CO₂e.

(c) A reporter of emissions from on-road motor vehicles, aircraft, or marine vessels operating exclusively within the boundaries of a site must report these emissions as part of the site. For all mobile sources operating exclusively within the boundaries of a single site, the reporter must report the following information:

(i) Mobile source characteristic information and activity data including, but not limited to, fuel use and fuel type;

(ii) Annual greenhouse gas combustion emission quantities by fuel type or activity type for the mobile source type expressed in metric tons of each greenhouse gas. Emission quantities from biomass must be reported separately;

(iii) Annual greenhouse gas emissions quantities of fugitive emissions expressed in metric tons of each greenhouse gas, including, but not limited to, those from refrigeration, air conditioning, or other auxiliary units;

(iv) Annual indirect emissions quantities of greenhouse gases, expressed in metric tons of CO₂e, associated with the purchase of electricity, steam, heating, or cooling;

(v) Annual total emissions of greenhouse gases expressed in metric tons of CO₂e; and

(vi) Identify the site in which the mobile source exclusively operates.

(3) **Stationary sources.** A reporter of stationary sources of emissions from a site must report total emissions of greenhouse gases from each site that is subject to the reporting requirements of this chapter. For each site identified, the reporter must report the following information in addition to the general reporting requirements under subsection (1) of this section:

(a) Location address, mailing address if different from the reporter address, North American Industrial Classification System (NAICS) primary and secondary codes, the EPA Facility Site ID (if applicable), and geographic coordinates;

(b) Activity data and measurement based data associated with direct emissions and indirect emissions;

(c) Annual quantities of emissions of each greenhouse gas by fuel type or activity type expressed in metric tons of each greenhouse gas. Emission quantities from biomass must be reported separately;

(d) Annual quantities of emissions of each greenhouse gas from combustion of fuels expressed in metric tons of CO₂e;

(e) Annual quantities of fugitive emissions of each greenhouse gas, expressed in metric tons of CO₂e;

(f) Annual quantities of process emissions of each greenhouse gas expressed in metric tons of CO₂e;

(g) Annual quantities of indirect emissions of greenhouse gases associated with the purchase of electricity, steam, heating, or cooling expressed in metric tons of CO₂e;

(h) Annual total greenhouse gas emission quantities expressed in metric tons of CO₂e; and

(i) Emissions data and other information specified in WAC 173-441-500 through 173-441-800, as applicable.

(4) **Submission of greenhouse gas emissions report.** The annual greenhouse gas emissions report must be submitted to the department's registry of greenhouse gas emissions in the format specified by the department.

(5) **Greenhouse gas emissions report revisions.** The reporter may revise a previously submitted emissions report under the circumstances specified in this section. The reporter must maintain documentation to support any revisions made to a previously submitted emissions report. Documentation for all emissions report revisions must be retained by the reporter for five years.

(a) If, after the report submittal is complete, a report is found to contain an error, or accumulation of errors, resulting in a material misstatement of reported emissions, the reporter must revise and resubmit an emissions report within thirty days of the finding. A revised report will be accepted only if approved by the department.

(b) If, after the report submittal is complete, a report is found to contain an error, or accumulation of errors, not resulting in a material misstatement of reported emissions, the reporter may revise and resubmit an emissions report within thirty days of the finding. A revised report will be accepted only if approved by the department.

(c) If a reporter makes a change in reporting methodologies that results in a change of five percent or larger in either the reporter's total direct emissions or total indirect emissions, expressed in metric tons of CO₂e, then the reporter must adjust emissions reports from previous years to account for the change in accordance with WAC 173-441-090. If the activity data needed to use the new method is not available for previous emission years, the reporter must clearly describe the change in methodology and document the lack of activity data in the emissions report, but is not required to recalculate emissions for previous years.

(d) All changes and documentation relating to previous emission years must be submitted as part of the current year's reporting activities.

(6) **Review of emissions reports by the department.** The department may review the certification statement, conduct a comprehensive review of the emissions report, perform audits of selected emissions sources, review other documents, and conduct site inspections, as necessary, to ensure the completeness and accuracy of the reported greenhouse gas emissions.

NEW SECTION

WAC 173-441-160 Document retention and record-keeping requirements. The reporter must establish and maintain procedures for document retention and recordkeeping. The reporter must retain all documents regarding the design, development, and maintenance of the greenhouse gas inventory in paper, electronic, or other usable format for a

period of not less than five years following submission of each emissions report. The retained documents, including greenhouse gas emissions data, must be sufficient to allow for the review of each emissions report by the department.

(1) Upon request by the department the reporter must provide within thirty days all documents and data required to be retained under this section.

(2) In addition to information submitted as part of the emissions report, each reporter must retain, at a minimum, the following information for at least five years after the submission of the report:

(a) A list of all greenhouse gas sources (i.e., sites, fleets, operations, processes, and activities) included in the emission estimates;

(b) All activity data used to calculate emissions for each source, categorized by process and fuel or material type;

(c) Documentation of the process for collecting emissions data;

(d) Any greenhouse gas emissions calculations and quantification methods used;

(e) All emission factors used for emission estimates, including documentation for any factors not provided in this chapter;

(f) Documentation of biomass fractions for specific fuels;

(g) All other data submitted to the department under this chapter, including the greenhouse gas emissions report;

(h) All computations made to gap-fill missing data;

(i) Names and documentation of key facility personnel involved in emissions calculating and reporting;

(j) Any other information that is required for the department to conduct a review of the emissions report; and

(k) A log to be prepared for each reporting year, beginning January 1st, documenting all procedural changes made in greenhouse gas accounting methods and changes to instrumentation for greenhouse gas emissions estimation.

(3) For measurement based methodologies, the following information also must be retained for at least five years after the submission of the emissions report:

(a) List of all emission points monitored;

(b) Collected monitoring data;

(c) A detailed technical description of any continuous measurement systems, including documentation of any findings and approvals by federal, state, or local agencies;

(d) Raw and aggregated data from the continuous measurement system;

(e) A log book of all system down-times, calibrations, servicing, and maintenance of the continuous measurement system; and

(f) Documentation of any changes in any continuous measurement systems over time.

(4) For sources required to use a method listed in WAC 173-441-500 through 173-441-800, a reporter must retain any additional information as required in the specific section.

NEW SECTION

WAC 173-441-170 Reporting fees. (1) **Fee determination.** Each reporter of emissions from an emissions source subject to this chapter must pay a reporting fee. The depart-

ment must establish reporting fees based on workload using the process outlined below. The fees must be sufficient to cover the department's costs to administer the greenhouse gas emissions reporting program.

(2) **Fee eligible activities.** The costs of activities associated with administering this reporting program, as described in RCW 70.94.151(2), are fee eligible.

(3) **Workload analysis and budget development.** The department must conduct a workload analysis and develop a budget based on the process outlined below:

(a) **Workload analysis.** The department must conduct a workload analysis projecting resource requirements for administering the reporting program, organized by categories of fee-eligible activities, for the purpose of preparing the budget. The department must prepare the workload analysis for the two-year period corresponding to each biennium. The workload analysis must identify the fee-eligible administrative activities related to the reporting program that it will perform during the biennium and must estimate the resources required to perform these activities.

(b) **Budget development.** The department must prepare a budget for administering the reporting program for the two-year period corresponding to each biennium. The budget must be based on the resource requirements identified in the workload analysis for the biennium and must take into account the reporting program account balance at the start of the biennium.

(4) **Allocation methodology.** The department must allocate the reporting program budget among the reporters required to report greenhouse gas emissions under this chapter according to the following components:

(a) **Flat component.** The flat component of a reporter's fee is calculated by the equal division of twenty percent of the budget amount by the total number of reporters in the greenhouse gas reporting program.

(b) **Emissions component.** The emissions component of the reporting fee applies only to the following reporters and is calculated using the following methodology:

(i) **Total emissions of greenhouse gases less than twenty-five thousand metric tons of CO₂e.** For a reporter of emissions from a source or combination of sources with total emissions of greenhouse gases reported of less than twenty-five thousand metric tons of CO₂e, the emissions component of the reporting fee is calculated by dividing thirty percent of the total budget amount by the total number of reporters in this category.

(ii) **Total emissions of greenhouse gases equal to or greater than twenty-five thousand metric tons of CO₂e.** For a reporter of emissions from a source or combination of sources with total emissions of greenhouse gases reported equal to or greater than twenty-five thousand metric tons of CO₂e, the emissions component of the reporting fee is calculated by dividing fifty percent of the total budget amount by the total number of reporters in this category.

(5) **Fleets of on-road motor vehicles.** The reporting fee for a reporter of emissions from a fleet of on-road motor vehicles required to report under this chapter includes only the flat component of the fee.

(6) **Source or combination of sources of emissions.** The reporting fee for a reporter of emissions from a source or

combination of sources of emissions required to report under this chapter includes the flat component and the applicable emissions component of the fee. If a reporter reports emissions for a fleet of on-road motor vehicles and from sites or fleets of nonroad mobile sources, the reporter pays the flat component of the reporting fee only once.

(7) **Fee schedule.** The department must issue annually a fee schedule reflecting the administrative fee to be paid by each reporter. The fee schedule must be based on the budget and workload analysis conducted each biennium. The department must publish the fee schedule for the following year on or before October 31st of each year.

(8) **Fee payments.** Fees specified in this section must be paid within thirty days of receipt of the department's billing statement. All fees collected under this chapter must be made payable to the Washington department of ecology. A late fee surcharge of fifty dollars or ten percent of the fee, whichever is more, may be assessed for any fee not received after the thirty day period.

(9) **Dedicated account.** All reporting fees collected by the department must be deposited in the air pollution control account.

NEW SECTION

WAC 173-441-180 The department to share information with local air authorities and with the energy facility site evaluation council. (1) The department must share any reporting information reported to it under these rules with the local air authority in which the reporter operates.

(2) The department must share any information reported to it under these rules from facilities permitted by the energy facility site evaluation council with the council, including notice of a facility that has failed to report as required.

NEW SECTION

WAC 173-441-190 Enforcement. The department may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 43.21B.300 which is incorporated by reference.

(1) **Enforcement for first-time violators.** The department will waive any fines or civil penalties for first-time reporting violations under this chapter.

(a) When the department waives a fine or penalty under this section, when possible it must require the reporter to correct the violation within a reasonable period of time, in a manner specified by the department. If correction is impossible, no correction may be required and failure to correct is not grounds for reinstatement of fines or penalties under this section.

(b) Exceptions to the waiver requirement of this section may be made if the reporter committing the violation owns or operates, or owned or operated a different emissions source which previously violated a reporting requirement under this chapter.

(c) Any fine or civil penalty that is waived under this section may be reinstated and imposed in addition to any additional fines or penalties associated with a subsequent violation for noncompliance with a reporting requirement under

this chapter, or failure to correct the previous violation as required by the department in (a) of this subsection.

(2) **Enforcement actions by the department - notice to violators.** At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, the department shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the department may require that the alleged violator or violators appear before it for the purpose of providing the department information pertaining to the violation or the charges complained of. Every notice of violation shall offer to the alleged violator an opportunity to meet with the department prior to the commencement of enforcement action.

(3) **Civil penalties.** The department may impose a civil penalty on any reporter who violates the provisions of this chapter, as set forth below:

(a) In addition to or as an alternate to any other penalty provided by law, any reporter who violates any of the provisions of chapter 173-441 WAC may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation. Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty as set forth by RCW 70.94.431 for each day of continued noncompliance.

(b) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal. The maximum penalty amounts established in RCW 70.94.431 may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(c) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(d) All penalties recovered under this section by the department shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015.

(e) Public or private entities that are recipients or potential recipients of the department grants, whether for air quality related activities or not, may have such grants rescinded or withheld by the department for failure to comply with provisions of this chapter.

(f) In addition to other penalties provided by this chapter, a reporter knowingly underreporting emissions or other information used to set fees, or a reporter required to pay emission or permit fees who is more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(4) **Compliance orders.** The department may issue a compliance order in conjunction with a notice of violation. The order shall require the recipient of the notice of violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated.

(5) **Criminal penalties.** Any reporter who knowingly violates any of the provisions of this chapter is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than one year, or by both for each separate violation.

NEW SECTION

WAC 173-441-200 Confidentiality. (1) Emissions data submitted to the department under this section are public information and must not be designated as confidential.

(2) Any reporter submitting information to the department pursuant to this chapter may request that information that is not emissions data be kept confidential as proprietary information under RCW 70.94.205 or because it is otherwise exempt from public disclosure under the Washington Public Records Act (chapter 42.56 RCW). All such requests for confidentiality must meet the requirements of RCW 70.94.205.

NEW SECTION

WAC 173-441-210 Severability. If any provision of the regulation or its application to any person or circumstance is held invalid, the remainder of the regulation or application of the provision to other persons or circumstances is not affected.

NEW SECTION

WAC 173-441-500 Natural gas extraction, processing, storage, transmission, and distribution. (1) **Definition of the source category.** This source category consists of the following facilities:

- (a) Onshore natural gas processing facilities;
 - (b) Onshore natural gas transmission compression facilities;
 - (c) Natural gas transmission and distribution systems;
 - (d) Underground natural gas storage facilities;
 - (e) Liquefied natural gas storage facilities;
 - (f) Liquefied natural gas import and export facilities;
- (2) Sources of GHGs to include in report;
- (a) You must report CO₂ and CH₄ emissions in CO₂e metric tons per year from sources specified in (a)(i) through (xxv) of this subsection at onshore natural gas processing facilities, onshore natural gas transmission compression facilities, natural gas transmission and distribution systems, underground and above ground natural gas storage facilities, liquefied natural gas storage facilities and liquefied natural gas import and export facilities.
 - (i) Acid gas removal (AGR) vent stacks.
 - (ii) Blowdown vent stacks.
 - (iii) Centrifugal compressor dry seals.
 - (iv) Centrifugal compressor wet seals.

- (v) Compressor fugitive emissions.
- (vi) Compressor wet seal degassing vents.
- (vii) Dehydrator vent stacks.
- (viii) Flare stacks.
- (ix) Liquefied natural gas import and export facilities fugitive emissions.
- (x) Liquefied natural gas storage facilities fugitive emissions.
- (xi) Natural gas driven pneumatic pumps.
- (xii) Natural gas driven pneumatic manual valve actuator devices.
- (xiii) Natural gas driven pneumatic valve bleed devices.
- (xiv) Nonpneumatic pumps.
- (xv) Offshore platform pipeline fugitive emissions.
- (xvi) Open-ended lines (OELs).
- (xvii) Pump seals.
- (xviii) Platform fugitive emissions.
- (xix) Processing facility fugitive emissions.
- (xx) Reciprocating compressor rod packing.
- (xxi) Storage station fugitive emissions.
- (xxii) Storage tanks.
- (xxiii) Storage wellhead fugitive emissions.
- (xxiv) Transmission station fugitive emissions.
- (xxv) Transmission and distribution pipeline inspection and maintenance activities.

(b) Emissions from combustion of natural gas or other fuels associated with above operations must be calculated per the methods in WAC 173-441-100(4).

(3) **Calculating GHG emissions.**

(a) Estimate emissions using either an annual direct measurement, as specified in subsection (4) of this section, or an engineering estimation method specified in this section. You may use the engineering estimation method only for sources for which a method is specified in this section.

(b) You may use engineering estimation methods described in this section to calculate emissions from the following fugitive emissions sources:

- (i) Acid gas removal vent stacks;
 - (ii) Natural gas driven pneumatic pumps;
 - (iii) Natural gas driven pneumatic manual valve actuator devices;
 - (iv) Natural gas driven pneumatic valve bleed devices;
 - (v) Blowdown vent stacks;
 - (vi) Dehydrator vent stacks;
 - (vii) Natural gas pigging operations;
 - (viii) Pipeline maintenance and purging operations.
- (c) A combination of engineering estimation described in this section and direct measurement described in subsection (4) of this section must be used to calculate emissions from the following fugitive emissions sources:
- (i) Flare stacks;
 - (ii) Storage tanks;
 - (iii) Compressor wet seal degassing vents.

(d) You must use the methods described in subsection (4)(d) or (e) of this section to conduct annual leak detection of fugitive emissions from all sources listed in subsection (2)(a) of this section. If fugitive emissions are detected, engineering estimation methods may be used for sources listed in (b) and (c) of this subsection. If engineering estimation is

used, emissions must be calculated using the appropriate method from (d)(i) through (ix) of this subsection:

(i) Acid gas removal vent stack. Calculate acid gas removal vent stack fugitive emissions using simulation software packages, such as ASPEN™ or AMINECalc™. Any standard simulation software may be used provided it accounts for the following parameters:

(A) Natural gas feed temperature, pressure, and flow rate;

(B) Acid gas content of feed natural gas;

(C) Acid gas content of outlet natural gas;

(D) Unit operating hours, excluding downtime for maintenance or standby;

(E) Exit temperature of natural gas;

(F) Solvent pressure, temperature, circulation rate and weight.

(ii) Natural gas driven pneumatic pump. Calculate fugitive emissions from a natural gas driven pneumatic pump as follows:

(A) Calculate fugitive emissions using manufacturer data.

(I) Obtain from the manufacturer specific pump model natural gas emission per unit volume of liquid pumped at operating pressures.

(II) Maintain a log of the amount of liquid pumped annually from individual pumps.

(III) Calculate the natural gas fugitive emissions for each pump using Equation 500.1 of this section.

$$E_{s,n} = F_s * V \quad (Eq. 500.1)$$

Where:

$E_{s,n}$ = Natural gas fugitive emissions at standard conditions.

F_s = Natural gas driven pneumatic pump gas emission in "emission per volume of liquid pumped at discharge pressure" units at standard conditions, as provided by the manufacturer.

V = Volume of liquid pumped annually.

(IV) Both CH₄ and CO₂ volumetric and mass fugitive emissions must be calculated from volumetric natural gas fugitive emissions using calculations in (f) and (g) of this subsection.

(B) If manufacturer data for F_s are not available, follow the method in subsection (4)(i)(i) of this section.

(iii) Natural gas driven pneumatic manual valve actuator devices. Calculate fugitive emissions from a natural gas driven pneumatic manual valve actuator device as follows:

(A) Calculate fugitive emissions using manufacturer data.

(I) Obtain from the manufacturer specific pneumatic device model natural gas emission per actuation.

(II) Maintain a log of the number of times the pneumatic device was actuated throughout the reporting period.

(III) Calculate the natural gas fugitive emissions for each manual valve actuator using Equation 500.2 of this section.

$$E_{s,n} = A_s * N \quad (Eq. 500.2)$$

Where:

$E_{s,n}$ = Natural gas fugitive emissions at standard conditions.

A_s = Natural gas driven pneumatic valve actuator natural gas emission in "emission per actuation" units at standard conditions, as provided by the manufacturer.

N = Number of times the pneumatic device was actuated in a way that vented natural gas to the atmosphere through the reporting period.

(IV) Calculate both CH₄ and CO₂ volumetric and mass fugitive emissions from volumetric natural gas fugitive emissions using calculations in (f) and (g) of this subsection.

(B) Follow the method in subsection (4)(i)(ii) of this section if manufacturer data are not available.

(iv) Natural gas driven pneumatic valve bleed devices. Calculate fugitive emissions from a natural gas driven pneumatic valve bleed device as follows:

(A) Calculate fugitive emissions using manufacturer data.

(I) Obtain from the manufacturer specific pneumatic device model natural gas bleed rate during normal operation.

(II) Calculate the natural gas fugitive emissions for each valve bleed device using Equation 500.3 of this section.

$$E_{s,n} = B_s * T \quad (Eq. 500.3)$$

Where:

$E_{s,n}$ = Natural gas fugitive emissions at standard conditions.

B_s = Natural gas driven pneumatic device bleed rate in "emission per unit time" units at standard conditions, as provided by the manufacturer.

T = Amount of time the pneumatic device has been operational through the reporting period.

(III) Calculate both CH₄ and CO₂ volumetric and mass fugitive emissions from volumetric natural gas fugitive emissions using calculations in (f) and (g) of this subsection.

(B) Follow the method in subsection (4)(i)(iii) of this section if manufacturer data are not available.

(v) Blowdown vent stacks. Calculate fugitive emissions from blowdown vent stacks as follows:

(A) Calculate the total volume (including, but not limited to, pipelines and vessels) between isolation valves (V_v in Equation 500.4 of this section).

(B) Retain logs of the number of blowdowns for each equipment type.

(C) Calculate the total annual fugitive emissions using the following Equation 500.4 of this section.

$$E_{a,n} = N * V_v \quad (\text{Eq. 500.4})$$

Where:

- $E_{s,n}$ = Natural gas fugitive emissions at ambient conditions from blowdowns.
- N = Number of blowdowns for the equipment in reporting year.
- V_v = Total volume of blowdown equipment chambers (including, but not limited to, pipelines and vessels) between isolation valves.

(D) Calculate natural gas volumetric fugitive emissions at standard conditions using calculations in (e) of this subsection.

(E) Calculate both CH₄ and CO₂ volumetric and mass fugitive emissions from volumetric natural gas fugitive emissions using calculations in (f) and (g) of this subsection.

(vi) Dehydrator vent stacks. Calculate fugitive emissions from a dehydrator vent stack using a simulation software package, such as GLYCalc™. Any standard simulation software may be used provided it accounts for the following parameters:

- (A) Feed natural gas flow rate;
- (B) Feed natural gas water content;
- (C) Outlet natural gas water content;
- (D) Absorbent circulation pump type (natural gas pneumatic/air pneumatic/electric);
- (E) Absorbent circulation rate;
- (F) Absorbent type: Including, but not limited to, triethylene glycol (TEG), diethylene glycol (DEG) or ethylene glycol (EG);
- (G) Use of stripping natural gas;
- (H) Use of flash tank separator (and disposition of recovered gas);
- (I) Hours operated; and
- (J) Wet natural gas temperature, pressure, and composition.

(vii) Flare stacks. Calculate fugitive emissions from a flare stack as follows:

(A) Determine flare combustion efficiency from manufacturer. If not available, assume that flare combustion efficiency is ninety-five percent for nonsteam aspirated flares and ninety-eight percent for steam aspirated or air injected flares.

(B) Calculate volume of natural gas sent to flare from velocity measurement in subsection (4)(j) of this section using manufacturer's manual for the specific meter used to measure velocity.

(C) Calculate GHG volumetric fugitive emissions at actual conditions using Equation 500.5 of this section.

$$E_{a,i} = V_a * (1 - \eta) * X_i + (1 - K) * \eta * V_a * Y_j * R_{j,i} \quad (\text{Eq. 500.5})$$

Where:

- $E_{a,i}$ = Annual fugitive emissions from flare stack.
- V_a = Volume of natural gas sent to flare stack determined from subsection (4)(j)(i) of this section.
- η = Percent of natural gas combusted by flare (default is 95 percent for nonsteam aspirated flares and 98 percent for steam aspirated or air injected flares).
- X_i = Concentration of GHG i in the flare gas determined from subsection (4)(j)(i) of this section.
- Y_j = Concentration of natural gas hydrocarbon constituents j (such as methane, ethane, propane, butane, and pentanes plus).
- $R_{j,i}$ = Number of carbon atoms in the natural gas hydrocarbon constituent j ; 1 for methane, 2 for ethane, 3 for propane, 4 for butane, and 5 for pentanes plus).
- K = "1" when GHG i is CH₄ and "0" when GHG i is CO₂.

(D) Calculate GHG volumetric fugitive emissions at standard conditions using Equation 500.6 of this section.

$$E_{s,i} = \frac{E_{a,i} * (460 + T_s) * P_a}{(460 + T_a) * P_s} \quad (\text{Eq. 500.6})$$

Where:

- $E_{s,i}$ = Natural gas volumetric fugitive emissions at standard temperature and pressure (STP) conditions.
- $E_{a,i}$ = Natural gas volumetric fugitive emissions at actual conditions.
- T_s = Temperature at standard conditions (°F).
- T_a = Temperature at actual emission conditions (°F).
- P_s = Absolute pressure at standard conditions (inches of Hg).
- P_a = Absolute pressure at ambient conditions (inches of Hg).

(E) Calculate both CH₄ and CO₂ mass fugitive emissions from volumetric CH₄ and CO₂ fugitive emissions using calculations in (g) of this subsection.

(viii) Storage tanks. Calculate fugitive emissions from a storage tank as follows:

(A) Calculate the total annual hydrocarbon vapor fugitive emissions using Equation 500.7 of this section.

$$E_{a,h} = Q * ER \quad (Eq. 500.7)$$

Where:

- $E_{a,h}$ = A hydrocarbon vapor fugitive emissions at actual conditions.
- Q = Storage tank total annual throughput.
- ER = Measured hydrocarbon vapor emissions rate per throughput (e.g., cubic feet/barrel) determined from subsection (4)(j)(ii) of this section.

(B) Estimate hydrocarbon vapor volumetric fugitive emissions at standard conditions using calculations in (e) of this subsection.

(C) Estimate CH₄ and CO₂ volumetric fugitive emissions from volumetric hydrocarbon fugitive emissions using Equation 500.8 of this section.

$$E_{s,i} = E_{s,h} * M_i \quad (Eq. 500.8)$$

Where:

- $E_{s,i}$ = GHG i (either CH₄ or CO₂) volumetric fugitive emissions at standard conditions.
- $E_{s,h}$ = Hydrocarbon vapor volumetric fugitive emissions at standard conditions.
- M_i = Mole percent of a particular GHG i in the hydrocarbon vapors; hydrocarbon vapor analysis must be conducted in accordance with ASTM D1945-03.

(D) Estimate CH₄ and CO₂ mass fugitive emissions from GHG volumetric fugitive emissions using calculations in (g) of this subsection.

(ix) Compressor wet seal degassing vents. Calculate fugitive emissions from compressor wet seal degassing vents as follows:

(A) Calculate volume of natural gas sent to vent from velocity measurement in subsection (4)(j) of this section using manufacturer's manual for the specific meter used to measure velocity.

(B) Calculate natural gas volumetric fugitive emissions at standard conditions using calculations in (e) of this subsection.

(C) Calculate both CH₄ and CO₂ volumetric and mass fugitive emissions from volumetric natural gas fugitive emissions using calculations in (f) and (g) of this subsection.

(e) Calculate natural gas volumetric fugitive emissions at standard conditions by converting ambient temperature and pressure of natural gas fugitive emissions to standard temperature and pressure of natural gas using Equation 500.9 of this section.

$$E_{s,n} = \frac{E_{a,n} * (460 + T_s) * P_a}{(460 + T_a) * P_s} \quad (Eq. 500.9)$$

Where:

- $E_{s,n}$ = Natural gas volumetric fugitive emissions at standard temperature and pressure (STP) conditions.
- $E_{a,n}$ = Natural gas volumetric fugitive emissions at actual conditions.
- T_s = Temperature at standard conditions (°F).
- T_a = Temperature at actual emission conditions (°F).
- P_s = Absolute pressure at standard conditions (inches of Hg).
- P_a = Absolute pressure at ambient conditions (inches of Hg).

(f) Calculate GHG volumetric fugitive emissions at standard conditions as specified in (f)(i) and (ii) of this subsection.

(i) Estimate CH₄ and CO₂ fugitive emissions from natural gas fugitive emissions using Equation 500.10 of this section.

$$E_{s,i} = E_{s,n} * M_i \quad (Eq. 500.10)$$

Where:

- $E_{s,i}$ = GHG i (either CH₄ or CO₂) volumetric fugitive emissions at standard conditions.
- $E_{s,n}$ = Natural gas volumetric fugitive emissions at standard conditions.
- M_i = Mole percent of GHG i in the natural gas.

(ii) For Equation 500.10 of this section, the mole percent, M_i , must be the annual average mole percent for each facility, as specified in (f)(ii)(A) through (G) of this subsection.

(A) GHG mole percent in produced natural gas for offshore petroleum and natural gas production facilities.

(B) GHG mole percent in feed natural gas for all fugitive emissions sources upstream of the demethanizer and GHG mole percent in facility specific residue gas to transmission pipeline systems for all fugitive emissions sources downstream of the demethanizer for onshore natural gas processing facilities.

(C) GHG mole percent in transmission pipeline natural gas that passes through the facility for onshore natural gas transmission compression facilities.

(D) GHG mole percent in natural gas stored in underground natural gas storage facilities.

(E) GHG mole percent in natural gas stored in LNG storage facilities.

(F) GHG mole percent in natural gas stored in LNG import and export facilities.

(G) GHG mole percent in transmission pipeline natural gas that is passed to a natural gas distribution system.

(g) Calculate GHG mass fugitive emissions at standard conditions by converting the GHG volumetric fugitive emissions into mass fugitive emissions using Equation 500.11 of this section.

$$Mass_{s,i} = E_{s,i} * \rho_i \quad (Eq. 500.11)$$

Where:

Mass_{s,i} = GHG i (either CH₄ or CO₂) mass fugitive emissions at standard conditions.

E_{s,i} = GHG i (either CH₄ or CO₂) volumetric fugitive emissions at standard conditions.

ρ_i = Density of GHG i; 1.87 kg/m³ for CO₂ and 0.68 kg/m³ for CH₄.

(h) Emissions from gas transmission and distribution lines from line maintenance operations.

(i) Emissions CH₄ and CO₂ as a result of pipeline cleaning and inspection with pigs must be estimated based on the volume of gas required to insert the pig at the pig injection station plus the volume required to eject the pig from the pipeline at pig retrieval stations. The CH₄ and CO₂ emissions must be based on the measured mole fractions of CH₄ and CO₂ content measured per subsection (4)(j)(i)(C) of this section.

(ii) Emissions of CH₄ and CO₂ as a result of pipe maintenance that requires a pipe segment to be purged of natural gas. These emissions must be calculated based on the volume of the pipe between shut off valves the pressure of the gas inside the pipe at the time of purging, and the mole fractions of the natural gas CH₄ and CO₂ content measured per subsection (4)(j)(i)(C) of this section.

(i) Converting mass of CH₄ and CO₂ emitted to CO₂e.

$$CO_{2e} = 21 * Mass_{CH_4} + Mass_{CO_2} \quad (Eq. 500.12)$$

Where:

CO₂e = Total metric tonnes of CH₄ and CO₂ expressed as carbon dioxide equivalent.

Mass_{CH₄} = The mass in metric tons of CH₄ contained in the gas emitted from all units and sources covered in this section.

Mass_{CO₂} = The mass in metric tons of CO₂ contained in the gas emitted from all units and sources covered in this section.

21 = Global warming potential of CH₄.

(4) Monitoring and QA/QC requirements.

(a) You must use the methods described in (d) or (e) of this subsection to conduct annual leak detection of fugitive

emissions from all sources listed in subsection (2)(a) of this section, whether in operation or on standby. If fugitive emissions are detected for sources listed in (b) of this subsection, you must use the measurement methods described in (c) of this subsection to measure emissions from each source with fugitive emissions.

(b) You must use detection instruments described in (d) and (e) of this subsection to monitor the following fugitive emissions:

- (i) Centrifugal compressor dry seals fugitive emissions;
- (ii) Centrifugal compressor wet seals fugitive emissions;
- (iii) Compressor fugitive emissions;
- (iv) LNG import and export facility fugitive emissions;
- (v) LNG storage station fugitive emissions;
- (vi) Nonpneumatic pumps fugitive emissions;
- (vii) Open-ended lines (OELs) fugitive emissions;
- (viii) Pump seals fugitive emissions;
- (ix) Offshore platform pipeline fugitive emissions;
- (x) Platform fugitive emissions;
- (xi) Processing facility fugitive emissions;
- (xii) Reciprocating compressor rod packing fugitive emissions;
- (xiii) Storage station fugitive emissions;
- (xiv) Transmission station fugitive emissions; and
- (xv) Storage wellhead fugitive emissions.

(c) You must use a high volume sampler, described in (f) of this subsection, to measure fugitive emissions from the sources detected in (b) of this subsection, except as provided in (c)(i) and (ii) of this subsection:

(i) Where high volume samplers cannot capture all of the fugitive emissions, you must use calibrated bags described in (g) of this subsection or meters described in (h) of this subsection to measure the following fugitive emissions:

- (A) Open-ended lines (OELs);
- (B) Centrifugal compressor dry seals fugitive emissions;
- (C) Centrifugal compressor wet seals fugitive emissions;
- (D) Compressor fugitive emissions;
- (E) Pump seals fugitive emissions;
- (F) Reciprocating compressor rod packing fugitive emissions; and

(G) Flare stacks and storage tanks, except that you must use meters in combination with engineering estimation methods to calculate fugitive emissions.

(ii) Use hot wire anemometer to calculate fugitive emissions from centrifugal compressor wet seal degassing vents and flares where it is unsafe or too high a flow rate to use calibrated bags.

(d) Infrared remote fugitive emissions detection.

(i) Use infrared fugitive emissions detection instruments that can identify specific equipment sources as emitting. Such instruments must have the capability to trace a fugitive emission back to the specific point where it escapes the process and enters the atmosphere.

(ii) If you are using instruments that visually display an image of fugitive emissions, you must inspect the emissions source from multiple angles or locations until the entire source has been viewed without visual obstructions at least once annually.

(iii) If you are using any other infrared detection instruments, such as those based on infrared laser reflection, you

must monitor all potential emission points at least once annually.

(iv) Perform fugitive emissions detection under favorable conditions, including, but not limited to, during daylight hours, in the absence of precipitation, in the absence of high wind, and, for active laser devices, in front of appropriate reflective backgrounds within the detection range of the instrument.

(v) Use fugitive emissions detection and measurement instrument manuals to determine optimal operating conditions.

(e) Use organic vapor analyzers (OVAs) for all fugitive emissions detection that are safely accessible at close-range.

(i) Check each potential emissions source, all joints, connections, and other potential paths to the atmosphere for emissions.

(ii) Evaluate the lag time between the instrument sensing and alerting caused by the residence time of a sample in the probe must be evaluated; upon alert, the instrument must be slowly retraced over the source to pinpoint the location of fugitive emissions.

(iii) Use Method 21 of 40 CFR Part 60, Appendix A, Determination of Volatile Organic Compound Leaks to calibrate OVAs.

(f) Use a high volume sampler to measure only cold and steady emissions within the capacity of the instrument.

(i) A trained technician must conduct measurements. The technician must be conversant with all operating procedures and measurement methodologies relevant to using a high volume sampler, including, but not limited to, positioning the instrument for complete capture of the fugitive emissions without creating backpressure on the source.

(ii) If the high volume sampler, along with all attachments available from the manufacturer, is not able to capture all the emissions from the source then you must use antistatic wraps or other aids to capture all emissions without violating operating requirements as provided in the instrument manufacturer's manual.

(iii) Estimate CH₄ and CO₂ volumetric and mass emissions from volumetric natural gas emissions using the calculations in subsection (3)(f) and (g) of this section.

(iv) Calibrate the instrument at 2.5 percent methane with 97.5 percent air and 100 percent CH₄ by using calibrated gas samples and by following manufacturer's instructions for calibration.

(g) Use calibrated bags (also known as vent bags) only where the emissions are at near-atmospheric pressures and the entire fugitive emissions volume can be captured for measurement.

(i) Hold the bag in place enclosing the emissions source to capture the entire emissions and record the time required for completely filling the bag.

(ii) Perform three measurements of the time required to fill the bag; report the emissions as the average of the three readings.

(iii) Estimate natural gas volumetric emissions at standard conditions using calculations in subsection (3)(e) of this section.

(iv) Estimate CH₄ and CO₂ volumetric and mass emissions from volumetric natural gas emissions using the calculations in subsection (3)(f) and (g) of this section.

(v) Obtain consistent results when measuring the time it takes to fill the bag with fugitive emissions.

(h) Channel all emissions from a single source directly through the meter when using metering (e.g., rotameters, turbine meters, and others).

(i) Use an appropriately sized meter so that the flow does not exceed the full range of the meter in the course of measurement and conversely has sufficient momentum for the meter to register continuously in the course of measurement.

(ii) Estimate natural gas volumetric fugitive emissions at standard conditions using calculations in subsection (3)(f) of this section.

(iii) Estimate CH₄ and CO₂ volumetric and mass fugitive emissions from volumetric natural gas fugitive emissions using calculations in subsection (3)(f) and (g) of this section.

(iv) Calibrate the meter using either one of the two methods provided as follows:

(A) Develop calibration curves by following the manufacturer's instruction.

(B) Weigh the amount of gas that flows through the meter into or out of a container during the calibration procedure using a master weigh scale (approved by National Institute of Standards and Technology (NIST) or calibrated using standards traceable by NIST). Determine correction factors for the flow meter according to the manufacturer's instructions. Record deviations from the correct reading at several flow rates. Plot the data points, comparing the flowmeter output to the actual flow rate as determined by the master weigh scale and use the difference as a correction factor.

(i) Where engineering estimation as described in subsection (3) of this section is not possible, use direct measurement methods as follows:

(i) If manufacturer data on pneumatic pump natural gas emission are not available, conduct a one-time measurement to determine natural gas emission per unit volume of liquid pumped using a calibrated bag for each pneumatic pump, when it is pumping liquids. Determine the volume of liquid being pumped from the manufacturer's manual to provide the amount of natural gas emitted per unit of liquid pumped.

(A) Record natural gas conditions (temperature and pressure) and convert natural gas emission per unit volume of liquid pumped at actual conditions into natural gas emission per pumping cycle at standard conditions using Equation 500.9 of subsection (3) of this section.

(B) Calculate annual fugitive emissions from the pump using Equation 500.1 of this section, by replacing the manufacturer's data on emission (variable F_s) in the equation with the standard conditions natural gas emission calculated in (i)(i)(A) of this subsection.

(C) Estimate CH₄ and CO₂ volumetric and mass fugitive emissions from volumetric natural gas fugitive emissions using calculations in subsection (3)(f) and (g) of this section.

(ii) If manufacturer data on pneumatic manual valve actuator device natural gas emission are not available, conduct a one-time measurement to determine natural gas emission per actuation using a calibrated bag for each pneumatic device per actuation.

(A) Record natural gas conditions (temperature and pressure) and convert natural gas emission at actual conditions into natural gas emission per actuation at standard conditions using Equation 500.9 of this section.

(B) Calculate annual fugitive emissions from the pneumatic device using Equation 500.2 of this section, by replacing the manufacturer's data on emission (variable A_s) in the equation with the standard conditions natural gas emission calculated in (i)(ii)(A) of this subsection.

(C) Estimate CH_4 and CO_2 volumetric and mass emissions from volumetric natural gas fugitive emissions using the calculations in subsection (3)(f) and (g) of this section.

(iii) If manufacturer data on natural gas driven pneumatic valve bleed rate is not available, conduct a one-time measurement to determine natural gas bleed rate using a high volume sampler or calibrated bag or meter for each pneumatic device.

(A) Record natural gas conditions (temperature and pressure) to convert natural gas bleed rate at actual conditions into natural gas bleed rate at standard conditions using Equation 500.9 of this section.

(B) Calculate annual fugitive emissions from the pneumatic device using Equation 500.3 of this section, by replacing the manufacturer's data on bleed rate (variable B) in the equation with the standard conditions bleed rate calculated in (i)(iii)(A) of this subsection.

(C) Estimate CH_4 and CO_2 volumetric and mass fugitive emissions from volumetric natural gas fugitive emissions using calculations in subsection (3)(f) and (g) of this section.

(j) Parameters for calculating emissions from flare stacks, compressor wet seal degassing vents, transmission and distribution system maintenance activities, and storage tanks.

(i) Estimate fugitive emissions from flare stacks and compressor wet seal degassing vents as follows:

(A) Insert flow velocity measuring device (such as hot wire anemometer or pitot tube) directly upstream of the flare stack or compressor wet seal degassing vent to determine the velocity of gas sent to flare or vent.

(B) Record actual temperature and pressure conditions of the gas sent to flare or vent.

(C) Sample representative gas to the flare stack or compressor wet seal degassing vent every quarter to evaluate the composition of GHGs present in the stream. Record the average of the most recent four gas composition analyses, which must be conducted using ASTM D1945-03.

(ii) Estimate fugitive emissions from storage tanks as follows:

(A) Measure the hydrocarbon vapor emissions from storage tanks using a flow meter described in (h) of this subsection for a test period that is representative of the normal operating conditions of the storage tank throughout the year and which includes a complete cycle of accumulation of hydrocarbon liquids and pumping out of hydrocarbon liquids from the storage tank.

(B) Record the net (related to working loss) and gross (related to flashing loss) input of the storage tank during the test period.

(C) Record temperature and pressure of hydrocarbon vapors emitted during the test period.

(D) Collect a sample of hydrocarbon vapors for composition analysis.

(k) Component fugitive emissions sources that are not safely accessible within the operator's arm's reach from the ground or stationary platforms are excluded from the requirements of this section.

(l) Determine annual emissions assuming that the fugitive emissions were continuous from the beginning of the reporting period or last recorded zero detection in the current reporting period and continuing until the fugitive emissions is repaired.

(5) **Data reporting requirements.** In addition to the information required by WAC 173-441-150, each annual report must report emissions data as specified in this section.

(a) Annual emissions reported separately for each of the operations listed in (a)(i) through (vi) of this subsection. Within each operation, emissions from each source type must be reported in the aggregate. For example, an underground natural gas storage facility with multiple reciprocating compressors must report emissions from all reciprocating compressors as an aggregate number.

(i) Offshore petroleum and natural gas production facilities.

(ii) Onshore natural gas processing facilities.

(iii) Onshore natural gas transmission compression facilities.

(iv) Underground natural gas storage facilities.

(v) Liquefied natural gas storage facilities.

(vi) Liquefied natural gas import and export facilities.

(b) Emissions reported separately for standby equipment.

(c) Emissions calculated for these sources must assume no CO_2 capture and transfer offsite.

(d) Activity data for each aggregated source type level for which emissions are being reported.

(e) Engineering estimate of total component count.

(f) Total number of compressors and average operating hours per year for compressors for each operation listed in (a)(i) of this subsection through subsection (6) of this section.

(g) Minimum, maximum, and average throughout for each operation listed in (a)(i) through (vi) of this subsection.

(h) Specification of the type of any control device used, including flares, for any source type listed in subsection (2)(a) of this section.

(i) For offshore petroleum and natural gas production facilities, the number of connected wells, and whether they are producing oil, gas, or both.

(j) Detection and measurement instruments used.

(6) **Definitions.** All terms used in this section have the meaning given in WAC 173-441-030 and the Washington Clean Air Act unless defined below.

"Air injected flare" means a flare in which air is blown into the base of a flare stack to induce complete combustion of low Btu natural gas (i.e., high noncombustible component content).

"Bleed rate" means the rate at which natural gas flows continuously or intermittently from a process measurement instrument to a valve actuator controller where it is vented (bleeds) to the atmosphere.

"Blowdown" means manual or automatic opening of valves to relieve pressure and/or release natural gas from, but not limited to, process vessels, compressors, storage vessels or pipelines by venting natural gas to the atmosphere or a flare. This practice is often implemented prior to shutdown or maintenance.

"Blowdown vent stack fugitive emissions" means natural gas released due to maintenance and/or blowdown operations including, but not limited to, compressor blowdown and emergency shutdown system testing.

"Boil-off gas" means natural gas that vaporizes from liquefied natural gas in storage tanks.

"Centrifugal compressor" means any equipment that increases the pressure of a process natural gas by centrifugal action, employing rotating movement of the driven shaft.

"Centrifugal compressor dry seals" means a series of rings that are located around the compressor shaft where it exits the compressor case and that operate mechanically under the opposing forces to prevent natural gas from escaping to the atmosphere.

"Centrifugal compressor dry seals fugitive emissions" means natural gas released from a dry seal vent pipe and/or the seal face around the rotating shaft where it exits one or both ends of the compressor case.

"Centrifugal compressor wet seals" means a series of rings around the compressor shaft where it exits the compressor case, that use oil circulated under high pressure between the rings to prevent natural gas from escaping to the atmosphere.

"Centrifugal compressor wet seals fugitive emissions" means natural gas released from the seal face around the rotating shaft where it exits one or both ends of the compressor case PLUS the natural gas absorbed in the circulating seal oil and vented to the atmosphere from a seal oil degassing vessel or sump before the oil is recirculated, or from a seal oil containment vessel vent.

"Component," for the purposes of this section only, means but is not limited to each metal to metal joint or seal of nonwelded connection separated by a compression gasket, screwed thread (with or without thread sealing compound), metal to metal compression, or fluid barrier through which natural gas or liquid can escape to the atmosphere.

"Compressor" means any machine for raising the pressure of a natural gas by drawing in low pressure natural gas and discharging significantly higher pressure natural gas (i.e., compression ratio higher than 1.5).

"Compressor fugitive emission" means natural gas emissions from all components in close physical proximity to compressors where mechanical and thermal cycles may cause elevated emission rates, including, but not limited to, open-ended blowdown vent stacks, piping and tubing connectors and flanges, pressure relief valves, pneumatic starter open-ended lines, instrument connections, cylinder valve covers, and fuel valves.

"Condensate" means hydrocarbon and other liquid separated from natural gas that condenses due to changes in the temperature, pressure, or both, and remains liquid at storage conditions, includes both water and hydrocarbon liquids.

"Connector" means but is not limited to flanged, screwed, or other joined fittings used to connect pipe line

segments, tubing, pipe components (such as elbows, reducers, "Ts" or valves) or a pipe line and a piece of equipment or an instrument to a pipe, tube or piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation.

"Dehydrator" means, for the purposes of this rule, a device in which a liquid absorbent (including, but not limited to, desiccant, ethylene glycol, diethylene glycol, or triethylene glycol) directly contacts a natural gas stream to absorb water vapor.

"Dehydrator vent stack fugitive emissions" means natural gas released from a natural gas dehydrator system absorbent (typically glycol) reboiler or regenerator, including stripping natural gas and motive natural gas used in absorbent circulation pumps.

"Demethanizer" means the natural gas processing unit that separates methane rich residue gas from the heavier hydrocarbons (ethane, propane, butane, pentane-plus) in feed natural gas stream.

"Engineering estimation" means an estimate of fugitive emissions based on engineering principles applied to measured and/or approximated physical parameters such as dimensions of containment, actual pressures, actual temperatures, and compositions.

"Equipment" means but is not limited to each pump, compressor, pipe, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, tank, vessel, and instrumentation system in natural gas or liquid service; and any control devices or systems referenced by this subpart.

"Equipment chambers" means the total natural gas-containing volume within any equipment and between the equipment isolation valves.

"Export" means to transport a product from inside Washington state to persons outside Washington state, excluding United States military bases and ships for onboard use.

"Exporter" means any person, company, or organization of record that contracts to transfer a product from Washington state to another state or country or that transfers products to an affiliate in another state or country, excluding transfers to United States military bases and ships for onboard use.

"Flare" means a combustion device, whether at ground level or elevated, that uses an open flame to burn combustible gases with combustion air provided by uncontrolled ambient air around the flame.

"Flare combustion efficiency" means the fraction of natural gas, on a volume or mole basis, that is combusted at the flare burner tip, assumed ninety-five percent for nonaspirated field flares and ninety-eight percent for steam or air aspirated flares.

"Flare stack" means a device used to provide a safe means of combustible natural gas disposal from routine operations, upsets, or emergencies via combustion of the natural gas in an open, normally elevated flame.

"Flare stack fugitive emissions" means the CH₄ and CO₂ content of that portion of natural gas (typically five percent in nonaspirated field flares and two percent in steam or air aspirated flares) that passes through flares uncombusted and the

total CO₂ emissions of that portion of the natural gas that is combusted.

"Fugitive emissions" means unintentional equipment emissions of methane and/or carbon dioxide containing natural gas or hydrocarbon gas (not including combustion flue gas) from emissions sources including, but not limited to, open ended lines, equipment connections or seals to the atmosphere. Fugitive emissions also mean CO₂ emissions resulting from combustion of natural gas in flares.

"Gas conditions" means the actual temperature, volume, and pressure of a gas sample.

"Gathering and boosting station" means a station used to gather natural gas from well or field pipelines for delivery to natural gas processing facilities or a central point. Stations may also provide compression, dehydration, and/or treating services.

"Importer" means any person, company, or organization of record that for any reason brings a product (natural gas or LNG) into the United States from a foreign country. An importer includes the person, company, or organization primarily liable for the payment of any duties on the merchandise or an authorized agent acting on their behalf. The term also includes, as appropriate:

- (a) The consignee.
- (b) The importer of record.
- (c) The actual owner.
- (d) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred.

"Infrared remote fugitive emissions detection instrument" means an instrument that detects infrared light in the narrow wavelength range absorbed by light hydrocarbons including methane, and presents a signal (sound, digital, or visual image) indicating the presence of methane and other light hydrocarbon vapor emissions in the atmosphere. For the purpose of this rule, it must detect the presence of methane.

"Interstate pipeline" means a natural gas pipeline designated as interstate pipelines under the Natural Gas Act, 15 U.S.C. § 717a.

"Intrastate pipeline" means a natural gas pipeline not subject to the jurisdiction of the Federal Energy Regulatory Commission as described in 15 U.S.C. § 3301.

"Liquefied natural gas (LNG)" means natural gas (primarily methane) that has been liquefied by reducing its temperature to -260°F at atmospheric pressure.

"Liquefied natural gas import and export facilities" means onshore and/or offshore facilities that send out exported or receive imported liquefied natural gas, store it in storage tanks, regasify it, and deliver regasified natural gas to natural gas transmission or distribution systems. The facilities include tanker unloading equipment, liquefied natural gas transportation pipelines, pumps, compressors to liquefy boil-off-gas, recondensers, and vaporization units for regasification of the liquefied natural gas.

"Liquefied natural gas storage facilities" means an onshore facility that stores liquefied natural gas in above ground storage vessels. The facility may include equipment for liquefying natural gas, compressors to liquefy boil-off-gas, recondensers, and vaporization units for regasification of the liquefied natural gas.

"LNG import and export facility fugitive emissions" means natural gas releases from valves, connectors, storage tanks, flanges, open-ended lines, pressure relief valves, boil-off-gas recovery, send outs (pumps and vaporizers), packing and gaskets. This does not include fugitive emissions from equipment and equipment components reported elsewhere for this rule.

"LNG storage station fugitive emissions" means natural gas releases from valves, connectors, flanges, open-ended lines, storage tanks, pressure relief valves, liquefaction process units, packing and gaskets. This does not include fugitive emissions from equipment and equipment components reported elsewhere for this rule.

"Mcf" means thousand cubic feet.

"Natural gas" means a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which its constituents include, but are not limited to, methane, heavier hydrocarbons and carbon dioxide. Natural gas may be field quality (which varies widely) or pipeline quality. For the purposes of this section, the definition of natural gas includes similarly constituted fuels such as field production gas, process gas, and fuel gas.

"Natural gas distribution system" means the natural gas piping system between the gas distribution pressure let-down metering and regulating stations and the customer's gas meter. The distribution network includes all valves, pressure regulating stations, compression stations, and natural gas distribution fugitive emission sources.

"Natural gas driven pneumatic manual valve actuator device" means valve control devices that use pressurized natural gas to provide the energy required for an operator to manually open, close, or throttle a liquid or gas stream. Typical manual control applications include, but are not limited to, equipment isolation valves, tank drain valves, pipeline valves.

"Natural gas driven pneumatic manual valve actuator device fugitive emissions" means natural gas released due to manual actuation of natural gas pneumatic valve actuation devices, including, but not limited to, natural gas diaphragm and pneumatic-hydraulic valve actuators.

"Natural gas driven pneumatic pump" means a pump that uses pressurized natural gas to move a piston or diaphragm, which pumps liquids on the opposite side of the piston or diaphragm.

"Natural gas driven pneumatic pump fugitive emissions" means natural gas released from pumps that are powered or assisted by pressurized natural gas.

"Natural gas driven pneumatic valve bleed device" means valve control devices that use pressurized natural gas to transmit a process measurement signal to a valve actuator to automatically control the valve opening. Typical bleeding process control applications include, but are not limited to, pressure, temperature, liquid level, and flow rate regulation.

"Natural gas driven pneumatic valve bleed devices fugitive emissions" means the continuous or intermittent release of natural gas from automatic process control loops including the natural gas pressure signal flowing from a process measurement instrument (e.g., liquid level, pressure, tempera-

ture) to a process control instrument which activates a process control valve actuator.

"Natural gas liquids (NGL)" means those hydrocarbons in natural gas that are separated from the gas as liquids through the process of absorption, condensation, adsorption, or other methods in gas processing or cycling plants. Generally, such liquids consist of primarily ethane, propane, butane, and isobutane, primarily pentanes produced from natural gas at lease separators and field facilities. For the purposes of subpart NN only, natural gas liquids does not include lease condensate. Bulk NGLs refers to mixtures of NGLs that are sold or delivered as undifferentiated product from natural gas processing plants.

"Natural gas processing facilities" is engaged in the extraction of natural gas liquids from produced natural gas; fractionation of mixed natural gas liquids to natural gas products; and removal of carbon dioxide, sulfur compounds, nitrogen, helium, water, and other contaminants. Natural gas processing facilities also encompass gathering and boosting stations that include equipment to phase-separate natural gas liquids from natural gas, dehydrate the natural gas, and transport the natural gas to transmission pipelines or to a processing facility.

"Natural gas products" means products produced for consumers from natural gas processing facilities including, but not limited to, ethane, propane, butane, isobutane, and pentanes-plus.

"Natural gas transmission compression facility" means any permanent combination of compressors that move natural gas at increased pressure from production fields or natural gas processing facilities, in transmission pipelines, to natural gas distribution pipelines, or into storage facilities. In addition, transmission compressor stations may include equipment for liquids separation, natural gas dehydration, and storage of water and hydrocarbon liquids.

"NIST" means the United States National Institute of Standards and Technology.

"Nonsteam aspirated flare" means a flare where natural gas burns at the tip with natural induction of air (and relatively lower combustion efficiency as may be evidenced by smoke formation).

"Offshore" means tidal-affected borders of the U.S. lands, both state and federal, adjacent to oceans, bays, lakes or other normally standing water.

"Offshore petroleum and natural gas production facilities" means any platform structure, floating in the ocean or lake, fixed on ocean or lake bed, or located on artificial islands in the ocean or lake, that houses equipment to extract hydrocarbons from ocean floor and transports it to storage or transport vessels or onshore. In addition, offshore production facilities may include equipment for separation of liquids from natural gas components, dehydration of natural gas, extraction of H₂S and CO₂ from natural gas, crude oil and condensate storage tanks, both on the platform structure and floating storage tanks connected to the platform structure by a pipeline, and compression or pumping of hydrocarbons to vessels or onshore. The facilities under consideration are located in both state administered waters and mineral management services administered federal waters.

"Offshore platform pipeline fugitive emissions" means natural gas above the water line released from piping connectors, pipe wall ruptures and holes in natural gas and crude oil pipeline surfaces on offshore production facilities.

"Open-ended line fugitive emissions" means natural gas released from pipes or valves open on one end to the atmosphere that are intended to periodically vent or drain natural gas to the atmosphere but may also leak process gas or liquid through incomplete valve closure including valve seat obstructions or damage.

"Open-ended valve or lines (OELs)" means any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid (such as pressurized natural gas) and one side open to atmosphere, either directly or through open piping.

"Organic vapor analyzer (OVA)" means an organic monitoring device that uses a flame ionization detector to measure the concentrations in air of combustible organic vapors from 9 to 10,000 parts per million sucked into the probe.

"Platform fugitive emissions" means natural gas released from equipment and equipment components including valves, pressure relief valves, connectors, tube fittings, open-ended lines, ports, and hatches. This does not include fugitive emissions from equipment and components reported elsewhere for this rule.

"Processing facility fugitive emissions" means natural gas released from all components including valves, flanges, connectors, open-ended lines, pump seals, ESD (emergency shutdown) system fugitive emissions, packing and gaskets in natural gas processing facilities. This does not include fugitive emissions from equipment and components reported elsewhere for this rule, such as compressor fugitive emissions; acid gas removal, blowdown, wet seal oil degassing, and dehydrator vents; and flare stacks.

"Production process unit" means equipment used to capture a carbon dioxide stream.

"Pump seals" means any seal on a pump drive shaft used to keep methane and/or carbon dioxide containing light liquids from escaping the inside of a pump case to the atmosphere.

"Pump seal fugitive emissions" means natural gas released from the seal face between the pump internal chamber and the atmosphere.

"Reciprocating compressor" means a piece of equipment that increases the pressure of a process natural gas by positive displacement, employing linear movement of a shaft driving a piston in a cylinder.

"Reciprocating compressor rod packing" means a series of flexible rings in machined metal cups that fit around the reciprocating compressor piston rod to create a seal limiting the amount of compressed natural gas that escapes to the atmosphere.

"Reciprocating compressor rod packing fugitive emissions" means natural gas released from a connected tubing vent and/or around a piston rod where it passes through the rod packing case. It also includes emissions from uncovered distance piece, rod packing flange (on each cylinder), any packing vents, cover plates (on each cylinder), and the crank-case breather cap.

"Recondenser" means heat exchangers that cool compressed boil-off-gas to a temperature that will condense natural gas to a liquid.

"Regasification" means the process of vaporizing liquefied natural gas to gaseous phase natural gas.

"Sour natural gas" means natural gas that contains significant concentrations of hydrogen sulfide and/or carbon dioxide that exceed the concentrations specified for commercially saleable natural gas delivered from transmission and distribution pipelines.

"Standard conditions or standard temperature and pressure (STP)" means 60°F and 14.7 pounds per square inch absolute.

"Steam aspirated flare" means steam injected into the flare burner tip to induce air mixing with the hydrocarbon fuel to promote more complete combustion as indicated by lack of smoke formation.

"Storage station fugitive emissions" means natural gas released from all components including valves, flanges, connectors, open-ended lines, pump seals, ESD (emergency shutdown) system emissions, packing and gaskets in natural gas storage station. This does not include fugitive emissions from equipment and equipment components reported elsewhere for this rule.

"Storage tank fugitive emissions" means natural gas vented when it flashes out of liquids; this occurs when liquids are transferred from higher pressure and temperature conditions upstream, plus working losses from liquid level increases and decreases during filling and draining and standing losses (breathing losses) from diurnal temperature changes and barometric pressure changes expanding and contracting the vapor volume of a tank.

"Storage wellhead fugitive emissions" means natural gas released from storage station wellhead components including, but not limited to, valves, OELs, connectors, flanges, and tube fittings.

"Subsurface" or "subsurface facility" means for the purposes of this rule, a natural gas facility, such as a pipeline and metering and regulation station in a closed vault below the land surface of the earth.

"Tanker unloading" means pumping of liquid hydrocarbon (e.g., crude oil, LNG) from an ocean-going tanker or barge to shore storage tanks.

"Transmission compressor station fugitive emissions" means natural gas released from all components including, but not limited to, valves, flanges, connectors, open-ended lines, pump seals, ESD (emergency shutdown) system emissions, packing and gaskets in natural gas transmission compressor stations. This does not include fugitive emissions from equipment and equipment components reported elsewhere for this rule, such as compressor fugitive emissions.

"Transmission pipeline" means high pressure cross country pipeline transporting saleable quality natural gas from production or natural gas processing to natural gas distribution pressure letdown, metering, regulating stations where the natural gas is typically odorized before delivery to customers.

"Underground natural gas storage facility" means a subsurface facility, including, but not limited to, depleted gas or oil reservoirs and salt dome caverns, utilized for storing nat-

ural gas that has been transferred from its original location for the primary purpose of load balancing, which is the process of equalizing the receipt and delivery of natural gas. Processes and operations that may be located at a natural gas underground storage facility include, but are not limited to, compression, dehydration and flow measurement. The storage facility also includes all the wellheads connected to the compression units located at the facility.

"Valve" means any device for halting or regulating the flow of a liquid or gas through a passage, pipeline, inlet, outlet, or orifice; including, but not limited to, gate, globe, plug, ball, butterfly and needle valves.

"Vapor recovery system" means any equipment located at the source of potential gas emissions to the atmosphere or to a flare, that is composed of piping, connections, and, if necessary, flow-inducing devices; and that is used for routing the gas back into the process as a product and/or fuel.

"Vaporization unit" means a process unit that performs controlled heat input to vaporize liquefied natural gas to supply transmission and distribution pipelines, or consumers with natural gas.

"Wellhead" means the piping, casing, tubing and connected valves protruding above the earth's surface for an oil and/or natural gas well. The wellhead ends where the flow line connects to a wellhead valve.

"Wet natural gas" means natural gas in which water vapor exceeds the concentration specified for commercially saleable natural gas delivered from transmission and distribution pipelines. This input stream to a natural gas dehydrator is referred to as "wet gas."

NEW SECTION

WAC 173-441-510 Oil refinery combustion sources.

(1) **Definition of the source category.** Combustion units at petroleum refineries using refinery gas or a mixture of refinery gas and other fuels, not including units included in WAC 173-441-520 or 173-441-530.

(2) **GHGs to report.** You must report CO₂, CH₄, and N₂O mass emissions from each stationary fuel combustion unit not included in WAC 173-441-520 or 173-441-530.

(3) **Calculating GHG emissions.** The owner or operator must use the methodologies in this section to calculate the GHG emissions from stationary fuel combustion sources.

(a) CO₂ emissions from fuel combustion. For each stationary fuel combustion unit, the owner or operator must use the four-tiered approach in this subsection, subject to the conditions, requirements, and restrictions set forth in (b) of this subsection.

(i) Tier C Calculation Methodology. Calculate the annual CO₂ mass emissions for a particular type of fuel combusted in a unit, by substituting a fuel-specific default CO₂ emission factor (from Table 510.1 of this section), a default high heating value (from Table 510.1 of this section), and the annual fuel consumption (from company records kept as provided in this rule) into the Equation 510.1 of this section.

$$CO_2 = 1 \times 10^{-3} * Fuel * HHV * EF \quad (\text{Eq. 510.1})$$

Where:

- CO₂ = Annual CO₂ mass emissions for the specific fuel type (metric tons).
- Fuel = Mass or volume of fuel combusted per year, from company records (express mass in short tons for solid fuel, volume in standard cubic feet for gaseous fuel, and volume in gallons for liquid fuel).
- HHV = Default high heat value of the fuel, from Table 510.1 of this section (mmBtu per mass or mmBtu per volume, as applicable).
- EF = Fuel-specific default CO₂ emission factor, from Table 510.1 of this section (kg CO₂/mmBtu).
- 1 x 10⁻³ = Conversion factor from kilograms to metric tons.

(ii) Tier B Calculation Methodology. Calculate the annual CO₂ mass emissions for a particular type of fuel combusted in a unit, by substituting measured high heat values, a default CO₂ emission factor (from Table 510.1 or Table 510.2 of this section), and the quantity of fuel combusted (from company records kept as provided in this rule) into the following equations:

(A) Equation 510.2 of this section applies to any type of fuel.

$$CO_2 = \sum_{p=1}^n 1 \times 10^{-3} (Fuel)_p * (HHV)_p * EF \quad (\text{Eq. 510.2})$$

Where:

- CO₂ = Annual CO₂ mass emissions for the specific fuel type (metric tons).
- n = Number of required heat content measurements for the year.
- (Fuel)_p = Mass or volume of the fuel combusted during the measurement period "p" (express mass in short tons for solid fuel, volume in standard cubic feet for gaseous fuel, and volume in gallons for liquid fuel).
- p = Measurement period (month).
- (HHV)_p = High heat value of the fuel for the measurement period (mmBtu per mass or volume).
- EF = Fuel-specific default CO₂ emission factor, from Table 510.1 or Table 510.2 of this section (kg CO₂/mmBtu).
- 1 x 10⁻³ = Conversion factor from kilograms to metric tons.

(B) In Equation 510.2 of this section, the value of "n" depends upon the frequency at which high heat value (HHV) measurements are required under subsection (4)(c) of this section. For example, for natural gas, which requires

monthly sampling and analysis, n = 6 if the unit combusts natural gas in only six months of the year.

(iii) Tier A2 Calculation Methodology. Calculate the annual CO₂ mass emissions for a particular type of fuel combusted in a unit, by substituting measurements of fuel carbon content, molecular weight (gaseous fuels, only), and the quantity of fuel combusted into the following equations. For solid fuels, the amount of fuel combusted is obtained from company records kept as provided in this rule. For liquid and gaseous fuels, the volume of fuel combusted is measured directly, using fuel flow meters (including gas billing meters). For fuel oil, tank drop measurements may also be used.

(A) For a solid fuel, use Equation 510.3 of this section.

$$CO_2 = \sum_{p=1}^n \frac{44}{12} * (Fuel)_p * (CC)_p \quad (\text{Eq. 510.3})$$

Where:

- CO₂ = Annual CO₂ mass emissions for the specific solid fuel type (metric tons).
- n = Number of required carbon content determinations for the year.
- (Fuel)_n = Mass of the solid fuel combusted in month "n" (metric tons).
- p = Measurement period (month).
- (CC)_n = Carbon content of the solid fuel, from the fuel analysis results for month "n" (percent by weight, expressed as a decimal fraction, e.g., 95% = 0.95).
- 44/12 = Ratio of molecular weights, CO₂ to carbon.

(B) For a liquid fuel, use Equation 510.4 of this section.

$$CO_2 = \sum_{p=1}^n \frac{44}{12} * (Fuel)_p * (CC)_p * 0.001 \quad (\text{Eq. 510.4})$$

Where:

- CO₂ = Annual CO₂ mass emissions for the specific liquid fuel type (metric tons).
- n = Number of required carbon content determinations for the year.
- (Fuel)_n = Volume of the liquid fuel combusted in month "n" (gallons).
- p = Measurement period (month).
- (CC)_n = Carbon content of the liquid fuel, from the fuel analysis results for month "n" (kg C per gallon of fuel).
- 44/12 = Ratio of molecular weights, CO₂ to carbon.
- 0.001 = Conversion factor from kg to metric tons.

(C) For a gaseous fuel, use Equation 510.5 of this section.

$$CO_2 = \sum_{p=1}^n \frac{44}{12} * (Fuel)_p * (CC)_p * \frac{MW}{MVC} * 0.001 \quad (\text{Eq. 510.5})$$

Where:

- CO_2 = Annual CO_2 mass emissions from combustion of the specific gaseous fuel (metric tons).
- n = Number of required carbon content and molecular weight determinations for the year.
- $(Fuel)_n$ = Volume of the gaseous fuel combusted on day "n" or in month "n," as applicable (scf).
- p = Measurement period (month or day, as applicable).
- $(CC)_n$ = Average carbon content of the gaseous fuel, from the fuel analysis results for the day or month, as applicable (kg C per kg of fuel).
- MW = Molecular weight of the gaseous fuel, from fuel analysis (kg/kg-mole).
- MVC = Molar volume conversion factor (849.5 scf per kg-mole at standard conditions).
- 44/12 = Ratio of molecular weights, CO_2 to carbon.
- 0.001 = Conversion factor from kg to metric tons.

(D) In applying Equation 510.5 of this section to natural gas combustion, the CO_2 mass emissions are calculated only for those months in which natural gas is combusted during the reporting year. For the combustion of other gaseous fuels (e.g., refinery gas or process gas), the CO_2 mass emissions are calculated only for those days on which the gaseous fuel is combusted during the reporting year. For example, if the unit combusts process gas on 250 of the 365 days in the year, then $n = 250$ in Equation 510.5 of this section.

(iv) Tier A1 Calculation Methodology. Calculate the annual CO_2 mass emissions from all fuels combusted in a unit, by using quality-assured data from continuous emission monitoring systems (CEMS).

(A) This methodology requires a CO_2 concentration monitor and a stack gas volumetric flow rate monitor, except as otherwise provided in (a)(iv)(D) of this subsection. Hourly measurements of CO_2 concentration and stack gas flow rate are converted to CO_2 mass emission rates in metric tons per hour.

(B) When the CO_2 concentration is measured on a wet basis, Equation 510.6 of this section is used to calculate the hourly CO_2 emission rates.

$$CO_2 = 5.18 \times 10^{-7} * C_{CO_2} * Q \quad (\text{Eq. 510.6})$$

Where:

- CO_2 = CO_2 mass emission rate.
- C_{CO_2} = Hourly average CO_2 concentration (% CO_2).
- Q = Hourly average stack gas volumetric flow rate (scfh).
- 5.18×10^{-7} = Conversion factor (tons/scf-% CO_2).

(C) If the CO_2 concentration is measured on a dry basis, a correction for the stack gas moisture content is required. The owner or operator must either continuously monitor the stack gas moisture content as described in 40 CFR 75.11 (b)(2) or, for certain types of fuel, use a default moisture percentage from 40 CFR 75.11 (b)(1). For each unit operating hour, a moisture correction must be applied to Equation 510.6 of this section as follows:

$$CO_2^* = CO_2 \left(\frac{100 - \%H_2O}{100} \right) \quad (\text{Eq. 510.7})$$

Where:

- CO_2^* = Hourly CO_2 mass emission rate, corrected for moisture (metric tons/hr).
- CO_2 = Hourly CO_2 mass emission rate from Equation 510.6 of this section, uncorrected (tons/hr).
- $\%H_2O$ = Hourly moisture percentage in the stack gas (measured or default value, as appropriate).

(D) An oxygen (O_2) concentration monitor may be used in lieu of a CO_2 concentration monitor to determine the hourly CO_2 concentrations, in accordance with Equation F-14a or F-14b (as applicable) in Appendix F to 40 CFR Part 75, if the effluent gas stream monitored by the CEMS consists solely of combustion products and if only fuels that are listed in Table 1 in section 3.3.5 of Appendix F to 40 CFR Part 75 are combusted in the unit. If the O_2 monitoring option is selected, the F-factors used in Equations F-14a and F-14b must be determined according to section 3.3.5 or section 3.3.6 of Appendix F to 40 CFR Part 75 as applicable. If Equation F-14b is used, the hourly moisture percentage in the stack gas must be either a measured value in accordance with 40 CFR 75.11 (b)(2), or, for certain types of fuel, a default moisture value from 40 CFR 75.11 (b)(1).

(E) Each hourly CO_2 mass emission rate from Equation 510.6 or 510.7 of this section is multiplied by the operating time to convert it from metric tons per hour to metric tons. The operating time is the fraction of the hour during which fuel is combusted (e.g., the unit operating time is 1.0 if the unit operates for the whole hour and is 0.5 if the unit operates for thirty minutes in the hour). For common stack configurations, the operating time is the fraction of the hour during which effluent gases flow through the common stack.

(F) The hourly CO_2 mass emissions are then summed over the entire calendar year.

(G) If both biogenic fuel and fossil fuel are combusted during the year, determine the biogenic CO₂ mass emissions separately, as described in (e) of this subsection.

(b) **Use of the four tiers.** Use of the four tiers of CO₂ emissions calculation methodologies described in (a) of this subsection is subject to the following conditions, requirements, and restrictions:

(i) The Tier C Calculation Methodology may be used for any type of fuel combusted in a unit with a maximum rated heat input capacity of 250 mmBtu/hr or less, provided that:

(A) An applicable default CO₂ emission factor and an applicable default high heat value for the fuel are specified in Table 510.1 of this section.

(B) The owner or operator does not perform, or receive from the entity supplying the fuel, the results of fuel sampling and analysis on a monthly (or more frequent) basis that includes measurements of the HHV. If the owner or operator performs such fuel sampling and analysis or receives such fuel sampling and analysis results, the Tier C Calculation Methodology must not be used, and the Tier B, Tier A2, or Tier A1 Calculation Methodology must be used instead.

(ii) The Tier C Calculation Methodology may also be used to calculate the biogenic CO₂ emissions from a unit of any size that combusts wood, wood waste, or other solid biomass-derived fuels, except when the Tier A1 Calculation Methodology is used to quantify the total CO₂ mass emissions. If the Tier A1 Calculation Methodology is used, the biogenic CO₂ emissions must be calculated according to (e) of this subsection.

(iii) The Tier B Calculation Methodology may be used for any type of fuel combusted in any unit with a maximum rated heat input capacity of 250 mmBtu/hr or less, provided that a default CO₂ emission factor for the fuel is specified in Table 510.1 or Table 510.2 of this section.

(iv) The Tier A2 Calculation Methodology may be used for a unit of any size, combusting any type of fuel, except when the use of Tier A1 is required or elected, as provided in (b)(v) of this subsection.

(v) The Tier A1 Calculation Methodology:

(A) May be used for a unit of any size, combusting any type of fuel.

(B) Must be used for a unit if:

(I) The unit has a maximum rated heat input capacity greater than 250 mmBtu/hr.

(II) The unit combusts solid fossil fuel, either as a primary or secondary fuel.

(III) The unit has operated for more than one thousand hours in any calendar year since 2005.

(IV) The unit has installed CEMS that are required either by an applicable federal or state regulation or the unit's operating permit.

(V) The installed CEMS include a gas monitor of any kind, a stack gas volumetric flow rate monitor, or both and the monitors have been certified in accordance with the requirements of 40 CFR Part 75, 40 CFR Part 60, or an applicable permitting authority continuous monitoring program.

(VI) The installed gas and/or stack gas volumetric flow rate monitors are required, by an applicable federal or state regulation or the unit's operating permit, to undergo periodic quality assurance testing in accordance with Appendix B to

40 CFR Part 75, Appendix F to 40 CFR Part 60, or an applicable permitting authority or local authority continuous monitoring program.

(C) Must be used for a unit with a maximum rated heat input capacity of 250 mmBtu/hr or less, if the unit:

(I) Has both a stack gas volumetric flow rate monitor and a CO₂ concentration monitor.

(II) The unit meets the other conditions specified in (b)(v)(B)(II) and (III) of this subsection.

(III) The CO₂ and stack gas volumetric flow rate monitors meet the conditions specified in (b)(v)(B)(IV) through (VI) of this subsection.

(vi) The Tier A1 Calculation Methodology, if selected or required, must be used beginning on:

(A) January 1, 2010, for a unit is required to report CO₂ mass emissions beginning on that date, if all of the monitors needed to measure CO₂ mass emissions have been installed and certified by that date.

(B) January 1, 2011, for a unit that is required to report CO₂ mass emissions beginning on January 1, 2010, if all of the monitors needed to measure CO₂ mass emissions have not been installed and certified by January 1, 2010. In this case, the owner or operator must use the Tier A2 Calculation Methodology in 2010.

(c) **Calculation of CH₄ and N₂O emissions from all fuel combustion.** Calculate the annual CH₄ and N₂O mass emissions from stationary fuel combustion sources as follows:

(i) For units subject to the requirements of the acid rain program and for other units monitoring and reporting heat input on a year-round basis according to 40 CFR 75.10(c) and 40 CFR 75.64 use Equation 510.8 of this section.

$$CH_4 \text{ or } N_2O = 1 \times 10^{-3} * (HI)_A * EF \tag{Eq. 510.8}$$

Where:

- CH₄ or N₂O = Annual CH₄ or N₂O emissions from the combustion of a particular type of fuel (metric tons).
- (HI)_A = Cumulative annual heat input from the fuel, derived from the electronic data report required under 40 CFR 75.64 (mmBtu).
- EF = Fuel-specific default emission factor for CH₄ or N₂O, from Table 510.3 of this section (kg CH₄ or N₂O per mmBtu).
- 1 x 10⁻³ = Conversion factor from kilograms to metric tons.

(ii) For all other units, use the applicable equations and procedures in (c)(ii) through (iv) of this subsection to calculate the annual CH₄ and N₂O emissions.

(A) If a default high heat value for a particular fuel is specified in Table 510.1 of this section and if the HHV is not measured or provided by the entity supplying the fuel on a

monthly (or more frequent) basis throughout the year, use Equation 510.9 of this section.

$$CH_4 \text{ or } N_2O = 1 \times 10^{-3} * Fuel * HHV * EF \quad (Eq. 510.9)$$

Where:

CH ₄ or N ₂ O	=	Annual CH ₄ or N ₂ O emissions from the combustion of a particular type of fuel (metric tons).
Fuel	=	Mass or volume of the fuel combusted, from company records (mass or volume per year).
HHV	=	Default high heat value of the fuel from Table 510.1 of this section (mmBtu per mass or volume).
EF	=	Fuel-specific default emission factor for CH ₄ or N ₂ O, from Table 510.3 of this section (kg CH ₄ or N ₂ O per mmBtu).
1 x 10 ⁻³	=	Conversion factor from kilograms to metric tons.

(B) If the high heat value of a particular fuel is measured on a monthly (or more frequent) basis throughout the year, or if such data are provided by the entity supplying the fuel, use Equation 510.10 of this section.

$$CH_4 \text{ or } N_2O = \sum_{p=1}^n 1 \times 10^{-3} * (Fuel)_p * (HHV)_p * EF \quad (Eq. 510.10)$$

Where:

CH ₄ or N ₂ O	=	Annual CH ₄ or N ₂ O emissions from the combustion of a particular type of fuel (metric tons).
n	=	Number of required heat content measurements for the year.
(Fuel) _p	=	Mass or volume of the fuel combusted during the measurement period "p" (mass or volume per unit time).
(HHV) _p	=	Measured high heat value of the fuel for period "p" (mmBtu per mass or volume).
p	=	Measurement period (day or month, as applicable).
EF	=	Fuel-specific default emission factor for CH ₄ or N ₂ O, from Table 510.3 of this section (kg CH ₄ or N ₂ O per mmBtu).
1 x 10 ⁻³	=	Conversion factor from kilograms to metric tons.

(ii) Multiply the result from Equations 510.8, 510.9, and 510.10 of this section (as applicable) by the global warming potential (GWP) factor to convert the CH₄ or N₂O emissions to metric tons of CO₂ equivalent.

(iv) If, for a particular type of fuel, default CH₄ and N₂O emission factors are not provided in Table 510.3 of this section, the owner or operator may, subject to the approval of ecology, develop site-specific CH₄ and N₂O emission factors, based on the results of source testing.

(d) Calculation of CO₂ from sorbent.

(i) When a unit is a fluidized bed boiler, is equipped with a wet flue gas desulfurization system, or uses other acid gas emission controls with sorbent injection, use the following equation to calculate the CO₂ emissions from the sorbent, if those CO₂ emissions are not monitored by CEMS.

$$CO_2 = S * R * \left(\frac{MW_{CO_2}}{MW_s} \right) \quad (Eq. 510.11)$$

Where:

CO ₂	=	CO ₂ emitted from sorbent for the reporting year (metric tons).
S	=	Limestone or other sorbent used in the reporting year (metric tons).
R	=	Ratio of moles of CO ₂ released upon capture of one mole of acid gas.
MW _{CO₂}	=	Molecular weight of carbon dioxide (44).
MW _s	=	Molecular weight of sorbent (100, if calcium carbonate).

(ii) The total annual CO₂ mass emissions for the unit must be the sum of the CO₂ emissions from the combustion process and the CO₂ emissions from the sorbent.

(e) **Biogenic CO₂ emissions.** If any fuel combusted in the unit meets the definition of biomass or biomass-derived fuel in WAC 173-441-030, then the owner or operator must estimate and report the total annual biogenic CO₂ emissions, according to (e)(i), (ii), or (iii) of this subsection, as applicable.

(i) The owner or operator may use Equation 510.1 of this section to calculate the annual CO₂ mass emissions from the combustion of biogenic fuel, for a unit of any size, provided that:

(A) The Tier A1 Calculation Methodology is not required or elected.

(B) The biogenic fuel consists of wood, wood waste, or other biomass-derived solid fuels.

(ii) If CEMS are used to determine the total annual CO₂ emissions, either according to 40 CFR Part 75 or the Tier A1 Calculation Methodology of this section and if both fossil fuel and biogenic fuel are combusted in the unit during the reporting year, use the following procedure to determine the annual biogenic CO₂ mass emissions.

(A) For each operating hour, use Equation 510.12 of this section to determine the volume of CO₂ emitted.

$$V_{CO2h} = \frac{(\%CO_2)_h}{100} * Q_h * t_h \quad (Eq. 510.12)$$

$$\%Biogenic = \frac{V_{bio}}{V_{total}} * 100 \quad (Eq. 510.14)$$

Where:

- V_{CO2h} = Hourly volume of CO₂ emitted (scf).
 $(\%CO_2)_h$ = Hourly CO₂ concentration, measured by the CO₂ concentration monitor (%CO₂).
 Q_h = Hourly stack gas volumetric flow rate, measured by the stack gas volumetric flow rate monitor (scfh).
 t_h = Source operating time (decimal fraction of the hour during which the source combusts fuel, i.e., 1.0 for a full operating hour, 0.5 for 30 minutes of operation, etc.).
 100 = Conversion factor from percent to a decimal fraction.

(B) Sum all of the hourly V_{CO2h} values for the reporting year, to obtain V_{total} , the total annual volume of CO₂ emitted.

(C) Calculate the annual volume of CO₂ emitted from fossil fuel combustion using Equation 510.13 of this section. If two or more types of fossil fuel are combusted during the year, perform a separate calculation with Equation 510.13 of this section for each fuel and sum the results.

$$V_{ff} = \frac{Fuel * F_c * GCV}{10^6} \quad (Eq. 510.13)$$

Where:

- V_{ff} = Annual volume of CO₂ emitted from combustion of a particular fossil fuel (scf).
 Fuel = Total quantity of the fossil fuel combusted in the reporting year, from company records (lb for solid fuel, gallons for liquid fuel, and scf for gaseous fuel).
 F_c = Fuel-specific carbon based F-factor, either a default value from Table 1 in section 3.3.5 of Appendix F to 40 CFR Part 75 or a site-specific value determined under section 3.3.6 of Appendix F to 40 CFR Part 75 (scf CO₂/mmBtu).
 GCV = Gross calorific value of the fossil fuel, from fuel sampling and analysis (annual average value in Btu/lb for solid fuel, Btu/gal for liquid fuel and Btu/scf for gaseous fuel).
 10⁶ = Conversion factor, Btu per mmBtu.

(D) Subtract V_{ff} from V_{total} to obtain V_{bio} , the annual volume of CO₂ from the combustion of biogenic fuels.

(E) Calculate the biogenic percentage of the annual CO₂ emissions, using Equation 510.14 of this section.

(F) Calculate the annual biogenic CO₂ mass emissions, in metric tons, by multiplying the percent biogenic obtained from Equation 510.14 of this section by the total annual CO₂ mass emissions in metric tons, as determined under (a)(iv)(D) of this subsection.

(ii) For biogas combustion, the Tier B or Tier A2 Calculation Methodology must be used to determine the annual biogenic CO₂ mass emissions, except as provided in (e)(ii) of this subsection.

(4) **Monitoring and QA/QC requirements.** The CO₂ mass emissions data for stationary combustion units must be quality-assured as follows:

(a) For units using the calculation methodologies described in this subsection, the records required under WAC 173-441-150 and 173-441-160 must include both the company records and a detailed explanation of how company records are used to estimate the following:

(i) Fuel consumption, when the Tier C and Tier B Calculation Methodologies described in subsection (3)(a) of this section are used.

(ii) Fuel consumption, when solid fuel is combusted and the Tier A2 Calculation Methodology in subsection (3)(a)(iii) of this section is used.

(iii) Fossil fuel consumption, when, pursuant to subsection (3)(e) of this section, the owner or operator of a unit that uses CEMS to quantify CO₂ emissions and that combusts both fossil and biogenic fuels separately reports the biogenic portion of the total annual CO₂ emissions.

(iv) Sorbent usage, if the methodology in subsection (3)(d) of this section is used to calculate CO₂ emissions from sorbent.

(b) The owner or operator must document the procedures used to ensure the accuracy of the estimates of fuel usage and sorbent usage (as applicable) in (a) of this subsection, including, but not limited to, calibration of weighing equipment, fuel flow meters, and other measurement devices. The estimated accuracy of measurements made with these devices must also be recorded, and the technical basis for these estimates must be provided.

(c) For the Tier B Calculation Methodology, the applicable fuel sampling and analysis methods incorporated by reference in WAC 173-441-700 must be used to determine the high heat values. For coal, the samples must be taken at a location in the fuel handling system that provides a sample representative of the fuel bunkered or consumed. The minimum frequency of the sampling and analysis for each type of fuel (only for the weeks or months when that fuel is combusted in the unit) is as follows:

(i) Monthly, for natural gas, biogas, fuel oil, and other liquid fuels.

(ii) For coal and other solid fuels, weekly sampling is required to obtain composite samples, which are analyzed monthly.

(d) For the Tier A2 Calculation Methodology:

(i) All oil and gas flow meters (except for gas billing meters) must be calibrated prior to the first year for which GHG emissions are reported under this part, using an applicable flow meter test method listed in WAC 173-441-700 or the calibration procedures specified by the flow meter manufacturer. Fuel flow meters must be recalibrated either annually or at the minimum frequency specified by the manufacturer.

(ii) Oil tank drop measurements (if applicable) must be performed according to one of the methods listed in WAC 173-441-700.

(iii) The carbon content of the fuels listed in (c)(i) and (ii) of this subsection must be determined monthly. For other gaseous fuels (e.g., refinery gas, or process gas), daily sampling and analysis is required to determine the carbon content and molecular weight of the fuel. An applicable method listed in WAC 173-441-700 must be used to determine the carbon content and (if applicable) molecular weight of the fuel.

(e) For the Tier A1 Calculation Methodology, the CO₂ and flow rate monitors must be certified prior to the applicable deadline specified in subsection (3)(b)(vi) of this section.

(i) For initial certification, use the following procedures:

(A) 40 CFR 75.20 (c)(2) and (4) and Appendix A to 40 CFR Part 75.

(B) The calibration drift test and relative accuracy test audit (RATA) procedures of Performance Specification 3 in Appendix B to Part 60 (for the CO₂ concentration monitor) and Performance Specification 6 in Appendix B to Part 60 (for the continuous emission rate monitoring system (CERMS)).

(C) The provisions of an applicable state continuous monitoring program.

(ii) If an O₂ concentration monitor is used to determine CO₂ concentrations, the applicable provisions of 40 CFR Part 75, 40 CFR Part 60, or an applicable permitting authority or an applicable permitting authority continuous monitoring program must be followed for initial certification and ongoing quality assurance, and all required RATAs of the monitor must be done on a percent CO₂ basis.

(iii) For ongoing quality assurance, follow the applicable procedures in Appendix B to 40 CFR Part 75, Appendix F to 40 CFR Part 60, or an applicable permitting authority continuous monitoring program. If Appendix F to 40 CFR Part 60 is selected for ongoing quality assurance, perform daily calibration drift (CD) assessments for both the CO₂ and flow rate monitors, conduct cylinder gas audits of the CO₂ concentration monitor in three of the four quarters of each year (except for nonoperating quarters), and perform annual RATAs of the CO₂ concentration monitor and the CERMS.

(iv) For the purposes of this part, the stack gas volumetric flow rate monitor RATAs required by Appendix B to 40 CFR Part 75 and the annual RATAs of the CERMS required by Appendix F to 40 CFR Part 60 need only be done at one operating level, representing normal load or normal process operating conditions, both for initial certification and for ongoing quality assurance.

(5) **Procedures for estimating missing data.** Whenever a quality-assured value of a required parameter is unavailable (e.g., if a CEMS malfunctions during unit operation or if a required fuel sample is not taken), a substitute data

value for the missing parameter must be used in the calculations.

(a) For all units subject to the requirements of the acid rain program, the applicable missing data substitution procedures in 40 CFR Part 75 must be followed for CO₂ concentration, stack gas flow rate, fuel flow rate, gross calorific value (GCV), and fuel carbon content.

(b) For all units that are not subject to the requirements of the acid rain program, when the Tier C, Tier B, Tier A2, or Tier A1 calculation is used, perform missing data substitution as follows for each parameter:

(i) For each missing value of the heat content, carbon content, or molecular weight of the fuel, and for each missing value of CO₂ concentration and percent moisture, the substitute data value must be the arithmetic average of the quality-assured values of that parameter immediately preceding and immediately following the missing data incident. If, for a particular parameter, no quality-assured data are available prior to the missing data incident, the substitute data value must be the first quality-assured value obtained after the missing data period.

(ii) For missing records of stack gas flow rate, fuel usage, and sorbent usage, the substitute data value must be the best available estimate of the flow rate, fuel usage, or sorbent consumption, based on all available process data (e.g., steam production, electrical load, and operating hours). The owner or operator must document and keep records of the procedures used for all such estimates.

(6) Data reporting requirements.

(a) In addition to the facility-level information required under WAC 173-441-150 and 173-441-160, the annual GHG emissions report must contain the unit-level or process-level emissions data in (b) and (c) of this subsection (as applicable) and the emissions verification data in (d) of this subsection.

(b) Unit-level emissions data reporting. Except where aggregation of unit-level information is permitted under (c) of this subsection, the owner or operator must report:

(i) The unit ID number (if applicable).

(ii) A code representing the type of unit.

(iii) Maximum rated heat input capacity of the unit, in mmBtu/hr (boilers, combustion turbines, engines, and process heaters only).

(iv) Each type of fuel combusted in the unit during the report year.

(v) The calculated CO₂, CH₄, and N₂O emissions for each type of fuel combusted, expressed in metric tons of each gas and in metric tons of CO₂e.

(vi) The method used to calculate the CO₂ emissions for each type of fuel combusted (e.g., Part 75 of this chapter or the Tier C or Tier B Calculation Methodology).

(vii) If applicable, indicate which one of the monitoring and reporting methodologies in 40 CFR Part 75 was used to quantify the CO₂ emissions (e.g., CEMS, Appendix G, LME).

(viii) The calculated CO₂ emissions from sorbent (if any), expressed in metric tons.

(ix) The total GHG emissions from the unit for the reporting year, i.e., the sum of the CO₂, CH₄, and N₂O emissions for all fuel types, expressed in metric tons of CO₂e.

(c) Reporting alternatives for stationary combustion units. For stationary combustion units, the following reporting alternatives may be used to simplify the unit-level reporting required under (b) of this subsection:

(i) Aggregation of small units. If a facility contains two or more units (e.g., boilers or combustion turbines) that have a combined maximum rated heat input capacity of 250 mmBtu/hr or less, the owner or operator may report the combined emissions for the group of units in lieu of reporting separately the GHG emissions from the individual units, provided that the amount of each type of fuel combusted in the units in the group is accurately quantified. More than one such group of units may be defined at a facility, so long as the aggregate maximum rated heat input capacity of the units in the group does not exceed 250 mmBtu/hr. If this option is selected, the following information must be reported instead of the information in (b) of this subsection:

(A) Group ID number, beginning with the prefix "GP."

(B) The ID number of each unit in the group.

(C) Cumulative maximum rated heat input capacity of the group (mmBtu/hr).

(D) Each type of fuel combusted in the units during the reporting year.

(E) The calculated CO₂, CH₄, and N₂O mass emissions for each type of fuel combusted in the group of units during the year, expressed in metric tons of each gas and in metric tons of CO₂e.

(F) The methodology used to calculate the CO₂ mass emissions for each type of fuel combusted in the units.

(G) The calculated CO₂ mass emissions (if any) from sorbent.

(H) The total GHG emissions from the group for the year, i.e., the sum of the CO₂, CH₄, and N₂O emissions across, all fuel types, expressed in metric tons of CO₂e.

(ii) Monitored common stack configurations. When the flue gases from two or more stationary combustion units at a facility are discharged through a common stack, if CEMS are used to continuously monitor CO₂ mass emissions at the common stack according to 40 CFR Part 75 or as described in the Tier A1 Calculation Methodology in subsection (3)(a)(iv) of this section, the owner or operator may report the combined emissions from the units sharing the common stack, in lieu of reporting separately the GHG emissions from the individual units. If this option is selected, the following information must be reported instead of the information in (b) of this subsection:

(A) Common stack ID number, beginning with the prefix "CS."

(B) ID numbers of the units sharing the common stack.

(C) Maximum rated heat input capacity of each unit sharing the common stack (mmBtu/hr).

(D) Each type of fuel combusted in the units during the year.

(E) The methodology used to calculate the CO₂ mass emissions (i.e., CEMS or the Tier A1 Calculation Methodology).

(F) The total CO₂ mass emissions measured at the common stack for the year, expressed in metric tons of CO₂e.

(G) The combined annual CH₄ and N₂O emissions from the units sharing the common stack, expressed in metric tons of each gas and in metric tons of CO₂e.

(I) If the monitoring is done according to 40 CFR Part 75, use Equation 510.8 of this section, where the term "(HI)_A" is the cumulative annual heat input measured at the common stack.

(II) For the Tier A1 Calculation Methodology, use Equations 510.9 and 510.10 of this section separately for each type of fuel combusted in the units during the year, and then sum the emissions for all fuel types.

(H) The total GHG emissions for the year from the units that share the common stack, i.e., the sum of the CO₂, CH₄, and N₂O emissions, expressed in metric tons of CO₂e.

(iii) Common pipe configurations. When two or more oil-fired or gas-fired stationary combustion units at a facility combust the same type of fuel and that fuel is fed to the individual units through a common supply line or pipe, the owner or operator may report the combined emissions from the units served by the common supply line, in lieu of reporting separately the GHG emissions from the individual units, provided that the total amount of fuel combusted by the units is accurately measured at the common pipe or supply line using a calibrated fuel flow meter. If this option is selected, the following information must be reported instead of the information in (b) of this subsection:

(A) Common pipe ID number, beginning with the prefix "CP."

(B) ID numbers of the units served by the common pipe.

(C) Maximum rated heat input capacity of each unit served by the common pipe (mmBtu/hr).

(D) The type of fuel combusted in the units during the reporting year.

(E) The methodology used to calculate the CO₂ mass emissions.

(F) The total CO₂ mass emissions from the units served by the common pipe for the reporting year, expressed in metric tons of CO₂e.

(G) The combined annual CH₄ and N₂O emissions from the units served by the common pipe, expressed in metric tons of each gas and in metric tons of CO₂e.

(H) The total GHG emissions for the reporting year from the units served by the common pipe, i.e., the sum of the CO₂, CH₄, and N₂O emissions, expressed in metric tons of CO₂e.

(d) Verification data. The owner or operator must retain sufficient data and supplementary information to verify the reported GHG emissions.

(i) For stationary combustion sources using the Tier C, Tier B, Tier A2, or Tier A1 Calculation Methodology in subsection (3)(a)(iv) of this section to quantify CO₂ emissions, the following additional information must be included in the GHG emissions report:

(A) For the Tier C Calculation Methodology, report the total quantity of each type of fuel combusted during the reporting year, in short tons for solid fuels, gallons for liquid fuels and scf for gaseous fuels.

(B) For the Tier B Calculation Methodology, report:

(I) The total quantity of each type of fuel combusted during each month (except for MSW). Express the quantity of

each fuel combusted during the measurement period in short tons for solid fuels, gallons for liquid fuels, and scf for gaseous fuels.

(II) The number of required high heat value determinations for each type of fuel for the reporting year (i.e., "n" in Equation 510.2 of this section, corresponding (as applicable) to the number of operating days or months when each type of fuel was combusted, in accordance with subsections (3)(a)(ii) and (4)(c) of this section.

(III) For each month, the high heat value used in Equation 510.2 of this section for each type of fuel combusted, in mmBtu per short ton for solid fuels, mmBtu per gallon for liquid fuels, and mmBtu per scf for gaseous fuels.

(IV) For each reported HHV, indicate whether it is an actual measured value or a substitute data value.

(V) Each method from WAC 173-441-700 used to determine the HHV for each type of fuel combusted.

(VI) For MSW, the total quantity (i.e., lb.) of steam produced from MSW combustion during the year, and "B," the ratio of the unit's maximum rate heat input capacity to its design rated steam output capacity, in mmBtu per lb. of steam.

(C) For the Tier A2 Calculation Methodology, report:

(I) The total quantity of each type of fuel combusted during each month or day (as applicable), in metric tons for solid fuels, gallons for liquid fuels, and scf for gaseous fuels.

(II) The number of required carbon content determinations for each type of fuel for the reporting year, corresponding (as applicable) to the number of operating days or months when each type of fuel was combusted, in accordance with subsections (3)(a)(iii) and (4)(d) of this section.

(III) For each operating month or day, the carbon content (CC) value used in Equation 510.3, 510.4, or 510.5 of this section (as applicable), expressed as a decimal fraction for solid fuels, kg C per gallon for liquid fuels, and kg C per kg of fuel for gaseous fuels.

(IV) For gaseous fuel combustion, the molecular weight of the fuel used in Equation 510.5 of this section, for each operating month or day, in kg per kg-mole.

(V) For each reported CC value, indicate whether it is an actual measured value or a substitute data value.

(VI) For liquid and gaseous fuel combustion, the dates and results of the initial calibrations and periodic recalibrations of the fuel flow meters used to measure the amount of fuel combusted.

(VII) For fuel oil combustion, each method from WAC 173-441-700 used to make tank drop measurements (if applicable).

(VIII) Each method from WAC 173-441-700 used to determine the CC for each type of fuel combusted.

(IX) Each method from WAC 173-441-700 used to calibrate the fuel flow meters (if applicable).

(D) For the Tier A1 Calculation Methodology, report:

(I) The total number of source operating days and the total number of source operating hours in the reporting year.

(II) Whether the CEMS certification and quality assurance procedures of 40 CFR Part 75 of this chapter, 40 CFR Part 60, or an applicable permitting authority continuous monitoring program have been selected.

(III) The CO₂ emissions on each operating day, i.e., the sum of the hourly values calculated from Equation 510.6 or 510.7 of this section (as applicable), in metric tons.

(IV) For CO₂ concentration, stack gas flow rate, and (if applicable) stack gas moisture content, the number of source operating hours in which a substitute data value of each parameter was used in the emissions calculations.

(V) The dates and results of the initial certification tests of the CEMS.

(VI) The dates and results of the major quality assurance tests performed on the CEMS during the reporting year, i.e., linearity checks, cylinder gas audits, and relative accuracy test audits (RATAs).

(E) If CO₂ emissions that are generated from acid gas scrubbing with sorbent injection are not captured using CEMS, report:

(I) The total amount of sorbent used during the report year, in metric tons.

(II) The molecular weight of the sorbent.

(III) The ratio ("R") in Equation 510.11 of this section.

(F) For units that combust both fossil fuel and biogenic fuel, when CEMS are used to quantify the annual CO₂ emissions, the owner or operator must report the following additional information, as applicable:

(I) The annual volume of CO₂ emitted from the combustion of all fuels, i.e., V_{total}, in scf.

(II) The annual volume of CO₂ emitted from the combustion of fossil fuels, i.e., V_{ff}, in scf. If more than one type of fossil fuel was combusted, report the combustion volume of CO₂ for each fuel separately as well as the total.

(III) The annual volume of CO₂ emitted from the combustion of biogenic fuels, i.e., V_{bio}, in scf.

(IV) The carbon-based F-factor used in Equation 510.14 of this section, for each type of fossil fuel combusted, in scf CO₂ per mmBtu.

(V) The annual average GCV value used in Equation 510.14 of this section, for each type of fossil fuel combusted, in Btu/lb, Btu/gal, or Btu/scf, as appropriate.

(VI) The total quantity of each type of fossil fuel combusted during the reporting year, in lb, gallons, or scf, as appropriate.

(VII) The total annual biogenic CO₂ mass emissions, in metric tons.

(ii) Within seven days of receipt of a written request (e.g., a request by electronic mail) from the administrator or from the applicable state or local air pollution control agency, the owner or operator must submit the explanations described in subsection (4)(a) and (b) of this section, as follows:

(A) A detailed explanation of how company records are used to quantify fuel consumption, if Calculation Methodology Tier C or Tier B is used to calculate CO₂ emissions.

(B) A detailed explanation of how company records are used to quantify fuel consumption, if solid fuel is combusted and the Tier A2 Calculation Methodology in subsection (3)(a)(iii) of this section is used to calculate CO₂ emissions.

(C) A detailed explanation of how sorbent usage is quantified, if the methodology in subsection (3)(d) of this section is used to calculate CO₂ emissions from sorbent.

(D) A detailed explanation of how company records are used to quantify fossil fuel consumption, when, as described in subsection (3)(e) of this section, the owner or operator of a unit that combusts both fossil fuel and biogenic fuel uses CEMS to quantify CO₂ emissions.

(7) Records that must be retained. The recordkeeping requirements of WAC 173-441-160 and, if applicable, subsection (4)(a) and (b) of this section must be fully met for affected facilities with stationary combustion sources. Also,

the records required under subsection (5)(a)(i) of this section, documenting the data substitution procedures for missing stack flow rate, fuel flow rate, fuel usage and (if applicable) sorbent usage information and site-specific source testing (as allowed in subsection (3)(c)(iv) of this section), must be retained. No special recordkeeping beyond that specified in WAC 173-441-160, and subsections (4)(a) and (b) and (5)(b)(ii) of this section are required.

Table 510.1. Default CO₂ Emission Factors and High Heat Values for Various Types of Fuel

Fuel Type	Default High Heat Value	Default CO₂ Emission Factor
Coal and Coke	mmBtu/short ton	kg CO₂/mmBtu
Anthracite	25.09	103.54
Bituminous	24.93	93.40
Sub-bituminous	17.25	97.02
Lignite	14.21	96.36
Unspecified (Residential/Commercial)	22.24	95.26
Unspecified (Industrial Coking)	26.28	93.65
Unspecified (Other Industrial)	22.18	93.91
Unspecified (Electric Power)	19.97	91.38
Coke	21.80	102.04
Natural Gas	mmBtu/scf	kg CO₂/mmBtu
Unspecified (Weighted US Average)	1.027 x 10 ⁻³	53.02
Petroleum Products	mmBtu/gallon	kg CO₂/mmBtu
Asphalt and Road Oil	0.158	75.55
Aviation Gasoline	0.120	69.14
Distillate Fuel Oil (# 1, 2, & 4)	0.139	73.10
Jet Fuel	0.135	70.83
Kerosene	0.135	72.25
LPG (energy use)	0.092	62.98
Propane	0.091	63.02
Ethane	0.069	59.54
Isobutane	0.099	65.04
n-Butane	0.103	64.93
Lubricants	0.144	74.16
Motor Gasoline	0.124	70.83
Residual Fuel Oil (# 5 & 6)	0.150	76.74
Crude Oil	0.138	74.49
Naphtha (> 401 deg. F)	0.125	66.46
Natural Gasoline	0.110	66.83
Other Oil (> 401 deg. F)	0.139	73.10
Pentanes Plus	0.110	66.83
Petrochemical Feedstocks	0.129	70.97
Petroleum Coke	0.143	102.04
Special Naphtha	0.125	72.77
Unfinished Oils	0.139	74.49
Waxes	0.132	72.58
Biomass-derived Fuels (solid)	mmBtu/short ton	kg CO₂/mmBtu
Wood and Wood waste (12% moisture content) or other solid biomass-derived fuels	15.38	93.80
Biomass-derived Fuels (Gas)	mmBtu/scf	kg CO₂/mmBtu
Biogas	Varies	52.07

Note: Heat content factors are based on higher heating values (HHV). Also, for petroleum products, the default heat content values have been converted from units of mmBtu per barrel to mmBtu per gallon.

Table 510.2. Default CO₂ Emission Factors for the Combustion of Alternative Fuels

Fuel Type	Default CO ₂ Emission Factor (kg CO ₂ /mmBtu)
Waste Oil	74
Tires	65
Plastics	75
Solvents	74
Impregnated Saw Dust	75
Other Fossil Based Wastes	80
Dried Sewage Sludge	110
Mixed Industrial Waste	83
Municipal Solid Waste	90.652

Note: Emission factors are based on higher heating values (HHV). Values were converted from LHV to HHV assuming that LHV are 5 percent lower than HHV for solid and liquid fuels.

Table 510.3. Default CH₄ and N₂O Emission Factors for Various Types of Fuel

Fuel Type	Default CH ₄ Emission Factor (kg CH ₄ /mmBtu)	Default N ₂ O Emission Factor (kg N ₂ O/mmBtu)
Asphalt	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Aviation Gasoline	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Coal	1.0 x 10 ⁻²	1.5 x 10 ⁻³
Crude Oil	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Digester Gas	9.0 x 10 ⁻⁴	1.0 x 10 ⁻⁴
Distillate	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Gasoline	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Jet Fuel	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Kerosene	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Landfill Gas	9.0 x 10 ⁻⁴	1.0 x 10 ⁻⁴
LPG	1.0 x 10 ⁻³	1.0 x 10 ⁻⁴
Lubricants	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Municipal Solid Waste	3.0 x 10 ⁻²	4.0 x 10 ⁻³
Naphtha	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Natural Gas	9.0 x 10 ⁻⁴	1.0 x 10 ⁻⁴
Natural Gas Liquids	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Other Biomass	3.0 x 10 ⁻²	4.0 x 10 ⁻³
Petroleum Coke	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Propane	1.0 x 10 ⁻³	1.0 x 10 ⁻⁴
Refinery Gas	9.0 x 10 ⁻⁴	1.0 x 10 ⁻⁴
Residual Fuel Oil	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Tires	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Waste Oil	3.0 x 10 ⁻²	4.0 x 10 ⁻³
Waxes	3.0 x 10 ⁻³	6.0 x 10 ⁻⁴
Wood and Wood Waste	3.0 x 10 ⁻²	4.0 x 10 ⁻³

Note: Values were converted from LHV to HHV assuming that LHV are 5 percent lower than HHV for solid and liquid fuels and 10 percent lower for gaseous fuels. Those employing this table are assumed to fall under the IPCC definitions of the "Energy Industry" or "Manufacturing Industries and Construction." In all fuels except for coal the values for these two categories are identical. For coal combustion, those who fall within the IPCC "Energy Industry" category may employ a value of 1 g of CH₄/mmBtu.

NEW SECTION

WAC 173-441-520 Petroleum refineries. (1) Definition of source category.

(a) A petroleum refinery is any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel

oils, lubricants, asphalt (bitumen) or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

(b) This source category consists of the following sources at petroleum refineries: Catalytic cracking units;

fluid coking units; delayed coking units; catalytic reforming units; coke calcining units; asphalt blowing operations; blow-down systems; storage tanks; process equipment components (compressors, pumps, valves, pressure relief devices, flanges, and connectors) in gas service; marine vessel, barge, tanker truck, and similar loading operations; flares; land disposal units; sulfur recovery plants; hydrogen plants (nonmerchant plants only).

(c) Nonmerchant hydrogen plant emissions are quantified by using the methods in WAC 173-441-530.

(2) GHGs to report.

(a) CO₂, CH₄, and N₂O combustion emissions from stationary combustion sources and from each flare. For each stationary combustion unit, you must follow the calculation procedures, monitoring and QA/QC methods, missing data procedures, reporting requirements, and recordkeeping requirements specified in WAC 173-441-510 for stationary combustion units.

(b) CO₂, CH₄, and N₂O coke burn-off emissions from each catalytic cracking unit, fluid coking unit, and catalytic reforming unit.

(c) CO₂ emissions from sour gas sent off site for sulfur recovery operations. You must follow the calculation procedures from subsection (3)(f) of this section and the monitoring and QA/QC methods, missing data procedures, reporting requirements, and recordkeeping requirements of this section.

(d) CO₂ process emissions from each on-site sulfur recovery plant.

(e) CO₂, CH₄, and N₂O emissions from each coke calcining unit.

(f) CO₂ emissions from asphalt blowing operations controlled using a combustion device and CH₄ emissions from asphalt blowing operations not controlled by a combustion device.

(g) CH₄ fugitive emissions from equipment leaks, storage tanks, loading operations, delayed coking units, and uncontrolled blowdown systems.

(h) CO₂, CH₄, and N₂O emissions from each process vent not specifically included in (a) through (g) of this subsection.

(i) CH₄ emissions from on-site landfills. You must follow the calculation procedures, monitoring and QA/QC methods, missing data procedures, reporting requirements, and recordkeeping requirements of WAC 173-441-540.

(j) CO₂ and CH₄ emissions from on-site industrial wastewater treatment. You must follow the calculation procedures, monitoring and QA/QC methods, missing data procedures, reporting requirements, and recordkeeping requirements of WAC 173-441-550.

(k) CO₂ and CH₄ emissions from nonmerchant hydrogen production. You must follow the calculation procedures, monitoring and QA/QC methods, missing data procedures, reporting requirements, and recordkeeping requirements of WAC 173-441-530.

(3) Calculating GHG emissions.

(a) For stationary combustion sources, if you operate and maintain a CEMS that measures total CO₂ emissions according to WAC 173-441-510, you must estimate total CO₂ emissions according to the requirements in WAC 173-441-510 (3)(a)(iv).

(b) For flares, calculate GHG emissions according to the requirements in (b)(i) and (ii) of this subsection for combustion systems fired with refinery fuel gas.

(i) Calculate the CO₂ emissions according to the applicable requirements in (b)(i)(A) through (C) of this subsection.

(A) Flow measurement. If you have a continuous flow monitor on the flare, you must use the measured flow rates when the monitor is operational, to calculate the flare gas flow. If you do not have a continuous flow monitor on the flare, you must use engineering calculations, company records, or similar estimates of volumetric flare gas flow.

(B) Carbon content. If you have a continuous higher heating value monitor or carbon content monitor on the flare or if you monitor these parameters at least daily, you must use the measured heat value or carbon content value in calculating the CO₂ emissions from the flare. If you monitor carbon content, calculate the CO₂ emissions from the flare using the applicable equation in WAC 173-441-510 (3)(a). If you monitor heat content, calculate the CO₂ emissions from the flare using the applicable equation in WAC 173-441-510 (3)(a) and the default emission factor of 60 kilograms CO₂/mmBtu on a higher heating value basis.

(C) Startup, shutdown, malfunction. If you do not measure the higher heating value or carbon content of the flare gas at least daily, determine the quantity of gas discharged to the flare separately for periods of routine flare operation and for periods of startup, shutdown, or malfunction, and calculate the CO₂ emissions as specified in (b)(i)(C)(I) through (III) of this subsection.

(I) For periods of startup, shutdown, or malfunction, use engineering calculations and process knowledge to estimate the carbon content of the flared gas for each startup, shutdown, or malfunction event.

(II) For periods of normal operation, use the average heating value measured for the refinery fuel gas for the heating value of the flare gas.

(III) Calculate the CO₂ emissions using Equation 520.1 of this section.

$$CO_2 = Flare_n * HHV * (0.001 * EmF) + \sum_{p=1}^n \frac{44}{12} * (Flare_{SSM})_p * (CC)_p \quad Eq. 520.1$$

Where:

CO₂ = Annual CO₂ emissions for a specific fuel type (metric tons/year).

Flare_n = Annual volume of flare gas combusted during normal operations from company records, (million (MM) standard cubic feet per year, MMscf/year).

- HHV = Higher heating value for refinery fuel or flare gas from company records (British thermal units per scf, Btu/scf = mmBtu/MMscf).
- EmF = Default CO₂ emission factor of 60 kilograms CO₂/mmBtu (HHV basis).
- 0.001 = Unit conversion factor (metric tons per kilogram, mt/kg).
- n = Number of startup, shutdown, and malfunction events during the reporting year.
- p = Startup, shutdown, and malfunction event index.
- 44 = Molecular weight of CO₂ (kg/kg-mole).
- 12 = Atomic weight of C (kg/kg-mole).
- Flare_{SSM} = Volume of flare gas combusted during a startup, shutdown, or malfunctions from engineering calculations, (MMscf/event).
- (CC)_p = Average carbon content of the gaseous fuel, from the fuel analysis results or engineering calculations for the event (gram C per scf = metric tons C per MMscf).

(ii) Calculate CH₄ and N₂O emissions according to the requirements in WAC 173-441-510 (3)(c)(ii) using the emis-

sion factors for refinery gas in WAC 173-441-510 Table 510.3.

(c) For catalytic cracking units and traditional fluid coking units, calculate the GHG emissions using the applicable methods described in (c)(i) through (iv) of this subsection.

(i) For catalytic cracking units and fluid coking units that use a continuous CO₂ CEMS for the final exhaust stack, calculate the combined CO₂ emissions from each catalytic cracking or fluid coking unit and CO boiler (if present) using the CEMS according to the Tier A1 Calculation Methodology requirements in WAC 173-441-510 (3)(a)(iv). For units that do not have a CO boiler or other post-combustion device, Equation 520.3 of this section may be used as an alternative to a continuous flow monitor, if one is not already present.

(ii) For catalytic cracking units and fluid coking units that do not use a continuous CO₂ CEMS for the final exhaust stack, you must continuously monitor the O₂, CO, and CO₂ concentrations in the exhaust stack from the catalytic cracking unit regenerator or fluid coking unit burner prior to the combustion of other fossil fuels and calculate the CO₂ emissions according to the requirements of (c)(ii)(A) of this subsection:

(A) Calculate the CO₂ emissions from each catalytic cracking unit and fluid coking unit using Equation 520.2 of this section.

$$CO_2 = \sum_1^n (Q_r)_n * \frac{(\%CO_2 + \%CO)_n}{100\%} * \frac{44}{MVC} * 0.001 \tag{Eq. 520.2}$$

Where:

- CO₂ = Annual CO₂ mass emissions (metric tons/year).
- Q_r = Volumetric flow rate of exhaust gas from the fluid catalytic cracking unit regenerator or fluid coking unit burner prior to the combustion of other fossil fuels (dry standard cubic feet per hour, dscfh).
- %CO₂ = Hourly average percent CO₂ concentration in the exhaust gas stream from the fluid catalytic cracking unit regenerator or fluid coking unit burner (percent by volume - dry basis).
- %CO = Hourly average percent CO concentration in the exhaust gas stream from the fluid catalytic cracking unit regenerator or fluid coking unit burner (percent by volume - dry basis). When no auxiliary fuel is burned and a continuous CO monitor is not required, assume %CO to be zero.
- 44 = Molecular weight of CO₂ (kg/kg-mole).

- MVC = Molar volume conversion factor (849.5 scf/kg-mole).
- 0.001 = Conversion factor (metric ton/kg).
- n = Number of hours in calendar year.

(B) Either continuously monitor the volumetric flow rate of exhaust gas from the fluid catalytic cracking unit regenerator or fluid coking unit burner prior to the combustion of other fossil fuels or calculate the volumetric flow rate of this exhaust gas stream using Equation 520.3 of this section.

$$Q_r = \frac{(79 * Q_a + (100 - \%O_{oxy}) * Q_{oxy})}{100 - \%CO_2 - \%CO - \%O_2} \tag{Eq. 520.3}$$

Where:

- Q_r = Volumetric flow rate of exhaust gas from the fluid catalytic cracking unit regenerator or fluid coking unit burner prior to the combustion of other fossil fuels (dscfh).

- Qa = Volumetric flow rate of air to the fluid catalytic cracking unit regenerator or fluid coking unit burner, as determined from control room instrumentation (dscfh).
- Qoxy = Volumetric flow rate of oxygen enriched air to the fluid catalytic cracking unit regenerator or fluid coking unit burner as determined from control room instrumentation (dscfh).
- %O₂ = Hourly average percent oxygen concentration in exhaust gas stream from the fluid catalytic cracking unit regenerator or fluid coking unit burner (percent by volume - dry basis).
- %Ooxy = O₂ concentration in oxygen enriched gas stream inlet to the fluid catalytic cracking unit regenerator or fluid coking unit burner based on oxygen purity specifications of the oxygen supply used for enrichment (percent by volume - dry basis).
- %CO₂ = Hourly average percent CO₂ concentration in the exhaust gas stream from the fluid catalytic cracking unit regenerator or fluid coking unit burner (percent by volume - dry basis).
- %CO = Hourly average percent CO concentration in the exhaust gas stream from the fluid catalytic cracking unit regenerator or fluid coking unit burner (percent by volume - dry basis). When no auxiliary fuel is burned and a continuous CO monitor is not required, assume %CO to be zero.

(C) If a CO boiler or other post-combustion device is used, calculate the GHG emissions from the fuel fired to the CO boiler or post-combustion device using the methods for stationary combustion sources in (a) of this subsection and report this separately for the combustion unit.

(iii) Calculate CH₄ emissions using Equation 520.4 of this section.

$$CH_4 = \left(CO_2 * \frac{EmF_1}{EmF_2} \right) \quad Eq. 520.4$$

Where:

- CH₄ = Annual methane emissions from coke burn-off (metric tons CH₄/year) .
- CO₂ = Emission rate of CO₂ from coke burn-off calculated in subsection (3)(c)(i) and (ii), (e)(i) and (ii), (g)(i) or (ii) of this section, as applicable (metric tons/year).
- EmF₁ = Default CO₂ emission factor for petroleum coke, 102.04 kg CO₂/mmBtu.

EmF₂ = Default CH₄ emission factor for petroleum coke, 3.0 x 10⁻³ kg CH₄/mmBtu.

(iv) Calculate N₂O emissions using Equation 520.5 of this section.

$$N_2O = \left(CO_2 * \frac{EmF_1}{EmF_2} \right) \quad Eq. 520.5$$

Where:

- N₂O = Annual nitrous oxide emissions from coke burn-off (mt N₂O/year) .
- EmF₁ = Default CO₂ emission factor for petroleum coke, 102.04 kg CO₂/mmBtu.
- EmF₂ = Default N₂O emission factor for petroleum coke, from 6.0 x 10⁻⁴ kg N₂O/mmBtu.

(d) For fluid coking units that use the flexicoking design, the GHG emissions from the resulting use of the low value fuel gas must be accounted for only once. Typically, these emissions will be accounted for using the methods described in WAC 173-441-510 of this chapter for combustion sources. Alternatively, you may use the methods in (c) of this subsection provided that you do not otherwise account for the subsequent combustion of this low value fuel gas.

(e) For catalytic reforming units, calculate the CO₂ emissions using either the methods described in (e)(i) or (ii) of this subsection and calculate the CH₄ and N₂O emissions using the Equations 520.4 and 520.5 of this section, respectively.

(i) Calculate CO₂ emissions from the catalytic reforming unit catalyst regenerator using the methods in (c)(i) or (ii) of this subsection; or

(ii) Calculate CO₂ emissions from the catalytic reforming unit catalyst regenerator using Equation 520.6 of this section.

$$CO_2 = \sum_1^n (CB_Q)_n * CF * \frac{44}{12} * 0.001 \quad Eq. 520.6$$

Where:

- CO₂ = Annual CO₂ emissions (metric tons/year) .
- CB_Q = Coke burn-off quantity per regeneration cycle (kg coke/cycle).
- CF = Site-specific fraction carbon content of produced coke, use 0.94 if site-specific fraction carbon content is unavailable (kg C per kg coke).
- 44 = Molecular weight of CO₂ (kg/kg-mole).
- 12 = Atomic weight of C (kg/kg-mole).
- n = Number of regeneration cycles in the calendar year.

0.001 = Conversion factor (mt/kg).

(f) For on-site sulfur recovery plants, calculate CO₂ process emissions from sulfur recovery plants according to the requirements in (f)(i) through (iv) of this subsection. Except as provided in (f)(iv) of this subsection, combustion emissions from the sulfur recovery plant (e.g., from fuel combustion in the Claus burner or the tail gas treatment incinerator) must be reported using WAC 173-441-510. For the purposes of this section, the sour gas stream for which monitoring is required according to (f)(i) through (iii) of this subsection is not considered a fuel.

(i) Flow measurement. If you have a continuous flow monitor on the sour gas feed to the sulfur recovery plant, you must use the measured flow rates when the monitor is operational to calculate the sour gas flow rate. If you do not have a continuous flow monitor on the sour gas feed to the sulfur recovery plant, you must use engineering calculations, company records, or similar estimates of volumetric sour gas flow.

(ii) Carbon content. If you have a continuous compositional or carbon content monitor on the sour gas feed to the sulfur recovery plant or if you monitor these parameters on a routine basis, you must use the measured carbon content value. Alternatively, you may develop a site-specific carbon content factor or use the default factor of 0.20.

(iii) Calculate the CO₂ emissions from each sulfur recovery plant using Equation 520.7 of this section.

$$CO = F_{SG} * \frac{44}{MVC} * MF_c * 0.001 \quad Eq. 520.7$$

Where:

- CO₂ = Annual CO₂ emissions (metric tons/year) .
- F_{SG} = Volumetric flow rate of sour gas feed to the sulfur recovery plant (scf/year).
- 44 = Molecular weight of CO₂ (kg/kg-mole).

$$CO_2 = \frac{44}{12} * (M_{in} * CC_{GC} - (M_{out} + M_{dust}) * CC_{MPC}) \quad Eq. 520.8$$

Where:

- CO₂ = Annual CO₂ emissions (metric tons/year) .
- M_{in} = Annual mass of green coke fed to the coke calcining unit from facility records (metric tons/year).
- CC_{GC} = Average mass fraction carbon content of green coke from facility measurement data (metric ton carbon/metric ton green coke).

MVC = Molar volume conversion factor (849.5 scf/kg mole).

MF_c = Mole fraction of carbon in the sour gas to the sulfur recovery plant (kg-mole C/kg-mole gas); default = 0.20.

0.001 = Conversion factor, kg to metric tons.

(iv) As an alternative to the monitoring methods in (f)(i) through (iii) of this subsection, you may use a continuous flow monitor and CO₂ CEMS in the final exhaust stack from the sulfur recovery plant according to the requirements in WAC 173-441-510 (3)(a)(iv) to calculate the combined process and combustion emissions for the sulfur recovery plant. You must monitor fuel use in the Claus burner, tail gas incinerator, or other combustion sources that discharge via the final exhaust stack from the sulfur recovery plant and calculate the combustion emissions from the fuel use using WAC 173-441-510. You must report the process emissions from the sulfur recovery plant as the difference in the CO₂ CEMS emissions and the calculated combustion emissions associated with the sulfur recovery plant final exhaust stack.

(g) For coke calcining units, calculate GHG emissions according to the applicable provisions in (g)(i) through (iii) of this subsection.

(i) For coke calcining units that use a continuous CO₂ CEMS for the final exhaust stack, calculate the combined CO₂ emissions from the coke calcining process and any auxiliary fuel combusted using the CEMS according to the requirements in WAC 173-441-510 (3)(a)(iv).

(ii) For coke calcining units that do not use a continuous CO₂ CEMS for the final exhaust stack, calculate CO₂ emissions from the coke calcining unit according to the requirements in (g)(ii)(A) and (B) of this subsection.

(A) Calculate the CO₂ emissions for any auxiliary fuel fired to the calcining unit using the applicable methods in WAC 173-441-100.

(B) Calculate the CO₂ emissions from the coke calcining process using Equation 520.8 of this section.

M_{out} = Annual mass of marketable petroleum coke produced by the coke calcining unit from facility records (metric tons petroleum coke/year).

M_{dust} = Annual mass of petroleum coke dust collected in the dust collection system of the coke calcining unit from facility records (metric ton petroleum coke dust/year).

- CC_{MPC} = Average mass fraction carbon content of marketable petroleum coke produced by the coke calcining unit from facility measurement data (metric ton carbon/metric ton petroleum coke).
- 44 = Molecular weight of CO₂ (kg/kg-mole).
- 12 = Atomic weight of C (kg/kg-mole).

(iii) For all coke calcining units, use the CO₂ emissions from the coke calcining unit calculated in (g)(i) or (ii) of this subsection, as applicable, and calculate CH₄ using Equation 520.4 of this section and N₂O emissions using Equation 520.5 of this section.

(h) For asphalt blowing operations, calculate GHG emissions according to the applicable provisions in (h)(i) and (ii) of this subsection.

(i) For uncontrolled asphalt blowing operations, calculate CH₄ emissions using Equation 520.9 of this section.

$$CH_4 = \left(Q_{AB} * EF_{AB} * \frac{16}{MVC} * 0.001 \right) \quad Eq. 520.9$$

Where:

- CH₄ = Annual methane emissions from uncontrolled asphalt blowing (metric tons CH₄/year).
- Q_{ab} = Quantity of asphalt blown (million barrels per year, MMbbl/year).
- EF_{AB} = Emission factor for asphalt blowing from facility-specific test data (scf CH₄/MMbbl); use 2,555,000 scf CH₄/MMbbl if facility-specific test data are unavailable.
- 16 = Molecular weight of CH₄ (kg/kg-mole).
- MVC = Molar volume conversion factor (849.5 scf/kg-mole).
- 0.001 = Conversion factor (metric ton/kg).

(ii) For controlled asphalt blowing operations, calculate CO₂ emissions using Equation 520.10 of this section, provided these emissions are not already included in the flare emissions calculated in (b) of this subsection.

$$CO_2 = \left(Q_{AB} * EF_{AB} * \frac{44}{MVC} * 1 * 0.001 \right) \quad Eq. 520.10$$

Where:

- CO₂ = Annual CO₂ emissions (metric ton/year).
- Q_{AB} = Quantity of asphalt blown (MMbbl/year).
- EF_{AB} = Default emission factor (2,555,000 scf CH₄/MMbbl).
- 44 = Molecular weight of CO₂ (kg/kg-mole).

- MVC = Molar volume conversion factor (849.5 scf/kg-mole).
- 1 = Assumed conversion efficiency (kg-mole CO₂/kg-mole CH₄).
- 0.001 = Conversion factor (metric tons/kg).

(i) For delayed coking units, calculate the CH₄ emissions from the depressurization of the coking unit vessel to atmosphere using the process vent method in (j) of this subsection and calculate the CH₄ emissions from the subsequent opening of the vessel for coke cutting operations using Equation 520.11 of this section.

$$CH_4 = \left(N * H * \frac{\pi * D^2}{4} * \frac{16}{MVC} * MF_{CH_4} * 0.001 \right) \quad Eq. 520.11$$

Where:

- CH₄ = Annual methane emissions from the delayed coking unit vessel opening (metric ton/year).
- N = Total number of vessel openings for all delayed coking unit vessels of the same dimensions during the year.
- H = Height of coking unit vessel (feet).
- D = Diameter of coking unit vessel (feet).
- 16 = Molecular weight of CH₄ (kg/kg-mole).
- MVC = Molar volume conversion factor (849.5 scf/kg-mole).
- MF_{CH₄} = Mole fraction of methane in coking vessel gas (kg-mole CH₄/kg-mole gas); default value is 0.03.
- 0.001 = Conversion factor (metric tons/kg).

(j) For each process vent not covered in (a) through (i) of this subsection, calculate GHG emissions using the Equation 520.12 of this section. You must use Equation 520.12 of this section for catalytic reforming unit depressurization and purge vents when methane is used as the purge gas.

$$E_x = \sum_{n=1}^N VR_n * MF_x * \frac{MW_x}{MVC} * VT_n * 0.001 \quad Eq. 520.12$$

Where:

- E_x = Annual emissions of each GHG from process vent (metric ton/yr).
- N = Number of venting events per year.
- VR_n = Volumetric flow rate of process vent (scf per hour per event).
- 44 = Molecular weight of CO₂ (kg/kg-mole).
- MF_x = Mole fraction of GHG x in process vent.

MW_x	=	Molecular weight of GHG x (kg/kg-mole); use 44 for CO ₂ or N ₂ O and 16 for CH ₄ .
MVC	=	Molar volume conversion factor (849.5 scf/kg-mole).
VT_n	=	Venting time, (hours per event).
0.001	=	Conversion factor (metric ton/kg).

(k) For uncontrolled blowdown systems, you must either use the methods for process vents in (j) of this subsection or calculate CH₄ emissions using Equation 520.13 of this section.

$$CH_4 = \left(Q_{Ref} * EF_{BD} * \frac{16}{MVC} * 0.001 \right) \quad Eq. 520.13$$

Where:

CH ₄	=	Methane emission rate from blowdown systems (mtCH ₄ /year).
Q_{Ref}	=	Quantity of crude oil plus the quantity of intermediate products received from off-site that are processed at the facility (MMbbl/year).

$$CH_4 = (0.4 * N_{CD} + 0.2 * N_{PU1} + 0.1 * N_{PU2} + 4.3 * N_{H2} + 6 * N_{FGS}) \quad Eq. 520.14$$

Where:

CH ₄	=	Annual methane emissions from fugitive equipment leaks (metric tons/year).
N_{CD}	=	Number of atmospheric crude oil distillation columns at the facility.
N_{PU1}	=	Cumulative number of catalytic cracking units, coking units (delayed or fluid), hydrocracking, and full-range distillation columns (including depropanizer and debutanizer distillation columns) at the facility.
N_{PU2}	=	Cumulative number of hydrotreating/hydrorefining units, catalytic reforming units, and visbreaking units at the facility.
N_{H2}	=	Total number of hydrogen plants at the facility.
N_{FGS}	=	Total number of fuel gas systems at the facility.

(m) For storage tanks, calculate CH₄ emissions using the applicable methods in (m)(i) and (ii) of this subsection.

(i) For storage tanks other than those processing unstabilized crude oil, you must either calculate CH₄ emissions from storage tanks that have a vapor-phase methane concentration

EF_{BD}	=	Methane emission factor for uncontrolled blown systems (scf CH ₄ /MMbbl); default is 137,000.
16	=	Molecular weight of CH ₄ (kg/kg-mole).
MVC	=	Molar volume conversion factor (849.5 scf/kg-mole).
0.001	=	Conversion factor (metric ton/kg).

(l) For equipment leaks, calculate CH₄ emissions using the method specified in either (l)(i) or (ii) of this subsection.

(i) Use process-specific methane composition data (from measurement data or process knowledge) and any of the emission estimation procedures provided in the Protocol for Equipment Leak Emissions Estimates (EPA-453/R-95-017, NTIS PB96-175401).

(ii) Use Equation 520.14 of this section.

of 0.5 volume percent or more using tank-specific methane composition data (from measurement data or product knowledge) and the TANKS Model (Version 4.09D) or estimate CH₄ emissions from storage tanks using Equation 520.15 of this section.

$$CH_4 = (0.1 * Q_{Ref}) \quad Eq. 520.15$$

Where:

CH ₄	=	Annual methane emissions from storage tanks (metric tons/year).
0.1	=	Default emission factor for storage tanks (metric ton CH ₄ /MMbbl).
Q_{Ref}	=	Quantity of crude oil plus the quantity of intermediate products received from off-site that are processed at the facility (MMbbl/year).

(ii) For storage tanks that process unstabilized crude oil, calculate CH₄ emissions from the storage of unstabilized crude oil using either tank-specific methane composition data (from measurement data or product knowledge) and direct measurement of the gas generation rate or by using Equation 520.16 of this section.

$$CH_4 = (995,000 * Q_{un} * \Delta P) * MF_{CH_4} * \frac{16}{MVC} * 0.001 \quad \text{Eq. 520.16}$$

Where:

CH ₄	=	Annual methane emissions from storage tanks (metric tons/year).
Q _{un}	=	Quantity of unstabilized crude oil received at the facility (MMbbl/year).
ΔP	=	Pressure differential from the previous storage pressure to atmospheric pressure (pounds per square inch, psi).
MF _{CH₄}	=	Mole fraction of CH ₄ in vent gas from the unstabilized crude oil storage tank from facility measurements (kg-mole CH ₄ /kg-mole gas); use 0.27 as a default if measurement data are not available.
995,000	=	Correlation equation factor (scf gas per MMbbl per psi).
16	=	Molecular weight of CH ₄ (kg/kg-mole).
MVC	=	Molar volume conversion factor (849.5 scf/kg-mole).
0.001	=	Conversion factor (metric ton/kg).

(n) For crude oil, intermediate, or product loading operations for which the equilibrium vapor-phase concentration of methane is 0.5 volume percent or more, calculate CH₄ emissions from loading operations using product-specific, vapor-phase methane composition data (from measurement data or process knowledge) and the emission estimation procedures provided in Section 5.2 of the AP-42: "Compilation of Air Pollutant Emission Factors, Volume 1: Stationary Point and Area Sources." For loading operations in which the equilibrium vapor-phase concentration of methane is less than 0.5 volume percent, report zero methane emissions.

(4) Monitoring and QA/QC requirements.

(a) All fuel flow meters, gas composition monitors, and heating value monitors that are used to provide data for the GHG emissions calculations must be calibrated prior to the first reporting year, using a suitable method published by a consensus standards organization (e.g., ASTM, ASME, API, AGA, etc.). Alternatively, calibration procedures specified by the flow meter manufacturer may be used. Fuel flow meters, gas composition monitors, and heating value monitors must be recalibrated either annually or at the minimum frequency specified by the manufacturer.

(b) The owner or operator must document the procedures used to ensure the accuracy of the estimates of fuel usage, gas composition, and heating value including, but not limited to, calibration of weighing equipment, fuel flow meters, and other measurement devices. The estimated accuracy of measurements made with these devices must also be recorded, and the technical basis for these estimates must be provided.

(c) All CO₂ CEMS and flow rate monitors used for direct measurement of GHG emissions must comply with the QA procedures in WAC 173-441-510 (4)(e).

(5) **Procedures for estimating missing data.** A complete record of all measured parameters used in the GHG emissions calculations is required (e.g., concentrations, flow rates, fuel heating values, carbon content values). Therefore, whenever a quality-assured value of a required parameter is unavailable (e.g., if a CEMS malfunctions during unit operation or if a required fuel sample is not taken), a substitute data value for the missing parameter must be used in the calculations.

(a) For each missing value of the heat content, carbon content, or molecular weight of the fuel, the substitute data value must be the arithmetic average of the quality-assured values of that parameter immediately preceding and immediately following the missing data incident. If, for a particular parameter, no quality-assured data are available prior to the missing data incident, the substitute data value must be the first quality-assured value obtained after the missing data period.

(b) For missing oil and gas flow rates, use the standard missing data procedures in section 2.4.2 of Appendix D to 40 CFR Part 75.

(c) For missing CO₂, CO, or O₂, CH₄, and N₂O concentrations, stack gas flow rate, and stack gas moisture content values, use the applicable initial missing data procedures in WAC 173-441-510(5).

(d) For hydrogen plants, use the missing data procedures in WAC 173-441-530.

(e) For on-site landfills, use the missing data procedures in WAC 173-441-540.

(f) For on-site industrial wastewater treatment systems, use the missing data procedures in WAC 173-441-550.

(6) **Data reporting requirements.** In addition to the reporting requirements of WAC 173-441-150, you must report the information specified in (a) through (e) of this subsection.

(a) For combustion sources, including flares, use the data reporting requirements in WAC 173-441-510(6).

(b) For hydrogen plants, use the data reporting requirements in WAC 173-441-530.

(c) Reserved.

(d) For on-site landfills, use the data reporting requirements in WAC 173-441-540.

(e) For on-site industrial wastewater treatment systems, use the data reporting requirements in WAC 173-441-550.

(f) For catalytic cracking units, traditional fluid coking units, catalytic reforming units, sulfur recovery plants, and coke calcining units, owners and operators must report:

(i) The unit ID number (if applicable).

(ii) A description of the type of unit (fluid catalytic cracking unit, thermal catalytic cracking unit, traditional fluid coking unit, catalytic reforming unit, sulfur recovery plant, or coke calcining unit).

(iii) Maximum rated throughput of the unit, in bbl/stream day, metric tons sulfur produced/stream day, or metric tons coke calcined/stream day, as applicable.

(iv) The calculated CO₂, CH₄, and N₂O annual emissions for each unit, expressed in metric tons of each pollutant emitted.

(v) A description of the method used to calculate the CO₂ emissions for each unit (e.g., reference section and equation number).

(g) For fluid coking unit of the flexicoking type, the owner or operator must report:

(i) The unit ID number (if applicable).

(ii) A description of the type of unit.

(iii) Maximum rated throughput of the unit, in bbl/stream day.

(iv) Indicate whether the GHG emissions from the low heat value gas are accounted for in using methods in WAC 173-441-510 or subsection (3)(c) of this section.

(v) If the GHG emissions for the low heat value gas are calculated at the flexicoking unit, also report the calculated annual CO₂, CH₄, and N₂O emissions for each unit, expressed in metric tons of each pollutant emitted.

(h) For asphalt blowing operations, the owner or operator must report:

(i) The unit ID number (if applicable).

(ii) The quantity of asphalt blown.

(iii) The type of control device used to reduce methane (and other organic) emissions from the unit.

(iv) The calculated annual CO₂, CH₄, and N₂O emissions for each unit, expressed in metric tons of each pollutant emitted.

(i) For process vents subject to subsection (3)(j) of this section, the owner or operator must report:

(i) The vent ID number (if applicable).

(ii) The unit or operation associated with the emissions.

(iii) The type of control device used to reduce methane (and other organic) emissions from the unit, if applicable.

(iv) The calculated annual CO₂, CH₄, and N₂O emissions for each unit, expressed in metric tons of each pollutant emitted.

(j) For equipment leaks, storage tanks, uncontrolled blowdown systems, delayed coking units, and loading operations, the owner or operator must report:

(i) The total quantity (in million bbl) of crude oil plus the quantity of intermediate products received from off-site that are processed at the facility in the reporting year.

(ii) The method used to calculate equipment leak emissions and the calculated, cumulative CH₄ emissions (in metric tons of each pollutant emitted) for all equipment leak sources.

(iii) The cumulative annual CH₄ emissions (in metric tons of each pollutant emitted) for all storage tanks, except for those used to process unstabilized crude oil.

(iv) The quantity of unstabilized crude oil received during the calendar year and the cumulative CH₄ emissions (in metric tons of each pollutant emitted) for storage tanks used to process unstabilized crude oil.

(v) The cumulative annual CH₄ emissions (in metric tons of each pollutant emitted) for uncontrolled blowdown systems.

(vi) The total number of delayed coking units at the facility, the number of delayed coking drums per unit, the dimensions and annual number of coke-cutting cycles for each

drum, and the cumulative annual CH₄ emissions (in metric tons of each pollutant emitted) for delayed coking units.

(vii) The quantity and types of materials loaded that have an equilibrium vapor-phase concentration of methane of 0.5 volume percent or greater, and the type of vessels in which the material is loaded.

(viii) The type of control system used to reduce emissions from the loading of material with an equilibrium vapor-phase concentration of methane of 0.5 volume percent or greater, if any.

(ix) The cumulative annual CH₄ emissions (in metric tons of each pollutant emitted) for loading operations.

(k) If you have a CEMS that measures CO₂ emissions but that is not required to be used for reporting GHG emissions under this subpart (i.e., a CO₂ CEMS on a process heater stack but the combustion emissions are calculated based on the fuel gas consumption), you must identify the emission source that has the CEMS and report the CO₂ emissions as measured by the CEMS for that emissions source.

(7) Records that must be retained. In addition to the records required by WAC 173-441-150, you must retain the records of all parameters monitored under subsection (4) of this section, monitoring and QA/QC requirements and subsection (5) of this section, procedures for estimating missing data.

(8) Definitions. All terms used in this subsection have the same meaning given in WAC 173-441-030 and as follows:

"Catalytic cracking unit" means a refinery process unit in which petroleum derivatives are continuously charged and hydrocarbon molecules in the presence of a catalyst are fractured into smaller molecules, or react with a contact material suspended in a fluidized bed to improve feedstock quality for additional processing and the catalyst or contact material is continuously regenerated by burning off coke and other deposits. Catalytic cracking units include both fluidized bed systems, which are referred to as fluid catalytic cracking units (FCCU), and moving bed systems, which are also referred to as thermal catalytic cracking units. The unit includes the riser, reactor, regenerator, air blowers, spent catalyst or contact material stripper, catalyst or contact material recovery equipment, and regenerator equipment for controlling air pollutant emissions and for heat recovery.

"Coke (petroleum)" means a solid residue consisting mainly of carbon which results from the cracking of petroleum hydrocarbons in processes such as coking and fluid coking. This includes catalyst coke deposited on a catalyst during the refining process which must be burned off in order to regenerate the catalyst.

"Coke burn-off" means the coke removed from the surface of a catalyst by combustion during catalyst regeneration. Coke burn-off also means the coke combusted in fluid coking unit burner.

"Connector" means, but is not limited to, flanged, screwed, or other joined fittings used to connect pipe line segments, tubing, pipe components (such as elbows, reducers, "Ts" or valves) or a pipe line and a piece of equipment or an instrument to a pipe, tube or piece of equipment. A common connector is a flange. Joined fittings welded completely

around the circumference of the interface are not considered connectors for the purpose of this regulation.

"Crude oil" means any of the naturally occurring liquids and semisolids found in rock formations composed of complex mixtures of hydrocarbons ranging from one to hundreds of carbon atoms in straight and branched chains and rings.

"Delayed coking unit" means one or more refinery process units in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is produced in a series of closed, batch system reactors.

"Density" means the mass contained in a given unit volume (mass/volume).

"Engineering estimation" means an estimate of fugitive emissions based on engineering principles applied to measured and/or approximated physical parameters such as dimensions of containment, actual pressures, actual temperatures, and compositions.

"Flare" means a combustion device, whether at ground level or elevated, that uses an open flame to burn combustible gases with combustion air provided by uncontrolled ambient air around the flame.

"Flare combustion efficiency" means the fraction of natural gas, on a volume or mole basis, that is combusted at the flare burner tip, assumed ninety-five percent for nonaspirated field flares and ninety-eight percent for steam or air aspirated flares.

"Fluid coking unit" means one or more refinery process units in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is continuously produced in a fluidized bed system. The fluid coking unit includes equipment for controlling air pollutant emissions and for heat recovery on the fluid coking burner exhaust vent. There are two basic types of fluid coking units: A traditional fluid coking unit in which only a small portion of the coke produced in the unit is burned to fuel the unit and the fluid coking burner exhaust vent is directed to the atmosphere (after processing in a CO boiler or other air pollutant control equipment) and a flexicoking unit in which an auxiliary burner is used to partially combust a significant portion of the produced petroleum coke to generate a low value fuel gas that is used as fuel in other combustion sources at the refinery.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material for purpose of creating useful heat.

"Fuel" means solid, liquid, or gaseous combustible material.

"Fuel gas (still gas)" means gas generated at a petroleum refinery, petrochemical plant, or similar industrial process unit, and that is combusted separately or in any combination with any type of gas.

"Fuel gas system" means a system of compressors, piping, knock-out pots, mix drums, and, if necessary, units used to remove sulfur contaminants from the fuel gas (e.g., amine scrubbers) that collects fuel gas from one or more sources for treatment, as necessary, and transport to a stationary combustion unit. A fuel gas system may have an overpressure vent to a flare but the primary purpose for a fuel gas system is to provide fuel to the various combustion units at the refinery or petrochemical plant.

"Fugitive emissions" means unintentional equipment emissions of methane and/or carbon dioxide containing natural gas or hydrocarbon gas (not including combustion flue gas) from emissions sources including, but not limited to, open ended lines, equipment connections or seals to the atmosphere. Fugitive emissions also mean CO₂ emissions resulting from combustion of natural gas in flares.

"Fugitive emissions detection" means the process of identifying emissions from equipment, components, and other point sources.

"Fugitive emissions detection instruments" means any device or instrument that has been approved for fugitive emissions detection in this rule, namely infrared fugitive emissions detection instruments, OVAs, and TVAs.

"Gaseous fuel" means a material that is in the gaseous state at standard atmospheric temperature and pressure conditions and that is combusted to produce heat and/or energy.

"High heat value" or "HHV" means the high or gross heat content of the fuel with the heat of vaporization included. The water is assumed to be in a liquid state.

"Infrared remote fugitive emissions detection instrument" means an instrument that detects infrared light in the narrow wavelength range absorbed by light hydrocarbons including methane, and presents a signal (sound, digital or visual image) indicating the presence of methane and other light hydrocarbon vapor emissions in the atmosphere. For the purpose of this rule, it must detect the presence of methane.

"Lubricants" includes all grades of lubricating oils, from spindle oil to cylinder oil to those used in greases. Petroleum lubricants may be produced from distillates or residues.

"Mass-balance approach" means a method for estimating emissions of fluorinated greenhouse gases from use in equipment that can be applied to aggregates of units (for example by system). In this approach, annual emissions are the difference between the quantity of gas consumed in the year and the quantity of gas used to fill the net increase in equipment capacity or to replace destroyed gas.

"Maximum rated heat input capacity" means the hourly heat input to a unit (in mmBtu/hr), when it combusts the maximum amount of fuel per hour that it is capable of combusting on a steady state basis, as of the initial installation of the unit, as specified by the manufacturer.

"Mcf" means thousand cubic feet.

"Meter" means a device that measures gas flow rate from a fugitive emissions source or through a conduit by detecting a condition (pressure drop, spin induction, temperature loss, electronic signal) that varies in proportion to flow rate or measures gas velocity in a manner that can calculate flow rate.

"Miscellaneous products" includes all petroleum products not classified elsewhere. It includes petrolatum lube refining by-products (aromatic extracts and tars) absorption oils, ram-jet fuel, petroleum rocket fuels, synthetic natural gas feedstocks, and specialty oils.

"Noncrude feedstocks" means natural gas liquids, hydrogen and other hydrocarbons, and petroleum products that are input into the atmospheric distillation column or other processing units in a refinery.

"Nonpneumatic pump" means any pump that is not pneumatically powered with pressurized gas of any type, such as natural gas, air, or nitrogen.

"Nonsteam aspirated flare" means a flare where natural gas burns at the tip with natural induction of air (and relatively lower combustion efficiency as may be evidenced by smoke formation).

"Oil-fired unit" means a stationary combustion unit that derives more than fifty percent of its annual heat input from the combustion of fuel oil, and the remainder of its annual heat input from the combustion of natural gas or other gaseous fuels.

"Oil/water separator" means equipment used to routinely handle oily water streams, including gravity separators or ponds and air flotation systems.

"Open-ended line fugitive emissions" means natural gas released from pipes or valves open on one end to the atmosphere that are intended to periodically vent or drain natural gas to the atmosphere but may also leak process gas or liquid through incomplete valve closure including valve seat obstructions or damage.

"Open-ended valve" or "lines (OELs)" means any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

"Operating hours" means the duration of time in which a process or process unit is utilized; this excludes shutdown, maintenance, and standby.

"Operating pressure" means the containment pressure that characterizes the normal state of gas and/or liquid inside a particular process, pipeline, vessel or tank.

"Organic monitoring device" means an instrument used to indicate the concentration level of organic compounds exiting a control device based on a detection principle such as IR, photoionization, or thermal conductivity.

"Organic vapor analyzer (OVA)" means an organic monitoring device that uses a flame ionization detector to measure the concentrations in air of combustible organic vapors from 9 to 10,000 parts per million sucked into the probe.

"Petroleum" means oil removed from the earth and the oil derived from tar sands and shale.

"Petroleum coke" means a black solid residue, obtained mainly by cracking and carbonizing of petroleum derived feedstocks, vacuum bottoms, tar and pitches in processes such as delayed coking or fluid coking. It consists mainly of carbon (ninety to ninety-five percent) and has low ash content. It is used as a feedstock in coke ovens for the steel industry, for heating purposes, for electrode manufacture and for production of chemicals.

"Pressure relief device" or "pressure relief valve" or "pressure safety valve" means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is but not limited to a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 psig or by a vacuum are not pressure relief devices.

"Process gas" means any gas generated by an industrial process such as petroleum refining.

"Pump seals" means any seal on a pump drive shaft used to keep methane and/or carbon dioxide containing light liquids from escaping the inside of a pump case to the atmosphere.

"Pump seal fugitive emissions" means natural gas released from the seal face between the pump internal chamber and the atmosphere.

"Refined petroleum product" means petroleum products produced from the processing of crude oil, lease condensate, natural gas and other hydrocarbon compounds.

"Refinery fuel gas (still gas)" means any gas generated at a petroleum refinery, or any gas generated by a refinery process unit, that is combusted separately or in any combination with any type of gas or used as a chemical feedstock.

"Residual fuel oil" means a classification for the heavier fuel oils, No. 5 and No. 6. No. 5 is also known as Navy Special and is used in steam powered vessels in government service and inshore power plants. No. 6 includes Bunker C and is used for the production of electric power, space heating, vessel bunkering and various industrial purposes.

"Rotameter" means a flow meter in which gas flow rate upward through a tapered tube lifts a "float bob" to an elevation related to the gas flow rate indicated by etched calibrations on the wall of the tapered tube.

"Semirefined petroleum product" means all oils requiring further processing. Included in this category are unfinished oils which are produced by the partial refining of crude oil and include the following: Naphthas and lighter oils; kerosene and light gas oils; Heavy gas oils; and residuum, and all products that require further processing or the addition of blendstocks.

"Sensor" means a device that measures a physical quantity/quality or the change in a physical quantity/quality, such as temperature, pressure, flow rate, pH, or liquid level.

"Shutdown" means the cessation of operation of an emission source for any purpose.

"Standard conditions" or "standard temperature and pressure (STP)" means 60°F and 14.7 pounds per square inch absolute.

"Standby" means for an equipment to be in a state ready for operation, but not operating.

"Steam aspirated flare" means steam injected into the flare burner tip to induce air mixing with the hydrocarbon fuel to promote more complete combustion as indicated by lack of smoke formation.

"Steam reforming" means a catalytic process that involves a reaction between natural gas or other light hydrocarbons and steam. The result is a mixture of hydrogen, carbon monoxide, carbon dioxide, and water.

"Storage tank" means other vessel that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water and that is constructed entirely of nonferrous materials (e.g., wood, concrete, steel, plastic) that provide structural support.

"Storage tank fugitive emissions" means natural gas vented when it flashes out of liquids; this occurs when liquids are transferred from higher pressure and temperature conditions upstream, plus working losses from liquid level increases and decreases during filling and draining and standing losses (breathing losses) from diurnal temperature

changes and barometric pressure changes expanding and contracting the vapor volume of a tank.

"Sulfur recovery plant" means all process units which recover sulfur or produce sulfuric acid from hydrogen sulfide (H₂S) and/or sulfur dioxide (SO₂) at a petroleum refinery. The sulfur recovery plant also includes sulfur pits used to store the recovered sulfur product, but it does not include secondary sulfur storage vessels downstream of the sulfur pits. For example, a Claus sulfur recovery plant includes: Reactor furnace and waste heat boiler, catalytic reactors, sulfur pits, and, if present, oxidation or reduction control systems, or incinerator, thermal oxidizer, or similar combustion device.

"Supplemental fuel" means a fuel burned within a petrochemical process that is not produced within the process itself.

"Tanker unloading" means pumping of liquid hydrocarbon (e.g., crude oil, LNG) from an ocean-going tanker or barge to shore storage tanks.

"Toxic vapor analyzer (TVA)" means an organic monitoring device that uses a flame ionization detector and photoionization detector to measure the concentrations in air of combustible organic vapors from 9 parts per million and exceeding 10,000 parts per million sucked into the probe.

"Turbine meter" means a flow meter in which a gas or liquid flow rate through the calibrated tube spins a turbine from which the spin rate is detected and calibrated to measure the fluid flow rate.

"Unstabilized crude oil" means, for the purposes of this subsection, crude oil that is pumped from the well to a pipeline or pressurized storage vessel for transport to the refinery without intermediate storage in a storage tank at atmospheric pressures. Unstabilized crude oil is characterized by having a true vapor pressure of 5 pounds per square inch absolute (psia) or greater.

"Valve" means any device for halting or regulating the flow of a liquid or gas through a passage, pipeline, inlet, outlet, or orifice; including, but not limited to, gate, globe, plug, ball, butterfly and needle valves.

"Vapor recovery system" means any equipment located at the source of potential gas emissions to the atmosphere or to a flare, that is composed of piping, connections, and, if necessary, flow-inducing devices; and that is used for routing the gas back into the process as a product and/or fuel.

"Waste feedstocks" means noncrude feedstocks that have been contaminated, downgraded, or no longer meet the specifications of the product category or end-use for which they were intended. Waste feedstocks include, but are not limited to: Used plastics, used engine oils, used dry cleaning solvents, and trans-mix (mix of products at the interface in delivery pipelines).

NEW SECTION

WAC 173-441-530 Hydrogen production. (1) Definition of the source category.

(a) A hydrogen production source category produces hydrogen gas that is consumed at sites other than where it is produced.

(b) This source category comprises process units that produce hydrogen by oxidation, reaction, or other transformations of feedstocks.

(c) This source category includes hydrogen production facilities located within a petroleum refinery and that are not owned or under the direct control of the refinery owner and operator.

(d) Hydrogen plants located within a petroleum refinery and are owned or under the direct control of the refinery owner and operator are required to use the methods in this section as directed by WAC 173-441-520.

(2) GHGs to report.

(a) CO₂ process emissions for each hydrogen production process unit.

(b) CO₂, CH₄, and N₂O emissions from the combustion of fuels in each hydrogen production unit and any other stationary combustion units by following the calculation procedures, monitoring and QA/QC methods, missing data procedures, reporting requirements, and recordkeeping requirements of WAC 173-441-510.

(3) **Calculating GHG emissions.** Determine CO₂ emissions in accordance with the procedures specified in either subsection (2)(a) or (b) of this section.

(a) Continuous emission monitoring system. Any hydrogen process unit that meets the conditions specified in WAC 173-441-510 (3)(b)(v)(C)(I), (II), and (III), or (3)(b)(v)(B)(I) through (VI) must calculate total CO₂ emissions using a continuous emissions monitoring system according to the Tier A1 Calculation Methodology specified in WAC 173-441-510 (3)(a)(iv).

(b) Feedstock material balance approach. If you do not measure total emissions with a CEMS, you must calculate the annual CO₂ process emissions from feedstock used for hydrogen production.

(i) Gaseous feedstock. You must calculate the total CO₂ process emissions from gaseous feedstock according to Equation 530.1 of this section.

$$CO_2 = \left(\sum_{n=1}^k \frac{44}{12} * (Fdstk)_n * (CC)_n * \frac{MW}{MVC} \right) * 0.001 \tag{Eq. 530.1}$$

Where:

- CO₂ = Annual CO₂ process emissions arising from feedstock consumption (metric tons).
- (Fdstk)_n = Volume of the gaseous feedstock used in month n (scf of feedstock).
- (CC)_n = Average carbon content of the gaseous feedstock, from the analysis results for month n (kg C per kg of feedstock).
- MW = Molecular weight of the gaseous feedstock (kg/kg-mole).
- MVC = Molar volume conversion factor (849.5 scf per kg-mole at standard conditions).
- k = Months per year.

- 44/12 = Ratio of molecular weights, CO₂ to carbon.
 0.001 = Conversion factor from kg to metric tons.

(ii) Liquid feedstock. You must calculate the total CO₂ process emissions from liquid feedstock according to Equation 530.2 of this section.

$$CO_2 = \left(\sum_{n=1}^k \frac{44}{12} * (Fdstk)_n * (CC)_n \right) * 0.001 \quad (\text{Eq. 530.2})$$

Where:

- CO₂ = Annual CO₂ emissions arising from feedstock consumption (metric tons).
 (Fdstk)_n = Volume of the liquid feedstock used in month n (gallons of feedstock).
 (CC)_n = Average carbon content of the liquid feedstock, from the analysis results for month n (kg C per gallon of feedstock).
 k = Months per year.
 44/12 = Ratio of molecular weights, CO₂ to carbon.
 0.001 = Conversion factor from kg to metric tons.

(iii) Solid feedstock. You must calculate the total CO₂ process emissions from solid feedstock according to Equation 530.3 of this section.

$$CO_2 = \left(\sum_{n=1}^k \frac{44}{12} * (Fdstk)_n * (CC)_n \right) * 0.001 \quad (\text{Eq. 530.3})$$

Where:

- CO₂ = Annual CO₂ emissions arising from feedstock consumption (metric tons).
 (Fdstk)_n = Mass of solid feedstock used in month n (kg of feedstock).
 (CC)_n = Average carbon content of the solid feedstock, from the analysis results for month n (kg C per kg of feedstock).
 k = Months per year.
 44/12 = Ratio of molecular weights, CO₂ to carbon.
 0.001 = Conversion factor from kg to metric tons.

(4) Monitoring and QA/QC requirements.

(a) Facilities that use CEMS must comply with the monitoring and QA/QC procedures specified in WAC 173-441-510 (4)(e).

(b) The quantity of gaseous or liquid feedstock consumed must be measured continuously using a flow meter.

The quantity of solid feedstock consumed can be obtained from company records and aggregated on a monthly basis.

(c) You must collect a sample of each feedstock and analyze the carbon content of each sample using appropriate test methods incorporated by reference in WAC 173-441-700. The minimum frequency of the fuel sampling and analysis is monthly.

(d) All fuel flow meters, gas composition monitors, and heating value monitors must be calibrated prior to the first reporting year, using a suitable method listed in WAC 173-441-700. Alternatively, calibration procedures specified by the flow meter manufacturer may be used. Fuel flow meters, gas composition monitors, and heating value monitors must be recalibrated either annually or at the minimum frequency specified by the manufacturer.

(e) You must document the procedures used to ensure the accuracy of the estimates of feedstock consumption.

(5) **Procedures for estimating missing data.** A complete record of all measured parameters used in the GHG emissions calculations is required. Therefore, whenever a quality-assured value of a required parameter is unavailable (e.g., if a meter malfunctions during unit operation), a substitute data value for the missing parameter must be used in the calculations, according to the following requirements:

(a) For missing feedstock supply rates, use the lesser of the maximum supply rate that the unit is capable of processing or the maximum supply rate that the meter can measure.

(b) There are no missing data procedures for carbon content. A retest must be performed if the data from any monthly measurements are determined to be invalid.

(c) For missing CEMS data, you must use the missing data procedures in WAC 173-441-510(5).

(6) **Data reporting requirements.** In addition to the information required by WAC 173-441-150, each annual report must contain the following information for each process unit:

(a) Facilities that use CEMS must comply with the procedures specified in WAC 173-441-510 (6)(c)(i)(D).

(b) Annual total consumption of feedstock for hydrogen production; annual total of hydrogen produced; and annual total of ammonia produced, if applicable.

(c) Monthly analyses of carbon content for each feedstock used in hydrogen production (kg carbon/kg of feedstock).

(7) **Records that must be retained.** In addition to the information required by WAC 173-441-160, you must retain the following records:

(a) For all CEMS, you must comply with the CEMS recordkeeping requirements in WAC 173-441-510(7).

(b) Monthly analyses of carbon content for each feedstock used in hydrogen production.

NEW SECTION

WAC 173-441-540 Landfills. (1) Definition of source category.

(a) This source category consists of the following sources at municipal solid waste (MSW) landfill facilities: Landfills, landfill gas collection systems, and landfill gas combustion systems (including flares). This source category

also includes industrial landfills (including, but not limited to, landfills located at or owned or operated food processing, pulp and paper, and ethanol production facilities).

(b) This source category does not include hazardous waste landfills and construction and demolition landfills.

(2) **Greenhouse gases that must be reported.** Greenhouse gases that must be reported:

(a) You must report CH₄ generation and CH₄ emissions from landfills.

(b) You must report CH₄ destruction resulting from landfill gas collection and combustion systems.

(c) You must report CO₂, CH₄, and N₂O emissions from stationary fuel combustion devices. This includes emissions from the combustion of fuels used in flares (e.g., for pilot gas or to supplement the heating value of the landfill gas). CO₂ generated from flaring or other use of landfill gas is reported separately as biomass emissions and is quantified using the methods in WAC 173-441-100 (4)(a).

(3) **Calculating GHG emissions.**

(a) For all landfills subject to the reporting, calculate annual modeled CH₄ generation according to the applicable requirements in (a)(i) through (iv) of this subsection.

(i) Calculate annual modeled CH₄ generation using recorded or estimated waste disposal quantities, default values from Table 540.1 and Equation 540.1 of this section.

$$G_{CH_4} = \sum_{x=S}^{T-1} [W_x L_{0,x} (e^{-k(T-x-1)} - e^{-k(T-x)})] \quad (Eq. 540.1)$$

Where:

- G_{CH₄} = Modeled methane generation rate in reporting year T (metric tons CH₄).
- X = Year in which waste was disposed.
- S = Start year of calculation. Use the year 50 years prior to the year of the emissions estimate, or the opening year of the landfill, whichever is more recent.
- T = Reporting year for which emissions are calculated.
- W_x = Quantity of waste disposed in the landfill in year X from tipping fee receipts or other company records (metric tons, as received (wet weight)).
- L₀ = CH₄ generation potential (metric tons CH₄/metric ton waste) = MCF*DOC*DOC_F*F*16/12.
- MCF = Methane correction factor (fraction).
- DOC = Degradable organic carbon (fraction (metric tons C/metric ton waste)).
- DOC_F = Fraction of DOC dissimilated (fraction).
- F = Fraction by volume of CH₄ in landfill gas.
- k = Rate constant (yr⁻¹).

(ii) For years when material-specific waste quantity data are available, and for industrial waste landfills, apply Equation 540.1 of this section for each waste quantity type and sum the CH₄ generation rates for all waste types to calculate the total modeled CH₄ generation rate for the landfill. Use the appropriate parameter values for k, DOC, MCF, DOCF, and F shown in Table 540.1 of this section. The annual quantity of each type of waste disposed must be calculated as the sum of the daily quantities of waste (of that type) disposed. For both MSW and industrial landfills, you may use the bulk waste parameters for a portion of your waste materials when using the material-specific modeling approach for mixed waste streams that cannot be designated to a specific material type. For years when waste composition data are not available, use the bulk waste parameter values for k and L₀ in Table 540.1 of this section for the total quantity of waste disposed in those years.

(iii) For years prior to reporting for which waste disposal quantities are not readily available for MSW landfills, W_x must be estimated using the estimated population served by the landfill in each year, the values for national average per capita waste disposal and fraction of generated waste disposed of in solid waste disposal sites found in Table 540.2 of this section.

(iv) For industrial landfills, W_x in reporting years must be determined by direct mass measurement of waste entering the landfill using industrial scales with a manufacturer's stated accuracy of ±2 percent. For previous years, where data are unavailable on waste disposal quantities, estimate the waste quantities according to the requirements in (a)(iv)(A) and (B) of this subsection.

(A) Calculate the average waste disposal rate per unit of production for the first applicable reporting year using Equation 540.2 of this section.

$$WDF = \sum_{n=1}^N \frac{W_n}{N * P_n} \quad (Eq. 540.2)$$

Where:

- WDF = Average waste disposal factor determined on the first year of reporting (metric tons per production unit). The average waste disposal factor should not be recalculated in subsequent reporting years.
- N = Number of years for which disposal and production data are available.
- W_n = Quantity of waste placed in the industrial landfill in year n (metric tons).
- P_n = Quantity of product produced in year n (production units).

(B) Calculate the waste disposal quantities for historic years in which direct waste disposal measurements are not available using historical production data and Equation 540.3 of this section.

$$W_x = WDF * P_x \quad (Eq. 540.3)$$

P_x = Production quantity for the facility in year X from company records (production units).

Where:

- X = Historic year in which waste was disposed.
- W_x = Projected quantity of waste placed in the landfill in year X (metric tons).
- WDF = Average waste disposal factor from Equation 540.1 of this section (metric tons per production unit).

(b) For landfills with gas collection systems, calculate the quantity of CH₄ destroyed according to the requirements in (b)(i) through (ii) of this subsection.

(i) Measure continuously the flow rate, CH₄ concentration, temperature, and pressure, of the collected landfill gas (before any treatment equipment) using a monitoring meter specifically for CH₄ gas, as specified in subsection (4) of this section.

(ii) Calculate the quantity of CH₄ recovered for destruction using Equation 540.4 of this section.

$$R = \sum_{n=1}^{365} \left(V_n * \frac{C_n}{100\%} * 0.0423 * \frac{520^{\circ}R}{T_n} * \frac{P_n}{1 \text{ atm}} * 1440 * \frac{0.454}{1000} \right) \quad (Eq. 540.4)$$

Where:

- R = Annual quantity of recovered CH₄ (metric tons CH₄).
- V_n = Daily average volumetric flow rate for day n (acfm).
- C_n = Daily average CH₄ concentration of landfill gas for day n (% wet basis). 0.0423 = Density of CH₄ lb/scf (at 520°R or 60°F and 1 atm).
- T_n = Temperature at which flow is measured for day n (°R).
- P_n = Pressure at which flow is measured for day n (atm)
- 1,440 = Conversion factor (min/day).
- 0.454/1,000 = Conversion factor (metric ton/lb).

$$MG = G_{CH4} * (1 - OX) \quad (Eq. 540.5)$$

Where:

- MG = Methane generation from the landfill in the reporting year, adjusted for oxidation (metric tons CH₄).
- G_{CH4} = Modeled methane generation rate in reporting year from Equation 540.1 of this section (metric tons CH₄).
- OX = Oxidation fraction default rate is 0.1 (10%).

(c) Calculate CH₄ generation (adjusted for oxidation in cover materials) and actual CH₄ emissions (taking into account any CH₄ recovery, and oxidation in cover materials) according to the applicable methods in (d)(i) through (ii) of this subsection.

(i) Calculate CH₄ generation, adjusted for oxidation, from the modeled CH₄ (G_{CH4} from Equation 540.1 of this section) using Equation 540.5 of this section.

(ii) For landfills that do not have landfill gas collection systems, the CH₄ emissions are equal to the CH₄ generation calculated in Equation 540.5 of this section.

(d) For landfills with landfill gas collection systems, calculate CH₄ emissions using the methodologies specified in (d)(i) and (ii) of this subsection.

(i) Calculate CH₄ emissions from the modeled CH₄ generation and measured CH₄ recovery using Equation 540.6 of this section.

$$Emissions = [(G_{CH4} - R) * (1 - OX) + R * (1 - DE)] \quad (Eq. 540.6)$$

Where:

Emissions = Methane from the landfill in the reporting year (metric tons CH₄).

G_{CH₄} = Modeled methane generation rate in reporting year from Equation 540.1 of this section or the quantity of recovered CH₄ from Equation 540.4 of this section, whichever is greater (metric tons CH₄).

R = Quantity of recovered CH₄ from Equation 540.4 of this section (metric tons).

OX = Oxidation fraction default rate is 0.1 (10%).

DE = Destruction efficiency (lesser of manufacturer's specified destruction efficiency and 0.99).

(ii) Calculate CH₄ generation and CH₄ emissions using measured CH₄ recovery and estimated gas collection efficiency and Equations 540.7 and 540.8, of this section.

$$MG = \frac{R}{CE} * (1 - OX) \tag{Eq. 540.7}$$

$$Emissions = \left[\left(\frac{R}{CE_{CH_4}} - R \right) * (1 - OX) + R * (1 - DE) \right] \tag{Eq. 540.8}$$

Where:

MG = Methane generation from the landfill in the reporting year (metric tons CH₄).

Emissions = Methane from the landfill in the reporting year (metric tons CH₄).

R = Quantity of recovered CH₄ from Equation 540.4 of this section (metric tons CH₄).

CE = Collection efficiency estimated at landfill, taking into account system coverage, operation, and cover system materials. (Default is 0.75.)

OX = Oxidation fraction (default rate is 0.1 (10%)).

DE = Destruction efficiency, (lesser of manufacturer's specified destruction efficiency and 0.99).

(c) All fuel flow meters and gas composition monitors must be calibrated prior to the first reporting year, using ASTM D1945-03 (Reapproved 2006), Standard Test Method for Analysis of Natural Gas by Gas Chromatography; ASTM D1946-90 (Reapproved 2006), Standard Practice for Analysis of Reformed Gas by Gas Chromatography; ASTM D4891-89 (Reapproved 2006), Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion; or UOP539-97 Refinery Gas Analysis by Gas Chromatography (incorporated by reference in WAC 173-441-700). Alternatively, calibration procedures specified by the flow meter manufacturer may be used. Fuel flow meters, and gas composition monitors must be recalibrated either annually or at the minimum frequency specified by the manufacturer.

(d) All temperature and pressure monitors must be calibrated using the procedures and frequencies specified by the manufacturer.

(e) The owner or operator must document the procedures used to ensure the accuracy of the estimates of disposal quantities and, if applicable, gas flow rate, gas composition, temperature, and pressure measurements. These procedures include, but are not limited to, calibration of weighing equipment, fuel flow meters, and other measurement devices. The estimated accuracy of measurements made with these devices must also be recorded, and the technical basis for these estimates must be provided.

(4) Monitoring and QA/QC requirements.

(a) The quantity of waste landfilled must be determined using mass measurement equipment meeting the requirements for commercial weighing equipment as described in "Specifications, Tolerances, and Other Technical Requirements For Weighing and Measuring Devices" NIST Handbook 44, 2008.

(b) The quantity of landfill gas CH₄ destroyed must be determined using ASTM D1945-03 (Reapproved 2006), Standard Test Method for Analysis of Natural Gas by Gas Chromatography; ASTM D1946-90 (Reapproved 2006), Standard Practice for Analysis of Reformed Gas by Gas Chromatography; ASTM D4891-89 (Reapproved 2006), Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion; or UOP539-97 Refinery Gas Analysis by Gas Chromatography (incorporated by reference in WAC 173-441-700).

(5) Procedures for estimating missing data. A complete record of all measured parameters used in the GHG emissions calculations is required. Therefore, whenever a quality-assured value of a required parameter is unavailable (e.g., if a meter malfunctions during unit operation or if a required fuel sample is not taken), a substitute data value for the missing parameter must be used in the calculations, according to the requirements in (a) through (c) of this subsection.

(a) For each missing value of the CH₄ content, the substitute data value must be the arithmetic average of the quality-assured values of that parameter immediately preceding and immediately following the missing data incident. If, for a particular parameter, no quality assured data are available prior to the missing data incident, the substitute data value must be the first quality-assured value obtained after the missing data period.

(b) For missing gas flow rates, the substitute data value must be the arithmetic average of the quality assured values of that parameter immediately preceding and immediately following the missing data incident. If, for a particular parameter, no quality-assured data are available prior to the missing data incident, the substitute data value must be the first quality-assured value obtained after the missing data period.

(c) For missing daily waste disposal data for disposal in reporting years, the substitute value must be the average daily waste disposal quantity for that day of the week as measured on the week before and week after the missing daily data.

(6) **Data reporting requirements.** In addition to the information required by WAC 173-441-150, each annual report must contain the following information for each landfill.

- (a) Waste disposal for each year of landfilling.
- (b) Method for estimating waste disposal.
- (c) Waste composition, if available, in percentage categorized as:
 - (i) Municipal;
 - (ii) Construction and demolition;
 - (iii) Biosolids or biological sludges;
 - (iv) Industrial, inorganic;
 - (v) Industrial, organic;
 - (vi) Other, or more refined categories, such as those for which k rates are available in Table 540.1 of this section.
- (d) Method for estimating waste composition.
- (e) Fraction of CH₄ in landfill gas based on measured values if the landfill has a gas collection system or a default.
- (f) Oxidation fraction used in the calculations.

(g) Degradable organic carbon (DOC) used in the calculations.

(h) Decay rate (k) used in the calculations.

(i) Fraction of DOC dissimilated used in the calculations.

(j) Methane correction factor used in the calculations.

(k) Annual methane generation and methane emissions (metric tons/year) according to the methodologies in subsection (3)(c)(i) and (ii) of this section. Landfills with gas collection system must separately report methane generation and emissions according to the methodologies in subsection (3) of this section and indicate which values are calculated using the methodologies in subsection (3)(c)(ii) of this section.

(l) Landfill design capacity.

(m) Estimated year of landfill closure.

(n) Total volumetric flow of landfill gas for landfills with gas collection systems.

(o) CH₄ concentration of landfill gas for landfills with gas collection systems.

(p) Monthly average temperature at which flow is measured for landfills with gas collection systems.

(q) Monthly average pressure at which flow is measured for landfills with gas collection systems.

(r) Destruction efficiency used for landfills with gas collection systems.

(s) Methane destruction for landfills with gas collection systems (total annual, metric tons/year).

(t) Estimated gas collection system efficiency for landfills with gas collection systems.

(u) Methodology for estimating gas collection system efficiency for landfills with gas collection systems.

(v) Cover system description.

(w) Number of wells in gas collection system.

(x) Acreage and quantity of waste covered by intermediate cap.

(y) Acreage and quantity of waste covered by final cap.

(z) Total CH₄ generation from landfills.

(aa) Total CH₄ emissions from landfills.

(7) **Records that must be retained.** In addition to the information required by WAC 173-441-160, you must retain the calibration records for all monitoring equipment.

Table 540.1. Emissions Factors, Oxidation Factors

Factor	Default Value	Units
Waste model—Bulk waste option		
k (precipitation < 20 inches/year)	0.02 yr	per year
k (precipitation 20-40 inches/year)	0.038 yr	per year
k (precipitation > 40 inches/year)	0.057 yr	per year
L ₀ (Equivalent to DOC = 0.2028 when MCF = 1, DOC _F = 0.5, and F = 0.5)	0.067	metric tons CH ₄ /metric ton waste
Waste model—All MSW and industrial waste landfills		
MCF	1	
DOC _F	0.5	
F	0.5	
Waste model—MSW using waste composition option		
DOC (food waste)	0.15	Weight fraction, wet basis
DOC (garden)	0.2	Weight fraction, wet basis
DOC (paper)	0.4	Weight fraction, wet basis

Factor	Default Value	Units
DOC (wood and straw)	0.43	Weight fraction, wet basis
DOC (textiles)	0.24	Weight fraction, wet basis
DOC (diapers)	0.24	Weight fraction, wet basis
DOC (sewage sludge)	0.05	Weight fraction, wet basis
DOC (bulk waste)	0.2	Weight fraction, wet basis
k (food waste)	0.06 to 0.185 ^a	per year
k (garden)	0.05 to 0.10 ^a	per year
k (paper)	0.04 to 0.06 ^a	per year
k (wood and straw)	0.02 to 0.03 ^a	per year
k (textiles)	0.04 to 0.05 ^a	per year
k (diapers)	0.05 to 0.10 ^a	per year
k (sewage sludge)	.06 to 0.185 ^a	per year
Waste model - Industrial waste landfills		
DOC (food processing)	0.15	Weight fraction, wet basis
DOC (pulp and paper)	0.2	Weight fraction, wet basis
k (food processing)	0.185	per year
k (pulp and paper)	0.03	per year
Calculating Methane Generation and Emissions		
OX	0.1	
DE	0.99	

^a Use the lesser value when the potential evapotranspiration rate exceeds the mean annual precipitation rate and the greater value when it does not.

Table 540.2. Per Capita Waste Disposal Rates

Year	Waste per Capita, ton/cap/yr	% to SWDS	Year	Waste per Capita, ton/cap/yr	% to SWDS
1940	0.64	100	1974	0.71	100
1941	0.64	100	1975	0.72	100
1942	0.64	100	1976	0.73	100
1943	0.64	100	1977	0.73	100
1944	0.63	100	1978	0.74	100
1945	0.64	100	1979	0.75	100
1946	0.64	100	1980	0.75	100
1947	0.63	100	1981	0.76	100
1948	0.63	100	1982	0.77	100
1949	0.63	100	1983	0.77	100
1950	0.63	100	1984	0.78	100
1951	0.63	100	1985	0.79	100
1952	0.63	100	1986	0.79	100
1953	0.63	100	1987	0.80	100
1954	0.63	100	1988	0.80	100
1955	0.63	100	1989	0.85	84
1956	0.63	100	1990	0.84	77
1957	0.63	100	1991	0.78	76
1958	0.63	100	1992	0.76	72
1959	0.63	100	1993	0.78	71
1960	0.63	100	1994	0.77	67
1961	0.64	100	1995	0.72	63
1962	0.64	100	1996	0.71	62
1963	0.65	100	1997	0.72	61
1964	0.65	100	1998	0.78	61
1965	0.66	100	1999	0.78	60
1966	0.66	100	2000	0.84	61
1967	0.67	100	2001	0.95	63
1968	0.68	100	2002	1.06	66

Year	Waste per Capita, ton/cap/yr	% to SWDS	Year	Waste per Capita, ton/cap/yr	% to SWDS
1969	0.68	100	2003	1.06	65
1970	0.69	100	2004	1.06	64
1971	0.69	100	2005	1.06	64
1972	0.70	100	2006	1.06	64
1973	0.71	100			

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 173-441-550 Industrial wastewater treatment.

(1) Definition of industrial wastewater treatment system.

(a) An industrial wastewater treatment system is the collection of all processes that treat or remove pollutants and contaminants, such as soluble organic matter, suspended solids, pathogenic organisms, and chemicals from waters released from industrial processes. This source category applies to on-site industrial wastewater treatment systems at pulp and paper mills, food processing plants, ethanol production plants, petrochemical facilities, and petroleum refining facilities.

(b) This category does not include centralized or decentralized domestic wastewater treatment plants.

(2) Greenhouse gases that must be reported. Greenhouse gases that must be reported:

(a) Annual CH₄ emissions from anaerobic industrial wastewater treatment processes.

(b) Annual CO₂ emissions for oil/water separators at petroleum refineries.

(c) CO₂, CH₄, and N₂O emissions from the combustion of fuels in stationary combustion devices and fuels used in flares; methodology described in WAC 173-441-100 (4)(a). For flares, calculate the CO₂ emissions only from pilot gas and other auxiliary fuels combusted in the flare, as specified in WAC 173-441-100. CO₂ emissions resulting from the combustion of anaerobic digester gas are to be quantified and reported as biomass emissions.

(3) Calculating GHG emissions.

(a) Estimate the annual CH₄ mass emissions from systems other than digesters using Equation 550.1 of this section. The value of flow and COD must be determined in accordance with the monitoring requirements described in subsection (4) of this section. The flow and COD should reflect the wastewater treated anaerobically on site in anaerobic systems such as lagoons.

$$CH_4 = \sum_{n=1}^{12} (Flow_n * COD * B_0 * MCF * 0.001) \tag{Eq. 550.1}$$

Where:

- CH₄ = Annual CH₄ mass emissions from the industrial wastewater treatment system (metric tons).
- Flow_n = Volumetric flow rate of wastewater sent to an anaerobic treatment system in month n (m³/month).
- COD = Average monthly value for chemical oxygen demand of wastewater entering anaerobic treatment systems other than digesters (kg/m³).
- B₀ = Maximum CH₄ producing potential of wastewater (kg CH₄/kg COD), default is 0.25.

- MCF = CH₄ conversion factor, based on relevant values in Table 550.1 of this section.
- 0.001 = Conversion factor from kg to metric tons.

(b) For each petroleum refining facility having an on-site oil/water separator, estimate the annual CO₂ mass emissions using Equation 550.2 of this section using measured values for the volume of wastewater treated, and default values for emission factors by separator type from Table 550.1 of this section. The flow should reflect the wastewater treated in the oil/water separator.

$$CO_2 = \sum_{n=1}^{12} \left(EF_{sep} * V_{H2O} * C * \frac{44}{12} * 0.001 \text{ metric tons } CH_4/kg \right) \tag{Eq. 550.2}$$

Where:

- CO₂ = Annual emissions of CO₂ from oil/water separators (metric tons/yr).
- EF_{sep} = Emissions factor for the type of separator (kg NMVOC/m³ wastewater treated).
- V_{H₂O} = Volumetric flow rate of wastewater treated through oil/water separator in month m (m³/month).
- C = Carbon fraction in NMVOC (default = 0.6).
- 44/12 = Conversion factor for carbon to carbon dioxide.
- 0.001 = Conversion factor from kg to metric tons.

(c) For each anaerobic digester, estimate the annual mass of CH₄ destroyed using Equations 550.3 and 550.4 of this section.

$$CH_4d = CH_4AD * DE \quad Eq. 550.3$$

Where:

- CH₄d = Annual quantity of CH₄ destroyed (kg/yr).
- CH₄AD = Annual quantity of CH₄ generated by anaerobic digester, as calculated in Equation 550.4 of this section (metric tons CH₄).
- DE = CH₄ destruction efficiency from flaring or burning in engine (lesser of manufacturer's specified destruction efficiency and 0.99).

$$CH_4AD = \sum_{n=1}^{365} \left(V * \frac{C}{100\%} * 0.0423 * \frac{520^{\circ}R}{T_n} * \frac{P_n}{1 atm} * 1440 * \frac{0.454}{1000} \right) \quad Eq. 550.4$$

Where:

- CH₄AD = Annual quantity of CH₄ generated by anaerobic digester, as calculated in Equation 550.4 of this section (metric tons CH₄).
- V_n = Daily average volumetric flow rate for day n, as determined from daily monitoring specified in subsection (4) of this section (acfm).
- C_n = Daily average CH₄ concentration of landfill gas for day n, as determined from daily monitoring specified in subsection (4) of this section (% wet basis).
- 0.0423 = Density of CH₄ lb/scf (at 520°R or 60°F and 1 atm).
- T_n = Temperature at which flow is measured for day n (°R).
- P_n = Pressure at which flow is measured for day n (atm)
- 1440 = Minutes per day.
- 0.454/1,000 = Conversion from pounds to metric tons.

(4) Monitoring and QA/QC requirements.

(a) The quantity of COD treated anaerobically must be determined using analytical methods for industrial wastewater pollutants and must be conducted in accordance with methods specified in 40 CFR Part 136.

(b) All flow meters must be calibrated using the procedures and frequencies specified by the device manufacturer.

(c) For anaerobic treatment systems, facilities must monitor the wastewater flow and COD no less than once per week. The sample location must represent the influent to anaerobic treatment for the time period that is monitored. The flow sample must correspond to the location used to measure the COD. Facilities must collect twenty-four-hour flow weighted composite samples, unless they can demonstrate that the COD concentration and wastewater flow into the anaerobic treatment system does not vary. In this case, facilities must collect twenty-four-hour time-weighted composites to characterize the changes in wastewater due to production fluctuations, or a grab sample if the influent flow is equalized resulting in little variability.

(d) For oil/water separators, facilities must monitor the flow no less than once per week. The sample location must represent the influent to oil/water separator for the time period that is monitored.

(e) The quantity of gas destroyed must be determined using any of the oil and gas flow meter test methods listed in WAC 173-441-700.

(f) All gas flow meters and gas composition monitors must be calibrated prior to the first reporting year, using a suitable method listed in WAC 173-441-700. Alternatively, calibration procedures specified by the flow meter manufacturer may be used. Gas flow meters and gas composition monitors must be recalibrated either annually or at the minimum frequency specified by the manufacturer.

(g) All temperature and pressure monitors must be calibrated using the procedures and frequencies specified by the device manufacturer.

(h) All equipment (temperature and pressure monitors and gas flow meters and gas composition monitors) must be maintained as specified by the manufacturer.

(i) If applicable, the owner or operator must document the procedures used to ensure the accuracy of gas flow rate, gas composition, temperature, and pressure measurements. These procedures include, but are not limited to, calibration fuel flow meters, and other measurement devices. The estimated accuracy of measurements made with these devices shall also be recorded and the technical basis for these estimates must be provided.

(5) **Procedures for estimating missing data.** A complete record of all measured parameters used in the GHG emissions calculations is required. Therefore, whenever a quality-assured value of a required parameter is unavailable (e.g., if a meter malfunctions during unit operation or if a required fuel sample is not taken), a substitute data value for the missing parameter must be used in the calculations, according to the following requirements in (a) and (b) of this subsection:

(a) For each missing monthly value of COD or wastewater flow treated, the substitute data value must be the arithmetic average of the quality-assured values of those parameters for the weeks immediately preceding and immediately following the missing data incident. For each missing value of the CH₄ content or gas flow rates, the substitute data value must be the arithmetic average of the quality-assured values of that parameter immediately preceding and immediately following the missing data incident.

(b) If, for a particular parameter, no quality assured data are available prior to the missing data incident, the substitute data value must be the first quality-assured value obtained after the missing data period.

(6) **Data reporting requirements.** In addition to the information required by WAC 173-441-150, each annual

report must contain the following information for the industrial wastewater treatment system.

- (a) Type of industrial wastewater treatment system;
- (b) Percent of wastewater treated at each system component;
- (c) COD;
- (d) Influent flow rate;
- (e) B₀;
- (f) MCF;
- (g) Methane emissions;
- (h) Type of oil/water separator (petroleum refineries);
- (i) Carbon fraction in NMVOC (petroleum refineries);
- (j) CO₂ emissions (petroleum refineries);
- (k) Total volumetric flow of digester gas (facilities with anaerobic digesters);
- (l) CH₄ concentration of digester gas (facilities with anaerobic digesters);
- (m) Temperature at which flow is measured (facilities with anaerobic digesters);
- (n) Pressure at which flow is measured (facilities with anaerobic digesters);
- (o) Destruction efficiency used (facilities with anaerobic digesters);
- (p) Methane destruction (facilities with anaerobic digesters); and
- (q) Fugitive methane (facilities with anaerobic digesters).

(7) **Records that must be retained.** In addition to the information required by WAC 173-441-160, you must retain the calibration records for all monitoring equipment.

Table 550.1. Emission Factors

Factors	Default Value	Units
B ₀	0.25	Kg CH ₄ /kg COD
MCF - anaerobic deep lagoon, anaerobic reactor (e.g., upflow anaerobic sludge blanket, fixed film)	0.8	Fraction
MCF - anaerobic shallow lagoon (less than 2 m)	0.2	Fraction
MCF - centralized aerobic treatment system, well managed	0	Fraction
MCF - centralized aerobic treatment system, not well managed (overloaded)	0.3	Fraction
Anaerobic digester for a sludge	0.8	Fraction
C fraction in NMOC	0.6	Fraction
EF sep- Gravity Type (Uncovered)	1.11E-01	Kg NMVOC/m ³ wastewater
EF sep- Gravity Type (Covered)	3.30E-03	Kg NMVOC/m ³ wastewater
EF sep-Gravity Type—(Covered and Connected to a Destruction Device)	0	Kg NMVOC/m ³ wastewater
DAF or IAF - uncovered	4.00E-34	Kg NMVOC/m ³ wastewater
DAF or IAF - covered	1.20E-44	Kg NMVOC/m ³ wastewater
DAF or IAF - covered and connected to a destruction device	0	Kg NMVOC/m ³ wastewater

DAF = dissolved air flotation type
 IAF = induced air flotation type
 NMVOC = Non-Methane Volatile Organic Compounds

NEW SECTION

WAC 173-441-560 Coal pile fugitive emissions. (1) **Source category.** All owners or operators of facilities that combust coal.

(2) **Greenhouse gases to report.** Fugitive CH₄ emissions from coal storage must be reported and converted to CO₂e metric tons per year.

(3) **Calculating greenhouse gas emissions.**

(a) The operator must calculate fugitive CH₄ emissions from coal storage using Equation 560.1 of this section.

$$CH_4 = PC * EF * (CF_1 / CF_2) \quad \text{Eq. 560.1}$$

Where:

- CH₄ = CH₄ emissions in the report year, metric tonnes per year.
- PC = Purchased coal in the report year, tons per year.
- EF = Default emission factor for CH₄ based on coal origin and mine type provided in Table 560.1 of this section, scf CH₄/ton.
- CF₁ = Conversion factor equals 0.04228, lbs CH₄/scf.
- CF₂ = Conversion factor equals 2,204.6, lbs/metric ton.

(b) If coal from more than one coal source or mine type is purchased in the year, the above calculation is to be done for each coal source and mine type and the resulting CH₄ emissions summed.

(4) Monitoring and QA/QC requirements.

(a) The owner of a combustion source that uses coal must monitor the weight of coal purchased through:

(i) Weight of coal purchased from each coal origin area and mine type during the reporting year as recorded by a scale system operated by the owner or operator of the combustion source; or

(ii) Weight of coal purchased from each coal origin area and mine type during the reporting year as recorded by a scale system operated by the supplier of the coal; or

(iii) A calculated weight for the coal purchased from each coal origin area and mine type based on the volume of the coal and an appropriate volume to weight conversion factor;

(iv) Coal origin area or coal origin areas;

(v) Coal mine type or mine types if coal from multiple mine types used.

(b) All scales or load cells used to measure quantities that are to be reported under this section must be calibrated using:

(i) Suitable methods published by a consensus standards organization (e.g., ASTM, ASME, ASHRAE, or others); or

(ii) National Institute of Standards and Technology as listed in WAC 173-441-700; or

(iii) Calibration procedures specified by the scale, or load cell manufacturer may be used.

(c) Calibration must be performed prior to the first reporting year. After the initial calibration, recalibration must be performed at least annually or at the minimum frequency specified by the manufacturer, whichever is more frequent.

(5) Procedures for estimating missing data. No missing data is allowed.

(6) Data reporting requirements. In addition to the data required to be submitted per WAC 173-441-150, report the following:

(a) The coal origins and mine types of coal consumed, as identified in Table 560.1 of this section;

(b) The annual weight of coal purchased from each coal origin area and mine type.

(7) Records that must be retained. The recordkeeping requirements of WAC 173-441-160 and all records of annual tons of coal purchased by coal origin and mine type must be retained. All records of weigh scale calibration must be retained if the scale is owned or operated by the combustion source using coal.

Table 560.1. Default Fugitive Methane Emission Factors from Post-Mining Coal Storage and Handling (CH₄ ft³ per Short Ton)

Coal Origin		Coal Mine Type	
Coal Basin	States	Surface Post-Mining Factors	Underground Post-Mining Factors
Northern Appalachia	Maryland, Ohio, Pennsylvania, West Virginia North	19.3	45.0
Central Appalachia (WV)	Tennessee, West Virginia South	8.1	44.5
Central Appalachia (VA)	Virginia	8.1	129.7
Central Appalachia (E KY)	East Kentucky	8.1	20.0
Warrior	Alabama, Mississippi	10.0	86.7
Illinois	Illinois, Indiana, Kentucky West	11.1	20.9
Rockies (Piceance Basin)	Arizona, California, Colorado, New Mexico, Utah	10.8	63.8
Rockies (Uinta Basin)		5.2	32.3
Rockies (San Juan Basin)		2.4	34.1
Rockies (Green River Basin)		10.8	80.3
Rockies (Raton Basin)		10.8	41.6
N. Great Plains	Montana, North Dakota, Wyoming	6.5	5.1
N. Great Plains	North Dakota	1.8	5.1
West Interior (Forest City, Cherokee Basins)	Arkansas, Iowa, Kansas, Louisiana, Missouri, Oklahoma, Texas	11.1	20.9
West Interior (Arkoma Basin)		24.2	107.6

Coal Origin		Coal Mine Type	
Coal Basin	States	Surface Post-Mining Factors	Underground Post-Mining Factors
West Interior (Gulf Coast Basin)		3.6	41.6
Northwest (AK)	Alaska	1.8	52.0
Northwest (WA)	Washington	5.2	18.9

Source: *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990 - 2007* April 15, 2009, U.S. Environmental Protection Agency. Annex 3, Methodological Descriptions for Additional Source or Sink Categories, Section 3.3, Table A-105, Coal Surface and Post-Mining CH₄ Emission Factors (ft³ per Short Ton). (Only Post-Mining EFs used from Table). State assignments shown from Table 103 of Annex 3.

NEW SECTION

WAC 173-441-700 Standard test methods accepted for use. (1) American Society for Testing and Material.

The following materials are available for purchase from the following addresses: American Society for Testing and Material (ASTM), 100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428-B2959; and the University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106:

(a) ASTM D240-02 (Reapproved 2007), Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter.

(b) ASTM D388-05, Standard Classification of Coals by Rank.

(c) ASTM D396-08, Standard Specification for Fuel Oils.

(d) ASTM D975-08, Standard Specification for Diesel Fuel Oils.

(e) ASTM D1250-07, Standard Guide for Use of the Petroleum Measurement Tables.

(f) ASTM D1826-94 (Reapproved 2003), Standard Test Method for Calorific (Heating) Value of Gases in Natural Gas Range by Continuous Recording Calorimeter.

(g) ASTM Specification D1835-05 (2005).

(h) ASTM D1945-03 (Reapproved 2006), Standard Test Method for Analysis of Natural Gas by Gas Chromatography.

(i) ASTM D1946-90 (Reapproved 2006), Standard Practice for Analysis of Reformed Gas by Gas Chromatography.

(j) ASTM D2013-07, Standard Practice of Preparing Coal Samples for Analysis.

(k) ASTM D2234/D2234M-07, Standard Practice for Collection of a Gross Sample of Coal.

(l) ASTM D2502-04 (Reapproved 2002), Standard Test Method for Estimation of Molecular Weight (Relative Molecular Mass) of Petroleum Oils from Viscosity Measurements.

(m) ASTM D2503-92 (Reapproved 2007), Standard Test Method for Relative Molecular Mass (Relative Molecular Weight) of Hydrocarbons by Thermoelectric Measurement of Vapor Pressure.

(n) ASTM D2880-03, Standard Specification for Gas Turbine Fuel Oils.

(o) ASTM D3176-89 (Reapproved 2002), Standard Practice for Ultimate Analysis of Coal and Coke.

(p) ASTM D3238-95 (Reapproved 2005), Standard Test Method for Calculation of Carbon Distribution and Structural Group Analysis of Petroleum Oils by the n-d-M Method.

(q) ASTM D3588-98 (Reapproved 2003), Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density of Gaseous Fuels.

(r) ASTM Specification D3699-07, Standard Specification for Kerosene.

(s) ASTM D4057-06, Standard Practice for Manual Sampling of Petroleum and Petroleum Products.

(t) ASTM D4809-06, Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter (Precision Method).

(u) ASTM Specification D4814-08a, Standard Specification for Automotive Spark-Ignition Engine Fuel.

(v) ASTM D4891-89 (Reapproved 2006), Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion.

(w) ASTM D5291-02 (Reapproved 2007), Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Petroleum Products and Lubricants.

(x) ASTM D5373-08, Standard Test Methods for Instrumental Determination of Carbon, Hydrogen, and Nitrogen in Laboratory Samples of Coal and Coke.

(y) ASTM D5865-07a, Standard Test Method for Gross Calorific Value of Coal and Coke.

(z) ASTM D6316-04, Standard Test Method for the Determination of Total, Combustible and Carbonate Carbon in Solid Residues from Coal and Coke.

(aa) ASTM D6866-06a, Standard Test Methods for Determining the Biobased Content of Natural Range Materials Using Radiocarbon and Isotope Ratio Mass Spectrometry Analysis.

(bb) ASTM E1019-03, Standard Test Methods for Determination of Carbon, Sulfur, Nitrogen, and Oxygen in Steel and in Iron, Nickel, and Cobalt Alloys.

(cc) ASTM E1915-07a, Standard Test Methods for Analysis of Metal Bearing Ores and Related Materials by Combustion Infrared-Absorption Spectrometry.

(dd) ASTM CS-104 (1985), Carbon Steel of Medium Carbon Content.

(ee) ASTM D7459-08, Standard Practice for Collection of Integrated Samples for the Speciation of Biomass (Biogenic) and Fossil-Derived Carbon Dioxide Emitted from Stationary Emissions Sources.

(ff) ASTM D6060-96 (2001) Standard Practice for Sampling of Process Vents With a Portable Gas Chromatograph.

(gg) ASTM D2502-88 (2004)e1 Standard Test Method for Ethylene, Other Hydrocarbons, and Carbon Dioxide in High-Purity Ethylene by Gas Chromatography.

(hh) ASTM C25-06 Standard Test Method for Chemical Analysis of Limestone, Quicklime, and Hydrated Lime.

(ii) UOP539-97 Refinery Gas Analysis by Gas Chromatography.

(2) **American Society of Mechanical Engineers (ASME).** The following materials are available for purchase from the American Society of Mechanical Engineers (ASME), 22 Law Drive, P.O. Box 2900, Fairfield, NJ 07007-2900:

(a) ASME MFC-3M-2004, Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi.

(b) ASME MFC-4M-1986 (Reaffirmed 1997), Measurement of Gas Flow by Turbine Meters.

(c) ASME MFC-5M-1985, (Reaffirmed 1994), Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters.

(d) ASME MFC-6M-1998, Measurement of Fluid Flow in Pipes Using Vortex Flowmeters.

(e) ASME MFC-7M-1987 (Reaffirmed 1992), Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles.

(f) ASME MFC-9M-1988 (Reaffirmed 2001), Measurement of Liquid Flow in Closed Conduits by Weighing Method.

(3) **American National Standards Institute (ANSI).** The following materials are available for purchase from the American National Standards Institute (ANSI), 25 West 43rd Street, Fourth Floor, New York, New York 10036:

(a) ISO 8316: 1987 Measurement of Liquid Flow in Closed Conduits - Method by Collection of the Liquid in a Volumetric Tank.

(b) ISO/TR 15349-1: 1998, Unalloyed steel - Determination of low carbon content. Part 1: Infrared absorption method after combustion in an electric resistance furnace (by peak separation).

(c) ISO/TR 15349-3: 1998, Unalloyed steel - Determination of low carbon content. Part 3: Infrared absorption method after combustion in an electric resistance furnace (with preheating).

(4) **Gas Processors Association (GPA).** The following materials are available for purchase from the following address: Gas Processors Association (GPA), 6526 East 60th Street, Tulsa, Oklahoma 74143:

(a) GPA Standard 2172-96, Calculation of Gross Heating Value, Relative Density and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis.

(b) GPA Standard 2261-00, Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography.

(5) **American Gas Association.** The following American Gas Association materials are available for purchase from the following address: ILI Infodisk, 610 Winters Avenue, Paramus, New Jersey 07652:

(a) American Gas Association Report No. 3: Orifice Metering of Natural Gas, Part 1: General Equations and Uncertainty Guidelines (1990), Part 2: Specification and Installation Requirements (1990).

(b) American Gas Association Transmission Measurement Committee Report No. 7: Measurement of Gas by Turbine Meters (2006).

(6) **American Petroleum Institute (API).** The following materials are available for purchase from the following address: American Petroleum Institute, Publications Department, 1220 L Street N.W., Washington, D.C. 20005-4070:

(a) American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 3—Tank Gauging:

(i) Section 1A, Standard Practice for the Manual Gauging of Petroleum and Petroleum Products, Second Edition, August 2005.

(ii) Section 1B, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Tanks by Automatic Tank Gauging, Second Edition June 2001 (Reaffirmed, October 2006).

(iii) Section 3, Standard Practice for Level Measurement of Liquid Hydrocarbons in Stationary Pressurized Storage Tanks by Automatic Tank Gauging, First Edition June 1996 (Reaffirmed, October 2006).

(b) Shop Testing of Automatic Liquid Level Gages, Bulletin 2509 B, December 1961 (Reaffirmed August 1987, October 1992).

(c) American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 4—Proving Systems:

(i) Section 2, Displacement Provers, Third Edition, September 2003.

(ii) Section 5, Master-Meter Provers, Second Edition, May 2000 (Reaffirmed, August 2005).

(d) American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 22, Testing Protocol, Section 2, Differential Pressure Flow Measurement Devices, First Edition, August 2005.

(7) **American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc.** The following material is available for purchase from the following address: American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle N.E., Atlanta, Georgia 30329.

ASHRAE 41.8-1989: Standard Methods of Measurement of Flow of Liquids in Pipes Using Orifice Flowmeters.

(8) **National Institute of Standards and Technology.** Specifications, Tolerances, and Other Technical Requirements For Weighing and Measuring Devices NIST Handbook 44, 2008.

NEW SECTION

WAC 173-441-800 Utility average system mix reporting. (1) **Average system mix reporting.** A utility must report its average system mix to Washington state department of commerce (commerce).

(a) **Purpose of average system mix.** The average system mix is the total of all power and market resources that the utility purchases or operates during the reporting year, prorated by the proportion of this total that is needed to serve its retail customers' load. Commerce will use this average system mix data to calculate the CO₂ utility-specific emission factor.

(b) **Example of applying the average system mix.** Example 800.1 of this section illustrates the information that utilities must report to commerce.

Example 800.1:

Utility A served 12,000 MWhs of total retail load in an annual period. Over the course of the year, Utility A received or purchased power resources totaling 16,000 MWhs from three sources: A hydro generating unit it owned (10,000 MWhs); BPA SLICE (4,000 MWhs); and market purchase contracts (2,000 MWhs).

Utility A's retail load (sales + line losses) = 12,000 MWhs

Utility A's owned or purchased power resources:

Hydro Facility Z	=	10,000 MWhs
BPA SLICE	=	4,000 MWhs
Market Purchases	=	2,000 MWhs
Total Power Resources	=	16,000 MWhs

Utility A must calculate the proportion of each electricity source's contribution to the utility's average system mix by dividing the total retail load (12,000 MWhs) by the total of all power resources (16,000 MWhs). In Example 800.1 of this section:

Divide total retail load by total power resources:	12,000/16,000	=	0.75 or 75%
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Utility A must claim 75% of the power it obtained from the hydro generating unit, 75% of its BPA SLICE, as well as 75% of the market purchase contracts. (Note the two exceptions for above market power purchases in subsection (2) of this section and BPA block purchases in subsection (3) of this section).

Utility A's claims are reported as:

Hydro Facility Z:	10,000* 0.75	=	7,500 MWhs
BPA SLICE:	4,000* 0.75	=	3,000 MWhs
Market Purchases:	2,000* 0.75	=	1,500 MWhs
Total Retail Load:			12,000 MWhs

(2) **Above-market power purchases.** The utility must report as a claimed resource all of the power produced from investments in a specific above-market power resource with unique societal attributes, such as a renewable resource, for which the utility does not resell that electricity specifically as power produced by that unique power generator.

(a) **Green power program resources.** Resources sold through a utility's green power program are reported to commerce in the annual green power report and must not be included in the fuel mix average reporting. The intent of the fuel mix disclosure is to determine the fuel mix of electricity sold to general customers.

(b) **Retention of environmental attributes.** If a utility retains the environmental attributes (such as green tags or renewable energy certificates) and does not sell these attributes so that the renewable power is blended with the electricity sold to general customers, then the utility must report that renewable resource generating unit in the fuel mix disclosure reporting process.

(c) **Selling of environmental attributes.** If a utility sells the environmental attributes (such as CO₂ credits, renewable energy certificates, or the green tags from any renewable resource) but keeps the electricity, then that electricity is no longer considered a renewable resource for fuel mix purposes. For this process, that electricity must be reported as a market purchase contract and will be assigned the fuel mix of the Northwest Power Pool's net system mix.

(d) **Purchasing green tags.** If a utility purchases green tags from a specific renewable resource generating unit, then the utility must report a resource claim on that renewable generating resource. The company that sold that green tag to the utility would now report its electricity as a market purchase contract.

(e) **Example of how to address above-market purchases:** Example 800.2 of this section illustrates how to address above-market purchases.

Example 800.2:

Utility B's retail load (sales+ line losses) = 12,000 MWhs

Utility B's owned or purchased power resources:

Wind Facility Y	=	1,000 MWhs
Hydro Facility Z	=	10,000 MWhs

BPA SLICE	=	4,000 MWhs
Market Purchases	=	2,000 MWhs
Total Power Resources	=	17,000 MWhs
Total Power Resources Excluding Wind	=	16,000 MWhs

New Retail Load:

Subtract wind purchases from retail load:	12,000 - 1,000	=	11,000 MWhs
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Divide new retail load by total power resources excluding wind:	11,000/16,000	=	0.6875 or 68.75%
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Utility B's claims are reported as:

Hydro Facility Z:	10,000* 0.6875	=	6,875
BPA SLICE:	4,000* 0.6875	=	2,750
Market Purchases:	2,000* 0.6875	=	1,375
Wind Facility Y:			1,000 MWhs
Total Retail Load:			12,000 MWhs

(3) **BPA Block purchases.** BPA Block purchases (i.e., non-BPA SLICE purchases of power made by utilities who are not BPA full requirements customers) must be counted as part of the utility's average system mix.

(a) **Purpose of BPA Block purchases.** BPA Block is intended to be utilized strictly to serve retail load and not resold. Therefore, the full amount of BPA Block purchases made during the calendar year must be counted as part of the

utility's average system mix. BPA Block purchases must be deducted from total power resource purchases and from retail load before calculating the multiplier used to apportion other resources for inclusion in the average system mix.

(b) **Example of how to address BPA Block purchases.** Example 800.3 of this section illustrates how to address BPA Block purchases.

Example 800.3:

Utility C's retail load (sales + line losses)	=	12,000 MWhs
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Utility C's owned and purchased power resources:

Owned Hydro Facility	=	8,000 MWhs
Market Purchases	=	2,000 MWhs
BPA Block Purchase	=	4,000 MWhs
Total Power Resources	=	14,000 MWhs
Total Power Resources excluding BPA Block Purchases	=	10,000 MWhs

New Retail Load:

Subtract BPA Block purchases from retail load:	12,000 - 4,000	=	8,000 MWhs
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Divide new retail load by total power resources excluding BPA Block purchases:	8,000/10,000	=	0.80 or 80%
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Utility C's claims are reported as:

Owned Hydro Facility:	8,000* 0.80	=	6,400 MWhs
Market Purchases:	2,000* 0.80	=	1,600 MWhs
BPA Block purchase:			4,000 MWhs

Total Retail Load:

12,000 MWhs

(4) **Definitions.** All terms used in this section have the meaning given in WAC 173-441-030 and the Washington Clean Air Act unless defined below.

"BPA SLICE" means utilities that have a contracted agreement with BPA to receive at all times a portion of BPA managed resource mix.

WSR 09-19-110
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed September 22, 2009, 8:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-16-027.

Title of Rule and Other Identifying Information: WAC 308-56A-040 Name and address—Change of address.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on November 2, 2009, at 10:00 a.m.

Date of Intended Adoption: November 24, 2009.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822, by October 30, 2009.

Assistance for Persons with Disabilities: Contact Dale R. Brown by October 30, 2009, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to allow address changes from approved sources other than the registered owner of the vehicle.

Reasons Supporting Proposal: The purpose of this rule is to allow outside entities other than the registered owner to update change of address when change has been made and the department has not been updated.

Statutory Authority for Adoption: RCW 46.01.110.

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

Name of Agency Personnel Responsible for Drafting: Dale Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Jennifer Dana, 1125 Washington Street S.E., Olympia, WA, (360) 902-3673.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

September 22, 2009

Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-23-135, filed 11/22/05, effective 1/3/06)

WAC 308-56A-040 Name and address—Change of address. (1) **If the registered owner's address changes, does the owner need to notify the department?**

Yes.

(2) **What information does the registered owner need to provide to the department if their address changes?**

The owner must provide to the department (~~((with))~~):

(a) The registered owner's name (natural person or business) as it appears on the vehicle record(s);

(b) The license plate number or vehicle identification number (VIN) of each vehicle; and

(c) The (~~((new))~~) street address for the primary residence and (~~((at the choice of the registered owner.))~~) a separate mailing address if different from the primary residence address as defined in WAC 308-56A-030(2) (~~((with at least))~~). The address must include a five digit zip code ((and preferably a) or the nine digit zip code if known.

(3) **Who may file an address change or correction?**

(a) The registered owner of the vehicle; or

(b) A public official, governmental agency, or taxing authority when proof of disputed residence is established; or

(c) A contractor who verifies or supplies correct addresses obtained from a public official or governmental agency.

This section does not relieve the registered owner of the responsibility to notify the department of an address change.

(4) **Are there exceptions to the requirement to provide a primary residence street address on the department's change of address form?**

Yes. (~~((To be exempt from the requirement to provide the primary resident street address.))~~) The registered owner must meet one of the exceptions in WAC 308-56A-030(4) and complete and sign a form developed by the department indicating which exception they meet.

~~((4))~~ (5) **Does the address need to conform to United States Postal Service (USPS) standards?**

Yes. USPS address standards must be used on all vehicle records, registrations, and certificates of ownership.

~~((5))~~ (6) **When is the registered owner required to certify the truth of the address information provided (~~((when using the department's change of address form))~~)?**

~~((No.))~~ The registered owner (~~((will only be))~~) is required to complete and sign a declaration under penalty of perjury (~~((on a form developed by the department))~~) if the department (~~((has been presented with documentation or other information to indicate))~~) receives notice that there may be an error in the address information provided (~~((and))~~) for the vehicle record (~~((has been))~~). These records will be flagged to require the declaration be submitted before any transactions can be processed on that record.

~~((6))~~ (7) **What is the penalty if the applicant or registered owner provides false address information when changing an address?**

A person providing false (~~((residency))~~) address information is guilty of a gross misdemeanor punishable by a fine of five hundred twenty-nine dollars.

~~((7))~~ **(8) Is my residence address subject to public disclosure?**

~~(Where both a mailing address and a residence address are recorded on the vehicle record and are different, only a mailing address will be disclosed. Both addresses will be disclosed in response to requests from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.)~~ The department of licensing complies with statutory standards for disclosure set out in chapter 46.12 RCW and the Driver's Privacy Protection Act set out in 18 U.S.C. Secs. 2721-2725.

WSR 09-19-116
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed September 22, 2009, 11:31 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-12-050, creating a permanent new section to provide for temporary practice permits to be issued to an applicant for a profession listed in RCW 18.130.040 (2)(a) while a fingerprint-based national background check is completed.

Hearing Location(s): Town Center 2, 111 Israel Road S.E., Room 158, Tumwater, WA, on October 28, 2009, at 9:00 a.m.

Date of Intended Adoption: October 30, 2009.

Submit Written Comments to: Dianna Staley, Department of Health, Health Systems Quality Assurance, P.O. Box 47860, Olympia, WA 98504-7860, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by October 28, 2009.

Assistance for Persons with Disabilities: Contact Dianna Staley by October 21, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide for permanent temporary practice permits to be issued to an applicant for a profession listed in RCW 18.130.040 (2)(a) if a fingerprint-based national background check must be conducted. The national background check process is lengthy and has caused licensing delays that may affect the public's access to health care. The temporary practice permit will be issued to applicants in secretary professions listed in RCW 18.130.040 (2)(a) that do not currently regulate temporary practice permits by statute or rule. To receive the permit, the applicant must meet all other licensing requirements, qualifications, and have no criminal record in Washington. The proposed rule will provide for qualified applicants to practice in the full scope of their profession until the permit expires. The proposed permanent rule will replace the emergency rule adopted effective September 1, 2009.

Reasons Supporting Proposal: In 2008 4SHB 1103 (chapter 134, Laws of 2008) passed authorizing fingerprint-based national background checks for those situations when a background check in RCW 18.130.064 was inadequate. The

legislation authorized the secretary to issue a temporary practice permit to an applicant who must have the national background check. The proposed rule will reduce the barriers for out-of-state licensed applicants who otherwise meet all licensing requirements. This rule will also improve the public's access to health care.

Statutory Authority for Adoption: RCW 18.130.064, 18.130.075.

Statute Being Implemented: RCW 18.130.064, 18.130.075.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Dianna Staley, Department of Health, P.O. Box 47860, Olympia, WA 98504-7860, (360) 236-4997; Implementation: Shannon Beigert, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, (360) 236-4604; and Enforcement: Karen Jensen, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, (360) 236-4600.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(g)(ii), a small business economic impact statement is not required for proposed rules that adopt, amend, or repeal a filing or related process requirement for applying to an agency for a license or permit.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute. A preliminary cost-benefit analysis may be obtained by contacting Dianna Staley, Department of Health, Health Systems Quality Assurance, P.O. Box 47860, Olympia, WA 98504-7860, phone (360) 236-4997, fax (360) 236-4626, e-mail dianna.staley@doh.wa.gov.

September 22, 2009

Mary C. Selecky

Secretary

NEW SECTION

WAC 246-12-050 How to obtain a temporary practice permit. Fingerprint-based national background checks may cause a delay in licensing. Individuals who satisfy all other licensing requirements and qualifications may receive a temporary practice permit while the national background check is completed. This section applies to any profession listed in RCW 18.130.040 (2)(a) that does not currently issue a temporary practice permit under the profession's specific statute or rule, unless the profession prohibits temporary practice permits by statute or rule.

(1) A temporary practice permit may be issued to an applicant who:

(a) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards for the same profession to those in Washington;

(b) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(c) Does not have a criminal record in Washington.

(2) A temporary practice permit grants the individual the full scope of practice for the profession.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), and documentation for the license.

(b) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check, if required.

(c) Provide verification of having an active unrestricted license in the same profession from another state that has substantially equivalent licensing standards for the profession in Washington.

(d) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

WSR 09-19-117

PROPOSED RULES

DEPARTMENT OF

FINANCIAL INSTITUTIONS

(Division of Consumer Services)

[Filed September 22, 2009, 11:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-066.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-630 WAC) under the Check Cashers and Sellers Act (chapter 31.45 RCW).

Hearing Location(s): John A. Cherberg Senate Building, Senate Hearing Room 1, Capitol Campus, Capitol Way, Olympia, Washington 98504, on November 5, 2009, at 10 a.m. - 12 noon.

Date of Intended Adoption: November 24, 2009.

Submit Written Comments to: Elizabeth Hampton, P.O. Box 41200, Olympia, WA 98504-120 [98504-1200], e-mail elizabeth.hampton@dfi.wa.gov, fax (360) 586-5068, by November 13, 2009.

Assistance for Persons with Disabilities: Contact Elizabeth Hampton by October 30, 2009, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement chapters 13 and 510, Laws of 2009, and to amend the rules generally for clarity and consistency. The Laws of 2009 are significant amendments and rule amendments are necessary to provide specificity and guidance to the laws' requirements.

Reasons Supporting Proposal: The changes to the law are significant and specific information is necessary to guide the industry in complying with the laws.

Statutory Authority for Adoption: Chapter 43.320 RCW, chapter 510, Laws of 2009.

Statute Being Implemented: Chapter 31.45 RCW.

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

Name of Proponent: Department of financial institutions, governmental.

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

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Introduction: The department of financial institutions (the department) has prepared this small business economic impact statement (SBEIS) in compliance with chapter 19.85 RCW, the Regulatory Fairness Act. This SBEIS is written in support of rules proposed by the department to implement amendments to chapter 31.45 RCW, the Check Cashers and Sellers Act (the act) from the 2009 legislative session. The department filed the preproposal statement of inquiry (CR-101) on May 4, 2009, as WSR 09-10-066.

Background for Proposed Rules: During the 2009 legislative session, the Washington legislature passed SB 5164 and ESHB 1709. Governor Gregoire signed SB 5164 into law on March 25, 2009, as chapter 13, Laws of 2009, and signed ESHB 1709 into law on May 15, 2009, as chapter 510, Laws of 2009.

The proposed rules impact companies licensed under the act that have a small loan endorsement (licensees). Key changes required by the legislature affecting licensees include:

- Licensees are required to maintain a log of all communications with borrowers regarding collection communications.
- Small loan amounts are limited to \$700 or 30% of the borrower's gross monthly income, whichever is lower.
- Borrowers are limited to eight loans in any twelve-month period.
- Licensees must access a statewide database to determine a borrower's eligibility for a small loan.
- Borrowers are entitled to an installment plan on each small loan they are unable to repay.
- Licensees must provide a disclosure to borrowers about the availability of an installment plan.
- Licensees must provide a notice to applicants highlighting changes to the act.

REQUIRED ELEMENTS OF SBEIS:

ELEMENT 1: A brief description of the reporting, record-keeping, and other compliance requirements of the proposed rules and the kinds of professional services that a small business is likely to need in order to comply with the requirements.

RESPONSE:

Reporting: There are no new reporting requirements for licensees.

Record keeping: Licensees will be subject to the following new record-keeping requirements:

1. Create and maintain a communication log of all licensee initiated collection communications with a borrower, including telephone and written communications;
2. Maintain the income documentation used to determine the borrower's eligibility for a small loan;
3. Include a disclosure to borrowers, on the small loan application form, about the availability of the installment plan; and
4. Provide borrowers with contracts that meet the amended installment plan terms and conditions.

Other compliance requirements: Licensees will be subject to the following other compliance requirements:

1. Licensees must use a database implemented by the department to determine a borrower's eligibility for a small loan;
2. Licensees must use a database implemented by the department to update required information on small loans outstanding or that have not expired;
3. Licensees will incur a database transaction fee of approximately \$1.00 for each small loan recorded on the database; and
4. Licensees must provide a notice to applicants and borrowers describing the changes to the act resulting from the Laws of 2009. The department will provide the content of the notice.

Professional services required: The reporting, record-keeping and other compliance requirements of the proposed rules do not necessarily require professional services. These functions can be performed by a licensee. However, many licensees will likely choose to hire additional employees or outside professional services to create and maintain a communications log, maintain income documentation, amend application forms, create installment plan agreements, access the database, or produce the required notice.

ELEMENT 2: An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, and increased administrative costs.

RESPONSE: The department gathered the data needed for analysis using an online survey of licensees. The survey was available to licensees from August 10, to August 31, 2009. To promote licensee participation, on August 10, 2009, the department used its check-casher-seller ListServ to send an email to the seven hundred thirty-six individual ListServ subscribers (consisting of licensees and other interested persons) advising them of the survey. This communication resulted in a total of eighty-two survey responses; however, after eliminating incomplete and duplicate entries, the department found that just thirty-one of the responses were acceptable. These thirty-one responses came from the department's population of one hundred twenty-six licensees, for a 25% response rate. Only six of these thirty-one respondents have more than fifty employees. All other respondents are "small businesses" under RCW 19.85.020. The small businesses that participated in the survey had from one to forty-eight employees.

Each survey participant was asked to estimate the cost of the proposed rules on the business. The tables shown below, Appendices A and B, summarize the results of the survey from small businesses with fifty or fewer employees and businesses with more than fifty employees respectively, with each response assigned a number rather than the respondent's name.

Analysis of survey results for licensees with fifty or fewer employees: The highest cost elements of the proposed rules for this group are the income documentation and database utilization provisions. Respondents indicated that a majority of the income documentation costs were associated with labor, while the costs associated with using the database were evenly split between labor and other administrative costs. Among the other elements of the proposed rules, labor represented the highest cost component by a significant margin in all cases except the requirement to provide a brochure to borrowers where the cost of supplies slightly exceeds labor costs.

There is a wide range of cost estimates among the respondents. The department believes this is due to the varied business models, delivery channels, and uses of technology among licensees.

Analysis of survey results for licensees with more than fifty employees: The highest cost element of the proposed rules for this group is by far the income documentation requirement. Accessing the database, using installment plan contracts, and keeping and maintaining the communication log are other elements identified as higher cost. Respondents indicated that a majority of the income documentation, database use, and installment plan contract costs were associated with other administrative costs; while labor was the highest cost associated with maintaining a communication log.

ELEMENT 3: Whether compliance with the proposed rules will cause businesses to lose sales or revenue.

RESPONSE: The proposed rules do not restrict a licensee's ability to provide services. However, the act was amended to limit borrowers to eight small loans in any twelve-month period. This amendment will likely cause licensees to lose sales and revenue. The proposed rule requiring licensees to provide borrowers with a notice explaining the amendments to the act may increase the borrower's awareness of the installment plan provision and could result in more borrowers exercising that right. However, the department does not believe that enhanced disclosure of this provision of the law will have a measurable effect on a licensee's volume of business or revenue.

ELEMENT 4: A comparison of compliance costs for the small and large business segments of the affected industries, and whether the impact on small business is disproportionate.

RESPONSE: It appears that the cost of compliance for a small business runs from a low of \$1,669 per employee to a high cost of \$60,938 per employee with an average of \$12,197 per employee. For businesses with over fifty employees, the cost of compliance runs from a low of \$63 per employee to a high cost of \$4,178 per employee with an average of \$1,293 per employee. Therefore, it does appear that the proposed rules will have a disproportionate impact on small businesses.

ELEMENT 5: Steps taken by the agency under RCW 19.85.030(2) to reduce costs of the proposed rules on small businesses, or reasonable justification for not doing so, addressing the specified mitigation steps.

RESPONSE: The department's analysis of these new licensee requirements, listed in the response to Element 1 above, found that several of the requirements addressed are either entirely or partially attributable to legislative changes to the act rather than the proposed rules. The department has fully considered and pursued methods to reduce the costs on small businesses in accordance with RCW 19.85.030 (3)(a) through (f). The following table summarizes each new requirement, the department's findings related to the requirement's source, and the steps taken by the department to mitigate the costs to small businesses.

New Requirement	Source of Requirement	Department Mitigation Efforts
Licensees must create and maintain a communication log of all licensee initiated collection communications with a borrower, including telephone and written communications.	This is a requirement of the act, SB 5164, section 1(4).	The department amended an earlier version of the proposed rules to limit the required elements of the communication log to only those items required by the act.
Licensees must maintain the income documentation used to determine the borrower's eligibility for a small loan.	Partially attributable to proposed rules.	The department has expanded the acceptable forms of income verification from earlier versions of the proposed rule and reduced the frequency that licensees must obtain income verification from once every thirty days to every ninety days. In addition, most licensees already collect income documentation as part of their routine processes; therefore, any additional cost would be negligible.
Licensees must include a disclosure to borrowers, on the small loan application form, about the availability of the installment plan.	This is a requirement of the act, SB 1709, section 5(1).	The department is unable to mitigate the impact of this statutory change.
Licensees must provide borrowers with contracts that meet the amended installment plan terms and conditions.	This is a requirement of the act, SB 1709, section 4(1).	The department is unable to mitigate the impact of this statutory change.
Licensees must use a database implemented by the department to determine a borrower's eligibility for a small loan.	This is a requirement of the act, SB 1709, section 6(1).	The department is unable to mitigate the impact of this statutory change.
Licensees must use a database implemented by the department to update required information on small loans.	This is a requirement of the act, SB 1709, section 6(4).	The department is unable to mitigate the impact of this statutory change.

New Requirement	Source of Requirement	Department Mitigation Efforts
Licensees will incur a database transaction fee of approximately \$1.00 for each small loan recorded on the database.	Partially attributable to proposed rules.	This cost is tied to a licensee's volume of business and therefore should be comparable for all licensees regardless of business size. In addition, the nature of this charge is self-mitigating, since a licensee must make a small loan, and thus will charge the borrower a loan fee of up to \$95, in order to incur the \$1 database transaction fee.
Licensees must provide a notice, using content provided by the department, to each small loan applicant outlining the changes to the act resulting from the Laws of 2009.	Attributable to proposed rules.	The department requires licensees to provide the notice to borrowers only during 2010.

ELEMENT 6: A description of how the agency will involve small business in the development of the proposed rules.

RESPONSE: The department involved industry representatives and consumer advocates to assist in developing the proposed rules. The department met with each group individually and jointly during rule drafting. All rule drafts were available on the department's web site. The department has received numerous comments on the amendments to the act and the proposed rules. The department will continue to solicit comments until November 13, 2009.

ELEMENT 7: A list of the industry(ies) affected by the proposed rules.

RESPONSE: The industry affected by the proposed rule is check cashers, check sellers, and small loan ("payday loan") lenders licensed under the act. Check cashers and sellers must obtain a license before engaging in business. Small loan lenders must first obtain a check casher and seller's license and then obtain an endorsement that permits them to make small loans. Not all companies provide all three services.

ELEMENT 8: An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rules.

RESPONSE: Based upon the survey responses, licensees with fifty or fewer employees estimate that an average of one job would be lost as a result of the proposed rules, and none indicated that any jobs would be created. Licensees with more than fifty employees estimated that an average of ten jobs would be lost, and an average of one job would be created.

Responses from the fifty or fewer employee licensee group ranged from zero to eight lost jobs. Just one respondent with more than fifty employees reported that any jobs would be lost; however, this respondent indicated that all fifty-six of its employees would lose their jobs. The two respondents that indicated jobs would be created reported that two and four jobs would be created as a result of the proposed rules.

Appendix A
Small Businesses with 50 or Fewer Employees

	Communication Log: Equipment, Supplies, Labor, and Other Admin Costs	Recordkeeping Log: Communication Log: Recordkeeping Costs	Income Documentation: Equipment, Supplies, Labor, and Other Admin Costs	Recordkeeping Costs	Income Documentation: Equipment, Supplies, Labor, and Other Admin Costs	Recordkeeping Costs	Using The Database: Equipment, Supplies, Labor, and Other Admin Costs	Professional Services \$	Installation Plan Contracts: Equipment, Supplies, Labor, and Other Admin Costs	Law Change Brochure: Equipment, Supplies, Labor, and Other Admin Costs	Total Costs	Jobs Created	Jobs Lost	Number of Employees	Cost Per Employee
1	\$ -	\$ -	\$ 45,000	\$ 10,000	\$ 2,080	\$ 86,000	\$ 4,000	\$ 10,000	\$ 10,000	\$ 6,600	\$ 163,681	0	0	48	\$ 3,410
2	\$ -	\$ -	\$ 17,000	\$ 2,500	\$ 3,000	\$ 97,660	\$ 10,000	\$ 14,000	\$ 14,000	\$ 3,500	\$ 147,662	0	0	22	\$ 6,712
3	\$ -	\$ 500	\$ 30,361	\$ 4,032	\$ 60,963	\$ 28,924	\$ 4,152	\$ 80,412	\$ 80,412	\$ 11,485	\$ 220,832	0	8	17	\$ 12,990
4	\$ 13,300	\$ 13,300	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 26,604	0	0	14	\$ 1,900
5	\$ 12,500	\$ 5,000	\$ 102,500	\$ 5,000	\$ 7,000	\$ 15,000	\$ 3,000	\$ 9,000	\$ 9,000	\$ 27,500	\$ 186,505	0	1	10	\$ 18,651
6	\$ 8,020	\$ 500	\$ 1,000	\$ 5,000	\$ 1,300	\$ 18,612	\$ 25,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 69,438	0	7	10	\$ 6,944
7	\$ 19,092	\$ 200	\$ 17,050	\$ 200	\$ 2,308	\$ 71,408	\$ 9,600	\$ 20,184	\$ 20,184	\$ 28,222	\$ 168,271	0	0	9	\$ 18,697
8	\$ 5,075	\$ 2,500	\$ 10,450	\$ 2,500	\$ 6,450	\$ 20,500	\$ 4,500	\$ 10,700	\$ 10,700	\$ 13,500	\$ 76,183	0	3	8	\$ 9,523
9	\$ 25,600	\$ 25,600	\$ 24,450	\$ 24,450	\$ 25,500	\$ 31,000	\$ 3,000	\$ 24,500	\$ 24,500	\$ 25,500	\$ 209,609	0	0	6	\$ 34,935
10	\$ 18,600	\$ 300	\$ 9,600	\$ 500	\$ -	\$ 225	\$ 1,000	\$ -	\$ -	\$ 1,025	\$ 31,260	0	2	5	\$ 6,252
11	\$ 9,000	\$ -	\$ 14,400	\$ -	\$ 500	\$ 9,100	\$ 1,000	\$ 1,200	\$ 1,200	\$ 2,250	\$ 37,461	0	0	5	\$ 7,492
12	\$ 2,440	\$ 2,440	\$ 21,100	\$ -	\$ -	\$ 2,000	\$ 3,000	\$ -	\$ -	\$ 3,000	\$ 33,992	0	2	5	\$ 6,798
13	\$ -	\$ -	\$ 300	\$ 120	\$ 1,150	\$ 11,420	\$ 1,000	\$ 10,920	\$ 10,920	\$ 4,350	\$ 29,273	0	2	5	\$ 5,855
14	\$ -	\$ -	\$ 300	\$ -	\$ 900	\$ 3,900	\$ 1,200	\$ -	\$ -	\$ 360	\$ 6,674	0	0	4	\$ 1,669
15	\$ 7,100	\$ 4,200	\$ 109,500	\$ 2,000	\$ 5,500	\$ 35,000	\$ 7,000	\$ 4,500	\$ 4,500	\$ 8,000	\$ 182,815	0	5	3	\$ 60,938
16	\$ 400	\$ 1,000	\$ 4,800	\$ 1,000	\$ 300	\$ 10,000	\$ 10,000	\$ 2,200	\$ 2,200	\$ 2,400	\$ 32,116	0	0	3	\$ 10,705
17	\$ 8,400	\$ 200	\$ -	\$ -	\$ 1,500	\$ 705	\$ 3,000	\$ 5,600	\$ 5,600	\$ 1,500	\$ 20,922	0	1	3	\$ 6,974
18	\$ 1,200	\$ 1,200	\$ 1,200	\$ 600	\$ 2,000	\$ 4,400	\$ 4,000	\$ 500	\$ 500	\$ 2,200	\$ 17,318	0	3	3	\$ 5,773
19	\$ 250	\$ 50	\$ 850	\$ 50	\$ 800	\$ 2,350	\$ 3,500	\$ 3,700	\$ 3,700	\$ 1,700	\$ 13,269	0	0	2	\$ 6,635
20	\$ 1,320	\$ -	\$ 5,520	\$ -	\$ 120	\$ 4,100	\$ 800	\$ 400	\$ 400	\$ 680	\$ 12,960	0	0	2	\$ 6,480
21	\$ 4,000	\$ -	\$ -	\$ 2,000	\$ 500	\$ 4,400	\$ 5,000	\$ 5,000	\$ 5,000	\$ 2,000	\$ 22,921	0	1	2	\$ 11,461
22	\$ 2,000	\$ -	\$ 2,250	\$ -	\$ 700	\$ 5,500	\$ -	\$ 3,000	\$ 3,000	\$ -	\$ 13,472	0	0	2	\$ 6,736
23	\$ 1,250	\$ 50	\$ 5,550	\$ 500	\$ 1,050	\$ 2,250	\$ 500	\$ 3,000	\$ 3,000	\$ 20	\$ 14,193	0	0	2	\$ 7,097
24	\$ 1,750	\$ 250	\$ 7,800	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,824	0	0	1	\$ 9,824
25	\$ -	\$ -	\$ 7,461	\$ 10,140	\$ 373	\$ 9,468	\$ 960	\$ 561	\$ 561	\$ 1,489	\$ 30,476	0	1	1	\$ 30,476
Average	\$ 5,652	\$ 2,292	\$ 17,538	\$ 2,824	\$ 4,960	\$ 18,957	\$ 4,208	\$ 8,575	\$ 6,091	\$ 71,109	\$ 71,109	0	1	8	\$ 12,197

Appendix B
Businesses with More Than 50 Employees

	Communication Log: Equipment, Supplies, Labor, and Other Admin Costs	Communication Log: Recordkeeping Costs	Income Documentation: Equipment, Supplies, Labor, and Other Admin Costs	Income Documentation: Recordkeeping Costs	Installation Plan Disclosure: Equipment, Supplies, Labor, and Other Admin Costs	Using The Database: Equipment, Supplies, Labor, and Other Admin Costs	Annual Costs for Professional Services \$	Installation Plan Contracts: Equipment, Supplies, Labor, and Other Admin Costs	Law Change Brochure: Other Admin Costs	Equipment, Supplies, Labor, and Other Admin Costs	Total Costs	Jobs Created	Jobs Lost	Number of Employees	Cost Per Employee
1	\$ 156,112	\$ -	\$ 335,000	\$ 5,000	\$ 5,000	\$ 25,000	\$ 5,000	\$ 5,000	\$ -	\$ -	\$ 380,000	2	0	573	\$ 663
2	\$ 20,000	\$ 6	\$ 30,835	\$ -	\$ 151	\$ 226,568	\$ 5,000	\$ 160,000	\$ -	\$ 6,300	\$ 584,972	4	0	140	\$ 4,178
3	\$ -	\$ 5,000	\$ -	\$ 7,200	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 25,000	0	0	113	\$ 221
4	\$ -	\$ -	\$ 13,800	\$ 2,000	\$ 14,859	\$ 6,600	\$ -	\$ 3,894	\$ 12,135	\$ 17,500	\$ 58,488	0	0	77	\$ 760
5	\$ 18,000	\$ 5,000	\$ 12,500	\$ 2,000	\$ 6,500	\$ 31,500	\$ 5,000	\$ 42,500	\$ 17,500	\$ 140,500	\$ 140,500	0	5	75	\$ 1,873
6	\$ -	\$ -	\$ -	\$ -	\$ 500	\$ -	\$ -	\$ -	\$ 3,000	\$ 3,500	\$ 3,500	0	56	56	\$ 63
Average	\$32,352	\$ 1,668	\$ 65,356	\$ 2,367	\$ 4,502	\$ 48,278	\$ 2,500	\$ 35,232	\$ 6,489	\$ 198,743	\$ 198,743	1	10	172	\$ 1,293

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to the proposed rules.

September 22, 2009
Deborah Bortner, Director
Division of Consumer Services

Chapter 208-630 WAC

REGULATION OF CHECK CASHERS AND SELLERS((REGULATION OF)) AND SMALL LOANS (PAYDAY LENDERS)

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

WAC 208-630-110 What definitions are required to understand these rules? The definitions in RCW 31.45.010 and this section apply throughout this chapter unless the context clearly requires otherwise.

"Act" means chapter 31.45 RCW.

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

"Agent" for purposes of RCW 31.45.079 means a person who, pursuant to the terms of a written agreement and for compensation, performs small loan agent services on behalf of an exempt entity.

"Annual percentage rate" or "APR" means the cost of credit expressed as a yearly rate, determined in accordance with the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.), and Regulation Z (12 C.F.R. Part 226 et seq.), as amended.

The Office of the Comptroller of the Currency (OCC) has developed an APR calculator (APRWIN) that licensees may download and use without charge. APRWIN is available on the OCC's web site at <http://www.occ.treas.gov/aprwin.htm>.

"Board director" means a director of a corporation or a person occupying a similar status and performing a similar function with respect to an organization, whether incorporated or unincorporated.

"Check" means the same as defined in RCW 62A.3-104(f) and, for purposes of conducting the business of making small loans, includes other electronic forms of payment, including stored value cards, internet transfers, and automated clearing house transactions.

"Check cashier" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other commercial paper serving the same purpose.

"Check seller" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of selling checks, drafts, money orders, or other commercial paper serving the same purpose.

"Close of business" for the purposes of RCW 31.45.86 and these regulations means the actual time a licensee closes for business at the location from which a small loan was originated or 11:59 p.m. Pacific Time, whichever is earlier.

A copy of the statement may be obtained by contacting Elizabeth Hampton, P.O. Box 41200, Olympia, WA 98504-120 [98504-1200], phone (360) 902-8793, fax (360) 586-5068, e-mail elizabeth.hampton@dfi.wa.gov.

"Default" means the borrower's failure to repay the small loan in compliance with the terms contained in the small loan agreement or note or failure to pay any installment plan payment within ten days after the date upon which the installment was scheduled to be paid.

"Department" means the department of financial institutions.

"Exempt entity" means a person described in RCW 31.45.020 that is engaged in the business of making small loans.

"Installment plan" is a contract between a licensee and borrower that provides that the loaned amount will be repaid in substantially equal installments scheduled on or after a borrower's pay dates and no less than fourteen days apart.

"Investigation" means an examination undertaken for the purpose of detecting violations of chapter 31.45 RCW or these rules or obtaining information lawfully required under chapter 31.45 RCW or these rules.

"License" means a license issued by the director to engage in the business of check cashing or check selling under the provision of chapter 31.45 RCW.

"Loaned amount" means the outstanding principal balance and any fees authorized under RCW 31.45.073 that have not been paid by the borrower.

"Monetary instrument" means a check, draft, money order or other commercial paper serving the same purpose.

"Paid" means that moment in time when the licensee deposits the borrower's check or accepts cash for the full amount owed on a valid small loan. If the borrower's check is dishonored and returned unpaid by the borrower's bank, the loan is not paid.

"Payday advance lender" or "payday lender" means a licensee under this chapter who has obtained a small loan endorsement under RCW 31.45.073.

"Payday advance loan," "payday loan" or "deferred deposit loan" means the same as a small loan.

"Postdated check" means a check delivered prior to its date, generally payable at sight or on presentation on or after the day of its date. "Postdated check" does not include any promise or order made or submitted electronically by a borrower to a licensee.

"RCW" means the *Revised Code of Washington*.

"Small loan" or "loan" means a loan of up to the maximum amount and for a period of time up to the maximum term specified in RCW 31.45.073.

"Small loan agent services" means all or substantially all of the following services:

- (1) Marketing and advertising small loans;
- (2) Taking small loan applications;
- (3) Assisting customers in completing small loan documentation;
- (4) Providing required disclosures;
- (5) Disbursing small loan proceeds;
- (6) Collecting small loans;
- (7) Retaining documents and records; and
- (8) Making reports.

"State" means the state of Washington.

"Unsafe or unsound financial practice" means any action, or lack of action, the likely consequences of which, if continued, would ~~((impair))~~ materially impair the net worth

of a licensee or create an abnormal risk of loss to its customers.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-120 What does a business have to do to operate as a check casher and seller(=) or to make small loans as a payday lender? ((1)) In order to engage in the business of check cashing and selling, a business must apply for and obtain from the department a check cashing or selling license.

((2)) In order to make payday loans (small loans), a business must first obtain a license as a check casher or seller ~~((must first))~~ and then obtain a small loan endorsement to ~~((its))~~ that license ~~((to make small loans in accordance with chapter 31.45 RCW and this chapter))~~.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-180 Is there a bond requirement for ((licensees)) my license? ~~((A licensee engaged in any business))~~ If you sell checks, drafts, or money orders or if you have a small loan endorsement under chapter 31.45 RCW you must obtain and maintain a bond. The bond must run to the benefit of the state and any person or persons who suffer loss. ~~((The licensee))~~ You must file the bond with the director at the beginning of each calendar year. The bond must be issued by a surety ~~((which))~~ that meets the requirements of chapter 48.28 RCW. The bond form must be acceptable to the director. ~~((The licensee))~~ You may obtain a copy of an acceptable form from the department.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-190 What type of bond is necessary and what are the conditions? The bond ~~((shall))~~ must be continuous and conditioned upon ~~((the licensee faithfully abiding by))~~ your compliance with chapter 31.45 RCW and all rules in this chapter. ~~((It shall))~~ The bond must also be conditioned upon ~~((the licensee))~~ you paying ~~((all))~~ to persons who purchase monetary instruments ~~((from the licensee))~~ the face value of any monetary instrument dishonored by the drawee financial institution due to insufficient funds or by reason of the account having been closed. The surety ~~((shall))~~ is only ~~((be))~~ liable for the face value of the dishonored monetary instrument, and ~~((shall))~~ not ~~((be liable))~~ for any interest or consequential damages. ~~((For a licensee with))~~ If you have a small loan endorsement, the bond ~~((shall))~~ must run to the benefit of the state and any person or persons who suffer loss due to ~~((the licensee's))~~ your violation of chapter 31.45 RCW or this chapter.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-230 What must I do if there are claims against the bond? ~~((The licensee))~~ You must notify the

department of any claim against the bond within ten days ~~((after))~~ of receiving notice of a claim.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-260 ~~((Does a licensee))~~ **Do I have any alternative to maintaining a surety bond?** ~~((In lieu of the surety bond required in this rule, an applicant or licensee))~~ With the approval of the director, you may substitute one of the following alternatives ((with the approval of the director)) for the surety bond required under this chapter. Any alternative to the surety bond ~~((shall))~~ must secure the same obligations ~~((as would))~~ the surety bond would. The amount of alternative substituted under subsection (1) or (2) of this section must be equal to or greater than the amount of the required surety bond.

(1) **Time deposit.** ~~((An assignment))~~ A certificate of deposit assigned in favor of the director ~~((of a certificate of deposit))~~. The certificate of deposit must be issued by a financial institution in the state and whose deposits or shares are insured by an agency of the government of the United States. The deposit must be in an amount equal to or greater than the required surety bond. The depositor is entitled to receive all interest and dividends on the certificate of deposit.

(2) **Demonstration of sufficient net worth.** ~~((A licensee or applicant for a small loan endorsement may))~~ You must demonstrate net worth ~~((in excess))~~ of at least three times the amount of the required bond. ~~((The licensee shall))~~ You must notify the director within ten business days of any date upon which ~~((its))~~ your net worth decreases below the required amount. ~~((A licensee that))~~ If you fail~~((s))~~ to maintain the required level of net worth and continue~~((s))~~ to operate under a small loan endorsement ~~((will be required to))~~, you must immediately obtain a surety bond and maintain it for five years after the date of noncompliance. During this five-year period, the director will not accept a demonstration of net worth in lieu of a surety bond.

(3) **Reports required.** ~~((A licensee that))~~ If you maintain~~((s))~~ net worth in lieu of a surety bond ~~((shall))~~, you must submit ~~((annually))~~ to the director an annual audited financial statement and ~~((within forty-five days after the close of each quarter))~~ a supplementary year-to-date financial statement within forty-five days after the close of each quarter, both prepared in accordance with generally accepted accounting principles. The financial statements must include at a minimum a statement of assets and liabilities and a profit and loss statement. The director may continue to require other documents, agreements or information necessary to properly evaluate and ensure that ~~((the licensee remains in compliance))~~ you comply with this section.

(4) **Bad debts and judgments.** ~~((A licensee that))~~ If you maintain~~((s))~~ net worth in lieu of a surety bond ~~((may))~~ you are not required to consider bad debts and certain judgments as assets. The director may approve exceptions in writing. ~~((The licensee))~~ You must charge off ~~((its))~~ your books any debt upon which any payment is six months or more past due. ~~((The licensee))~~ You may not count as an asset any unpaid judgment more than two years old ~~((which has not been~~

~~paid))~~. Time consumed by an appeal from a judgment is not counted in the two-year limit.

(5) **Noncompliance.** ~~((A licensee that does))~~ If you do not comply with this section you must obtain and file with the director a surety bond in the required amount in WAC ~~((208-630-030))~~ 208-630-240 and 208-630-250 by the date specified by the director.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-360 ~~((Whether a business has a license or not, what should the business know about))~~ **When may the director conduct an investigation?** The director or designee may conduct investigations at any time, in or outside of the state, to determine whether any person has violated or is about to violate chapter 31.45 RCW, these rules, or any order issued under these laws and rules. This includes a licensee or a business that may be conducting transactions requiring a license. For ~~((that))~~ these purposes the director or designee may conduct inquiries, interviews and examinations of any person relevant to the investigation.

ANNUAL ASSESSMENTS ~~((AND REPORTING REQUIREMENTS))~~

SMALL LOAN REQUIREMENTS ~~((FOR CHECK CASHING AND MAKING SMALL LOANS))~~ (PAYDAY LENDING)

NEW SECTION

WAC 208-630-461 **What is the maximum amount that all licensees may lend to a borrower at any one time?** The outstanding principals of all small loans made by all licensees to a single borrower at any one time may not exceed seven hundred dollars or thirty percent of the gross monthly income of the borrower, whichever is lower.

NEW SECTION

WAC 208-630-462 **What documentation is acceptable as proof of the borrower's gross monthly income?** (1) A copy of the borrower's pay stub or payroll;

(2) A copy of the borrower's receipt documenting payment of government benefits; or

(3) Other documentation as approved by the director, including, but not limited to, bank statements that show regular direct deposits from an identified source, check cashing history, employer's verbal confirmation of the borrower's employment status and current gross income.

For repeat borrowers, you must verify the borrower's gross monthly income at least every one hundred twenty days.

NEW SECTION

WAC 208-630-463 **What is the maximum number of small loans that may be made to a single borrower in any twelve-month period?** The maximum number of loans that

all licensees may make to a single borrower in any twelve-month period is eight loans.

NEW SECTION

WAC 208-630-464 What documentation must I accept as proof of the borrower's identity? (1) For loans made in person you must accept one of the following forms of identity which must contain a photograph of the borrower:

- (a) Driver's license issued in the United States, Canada, or Mexico;
 - (b) Any state's state identification card;
 - (c) Matricula consular;
 - (d) Tribal identification;
 - (e) Passport;
 - (f) Military identification; or
 - (g) Other forms of identification that provide a reliable means of verifying the borrower's identity.
- (2) For loans made over the internet. Reserved.
- (3) You must keep a copy of the identification you accepted as proof of the borrower's identity in the loan file.

NEW SECTION

WAC 208-630-466 What fees can I charge on a small loan? (1) You may charge interest or fees for small loans not to exceed in the aggregate fifteen percent of the first five hundred dollars of principal.

(2) If the principal exceeds five hundred dollars, you may charge interest or fees not to exceed in the aggregate ten percent of the portion of the principal in excess of five hundred dollars.

(3) If you make more than one loan to a single borrower, and the aggregated principal of all loans made to that borrower exceeds five hundred dollars at any one time, you may charge interest or fees not to exceed in the aggregate ten percent on the portion of the aggregated principal of all loans at any one time that is in excess of five hundred dollars.

NEW SECTION

WAC 208-630-501 How must I determine the due date on the loan? (1) The earliest due date for repayment is on or after the borrower's next pay date unless that date is within seven days of the date of the small loan. If the due date falls within the seven days, you must set the repayment date on or after the borrower's second pay date after the date of the small loan.

(2) The last due date of the loan may not be set more than forty-five days from the origination date on the loan unless the term of the loan is extended by agreement between you and the borrower at no additional cost to the borrower.

(3) Each due date must be scheduled on a date that the business is open to the public.

(4) For purposes of this section, "pay date" includes the date the borrower receives any direct deposit or other electronic transfer of funds into their bank account.

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

WAC 208-630-505 What process must ~~((a licensee))~~ I follow when a borrower pays off a small loan, or makes a payment toward ~~((a payment))~~ an installment plan, with cash? ~~((A licensee))~~ You must prepare a receipt with information that includes, but is not limited to, the date of the payment, the borrower's name, the amount of ~~((the))~~ cash received, an indication that the payment was made in cash, an indication that the payment was made ~~((either))~~ on a loan~~((;))~~ or towards ~~((a payment))~~ an installment plan, ~~((the borrower's signature,))~~ and an authorized signature, stamp, or other authenticating mark ~~((of the licensee))~~ confirming ~~((that the licensee))~~ you received the payment.

NEW SECTION

WAC 208-630-506 What are my obligations if the borrower notifies me that he or she will be or is unable to pay the small loan on time? You must notify the borrower that he or she has a right to convert the small loan to an installment plan. See WAC 208-630-520.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-510 When does a borrower have a right to enter into ~~((a statutory payment))~~ an installment plan? ~~((A))~~ (1) The borrower has ~~((a))~~ the right to convert a small loan ~~((to a statutory payment plan after four successive loans and prior to default on the last loan))~~ into an installment plan upon request made on or before the small loan's due date. If the request is made on the small loan's due date, it must be made before the close of business.

(2) If you extend a small loan's due date, the borrower's right to request an installment plan on that loan follows the extended date.

(3) If you extend a small loan's due date, you must update the data base with that new date as soon as practicable.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-520 If a borrower and licensee enter into ~~((a statutory payment))~~ an installment plan, what ~~((is))~~ are the terms of the ~~((payment))~~ installment plan? ~~((A payment))~~ An installment plan under ~~((the provisions of))~~ RCW 31.45.084 must contain the following terms:

(1) The plan must be in writing;

(2) If the small loan is four hundred dollars or less the term must be for a period of at least ~~((sixty))~~ ninety days ~~((unless a shorter period is agreed to by both the borrower and the licensee));~~

(3) If the small loan is over four hundred dollars the term must be for a period of at least one hundred eighty days; and

(4) The borrower may pay off the total amount due at any time without additional penalty, fee, or charge for prepayment.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-530 ~~If a borrower and licensee enter into ((a statutory payment)) an installment plan, how must the payments be structured? ((A)) All payments on an installment plan under the provisions of RCW 31.45.084 must ((provide for at least three separate payments which, unless otherwise requested by the borrower and agreed to in writing by the lender, shall be)):~~

(1) ~~Provide for at least three payments;~~

(2) ~~Be equal to the total amount of the ((payment)) installment plan balance divided by the number of payments ((€))subject to reasonable rounding((§)); and~~

~~((2)) (3) Be due at substantially equivalent intervals on or after the borrower's pay dates but at least fourteen days apart. ((For example, a sixty-day, three hundred fifty dollar payment plan entered into on May 1 providing for payments of one hundred twenty dollars on May 20, one hundred twenty dollars on June 11, and one hundred ten dollars on June 29, complies with this rule.))~~

NEW SECTION

WAC 208-630-531 **May I charge any fees if a borrower decides to convert their loan to an installment plan?** You may not charge any fee or interest to the borrower for converting the small loan to an installment plan as provided under RCW 31.45.084, other than the terms and conditions expressly authorized by RCW 31.45.084.

NEW SECTION

WAC 208-630-532 **May I make a small loan to a borrower who is in default on another small loan?** No. You are prohibited from making a small loan to a borrower who is in default on another small loan originated on or after January 1, 2010. This prohibition expires if the small loan is paid in full or two years have passed from the origination date of the small loan, whichever occurs first.

NEW SECTION

WAC 208-630-533 **May I make a small loan to a borrower who is in an installment plan?** No. You are prohibited from making a small loan to a borrower who is making payments as part of an installment plan with any licensee until after that loan is paid in full or two years have passed from the initiation date of the installment plan, whichever occurs first.

NEW SECTION

WAC 208-630-542 **What fees may I charge or collect when a borrower defaults on a small loan?** If the small loan is not in an installment plan, you may charge or collect a fee equal to or less than twenty-five dollars for a check returned unpaid by the bank drawn upon. Only one fee may be collected with respect to a particular check even if it has been redeposited and returned more than once. See WAC 208-630-549 for allowable default fees charged on small

loans in an installment plan. On any one loan you can only charge the borrower twenty-five dollars. The fee will either be in the form of a returned check fee or an installment plan default fee, or some combination thereof; but in no event can you charge the borrower more than twenty-five dollars over the life of one loan.

NEW SECTION

WAC 208-630-543 **What are the specifications required of the communication log in RCW 31.45.082(4)?** The communication log must contain:

(1) The date, time, and brief description of all telephone communications; and

(2) The date and brief description of all written communications. The log may be in written or electronic form, and must indicate the borrower's name.

The log must be maintained in a manner that will allow the examiner to review all collection communications covered under RCW 31.45.082 made during a period of time.

NEW SECTION

WAC 208-630-544 **May I allow a borrower to refinance a small loan with another small loan?** You may not allow a borrower to use a new small loan to pay off an existing small loan by the same lender or an affiliate of the lender. Licensees may not apply the proceeds from any small loan to any other loan from the same lender or affiliate of the lender.

NEW SECTION

WAC 208-630-545 **May I use a name or place of business other than that named on the license or small loan endorsement?** No. You may not make any loan under authority granted by chapter 31.45 RCW under any name or at any place of business other than that named on the license and small loan endorsement.

NEW SECTION

WAC 208-630-546 **What is the limit on the number of checks I may hold from one borrower?** You may not hold more than one check per small loan unless the loan is in an installment plan.

(1) If you have made multiple loans to a single borrower, you may not hold checks that total more than the lower of:

(a) Seven hundred dollars plus the allowable fees; or

(b) Thirty percent of the borrower's gross monthly income plus allowable fees.

(2) For purposes of this section, to "hold a check" does not include a check that has been deposited in your bank and subsequently returned unpaid by the borrower's bank.

NEW SECTION

WAC 208-630-547 **May I continue to hold the borrower's original check once the borrower has converted the loan to an installment plan?** No. You must either return or, at the borrower's request, destroy any postdated check or

automated clearing house (ACH) authorization for the original small loan at the initiation of an installment plan.

NEW SECTION

WAC 208-630-548 May I hold postdated checks for the installment plan payments? Yes. You may take postdated checks at the time the installment plan is originated. The checks may not be written for a value more than the amount of the borrower's installment plan payments. If any of the checks are later dishonored, you may not charge the borrower any fee for the dishonored check or checks. Exception, see WAC 208-630-549.

NEW SECTION

WAC 208-630-549 May I charge the borrower additional fees if the borrower defaults on an installment plan? Yes. You may charge the borrower a one time default fee of twenty-five dollars. A borrower defaults on an installment plan when the borrower fails to pay any installment plan payment within ten days after the date upon which the installment was scheduled to be paid. On any one loan you can only charge the borrower twenty-five dollars. The fee will either be in the form of a returned check fee or an installment plan default fee, or some combination thereof; but in no event can you charge the borrower more than twenty-five dollars over the life of one loan.

NEW SECTION

WAC 208-630-551 May I charge additional fees to cash monetary instruments issued as part of a small loan? You may not charge an additional fee to cash a monetary instrument issued as part of a small loan made under chapter 31.45 RCW by you or any affiliate.

NEW SECTION

WAC 208-630-555 What is the purpose of the data base? The purpose of this data base system is to:

- (1) Prevent the practice of refinancing a small loan with another small loan;
- (2) Prevent multiple licensees from making simultaneous small loans to an individual borrower so that the loans' total principal balance is the lesser of seven hundred dollars or thirty percent of the borrower's gross monthly income;
- (3) Prevent licensees from making more than eight loans to any one borrower in any twelve-month period;
- (4) Prevent a licensee from making a loan to a borrower who already has an outstanding small loan principal balance of the lesser of seven hundred dollars or thirty percent of their gross monthly income;
- (5) Prevent licensees from making a loan to a borrower who is in default on a small loan or is in an installment plan; and
- (6) Ensure that licensees set the small loan due date no earlier than the borrower's next pay date that is more than seven days from the origination date.

NEW SECTION

WAC 208-630-556 How do I use the data base system for small loan transactions? (1) Each small loan transaction must be registered with the data base system and receive a data base system-generated transaction authorization number. The transaction authorization number demonstrates that the transaction has been recorded in the data base prior to a licensee giving currency or a payment instrument to the borrower.

(2) **Do I have to buy any equipment, hardware, or software to use the data base system?** You must have a computer with access to the internet and Microsoft Internet Explorer 6 or higher. Dial-up capacity of at least 56 kps is sufficient. DSL or broadband access will provide faster access and response.

(3) **How and when may I access the data base system?**

(a) The data base system is the means by which real-time access to the data is made available to you through your internet connection.

(b) The data base system will be accessible twenty-four hours a day every day of the year, except for routine scheduled system maintenance and upgrades performed by the data base vendor.

(4) **What must I do to maintain confidentiality of the borrower's information provided to the data base?** In order to maintain the confidentiality and security of the borrower's information, you must not transmit information to the data base system using publicly accessible computers, computers that are not under the licensee's control, unsecured wireless connections, or other connections that are not secure. Maintaining a secure connection includes, but is not limited to, installing and regularly updating antivirus and antispyware software and a firewall.

(5) **How do I use the data base system to determine a borrower's eligibility for a small loan?** You must:

(a) Access the data base system using the assigned user identification and password provided by the security administrator of your company;

(b) Enter the borrower's Social Security number, individual tax identification number (ITIN), or alien identification number, and the borrower's gross monthly income into the system.

(6) **What information will the data base system give me when an eligibility search is conducted?** The data base system will state a borrower's eligibility or ineligibility for a small loan and will give a reason for the eligibility determination. If the borrower is eligible for a small loan, the data base system will provide the dollar amount the borrower is eligible to receive.

(7) **What must I do once the initial search determines that the borrower is eligible for a small loan?**

(a) If you receive an initial indication from the data base vendor that the borrower is eligible for a small loan, you must then submit all of the required borrower information necessary to register the transaction in the data base, as prescribed by the data base vendor.

(b) When the required information has been submitted to the data base, the data base system will confirm the initial borrower search. If the borrower's eligibility is confirmed, the small loan transaction will be recorded as open and

assigned a transaction authorization number evidencing that the transaction has been authorized by the data base system. You must place the transaction authorization number on the small loan agreement.

(8) What must I do if the borrower is determined to be ineligible for a small loan? If the borrower is deemed ineligible you will be provided with a printable message with a reason for the determination. The message will also include the name, address, and toll-free support number of the data base vendor. You must provide a copy of the printable message to the borrower.

(9) If I make a mistake entering data and must void the transaction, what do I do? Follow the data base vendor's instructions to administratively void the transaction.

(10) If the data base system is inaccessible via the internet, how do I access the data base?

(a) You will be given at least twenty-four hours notice for scheduled maintenance or system upgrades. The notice will be by electronic mail to the designated security administrator, or by a broadcast message on the data base vendor's web site.

(b) In the event the data base system is unavailable, you must adhere to the following procedures:

(i) Confirm that the data base system remains unavailable by attempting to access the data base system with every borrower seeking a new small loan transaction. You need not comply with this procedure if you have been notified via electronic mail by the data base vendor of an expected period of time necessary to correct whatever problem is causing the data base system to remain unavailable;

(ii) Contact the data base vendor's toll-free help desk or voice response system to obtain a temporary transaction authorization number directly from the data base vendor; and

(iii) Enter the remaining transactional data into the data base system within twenty-four hours of obtaining the temporary transaction authorization number from the data base vendor.

(c) In the event that either the department of financial institutions or the data base vendor notifies you that the data base system is unavailable and that all alternative methods for registering a transaction and receiving a transaction authorization number are also unavailable:

(i) You are authorized to conduct transactions during the specific period of unavailability, after receiving written authorization, via electronic mail or facsimile from either the department of financial institutions or the data base vendor with the department of financial institutions' consent.

(ii) Copies of the written authorization for any transactions conducted during an unavailability period must be attached to the small loan agreement for those transactions. One copy of the authorization must be provided to the borrower and another copy must be kept as an audit record.

(d) Transactions created during a period of authorized unavailability must be registered with the data base within twenty-four hours of notification that the data base system is available; provided, however, that if the data base system is unavailable for more than twenty-four hours, then the period for registration shall be extended by twenty-four hours for each additional twenty-four-hour period of unavailability.

(e) Once the transaction has been registered with the data base, the transaction number assigned to that transaction must be placed on the licensee's record copy of the small loan agreement signed by the borrower for that transaction. If the borrower requests that transaction number at any time, the licensee must provide it to the borrower.

(11) Once a loan is made, how can it be canceled or rescinded as authorized under RCW 31.45.086? A borrower may rescind a small loan agreement before the close of business on the next day of business after the date of the transaction without incurring a transaction fee. If a borrower elects to cancel a small loan agreement you must close the transaction on the data base as soon as practicable after the borrower rescinds the small loan transaction. A loan that has been rescinded does not count toward the eight loan limit; nor will you incur a one dollar transaction fee on that loan.

(12) When must I update information on the data base system?

(a) When a borrower's small loan is paid, you must update open transactions on the data base system as soon as practicable to ensure that all identifying information regarding both the borrower and the transaction are accurate, including any comments on the transaction which you deem relevant. You must input the date and time a transaction closes, as well as the payment method, unless you previously entered the payment method.

(b) When a loan is in default, you must mark the loan in the data base as in default as soon as practicable after the default.

(13) How much will each data base transaction cost me? The data base vendor's transaction fee is one dollar per loan registered. The data base vendor will assess this fee for each transaction that has been registered on the data base.

(14) What happens if I do not pay the data base fees to the data base vendor? The data base vendor will lock you out of the data base system.

(15) What happens if I do not receive training and become certified in using the data base? If you or another designated person in the company do not receive training and certification to use the data base, you will not be given an access number for the data base.

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

WAC 208-630-560 What ~~((types of))~~ disclosures must ~~((a licensee))~~ I make to a borrower? (1) ~~((A licensee))~~ You must deliver to the borrower at the time ~~((the licensee))~~ you make ~~((s))~~ a small loan, a disclosure that meets the requirements of all applicable laws, including the federal Truth in Lending Act. Compliance with the federal Truth in Lending Act and Regulation Z, 12 C.F.R. Part 226, will be deemed in compliance with this subsection.

(2) ~~((A licensee))~~ You must deliver to the borrower at the time ~~((the licensee))~~ you make ~~((s))~~ the small loan a disclosure of the right to rescind the loan and the right to convert the loan to ~~((a payment))~~ an installment plan. See WAC 208-630-570.

(3) ~~((A licensee who complies with the federal Truth in Lending Act and Regulation Z, 12 C.F.R. Part 226, will be~~

~~deemed in compliance with this act.)~~ You must include a statement on the front page of the application for a small loan that is in at least twelve point type and is substantially similar to the following: "At the time you repay this loan, you should have sufficient funds to meet your other financial obligations. If you cannot pay other bills because you are paying off this debt, you should enter the installment plan offered in connection with this loan."

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-570 What must be included in the disclosure(s) referred to in WAC 208-630-560(2)? The disclosure (~~referred to in WAC 208-630-560(2))~~ must be substantially in the following form:

Your right to rescind (cancel) this loan. You have the right to rescind this loan by returning the amount of the loan in cash, or returning the check given to you by us to our office by the close of business on our next business day following the date of this loan. We may not charge you for canceling the loan and we will return to you any postdated check or electronic equivalent you have given to us.

Your right to ((a payment)) an installment plan when you are unable to pay your small loan when it is due.

If ~~((this is your fourth (or greater) successive loan, and if you are not in default))~~ you will be or are unable to pay your loan when it is due, you may convert your loan to ~~((a payment))~~ an installment plan with us by notifying us on or before the loan's due date. ~~((("Successive loans" means loans made to you by us with no more than three business days between the repayment in full of one loan and the beginning date of the next loan.~~

A payment)) If your loan amount is four hundred dollars or less, you may enter into an installment plan that allows you to pay off your loan in substantially equal payments over ninety days. If your loan amount is more than four hundred dollars, you may enter into an installment plan that allows you to pay off your loan in substantially equal payments over one hundred eighty days.

An installment plan will allow you ~~((, by paying a one time fee equal to the finance charge on your loan,))~~ to pay all that you owe ~~((in at least three payments over a period of at least sixty days.~~

Your right to rescind (cancel) this loan. You have the right to rescind (cancel) this loan by returning the amount of the loan in cash, or returning the check given to you by us to our office by the close of business on our next business day following the date of this loan. We may not charge you for canceling the loan and we will return to you any postdated check or electronic equivalent you have given to us)) without having to pay any additional fees, interest charges or other charge for converting your small loan into an installment plan.

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

WAC 208-630-580 In addition to providing disclosures to the borrower, ((does a licensee have to)) must I post any disclosures? (1) ~~((Licensees that))~~ If you make

small loans you must post the following notices conspicuously at each location where small loans are made:

(a) A ~~((conspicuous))~~ notice substantially in the form set forth in WAC 208-630-570; and

(b) A ~~((conspicuous))~~ notice of how consumers may contact the department, substantially in the following form: "If you have questions about your rights and responsibilities when taking out a payday loan, contact the Department of Financial Institutions at 1-800-RINGDFI (1-877-746-4334), or 360-902-8700, or 150 Israel Road S.W., Tumwater, Washington, 98501."

(2) ~~((Licensees that))~~ If you make small loans using the internet you must post the notices required by subsections (1) and (2) of this section in a conspicuous location on ~~((their))~~ your web sites.

(3) ~~((Licensees))~~ You may download a copy of the notice required by subsection (1)(b) of this section from the department's web site or by contacting the department directly.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-590 How must I format disclosures?

All disclosures must be presented in a manner and physical format that is clear, conspicuous and designed to call attention to each right and responsibility of the borrower and lender being disclosed. Except for the disclosure that is required on the application (see WAC 208-630-560(3)), such statements may be provided separately or included within the note or loan agreement.

NEW SECTION

WAC 208-630-601 Must I provide any information about the changes to the law to borrowers? Yes. Throughout 2010, when you take a small loan application or use any other form to initiate a small loan, or upon request by a borrower who has not yet made application for a small loan, you must provide to the borrower a written notice with content produced by the department, that describes the changes to the payday lending law due to chapter 510, Laws of 2009 (ESHB 1709).

REQUIREMENTS FOR ALL LICENSEES

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

WAC 208-630-610 What ((are the)) accounting and financial records ((that a licensee must)) must I keep? ~~((Licensees))~~ You must maintain ~~((as a minimum))~~ the ~~((following))~~ records in this section for at least two years.

(1) A ~~((licensee must maintain a))~~ record of transactions conducted. ~~((Such a))~~ The record may be limited to the following provided a sufficient audit trail is available through records obtainable from ~~((the licensee's))~~ your bank of account:

- (a) Amount of the checks cashed;
- (b) Amount of fees charged for cashing the check;
- (c) Amount of cash deducted from the transaction for the sales of other services or products;

- (d) Amount of each check or monetary instrument sold;
- (e) Amount of fee charged for the monetary instrument;
- (f) Amount of small loan proceeds disbursed;
- (g) Fees charged for small loans;
- (h) Amount of payments on small loans received;
- (i) Origination date of each small loan;
- (j) Termination date of each small loan;
- (k) ~~((Payment))~~ Installment plan payment due dates;
- (l) ~~((The))~~ Application information as required ~~((to be maintained for applications in the))~~ by rule;
- (m) Records of cash payments made on small loans. The record must include the date of the payment, the borrower's name, the amount of cash received, the identity of the employee who received the cash, and whether the payment was applied to a loan or ~~((payment))~~ installment plan;
- (n) Copies of receipts required under WAC 208-630-505.

(2) ~~((Licensees))~~ You must maintain a cash reconciliation summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation must separately reflect cash received from the sale of checks, redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, cash disbursed in making small loans, cash received in payment of small loans and bank cash deposits.

(3) You must keep records of the disbursement of loan proceeds and the receipts of all payments on the balance of small loans. The receipt must ~~((be kept and must))~~ indicate the date of the transaction, the borrower's name, amount of receipt, and whether the disbursement or payment is on a loan or ~~((payment))~~ installment plan.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-670 ~~((For licensees with))~~ If I have a small loan endorsement((s)) on my license, what information must ~~((the licensee))~~ I keep in every loan file? ~~((For licensees with))~~ (1) If you have a small loan endorsement((s)), each loan file must contain at least a copy of the application, a copy of the note or loan agreement ~~((and)), a copy of the documentation used to substantiate the borrower's gross income, a copy of the borrower's photo ID and proof of identity, a copy of any disclosure statements, a copy of an installment plan entered into, and copies of the receipts required in WAC 208-630-505. As used in this section, "application" means any information you received ~~((by the licensee))~~ from the borrower for the purposes of making a lending decision, including, but not limited to, personal employment history and credit history;~~

(2) Records required to be maintained may be in paper form or on any electronic, magnetic, optical or other storage media, or any combination thereof, so long as the licensee maintains the necessary technology to permit access to the records by the department for the period required by law.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-700 ~~((a licensee))~~ I deposit a monetary instrument accepted in the course of making

a small loan? ~~((A licensee with))~~ If you have a small loan endorsement you may not deposit a monetary instrument accepted in the course of making a small loan under the act prior to the termination date ~~((and))~~ of the small loan or any ~~((time))~~ date disclosed on the note or small loan agreement.

(2) If the borrower notifies you that he or she will be late with a payment or is unable to repay the loan when it is due and an installment plan is initiated, you must return or destroy any postdated check or ACH authorization the borrower has given you prior to entering into the installment plan.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-740 ~~((does a licensee))~~ do I have to assure that employees comply with the laws and rules regarding payday lending and check cashing and selling? ~~((Each licensee shall))~~ (1) You must ensure that any employee or person who engages in business on your behalf ~~((of the licensee))~~ under the authority granted by chapter 31.45 RCW has sufficient understanding of the ~~((statutes))~~ law and rules ~~((applicable to its business))~~ to assure compliance ~~((with such statutes and rules)).~~

(2) You are legally responsible for the acts of your employees under RCW 31.45.070(2) when those acts are within the scope of their employment.

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

WAC 208-630-8201 ~~((What business practices are prohibited?))~~ (1) It is a violation of this chapter for any person subject to this chapter to:

(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

(b) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(c) Directly or indirectly obtain property by fraud or misrepresentation;

(d) Make a small loan to any person physically located in Washington through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a small loan endorsement;

(e) Directly or indirectly refer a borrower, or encourage a borrower, to use the services of more than one payday lending business that results in an amount outstanding that exceeds the loan limit in RCW 31.45.073; ~~((and))~~

(f) Directly or indirectly structure a loan transaction in order to exceed the loan limit in RCW 31.45.073;

(g) Directly or indirectly pressure a borrower to not enter into an installment plan;

(h) Directly or indirectly pressure a borrower to borrow more money than they state they want; provided, it is not a violation of this subsection for a licensee to inform a borrower as to his or her maximum loan amount or that he or she is subject to a limit of eight loans per twelve-months period;

(i) Cash a postdated check before the date written on the check except as permitted by RCW 31.45.070(2);

(j) Make a loan without processing it through the data base system except as specifically allowed in law or rule;

(k) Refuse to provide an installment plan to a borrower who is eligible for one; and

(l) Engage in any device or subterfuge to evade the requirements of the act.

(2) In addition to any other penalties, any transaction in violation of ~~((this section))~~ subsection (1)(d) of this section is uncollectible and unenforceable.

REPORTING REQUIREMENTS

AMENDATORY SECTION (Amending WSR 08-16-092, filed 8/5/08, effective 9/5/08)

WAC 208-630-830 What are ~~((a licensee's))~~ my annual reporting requirements? On or before April 15th of each year, ~~((each licensee))~~ you must submit ~~((financial statements for the calendar year just ended. If the licensee has established a fiscal year different from the calendar year, the financial statements are due not later than one hundred five days after the close of the fiscal year.))~~ the following reports:

(1) Annual financial statements. The financial statements must include at least a balance sheet and a statement of income prepared in accordance with generally accepted accounting principles. If you have established a fiscal year different from the calendar year, the financial statements are due not later than one hundred five days after the close of the fiscal year.

(2) Annual assessment report (AAR). ~~((Each licensee))~~ You must submit an AAR ~~((of its))~~ on your Washington activities, in a form prescribed by the director. The AAR must contain the following:

(a) The total dollar volume of checks cashed during the period, if applicable; and

(b) The total dollar volume of checks sold during the period, if applicable; and

(c) The total dollar volume of small loans made during the period, if applicable; and

(d) The annual assessment fee calculation. See WAC 208-630-400.

(3) Consolidated annual report (CAR). ~~((Each licensee))~~ You must submit a CAR ~~((of its))~~ on your Washington activities, in a form prescribed by the director. The CAR must contain at least the following:

(a) For all licensees, the CAR must contain:

(i) The total number of employees and annual payroll during the period;

(ii) The total number and dollar volume of transactions during the period;

(iii) The total dollar amount of fees collected during the period;

(iv) The total number and dollar amount of undeposited checks taken or held in connection with check cashing and small loan endorsement business at the end of the period;

(v) The total number and dollar amount of returned (NSF) checks taken or held in connection with check cashing and small loan business at the end of the period, and the total dollar amount of fees collected for returned (NSF) checks during the period;

(vi) The total number and dollar amount of charge-offs (losses), net of any recoveries, for the period; and

(vii) The total dollar amount of net income before and after taxes earned under authority of this chapter.

(viii) Such other relevant information as the director may require, in a form prescribed by the director.

(b) For all licensees with a small loan endorsement, the CAR must contain:

(i) The total dollar volume of small loans made during the period, including payment plans made prior to December 31, 2009, and installment plans ~~((loans))~~ made after January 1, 2010;

(ii) The total number of loans made for the period;

(iii) The total number of borrowers for the period;

(iv) The number of borrowers whose accounts were referred to collection agencies;

(v) The number of loans rescinded during the period;

(vi) The number of borrowers ~~((entering))~~ who entered into a payment plan for 2009 or installment plans after January 1, 2010, and the dollar amount of loans financed;

(vii) The number of borrowers who defaulted;

(viii) The number of loans made to borrowers to be paid through an ACH (automated clearing house) or other electronic transaction;

~~((viii))~~ (ix) The number of loans made to borrowers through other than a physical visit to the licensee's location (e.g., internet, telephone, etc.); and

~~((ix))~~ (x) The number of active military borrowers during the period.

(c) For all licensees with small loan endorsements and total loan volume of at least ten million dollars in principal for the reporting period, the CAR must contain the following:

(i) The number of loans per borrower for the period;

(ii) The number of loans per military borrower during the period; and

(iii) The number of loans with terms in each of the following categories for the period:

(A) One to seven days;

(B) Eight to fourteen days;

(C) Fifteen to twenty-one days;

(D) Twenty-two to thirty-one days; and

(E) Thirty-two or more days.

AMENDATORY SECTION (Amending WSR 08-16-092, filed 8/5/08, effective 9/5/08)

WAC 208-630-8301 What happens if ~~((a licensee is))~~ I am late filing the annual reports and paying the annual assessment? If ~~((a licensee does))~~ you do not file the financial statements, if due at that time, assessment report, consolidated annual report, and pay ~~((its))~~ the annual assessment fee by April 15 of each year, the director will send ~~((the licensee))~~ you a notice of suspension and assess a late fee of twenty-five percent of the annual assessment fee. The ~~((licensee's))~~ reports and payment of both the annual assessment fee and any late fee must arrive in the department's offices by 5:00 p.m. on the tenth day after April 15, unless the department is not open for business on that date, then the ~~((licensee's))~~ reports and payment of both the annual assessment fee and any late fee must arrive in the department's offices by

5:00 p.m. on the next day the department is open for business. ~~((If the reports and payment of both the annual assessment fee and any late fee do not arrive prior to such time and date, the expiration of the licensee's license is effective at 5:00 p.m. on the thirtieth day after April 15.))~~

NEW SECTION

WAC 208-630-835 When must I inform the director of significant changes in my business? (1) You must notify the director in writing within five days of the occurrence of any of the following significant developments:

- (a) Your company filing for bankruptcy or reorganization;
- (b) Your company receiving notification of a license revocation procedure against it in any state;
- (c) You, or a director, officer, partner, member or controlling person of the company being convicted of a crime;
- (d) You, or a director, officer, partner, member or controlling person of the company receiving notification of the filing of criminal charges or a criminal indictment or information, in any way related to check cashing, check selling or small loan activities.

(2) You must notify the director in writing at least fifteen days prior to a change of control. In the case of a corporation, control is defined as a change of ownership by a person or group acting in concert to acquire fifty percent of the stock, or the ability of a person or group acting in concert to elect a majority of the board directors or otherwise effect a change in policy of the corporation. The director may require such information as deemed necessary to determine whether a new application is required. In the case of entities other than corporations, change in control means any change in controlling persons of the organization, either active or passive. Change of control investigation fees are billed to the persons or group at the rate billed for applications.

NEW SECTION

WAC 208-630-836 When ceasing business, what information must I file before I close the business? (1) You must notify the department at least thirty days before ceasing operations. The notice must be in writing, signed by a principal of the small loan licensee, and include the following:

- (a) The date you will cease small loan activity;
- (b) A list of all open and pending transactions;
- (c) Your contact address and e-mail address; and
- (d) Your plan for the orderly closure of open loans on the data base system.

(2) For purposes of this section, the term "ceasing operations" means that you have closed the offices to the public or have removed public access to the web site, if such access is the sole means of communication with customers. This provision does not apply if you have given customers a reasonable alternative for communications and payments.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-880 ~~((What must))~~ As a check seller what must I report when ~~((surrendering))~~ my license is surrendered or ~~((revoking a license))~~ revoked? ~~((A licensee))~~ If you are engaged in the business of selling monetary instruments ~~((whose license has been surrendered or revoked shall))~~ you must submit to the director, at ~~((its))~~ your own expense, a closing annual report containing audited financial statements as of the effective date of the surrender or revocation. The director must receive the closing annual report on or before one hundred five days after the effective date of ~~((such))~~ the surrender or revocation ~~((, a closing annual report containing audited financial statements as of such effective date)).~~ ~~((This))~~ The closing annual report ~~((shall))~~ must cover the twelve months ending with ~~((such closure))~~ the surrender or revocation date or for such other time period as the director may specify. If the report, certificate, or opinion of the independent accountant is in any way qualified, the director may require ~~((the licensee))~~ you to take such action as appropriate to permit an independent accountant to remove ~~((such))~~ any qualification from the report, certificate, or opinion. ~~((Such))~~ The report shall include relevant information specified by the director.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-890 If I am not a check seller what must ~~((a licensee, other than a check seller,))~~ I report when ~~((surrendering or revoking a))~~ my license is surrendered or revoked? ~~((A licensee))~~ If you are not engaged in the business of selling monetary instruments ~~((whose license has been surrendered or revoked shall))~~ you must submit to the director at ~~((its))~~ your own expense ~~((,))~~ a closing annual report covering the twelve months ending with the surrender or closure date, or for such other time period as the director may specify. The closing annual report must be received by the director on or before one hundred five days after the effective date of ~~((such))~~ surrender or revocation ~~((, a closing annual report covering the twelve months ending with such closure date or for such other period as the director may specify)).~~ Financial statements contained in this closing report may be prepared by outside accountants or by ~~((the licensee's))~~ your own accountants.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-910 May ~~((a licensee))~~ I request an extension of time to comply with the reporting requirements? For good cause and upon written request, the director may extend the time for compliance with reporting requirements if you make the request at least ten days prior to the date the report is due.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

WAC 208-630-950 What ~~((are the))~~ trust accounting requirements ~~((that))~~ **must** a ~~((licensee must))~~ **I** comply with? (1) At least monthly a licensee in the business of selling checks ~~((shall))~~ **must** withdraw from the trust account an amount equal to fees earned for the corresponding period from the sale of monetary instruments. The remaining balance of the trust account must be sufficient to cover all monetary instruments that remain outstanding and drawn against the trust account.

(2) A licensee is prohibited from allowing the ~~((bank of))~~ financial institution holding the trust account to charge back checks or drafts deposited to the trust account and subsequently dishonored against ~~((said))~~ the trust account.

(3) A licensee~~((;))~~ whose license has expired or been suspended~~((;))~~ or terminated~~((; or not renewed, shall))~~ **must** not make withdrawals from the trust account without the director's consent, until a closing report has been received according to these rules.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 208-630-430 When may a licensee expect a fee increase?
- WAC 208-630-440 How will a licensee know about fee increases?
- WAC 208-630-460 When must a licensee inform the director of significant changes in business?
- WAC 208-630-540 Must a licensee comply with the federal Truth in Lending Act when entering into a payment plan?
- WAC 208-630-550 May the licensee and the borrower enter into a payment plan prior to the fourth consecutive loan?
- WAC 208-630-750 What fees may licensees charge to collect a delinquent small loan?
- WAC 208-630-770 May a licensee allow a borrower to refinance or "roll-over" a small loan with another small loan?
- WAC 208-630-780 May a licensee use a name or place of business other than that named on the license or small loan endorsement?
- WAC 208-630-790 What is the limit on the amount of checks a licensee may hold from one borrower?

- WAC 208-630-800 May a licensee holding a borrower's check for a period longer than the statutory limit of forty-five days charge additional fees?
- WAC 208-630-810 May a licensee charge additional fees to cash monetary instruments issued as part of a small loan?
- WAC 208-630-820 May a licensee charge any fees if a borrower decides to convert their loan to a payment plan?

**WSR 09-19-120
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed September 22, 2009, 12:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-16-112.

Title of Rule and Other Identifying Information: Chapter 296-65 WAC, Asbestos removal and encapsulation.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Auditorium, Tumwater, WA 98501-5414, on Wednesday, October 28, 2009, at 1:00 p.m.

Date of Intended Adoption: December 22, 2009.

Submit Written Comments to: Jamie Scibelli, P.O. Box 44620, Olympia, WA 98504-4620, e-mail scij235@lni.wa.gov, fax (360) 902-5619, by November 6, 2009.

Assistance for Persons with Disabilities: Contact Beverly Clark by October 14, 2009, (360) 902-5516 or clah235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As approved by the 2009 legislature, the purpose of this rule making is to adjust the fees set forth in WAC 296-65-025 Fees, for the division of occupational safety and health's asbestos program. If these fees are increased, this will be the first fee increase since the program began in 1985. This fee increase will ensure the department's ability to continue the asbestos program. The estimated budget and projected revenue show that the program is going to be underfunded by the end of 2009-2011 biennial fiscal years and in great deficit by the end of 2011-2013 fiscal years, provided that no fee increase occurs during these periods. In order for the program to function smoothly and keep providing speedy and quality service for asbestos-related business, this fee increase rule is proposed and considered as a necessary means to help cover the cost of ongoing services of the asbestos program.

The purpose of the asbestos program within the division of occupational safety and health is to oversee the certification of asbestos abatement work. These certification requirements are set forth in chapter 296-65 WAC, Asbestos. This

program reviews, approves, and audits asbestos abatement courses and asbestos abatement course providers. Asbestos abatement workers and supervisors are reviewed to ensure they have obtained an adequate level of training from an approved training course provider. Additionally, asbestos abatement supervisors must demonstrate a minimum level of experience to obtain certification. Asbestos abatement contractors are reviewed to ensure they are a registered contractor with the department of labor and industries and they have at least one certified asbestos supervisor on staff.

WAC 296-65-025 Fees, the proposed language in this section has been amended to increase the fees as follows:

- Increase fees for asbestos worker certificate from \$25 to \$45;
- Increase fees for asbestos supervisor certificate from \$35 to \$65;
- Increase fees for asbestos contractor certificate from \$1000 to \$1050; and
- Increase fees for asbestos training course approval from \$1000 to \$1250.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and section 218, chapter 564, Laws of 2009.

Statute Being Implemented: RCW 49.26.130.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Likewise, RCW 19.85-025(3) says that chapter 19.85 RCW does not apply to a rule described in RCW 34.05.310(4), and that subsection exempts rules that "set or adjust fees pursuant to legislative standards." As such, the department is exempt from conducting a small business economic impact statement for this proposed rule.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) states the exemption from its requirements rules "that set or adjust fees or rates pursuant to legislative standards." This proposal is to adjust fees with regard to asbestos-related trade and the program has received legislative approval, described in ESHB 1244, for the fee increase. As such, the department is exempt from conducting cost-benefit analysis for this proposed rule.

September 22, 2009

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 99-17-026, filed 8/10/99, effective 11/10/99)

WAC 296-65-025 Fees. (1) A nonrefundable administrative fee of ~~((twenty-five))~~ forty-five dollars will be assessed for each initial, replacement, or renewal asbestos worker certificate application. The fee (check or money order) must accompany the certificate application and be

made payable to the department. An application form may be obtained from any approved training course instructor or directly from the department.

(2) A nonrefundable administrative fee of ~~((thirty-five))~~ sixty-five dollars will be assessed for each initial, replacement, or renewal asbestos supervisor certificate application. The fee (check or money order) must accompany the certificate application and be made payable to the department. An application form may be obtained from any approved training course instructor or directly from the department.

(3) A nonrefundable administrative fee of one thousand fifty dollars will be assessed for each initial or renewal contractor certificate application. The fee (check or money order) must accompany the certificate application and be made payable to the department. An application form may be obtained from the department.

Note: In circumstances where it is necessary to coordinate an expiration date with the date of expiration of a contractor registration issued under chapter 18.27 RCW, certificates may be valid for less than one year. In such circumstances, the certificate fee prescribed in WAC 296-65-025 will be prorated accordingly for the initial application only.

(4) A nonrefundable administrative fee of one thousand two hundred fifty dollars will be assessed for each initial and renewal application for training course approval. A check or money order must accompany any application made under the provisions of WAC 296-65-015.

WSR 09-19-126
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Division of Consumer Services)
[Filed September 22, 2009, 12:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-065.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-620 WAC) under the Consumer Loan Act (chapter 31.04 RCW).

Hearing Location(s): John A. Cherberg Senate Building, Senate Hearing Room 1, Capitol Campus, Capitol Way, Olympia, Washington 98504, on November 5, 2009, at 1-3 p.m.

Date of Intended Adoption: November 24, 2009.

Submit Written Comments to: Elizabeth Hampton, P.O. Box 41200, Olympia, WA 98504-120 [98504-1200], e-mail elizabeth.hampton@dfi.wa.gov, fax (360) 586-5068, by November 13, 2009.

Assistance for Persons with Disabilities: Contact Elizabeth Hampton by October 30, 2009, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement chapters 120, 149 and 311, Laws of 2009, and to amend the rules generally for clarity and consistency. The rule amendments are necessary to provide specificity and guidance to the Laws of 2009 amendments.

Reasons Supporting Proposal: The changes to the law are significant and specific information is necessary to guide the industry in complying with the laws.

Statutory Authority for Adoption: Chapter 43.320 RCW, chapters 120, 149, and 311, Laws of 2009.

Statute Being Implemented: Chapter 31.04 RCW.

Rule is necessary because of federal law, the S.A.F.E. act, Title V of Public Law 110-289.

Name of Proponent: Department of financial institutions, governmental.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendments will not impose more than minor costs on the businesses impacted by the proposed rules.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to the proposed rules.

September 22, 2009

Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter 31.04 RCW.

"Affiliate" means any person who controls, is controlled by, or is under common control with another.

"Annual percentage interest rate" means the rate of interest specified in the note.

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Section 226 et seq.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be submitted in writing or electronically and includes a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Section 103.

"Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

"Borrower" means any natural person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan,

regardless of whether that person actually obtains such a loan.

"Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

"Creditor" has the same meaning as in the Truth in Lending Act, 15 U.S.C. 1602(f).

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. § 1735f-7a.

"Director" means the director of the department of financial institutions or his or her designated representative.

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. section 1691 and Regulation B, 12 C.F.R. Section 202.

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

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. section((s)) 1692 ((through 1692o)).

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, Director of the Office of Thrift Supervision, National Credit Union Administration, and Federal Deposit Insurance Corporation.

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

"Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or other documents, or transferring certificates of title to vehicles.

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

"Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. sections 2801 through 2810 and 12 C.F.R. Section 203.

"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes step-parents, stepchildren, stepsiblings, and adoptive relationships.

"Individual servicing a mortgage loan" means a person who on behalf of a lender or servicer licensed by this state, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due on existing obligations due and owing to the licensed lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

For purposes of this definition "on behalf of a lender or servicer" means that the individual person is employed by the lender or servicer and does not receive any compensation or gain directly or indirectly from the borrower for performing the described activities.

"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.

"Lender" means any person that extends money to a borrower with the expectation of being repaid.

"License" means a license issued under the authority of this chapter with respect to a single place of business.

"Licensee" means a person who holds one or more current licenses.

"Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

"Loan" means a sum of money lent at interest or for a fee or other charges and includes both open-end and closed-end transactions.

"Loan modification" means a change in one or more of the loan conditions and includes forbearances; repayment plans; a change in interest rates; loan term (length); loan type (fixed or adjustable); the capitalization of arrearages; and principal reductions. "Loan modification" does not include services that result in refinancing a residential mortgage loan.

"Loan originator" means the same as ~~(in RCW 19.146-010)~~ mortgage loan originator.

"Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 31.04 RCW.

A loan processor engaged as an independent contractor for a licensee must hold a mortgage loan originator license.

"Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

"Making a loan" means advancing, offering to advance, or making a commitment to advance funds for a loan.

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

"Mortgage broker" means the same as in RCW 19.146.010 except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same transaction.

"Mortgage loan originator" or "loan originator" means an individual who for compensation or gain (1) takes a residential mortgage loan application; or (2) offers or negotiates terms of a residential mortgage loan.

"Mortgage loan originator" does not include any individual who performs purely administrative or clerical tasks and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan.

"Mortgage loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law to conduct those activities, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. See the definition of real estate brokerage activity in this subsection.

This definition does not apply to an individual servicing a mortgage loan before July 1, 2011.

"Nationwide Mortgage Licensing System and Registry (NMLSR)" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

"Out-of-state licensee" means ~~(any)~~ a licensee that does not maintain a physical presence within the state, or a licensee that maintains headquarters or books and records outside Washington.

"Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

"Principal" means either (1) any person who controls, directly or indirectly through one or more intermediaries, a ten percent or greater interest in a partnership, company, association or corporation; or (2) the owner of a sole proprietorship.

"Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

"Principal balance" means the principal amount plus any allowable origination fee.

"RCW" means the *Revised Code of Washington*.

"Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (2) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction; (4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and (5) offering to engage in any activity, or act in any capacity, described in (1) through (4) of this definition.

"Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec-

tions 2601 et seq., and Regulation X, 24 C.F.R. Sections 3500 et seq.

"Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

"Registered mortgage loan originator" means any individual who (1) meets the definition of mortgage loan originator and is an employee of: A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and (2) is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

"Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law No. 110-289, effective July 30, 2008.

"Senior officer" means an officer of a consumer loan company at the vice-president level or above.

"Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Each payment (~~(shall)~~ must first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. In using such method, interest (~~(shall)~~ must not be payable in advance or compounded.

"State" means the state of Washington.

"Subsidiary" means a person that is controlled by another.

"Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

"Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. § 6101 to 6108.

"Telephone Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

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

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

"Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

EXEMPTION FROM LICENSING

NEW SECTION

WAC 208-620-104 Who is exempt from licensing as a consumer loan company? See RCW 31.04.025.

NEW SECTION

WAC 208-620-105 Who is exempt from licensing as a mortgage loan originator under this act? The following are exempt from licensing as a mortgage loan originator:

(1) Registered mortgage loan originators employed by an entity that is exempt from the act;

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;

(4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and

(5) Individuals that do not take residential mortgage loan applications or negotiate the terms of residential mortgage loans for compensation or gain.

COMPANY LICENSING

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-230 Do I need ~~((to apply for))~~ a consumer loan license if I am lending money in the state of Washington? If you are in the business of making secured or unsecured loans of money or credit (~~((at rates above those allowed under chapter 19.52 RCW, the Usury Act,))~~) and you do not qualify for an exception under RCW 31.04.025, you must hold a license (~~((to avoid noncompliance with the Usury Act. The current allowable rate under RCW 19.52.020 is twelve percent or less but that rate may change))~~) under this act.

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-235 Is there a maximum rate of interest allowed under the act? Yes. The note rate of interest (~~((rates))~~) may not (~~((exceeding))~~) exceed twenty-five percent per annum (~~((are allowed))~~).

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-240 Once I am licensed, does the act apply to all loans I make ~~((or only those above twelve percent))~~? Yes. All loans you make (~~((as a licensee))~~) to Wash-

ington residents and loans secured by Washington residential real estate are subject to the authority and restrictions of the act including the provisions relating to the calculation of the annual ((fee)) assessment.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-245 Does the Consumer Loan Act allow me to make one or two loans ((subject to the act)) without being licensed? No. The act ((applies to all loans made by licensees and)) does not provide an exemption for a ((de minimus)) de minimis number of loans. ((If you are not licensed, the act does not apply to your transactions.)) See WAC 208-620-230.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-260 If I am licensed under the Consumer Loan Act, can I broker loans in the state of Washington? Yes. You may broker loans under the Consumer Loan Act or Mortgage Broker Practices Act.

(1) If you broker loans under the Consumer Loan Act license, ((those loans are subject to)) you are subject to the act and the loans are subject to the annual assessment under WAC 208-620-240.

(2) If you ((broker loans)) are licensed under the Mortgage Broker Practices Act, chapter 19.146 RCW, you must comply with that act. If you do hold that additional license, the loans you broker are subject to that act and are not subject to the annual assessment under this act.

NEW SECTION

WAC 208-620-271 Do I need a license to assist a borrower with a loan modification? Yes. Persons providing loan modification services for compensation or gain must be licensed under this chapter, or under chapter 19.146 RCW.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-280 How do I apply for a consumer loan license? ((1) Application. An applicant for a consumer loan company license must complete a consumer loan license application form and include all of the following:

(a) In regard to each principal, officer or member of the board of directors:

(i) The names, addresses, occupation and prior employment history including a statement of their experience and qualifications;

(ii) A description of any material litigation in which they are involved;

(iii) A signed authorization for a background investigation on a form provided by the department;

(iv) A complete set of fingerprints taken by an authorized law enforcement officer, if requested; and

(v) An independent credit report obtained from a recognized credit reporting agency, if requested;

(b) A current financial statement as of the most recent quarter end, prepared in accordance with generally accepted accounting principles. The statement does not have to be audited but must include a statement of assets and liabilities and a profit and loss statement;

(c) A current, dated organizational chart for the applicant with names and titles of all officers, managers and supervisory personnel;

(d) A current, dated organizational chart identifying the holding companies, affiliates, and subsidiaries of the applicant and percentage owned or controlled;

(e) A certificate of existence/authorization obtained from the Washington secretary of state;

(f) A valid surety bond in the amount specified in WAC 208-620-320;

(g) For out of state licensees, the name, address, phone number, and fax number of its registered agent;

(h) The location of its records;

(i) A description of any current material civil litigation involving the company or any of the officers, directors or owners; and

(j) The fee required under WAC 208-620-290.

(2) **Completion of an application.** An application is not considered to be complete unless:

(a) All documents and other information requested by the department have been submitted in a completed form; and

(b) There are no unresolved complaints filed with the department or other outstanding regulatory or law enforcement issues concerning the applicant and its principals, officers and directors.)) (1) Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system.

(2) Upon application and periodically upon license renewal, each officer, director, and owner applicant must provide information concerning:

(a) Identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check;

(b) Personal history;

(c) Experience;

(d) Business record; and

(e) Other pertinent facts, as the director may reasonably require.

(3) ((**Responsible applicants.**)) Each ((of the)) principal((s)), officer((s)) and director((s)) of the entity that is applying for a license is deemed responsible for the information submitted as part of the application.

NEW SECTION

WAC 208-620-281 What will happen if my license application is incomplete? The department will only process complete applications. If your application is incomplete your file will be marked "pending-deficient" in the NMLSR. The department will either identify each deficiency or respond that there are multiple deficiencies and ask you to

contact the department. You are responsible for reviewing your record and responding to each issue.

NEW SECTION

WAC 208-620-282 How do I withdraw my application for a license? You may withdraw the application through the NMLSR. You will not receive a refund of the NMLSR application fee but you may receive a partial refund of your licensing fee if the fee exceeds the department's actual cost to investigate the license application.

NEW SECTION

WAC 208-620-284 What are my rights if the director denies my application for a license? You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied. See WAC 208-620-615.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-290 What fees (~~(will I be charged)~~) must I pay for my application for a consumer loan license? (1) (~~(Application)~~) NMLSR fees. (~~The director will charge the applicant or licensee~~) You must pay the NMLSR system fee when you submit your application.

(2) DFI fees. You must pay \$95.55 per hour for review and investigation of (~~its application and attendant investigation for~~) the following:

- (a) New consumer loan company license;
- (b) New branch office license;
- (c) Notice of change of control; or
- (d) Opinions rendered regarding interpretations of statutes and rules.

(~~(2)~~) (3) Licenses. (~~The licensee will be charged~~) You must pay \$106.71 for (the) issuance of the following licenses:

- (a) New or replacement main office licenses; or
- (b) New or replacement branch licenses.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-300 If I want to open more than one office, do I have to file an application for each location? (~~A licensee must complete a consumer loan license application~~) Yes. You must submit a branch office application through the NMLSR for each consumer loan company branch office, loan servicing location, or direct solicitation location, and provide evidence of surety bond coverage for (any additional) each branch. (The director may require that all or some of the information provided in the original application be updated.)

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-320 What is the amount of the bond required for my consumer loan license? (~~(1) Loans not secured by real estate.~~ For licensees making loans not secured by real property, the penal sum of the bond is one hundred thousand dollars for each office up to five locations. For each additional branch office over five, the amount of the bond must be increased by ten thousand dollars.

(2) ~~Loans secured by real estate.~~ For a licensee making loans secured by real property, the penal sum of the bond is ~~four hundred thousand dollars.~~) The bond amount is based on the annual dollar amount of loans you originate. See the following chart:

1. <u>Zero to five million in loans originated:</u>	<u>\$30,000</u>
2. <u>Five million to fifteen million:</u>	<u>\$50,000</u>
3. <u>Fifteen million to thirty million:</u>	<u>\$100,000</u>
4. <u>Thirty million and above:</u>	<u>\$150,000</u>

NEW SECTION

WAC 208-620-325 What will my bond amount be in the first year of licensing? Your initial bond amount will be based on either your prior year's loan origination volume or thirty thousand dollars, whichever is greater. See the bonding chart in WAC 208-620-320.

NEW SECTION

WAC 208-620-327 How often will my bond amount change? Your bond amount may change annually depending on your volume of loan origination.

NEW SECTION

WAC 208-620-328 How often must I report my loan origination volume? You must report your loan origination volume each quarter when filing your call report (see WAC 208-620-431) and each year during the annual assessment period. By March 1st of each year, you must determine your required bond amount and provide DFI with proof of having an adequate bond.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-340 Do I have any alternative to maintaining a surety bond? (~~Bond substitute.~~) You may use a bond substitute, as defined in WAC 208-620-010, that meets the following requirements:

(1) The company must be a Washington business corporation. (~~A licensee that is a Washington business corporation may maintain a bond substitute, as defined in WAC 208-620-010, in lieu of a surety bond.~~)

(2) (~~Amount of the bond substitute.~~) The company's (licensee must maintain) unimpaired capital must be maintained in an amount so that the aggregate sum of the (licensee's) company's debt, including outstanding promissory

notes or other evidences of debt, does not at any time exceed three times the amount of its bond substitute.

(3) ~~((Long-term subordinated debt.))~~ The company's long-term subordinated debt, as defined in WAC 208-620-010, may be excluded from the ((licensee's) company's debt for purposes of calculating the bond substitute only if any claim by the subordinate debtholder on the ((licensee's) company's assets is junior to claims by the state or a consumer under the act. The licensee must file with the director a subordination agreement in favor of the state.

(4) ~~((Bad debts and uncollectible judgments. A licensee that maintains a bond substitute))~~ The company may not consider bad debts and uncollectible judgments as assets for purposes of calculating the bond substitute. A bad debt is any debt owed to the licensee upon which any payment is six months or more past due. An uncollectible judgment is any judgment which is more than two years old and which has not been paid.

(5) ~~((Review of requirements.))~~ The director may evaluate the documentation submitted by the licensee or other documentation requested by the director to determine whether the bond substitute meets the requirements of RCW 31.04.045(3).

NEW SECTION

WAC 208-620-341 If my company relies on the bond alternative, must my licensed mortgage loan originators obtain an individual bond? Yes. They must each obtain individual bonds based on their mortgage loan origination volume. The bond must be in the following amount:

(Tiered levels of bonding)

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-360 What if I ~~((choose the))~~ use a bond substitute ~~((alternative))~~ and my unimpaired capital falls below the minimum? ~~((Failure to maintain sufficient unimpaired capital.))~~ A ((licensee)) company that does not maintain a sufficient bond substitute ~~((shall))~~ must notify the director within ten days ~~((as required by WAC 208-620-490))~~ of the decrease in unimpaired capital. The ~~((licensee must))~~ department will then direct you to obtain and file ~~((with the director))~~ a surety bond in the amount required by WAC 208-620-320. You must comply within twenty days ~~((after receiving notice from the director))~~. ~~((A licensee that files))~~ If you obtain a surety bond under this section you must maintain the surety bond for five years after the date of non-compliance. During this five-year period, the director will not accept a bond substitute.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-370 What are the grounds for denying or conditioning my consumer loan company license application? The director may deny or condition approval of a license application if the applicant or any principal, officer, or board director of the applicant:

(1) ~~((Failing to pay.))~~ Fails to pay a fee due the department or the NMLSR;

(2) ~~((Failing to demonstrate financial responsibility or fitness.))~~ Fails to demonstrate financial responsibility, experience, character, and general fitness to operate a business honestly, fairly, and efficiently within the purposes of the Consumer Loan Act. The director may find that the person has failed to make the demonstration if, among other things:

(a) The person is or has been subject to an injunction or an administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act, the Insurance Code, the Securities Act, or similar laws in this or another state; or

(b) An independent credit report issued by a recognized credit reporting agency indicates that the person has a history of unpaid debts; or

(c) The person is the subject of a criminal felony indictment, or a criminal misdemeanor charge involving dishonesty or financial misconduct; or

(d) The person is insolvent in the sense that the value of the applicant's or licensee's liabilities exceeds its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature;

(3) ~~((Misrepresentations or omissions.))~~ Has misrepresented, omitted or concealed a material fact from the department or has misrepresented a material fact to the department;

(4) ~~((Prior business conduct.))~~ Has been found to have committed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(5) ~~((Failure to complete the application.))~~ Has failed to complete its application as defined in WAC 208-620-280, within a reasonable time after being notified that the department considers the file abandoned for failure to provide requested information or documentation.

NEW SECTION

WAC 208-620-371 May I employ someone who has been convicted of a felony, or who has had a lending-related license revoked or suspended? No. Pursuant to RCW 31.04.093(6), the director may prohibit any officer, principal, or employee from participating in the affairs of any license if that officer, principal, or employee has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(1) During the seven-year period preceding the date of the application for licensing and registration; or

(2) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering. For purposes of this section, "participation in the affairs of any licensee" means an officer, principal, or employee who will or does originate loans, supervise loan originators, or manage the loan production activities of the licensee. Additionally, the director may prohibit participation in the affairs of the licensee by any officer, principal, or employee who has had a license to engage in lending, or performance of a settlement service related to lending, sus-

pending in this state or any state. The department considers it to be a deceptive practice in violation of RCW 31.04.027(2) for any licensee to employ an officer, principal, or employee to originate loans, supervise loan originators or manage the loan production activities of the licensee without first conducting a background check.

NEW SECTION

WAC 208-620-372 Am I responsible for the actions of my employees and independent contractors? Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

NEW SECTION

WAC 208-620-373 What happens to loans in the pipeline if a mortgage loan originator leaves my company? Existing loan applications must be processed by another licensed loan originator in the company. At the borrower's written request, the loan can be transferred to another licensed entity.

NEW SECTION

WAC 208-620-374 What action must I take in the NMLSR if I fire a loan originator or if the loan originator quits? You must file a relationship termination through the NMLSR within five days of firing someone or the person quitting.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-380 Are there any additional requirements for out-of-state licensees? (1) **All locations must be licensed.** Any person that conducts business under the act with Washington residents or Washington residential real estate must obtain a license for all locations from which such business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310.

(2) **Keeping records out-of-state.** The director may approve the maintenance of a licensee's records at an out-of-state location. The licensee must request approval in writing and must agree to provide the director access to the records and pay the hourly rate plus travel costs pursuant to WAC 208-620-590. ~~((Agreement to allow access to the records is a condition of licensing of an out-of-state location.))~~

(3) **Service on out-of-state licensee.** An out-of-state licensee's registered agent in Washington is the licensee's agent for service of process, notice, or demand.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-430 What are my annual filing requirements as a consumer loan licensee? Each year you are required to file a consolidated annual report on a form provided by the department. You must also pay a fee (assess-

ment) based on your loan portfolio ~~((from))~~ balance at the end of the prior calendar year ((end)), plus the loan activity conducted during the reporting year.

(1) **Annual report and assessment due ~~((March 1st)) February 14th.~~** You must provide the completed consolidated annual report, through the NMLSR by March 1st of each year. The worksheet(-) and annual fee must be provided directly to the department by March 1st of each year.

(2) **Late penalties.** A licensee that fails to submit the required annual report, worksheet, and assessment by March 1st is subject to a penalty of fifty dollars per report for each day of delay. For example, if the department receives the consolidated annual report and worksheet on March 4th, the licensee would have to pay an additional three hundred dollars as a late penalty. The maximum late penalty that will be assessed is five thousand dollars per year.

(3) **Failure to file.** If a licensee fails to pay its annual assessment and file a worksheet by April 1st the director may file a claim against the licensee's surety bond for failing to faithfully conform to and abide by the Consumer Loan Act. The department may make a claim on the licensee's surety bond for the late penalties under subsection (2) of this section and the greater of:

- (a) The assessment paid the previous year;
- (b) The average annual assessment paid in the previous two years; or
- (c) Fifteen hundred dollars.

NEW SECTION

WAC 208-620-431 What are my quarterly filing requirements? (1) In addition to any other annual financial statement you must file quarterly reports through the NMLSR. The NMLSR will prescribe the content and form of the report.

(2) The reports are due within forty-five days from the end of each quarter:

- First quarter - May 15th;
- Second quarter - August 14th;
- Third quarter - November 14th;
- Fourth quarter - February 14th.

(3) If you fail to submit the report within forty-five days of the end of the quarter as indicated in subsection (2) of this section, you will not be able to renew your license or registration, and will not be able to open additional branches or add new loan originators.

NEW SECTION

WAC 208-620-432 Will the filing of the fourth quarter call report satisfy the consolidated annual report (CAR) requirement of WAC 208-620-430? The director may accept the fourth quarter call report in lieu of your annual consolidated annual report.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-440 How do I calculate my annual assessment for activity in Washington? (1) **Calculation of the annual assessment.** The annual assessment is based on

the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.

(2) **All loans counted in assessment calculation.** The "adjusted total loan value" is the sum of:

(a) The principal loan balance on Washington loans in your loan portfolio on December 31 of the prior year; plus

(b) The total principal loan amount of all first and junior lien Washington loans both under and over twelve percent interest, you made, brokered, or purchased during the assessment year.

(3) **Reverse mortgages.** Each reporting year, you will report and be assessed on:

(a) The dollar amount of advances made; and

(b) The dollar amount of accrued interest.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-490 What are my reporting responsibilities when something of significance happens to my business? (1) Prior notification required. ~~((A licensee))~~ You must ((notify the director in writing)) amend your NMLSR record at least ten days prior to a change of ((the licensee's)) your:

(a) Principal place of business or any of ~~((its))~~ branch offices;

(b) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(c) Name and mailing address of ~~((the out-of-state licensee's))~~ your registered agent if you are located outside the state;

(d) Legal or trade name; or

(e) A change of ownership control of ten percent or more; or

(f) A closure or surrender of the license. See WAC 208-620-499.

(2) **Post notification within ten days.** ~~((A licensee))~~ You must ((notify the director in writing)) amend your NMLSR record within ten days after an occurrence of any of the following:

(a) Change in mailing address, telephone number, fax number, or e-mail address;

(b) Cancellation or expiration of ~~((its))~~ your Washington state master business license;

(c) Change in ~~((its))~~ standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(d) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340. See WAC 208-620-360; ~~((or))~~

(e) Receipt of notification of cancellation of ~~((the licensee's))~~ your surety bond; or

(f) Termination of sponsorship of loan originator.

(3) **Post notification within twenty days.** ~~((A licensee))~~ You must ((notify the director in writing)) amend your NMLSR record within twenty days after the occurrence of any of the following developments:

(a) Receipt of notification of ~~((the institution of))~~ license revocation procedures against your license in any state ~~((against the licensee));~~

(b) The filing of a felony indictment or information related to lending or brokering activities ~~((of the licensee;))~~ against you or any officer, board director, or principal ~~((of the licensee))~~ or an indictment or information involving dishonesty ~~((of the licensee;))~~ against you or any officer, board director, or principal ~~((of the licensee));~~

(c) ~~((The licensee;))~~ Conviction of you or any officer, director, or principal ~~((of the licensee is convicted of))~~ for a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(d) The filing of any material litigation against the ~~((licensee))~~ company.

(4) See WAC 208-620-499 for the requirements when you close your business.

NEW SECTION

WAC 208-620-499 What are my reporting requirements if I want to close my company or surrender my license? If you cease doing business in Washington you must do the following:

(1) Submit a surrender request through the NMLSR within ten days of closing the company or surrendering the license.

(2) You must file the final annual report, worksheet, and submit any fees owed as required in WAC 208-620-430. Failure to file these reports within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action.

(3) Any Washington loans in your portfolio and CLA activity remain subject to the director's authority including investigation and examination, and the fees associated with those activities.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-500 What are my reporting requirements if I want to close one or more of my branch offices? If you close a branch office, you must ~~((immediately notify the department using the Consumer Loan Office Closure Form. You must also return the original license))~~ submit a surrender request through the NMLSR at least ten days prior to the branch closing.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-505 In addition to the Consumer Loan Act, what other laws do I have to comply with? You must ensure you are in compliance with all federal and state laws and regulations that apply to lending or brokering loans when applicable to the transaction including, but not limited to, the Truth in Lending Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Bank Secrecy Act, the Real Estate Settlement Procedures Act, the Gramm-Leach-Bliley Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, the

Telemarketing and Consumer Fraud and Abuse Act, the Washington State Fair Housing Act, the SAFE Act, and the Federal Trade Commission Telephone Sales Rule, 16 C.F.R. Part 310.

NEW SECTION

WAC 208-620-506 Must my underwriting analysis of a borrower's residential mortgage loan application include a determination of the borrower's ability to repay the loan? Yes. To ensure that underwriting standards are consistent with prudent lending practices, the underwriting standards should include, at a minimum, an analysis of the borrower's ability to repay the obligation. The analysis of a borrower's repayment capacity must include the debt to income ratio; the assets, net worth, or equity; and any prepayment penalty clauses.

NEW SECTION

WAC 208-620-507 What elements of an ability to repay analysis must be part of my underwriting policy of a residential mortgage loan? (1) Your underwriting policy must include:

- A procedure for evaluating and documenting a borrower's ability to repay.
 - Standards used to evaluate the borrower's ability to repay by final maturity at the fully indexed rate.
 - A policy that provides the assumption of a fully amortizing repayment schedule in determining the borrower's ability to repay.
 - An evaluation of any negative amortization on a borrower's ability to repay.
 - Standards for verifying the borrower's income, current employment and reasonably expected future income.
 - Standards for verifying the borrower's assets, net worth or equity in the subject property.
 - Standards for an acceptable range for the borrower's debt to income ratio based on the loan type (conventional, reduced documentation, stated income).
 - Demonstration that the debt to income ratio includes all of the borrower's contractual obligations, or that an allowance has been made within the ratio to take into account ancillary borrower contractual obligations (utility, cell phone contracts, etc.).
 - Standards for counseling borrowers on the impact of their decision to accept a mortgage with an adjustable rate, balloon payment, or other alternative product or feature.
 - Standards on the substitution of a credit score in place of income, assets, or net worth.
 - Standards for due diligence of third-party originators including preresult review, verifications of borrower information, responsibility for initial RESPA compliance, responsibility for adverse action notice compliance, and post-closing reviews.
 - Procedures for notifying borrowers about prepayment penalties.
- (2) You must demonstrate consistent and uniform application of the elements in subsection (1) of this section in your in-house compliance and audit departments.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-510 What are my disclosure obligations to consumers ((under the Consumer Loan Act))? (1) **Content requirements.** In addition to complying with the applicable disclosure requirements in the federal and state statutes referred to in WAC 208-620-505 if the loan will be secured by a lien on real property, you must also provide the borrower or potential borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three days of receipt of a loan application.

(2) **Proof of delivery.** The licensee must be able to prove that the disclosures under subsection (1) of this section were provided within the required time frames. In most cases, proof of mailing is sufficient evidence of delivery. If the licensee has an established system of disclosure tracking that includes a disclosure and correspondence log, checklists, and a reasonable system for determining if a borrower did receive the documents, the licensee will be presumed to be in compliance.

(3) **Rate locks.** Within three days, including Saturdays, of receipt of a loan application you must provide the borrower with the following disclosure about the interest rate:

(a) If a lock-in agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

(b) If a lock-in agreement has been entered into whether the lock-in agreement is guaranteed and whether and under what conditions any lock-in fees are refundable to the borrower.

(c) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock disclosure within three days of the lock-in date that includes the following:

(i) The length of the lock-in period;

(ii) The expiration date of the lock-in rate;

(iii) The lock-in interest rate;

(iv) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and

(v) Any other terms of the lock-in agreement.

(4) Brokered loans.

(a) Within three business days following receipt of a loan application you must provide to each borrower a good faith estimate that conforms with RESPA 24 C.F.R. 3500.

(b) Within three business days following receipt of a loan application you must provide to each borrower a truth in lending disclosure that conforms with Regulation Z, 12 C.F.R. Section 226.

(c) Whether a lock-in agreement has been entered into with the borrower.

(d) If a lock-in agreement has been entered into whether the lock-in agreement is guaranteed and whether and under what conditions any lock-in fees are refundable to the borrower.

(e) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock disclosure within three days of the lock-in date that includes the following:

(i) The length of the lock-in period;

(ii) The expiration date of the lock-in rate;

(iii) The lock-in interest rate;

(iv) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and

(v) Any other terms of the lock-in agreement.

(5) **Shared appreciation mortgages (SAM) or mortgages with shared appreciation provisions.** Within three business days following receipt of a loan application for a shared appreciation mortgage, or a mortgage with a shared appreciation provision, you must provide each borrower with a written disclosure containing at a minimum the following:

(a) The percentage of shared equity or shared appreciation you will receive (or a formula for determining it);

(b) The value the borrower will receive for sharing his or her equity or appreciation;

(c) The conditions that will trigger the borrower's duty to pay;

(d) The conditions that may cause the lender to terminate the mortgage or share appreciation provision early;

(e) The procedure for including qualifying major home improvements in the home's basis (if any);

(f) Whether a prepayment penalty applies; and

(g) The date on which the SAM terminates and the equity or appreciation becomes payable if no triggering event occurs.

(6) Each licensee ~~(shall)~~ must maintain in its files sufficient information to show compliance with state and federal law.

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-511 What is the disclosure required under RCW 19.144.020? ~~((See))~~ (1) You must provide the borrower with a clear, brief one page summary to help borrowers understand their loan terms. The disclosure summary must be provided on one page separate from any other documents and must use clear, simple, plain language terms that are reasonably understandable to the average person.

(2) You must provide the initial disclosure summary to the borrower within three business days following your receipt of a complete loan application.

(3) You must redisclose material loan terms within three days of a significant change, or at least three days before closing, whichever is earlier.

(4) You may provide the disclosure summary in electronic form, in a manner consistent with the procedure for delivery of electronic disclosure under Regulation Z of the Truth in Lending Act, 12 C.F.R. Part 226, currently in effect, which implements the E-Sign Act of 2000, 15 U.S.C. Sec. 7001 et seq.

(5) The department has developed model forms that comply with this provision. See the department's web site. See also RCW 19.144.020 and WAC 208-600-200.

NEW SECTION

WAC 208-620-513 What information must I obtain from a borrower prior to pulling a credit report on a residential mortgage loan? (1) You must collect the borrower's name, monthly income, Social Security number, the

property address, an estimate of the value of the property, and the mortgage loan amount sought.

(2) If the submission is for a purchase mortgage loan and a specific property has not been identified you may obtain a credit report for a prequalification without obtaining all the information in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-515 What authority do I have as a licensee? ~~((+))~~ As a licensee you may:

~~((+))~~ (1) Lend money ~~((at a))~~ with a note rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed

(b) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(c) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;

(d) The powers listed in (a) and (b) of this subsection apply only to junior lien mortgage loans, and to lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans and nonmortgage loans.

(2) Agree with the borrower for the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender.

(3) Charge and collect a penalty of not more than ten percent of any installment payment delinquent ten days or more.

(4) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee.

(5) Make open end loans as provided in the act.

(6) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower). This applies only to non-

mortgage loans, junior lien mortgage loans, and to lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans. The requirement for the simple interest method of calculating interest does not apply to reverse mortgages.

(2) Make open-end loans as provided in RCW 31.04.-115.

(3) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, covering the involuntary unemployment of the borrower, or other insurance products approved by the Washington state office of the insurance commissioner.

(4) Sell incidental products. For the purposes of this section "incidental" means products or services including, but not limited to, guaranteed asset protection programs, warranties, and prepaid legal services.

(5) The authority to sell insurance and incidental products described in subsections (3) and (4) of this section is subject to the director's approval. The cost of the products may, at the consumer's option, be paid from the proceeds of the loan and included in the principal balance provided that:

(a) The purchase of the product is not a factor in the approval of credit and this fact is clearly disclosed in writing to the consumer; and

(b) The consumer gives the licensee written permission to purchase the product after receiving disclosure of the terms and cost.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-520 How long do I have to maintain my records under the Consumer Loan Act? What are the records I must maintain?

(1) **General records.** Each licensee must preserve the books, accounts, records, papers, documents, files, and other information relevant to a loan for a minimum of twenty-five months after making the final entry on that loan at a location approved by the director. Mortgage transaction documents have a different retention period; see subsection (3)(a) of this section.

(2) **Advertising records.** ~~((A licensee must maintain a copy of all advertising for a period of twenty-five months at a location approved by the director. Such copies shall include))~~ These records include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile or computer network.

(3) **Specific records.** The records required under subsection (1) of this section include, but are not limited to:

(a) **Mortgage transaction documents.** These documents must be retained for the period of time required by federal law;

(b) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(c) The initial rate sheet or other supporting rate information;

(d) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(e) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(f) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures include, but are not limited to: The good faith estimate, truth in lending disclosures, Equal Credit Opportunity Act disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

(g) Documents and records of compensation paid to employees and independent contractors;

(h) An accounting of all funds received in connection with loans with supporting data;

(i) Settlement statements (the final HUD-1 or HUD-1A);

(j) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(k) Records of any fees refunded to applicants for loans that did not close;

(l) All file correspondence and logs;

(m) All mortgage broker contracts with lenders and all other correspondence with the lenders; and

(n) All documents used to support the underwriting approval.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-550 What business practices are prohibited? Under RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:

(1) ~~((Disclosure of payoff amount.))~~ Failure to provide the exact pay-off amount as of a certain date within five business days after being requested in writing to do so by a borrower or their authorized representative;

(2) ~~((Recognition of payment delivery.))~~ Failure to record a borrower's payment as received on the day it is delivered to any of the licensee's locations during its regular working hours;

(3) ~~((Charging a fee for best efforts.))~~ Soliciting or entering into a contract with a borrower that provides in substance that the licensee may earn a fee or commission through its "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(4) ~~((False advertising of rates and fees. Soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time.))~~ **Engaging in unfair or deceptive advertising practices.** Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace. See also WAC 208-620-630;

(5) ~~((False filing.))~~ Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department;

(6) (~~Influencing appraisers.~~) Making any payment, directly or indirectly, or withholding or threatening to withhold any payment, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(7) (~~Documents with blanks.~~) Leaving blanks on a document that is signed by the borrower or providing the borrower with documents with blanks;

(8) (~~False advertising.~~) Soliciting business using advertising that includes:

(a) ~~An envelope or stationery that contains an official-looking emblem, such as an eagle or a crest, or that is otherwise designed to resemble an official government mailing, such as a mailing from the Internal Revenue Service or the U.S. Department of the Treasury;~~

(b) ~~An envelope or stationery containing warnings or notices citing codes or form numbers made to appear like government codes or form numbers that are not required to be shown on the mailing by the U.S. Postal Service;~~

(c) ~~Any suggestion or representation that the licensee is, or is affiliated with, a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent;~~

(d) ~~Any suggestion or representation that the solicitation is from an entity other than the licensee;~~

(e) ~~Any suggestion or representation that the information about a consumer's current loan was provided by any source other than the source disclosed pursuant to WAC 208-620-630;~~

(9) ~~Inclusion of taxes and insurance.~~) Failing to clearly disclose to a borrower whether the payment advertised or offered for a real estate loan includes amounts for taxes, insurance or other products sold to the borrower;

(~~(10) Forec-placed insurance.~~) (9) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower, unless mail has been previously returned as undeliverable from the address, in order to verify that the asset is not otherwise insured;

(~~(11) Filing an inappropriate lien.~~) (10) Willfully filing a lien on property without a legal basis to do so;

(~~(12) Threats and coercion.~~) (11) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;

(~~(13) Failure.~~) (12) Failing to reconvey title to collateral, if any, within thirty business days when the loan is paid in full unless conditions exist that make compliance unreasonable;

(13) Intentionally delaying the closing of a residential mortgage loan for the sole purpose of increasing interest costs, fees, or charges payable by the borrower;

(14) Steering a borrower to less favorable terms in order to increase the compensation paid to the company or mortgage loan originator;

(15) Failing to indicate on all residential mortgage loan applications the company's unique identifier, the loan originator's unique identifier, and the date the application was taken.

NEW SECTION

WAC 208-620-555 What fees are allowed under the Consumer Loan Act? (1) Origination fees. On first lien mortgage loans, licensees that are not "creditors" under Depository Institutions Deregulatory and Monetary Control Act may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(2) On nonmortgage loans and junior lien mortgage loans, all licensees may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(3) Mortgage broker fee. When agreed to in writing by the borrower, a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee.

(4) Third-party fees.

(a) When agreed to in writing by the borrower, the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan.

(b) However, no charge may be collected unless a loan is made, except for reasonable fees actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender.

(c) You must not charge or collect any fee to be paid to a third-party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid. You may charge the borrower for costs of allowable third-party services as provided by RCW 31.04.105(3) at the time of application for the loan or at any time thereafter except as prohibited.

(5) Rate lock fee. When agreed to in writing by the borrower, a nonrefundable rate lock fee. The fee may be retained if the borrower breaks the rate lock agreement and you are making the loan, or if you have paid a third party for the interest rate lock. The fee may not be retained if the borrower rescinds the loan under Regulation Z. The fee may not be retained if a loan is not made through no fault of the borrower.

(6) Underwriting. On first lien mortgages made by licensees that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act, an underwriting fee.

(7) Penalties. Not more than ten percent of any installment payment delinquent ten days or more.

(8) Attorneys' fees. Reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee.

(9) The fees allowed in subsections (5) and (6) of this section must be included in the loan origination fee calculations described in subsections (1) and (2) of this section.

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-560 What ~~((restrictions are there for charging fees on junior lien loans other than the loan origination fee when acting as a lender or correspondent lender))~~ fees are not allowed under the Consumer Loan Act? (1) **Filing fees.** ~~((A licensee cannot))~~ You must not charge or collect any funds from the borrower for the cost of filing, as defined in WAC 208-620-010, or for any other fees paid or to be paid to public officials, unless such charges are paid or are to be paid within one hundred eighty days by the licensee to public officials or other third parties for such filing. Any fee ~~((a licensee))~~ you collect for releasing or reconveying the security for the obligation must be paid to an unrelated third party unless you can demonstrate activities you conducted to facilitate the reconveyance.

(2) **Dishonored check fees.** ~~((A licensee may))~~ You must not charge or collect a fee in excess of twenty-five dollars for a check returned unpaid by the bank drawn upon. Only one fee may be collected with respect to a particular check even if it has been redeposited and returned more than once.

(3) ~~((Fees for third party services. A licensee may not charge or collect any fee to be paid to a third party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid. A licensee may charge the borrower for costs of allowable third party services as provided by RCW 31.04.105(3) at the time of application for the loan or at any time thereafter except as prohibited.~~

~~((4))~~ **Credit and noncredit insurance.**

(a) Except for the transaction described in (b) of this subsection, ~~((a licensee))~~ you may include the premiums for credit and noncredit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing and the borrower's confirmation is obtained by signature on the disclosure form.

(b) ~~((A licensee may))~~ You must not sell single premium credit insurance to a borrower at the inception of coverage unless the sale is in compliance with chapter 48.18 RCW.

~~((5))~~ **(4) Fees on existing loans.** Unless otherwise preempted under the Depository Institutions Deregulatory and Monetary Control Act, if ~~((a licensee))~~ you make ~~((s))~~ a new loan or increases a credit line within one hundred twenty days after originating a previous loan or credit line to the same borrower, the origination fee on the new loan or increased credit line ~~((shall))~~ must be limited as follows:

(a) ~~((The licensee may))~~ You must only charge an origination fee ~~((only))~~ on that part of the new loan not used to pay the amount due on the previous loan;

(b) ~~((The licensee may))~~ You must only charge an origination fee ~~((only))~~ on the difference between the amount of the existing credit line and the increased credit line;

(c) The limits in (a) and (b) of this subsection do not apply if ~~((the licensee))~~ you refund ~~((s))~~ the origination fee on the existing loan or credit line ~~((:));~~

~~((6))~~ (d) The limits in (a) and (b) of this subsection do not apply if you can demonstrate a net tangible benefit to the borrower for the new loan or credit line increase. For purposes of this subsection a net tangible benefit may be demonstrated by a lower monthly payment, or a decrease in the interest rate. Any net tangible benefit analysis must include the fees or charges for the new loan or credit line increase.

~~((5))~~ **Discount points.** ~~((A licensee may))~~

(a) You must not collect a fee from the borrower for lowering the interest rate unless the interest rate is actually reduced.

~~((7))~~ (b) Any applicable program add-on fees must be disclosed as part of the discount points.

~~((6))~~ **Administrative fees.** ~~((A licensee may))~~ On non-mortgages, junior lien and first lien mortgages by licensees who are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act, you must not collect a document preparation fee, a processing fee, an administrative fee, an application fee, or a courier fee unless paid to an unrelated third party and agreed to in writing in advance by the borrower.

~~((8))~~ **(7) Underwriting fees.** On nonmortgage and junior lien mortgage loans you must not collect an underwriting fee.

~~((8))~~ **Prepayment penalty.** ~~((A licensee may))~~ You must not collect a prepayment penalty on the following loans:

(a) Any nonmortgage loan ~~((made at rates authorized by the act));~~ ~~((or))~~

(b) Any adjustable rate residential mortgage loan, except as allowed by RCW 19.144.040; ~~((or))~~

(c) Any junior lien mortgage loan ~~((made at rates authorized by the act));~~ or

(d) Any loan ~~((made by a licensee that is))~~ you made if you are not a "creditor" under DIDMCA.

NEW SECTION

WAC 208-620-561 What fees can I collect on VA loans? Reserved.

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-565 What fees am I allowed ~~((and not allowed))~~ to charge or receive when acting as a broker under the act? (1) ~~((When acting as a broker under the act, you are allowed to:~~

(a) ~~Charge and collect a broker's fee pursuant to WAC 208-620-515 (1)(b).~~

~~((b))~~ Receive) A broker's fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct

benefit of the borrower, which fee may be included in the principal balance of the loan.

~~((2) A yield spread premium (YSP) if available. You must disclose the YSP as a dollar amount ((or dollar amount range)) credited to the borrower on the good faith estimate(;) and as ((a dollar amount)) applicable on the settlement statement.~~

~~((e) Charge)) (3) A processing fee when paid to an independent third-party processor.~~

~~((2) When acting as a broker under the act, you are NOT allowed to:~~

- ~~(a) Charge or receive fees on discount points;~~
- ~~(b) Charge or receive a loan origination fee in addition to a broker's fee; or~~
- ~~(c) Charge or receive an underwriting fee.))~~

NEW SECTION

WAC 208-620-566 What fees am I not allowed to charge or receive when acting as a broker under the act?

- (1) Fees for discount points;
- (2) An underwriting fee; or
- (3) Applicable fees in WAC 208-620-560(6).

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-570 What are the grounds for suspending or revoking a consumer loan company license?

The director may suspend or revoke a license if the licensee, or any principal, officer, or board director of the licensee:

- (1) **Failing to pay.** Fails to pay a fee due the department;
- (2) **Injunction or administrative action.** Is or has been subject to an injunction or a civil or administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act or similar laws of this state or another state;
- (3) **Substantial unpaid debt.** Has accumulated substantial unpaid debt;
- (4) **Violation of lending laws.** Has been found in violation of another state's lending laws, securities laws, real estate laws or insurance laws resulting in substantial license limitations or significant fines;
- (5) **Criminal charges.** The person is the subject of a criminal felony charge, or a criminal misdemeanor charge involving dishonesty or financial misconduct;
- (6) **Bond canceled.** Has had its surety bond canceled or revoked for cause;
- (7) **Deterioration of business.** Has allowed the licensed consumer loan business to deteriorate into a condition which would result in denial of a new application for a license;
- (8) **Aiding unlicensed practice.** Has aided or abetted an unlicensed person to practice in violation of the Consumer Loan Act or the Mortgage Broker Practices Act;
- (9) **Incompetence resulting in injury.** Has demonstrated incompetence or negligence that results in financial harm to a person or that creates an unreasonable risk that a person may be harmed;
- (10) **Insolvency.** Is insolvent in the sense that the value of the licensee's liabilities exceeds its assets or in the sense

that the applicant or licensee cannot meet its obligations as they mature;

(11) **Failure to comply.** Has failed to comply with an order, directive, subpoena, or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee;

(12) **Misrepresentation or fraud.** Has performed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(13) **Failure to cooperate.** Has failed to cooperate with the director, or his or her designee, including without limitation by:

(a) Not furnishing ((any)) records requested by the director for purposes of conducting a lawful investigation for disciplinary actions or denial, suspension, or revocation of a license; or

(b) Not furnishing ((any)) records requested by the director for purposes of conducting a lawful investigation into a complaint against the licensee filed with the department, or providing a full and complete written explanation of the circumstances of the complaint upon request by the director;

(14) **Interference with investigation.** Has interfered with a lawful investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

NEW SECTION

WAC 208-620-601 What assistance may the department seek in conducting an investigation or examination of my business? In order to carry out the purposes of RCW 31.04.145, the director may:

(1) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this act;

(4) Accept and rely on examination or investigation reports made by other government officials, within or without this state;

(5) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director; or

(6) Assess the licensee, individual, or person subject to this act the cost of the services in this subsection.

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-613 When I develop policies and procedures to implement the federal guidelines, what topics must be included? ((+)) The policies and procedures must include, at a minimum, underwriting standards, risk management, consumer protection, and control systems. If you only broker loans under your CLA license, your policies and procedures must comply with WAC ((208-660-XXX)) 208-660-500. For purposes of this section, the definition of "subprime" and "subprime loans" is taken from the *2001 Interagency Expanded Guidance for Subprime Lending Programs* (an attachment to SR 01-4 (GEN), January 31, 2001, by the Board of Governors of the Federal Reserve System, Division of Banking, Supervision and Regulation).

((+)) (1) Underwriting standards. To ensure that underwriting standards are consistent with prudent lending practices, the underwriting standards should include, at a minimum, an analysis of borrower characteristics, loan product attributes, and the borrower's ability to repay the obligation.

((+)) (a) Analysis of borrower characteristics. The analysis must include tolerances for combining borrowers with certain characteristics with certain nontraditional loan products.

The criteria or range of reasonable tolerances should consider the characteristics listed in the *2001 Interagency Expanded Guidance for Subprime Lending Programs*.

((+)) (b) Loan product attributes. Products with the following attributes, when combined with the borrower characteristics above result in higher risk. The risks are increased if borrowers are not adequately informed of the product features and risks.

- Low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments. Loans made to subprime borrowers must not contain any provisions that may lead to negative amortization.

- Very high or no limits on how much the payment amount or the interest rate may increase.

- Limited or no documentation of the borrower's income. Stated income is only acceptable if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. Licensees generally must be able to readily document income using recent W-2 statements, pay stubs, or tax returns. An exception to this is when the loan product underwriting itself contemplates reduced documentation (for example, FHA loans).

- Substantial prepayment penalties or prepayment penalties that extend beyond sixty days prior to the date the interest rate will reset.

- Simultaneous second lien loans. When features are layered, mitigating factors should be present to support the

underwriting decision and the borrower's repayment capacity.

((+)) (c) Ability to repay. For all nontraditional mortgage loan products, the analysis of a borrower's repayment capacity must include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule. In addition, for prime borrowers qualifying for loan products that permit negative amortization, the repayment analysis must be based on the initial loan amount plus any balance increase that may accrue from the negative amortization provision. The analysis should avoid over reliance on credit scores as a substitute for income verification. The higher a loan's credit risk, either from borrower characteristics or loan features, the more important it is to verify the borrower's income, assets, and outstanding liabilities.

((+)) (2) Risk management. The scope of the risk management activities should be determined by the volume of nontraditional mortgages originated or used as investment. Licensees that target subprime borrowers through tailored marketing, underwriting standards, and risk selection must ensure that such programs do not feature terms that could become predatory or abusive. Policy topics should include, at a minimum:

((+)) (a) Acceptable product attributes;

((+)) (b) Production, sales and securitization practices;

((+)) (c) Limits on risk layering. When features are layered, licensees should demonstrate that mitigating factors support the underwriting decision and the borrower's repayment capacity. Mitigating factors could include higher credit scores, lower LTV and DTI ratios, significant liquid assets, mortgage insurance, or other credit enhancements;

((+)) (d) Growth and volume limits by loan type;

((+)) (e) Performance measures. Incentive programs should not produce high concentrations of nontraditional products. Design performance measures and reporting systems that provide early warning for increased risk;

((+)) (f) Management reporting and quality control. Focus on the high risk lending activities. Monitor and document compliance with underwriting standards. Quality control should include regular audits of nontraditional loan products. Perform due diligence in establishing and maintaining relationships with third party originators. Third party originations must meet the underwriting standards. Document and respond in writing to all complaints. Take immediate remedial action which could include more thorough application reviews, more frequent reunderwriting, or terminating the third party originator;

((+)) (g) Secondary market activity. The risk management practices should be commensurate with the nature and volume of activity and should include contingency planning for response to reduced demand in the secondary market. Establish a policy on repurchase practices.

((+)) (3) Consumer protection.

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describ-

ing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Specifically:

- Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions.
- Licensees must apprise borrowers of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated.
- If negative amortization is possible under the terms of a nontraditional mortgage product, borrowers must be advised of the potential for increasing principal balances and decreasing home equity as a consequence of the borrower making minimum payments.
- Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.
- Borrowers must be made aware of any pricing premium based on reduced documentation.
- Monthly statements must provide information that enables borrowers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances. For example, the monthly payment statement must contain an explanation, if applicable, next to the minimum payment amount that making this payment would result in an increase to the borrower's principal loan balance.

~~((+))~~ (4) Control standards.

~~((+))~~ (a) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

~~((+))~~ (b) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the consolidated annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products as prescribed by rule.

NEW SECTION

WAC 208-620-614 What Washington law protects my rights when my license is suspended or revoked? The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions.

NEW SECTION

WAC 208-620-615 Application of the Administrative Procedure Act. (1) What are my rights when the department begins an administrative enforcement action against me? Under the Administrative Procedure Act (APA), chapter 34.05 RCW, you have the right to request a hearing on the agency's action. Hearings are conducted as either formal

adjudicative proceedings or may, under certain circumstances, be handled as a brief adjudicative proceeding (BAP).

(2) What must I do when I want to request a hearing? When you are notified of administrative charges filed against you, you are also notified of your right to request a hearing. At that time, the department will also notify you as to whether the hearing will be conducted as a brief adjudicative proceeding. You are required to notify the department, in writing, within twenty days from the date of the director's notice to you notifying you of the enforcement action against you. This notice must be received by the department by the 20th day following service of the charges on you.

(3) What is a brief adjudicative proceeding? Under the APA, a brief adjudicative proceeding is a hearing that is less formal in nature and typically resolves the charges quickly. The department provides a BAP for violations of the act in which the facts are undisputed and under circumstances where the parties may present their case without the need for witnesses. Typical matters to be heard in a BAP include, but are not limited to, license denials or revocations based on certain undisputed facts, including criminal convictions or misrepresentations on an application.

(4) May I request a brief adjudicative proceeding in response to an administrative enforcement action? Yes, but only if the matter has been designated by the department as one for which a BAP is available. The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings. Brief adjudicative proceedings may be limited to a determination of one or more of the following issues:

(a) Whether an applicant for a loan originator license meets the requirements of RCW 31.04.XXX;

(b) Whether an applicant for a consumer loan company license meets the requirements of RCW 31.04.045; and

(c) Whether a consumer loan company has failed to maintain the bond required by RCW 31.04.045(6).

(5) In a matter not listed in subsection (4) of this section, a brief adjudicative proceeding may be conducted at the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties, and:

(a) Only legal issues exist; or

(b) Both parties have agreed to a brief proceeding. As used in this section, "persons other than the parties" does not include an attorney or representative for a party, or a witness for a party.

(6) How does the BAP work? Brief adjudicative proceedings are controlled by the provisions of RCW 34.05.482 through 34.05.494. The department will use the following procedure:

(a) Presiding officer. The director designates a presiding officer to conduct the brief adjudicative proceedings. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's licensing application denial, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

(b) Preliminary records. The preliminary record for the brief adjudicative proceeding consists of the application and all associated documents including all documents relied upon by the department to deny the application and all correspondence between the applicant and the department regarding the application.

(c) Notice of hearing. The presiding officer will set the date, time, and place of the hearing, giving at least seven business days notice to the applicant.

(d) Written documents. The department's staff or representative and the applicant or their representative may present written documentation for consideration by the presiding officer. The presiding officer will designate the date and number of pages allowed for submission of written documents, including supporting exhibits.

(e) Oral argument. The presiding officer may exercise discretion on whether to allow oral argument.

(f) Witnesses. Live witness testimony will not be allowed. Witnesses providing testimony by sworn declaration or affidavit will be allowed at the discretion of the presiding officer.

(g) If, at the time of the hearing, the presiding officer determines that the alleged violations or evidence concerning the violations is such that a formal adjudicative proceeding is necessary, the presiding officer may immediately adjourn the hearing and direct that the matter be scheduled as a formal adjudicative proceeding.

(h) Initial order. The presiding officer must make a written initial order within ten business days of the final date for submission of materials, or oral argument, if any, to include a written statement describing the decision, the reasons for the decision, and describing the right to request review of the decision by the director. The initial order will become final twenty-one days after service on the applicant unless the applicant requests an administrative review or the department decides to review the matter.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-620 How do I have to identify my business when I advertise? You must either identify the business using your Washington consumer loan license number (NMLS unique identifier) or use the (~~whole~~) name on your Washington main office consumer loan license.

AMENDATORY SECTION (Amending WSR 09-01-159, filed 12/23/08, effective 1/23/09)

WAC 208-620-630 What are the advertising restrictions (~~, and what are some examples of those restrictions~~)? (1) Licensees are prohibited from advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist. (~~What are~~) Some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws (~~(? Some examples)~~) include, but are not limited to:

(a) Characterizing products as "government loan programs," "government-supported loans," or other words that

may mislead a consumer into believing that the government is guaranteeing, endorsing, or supporting the advertised loan product. Using the words "FHA loan," "VA loan," or words for other products that are in fact endorsed or sponsored by a federal, state, or local government entity is allowed.

(b) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(c) Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.

(d) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(e) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(f) Any suggestion or representation that the (~~solicitor is affiliated with any agency, bank~~) licensee is, or is affiliated with, a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent.

(2) **When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** The required disclosures in your advertisement must be reasonably understandable. Consumers must be able to see, read, or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. This requirement applies to all mandatory disclosures. The disclosure of the APR must be at least equivalent to any other rates disclosed in the advertisement.

(3) **The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?** Whenever a specific interest rate is advertised, the licensee must retain a copy of supporting rate information, and the APR calculation for the advertised interest rate.

(4) **Must I quote the annual percentage rate when discussing rates with a borrower?** Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 C.F.R., part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(5) **May a licensee advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 19.146.0201(7).

(6) **May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No.

It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

(7) **If I advertise using a borrower's current loan information, what must I disclose about that information?** When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with the name of the source of the information.

(8) **Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. This is a violation of RCW ((19.146.0204)) 31.04.027 (2), (7), and ((11)) (10). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations*, available at <http://www.ftc.gov/bcp/guides/free.htm>, 16 C.F.R. § 251.1(g) (2003).

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-640 What are some of the federal laws I must comply with when I advertise any loan subject to the Consumer Loan Act? You must comply with all the applicable advertising requirements under the federal statutes and regulations including, but not limited to, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, and the Equal Credit Opportunity Act.

LOAN ORIGINATOR LICENSING

NEW SECTION

WAC 208-620-700 Loan originator—General. (1) May I work from any location when I am a licensed loan originator? No. You can only work from a licensed location. The licensed location can be the main office, or any licensed branch.

(2) **May I transfer loan files to another licensed entity?** No. Only the borrower may submit a written request to the company to transmit the borrower's selected information to another entity. Loan files are the property and responsibility of the company named on the loan application. The company must transmit the information within five business days after receiving the borrower's written request.

(3) **May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING."

(4) **As a loan originator, may I be paid directly by the borrower for my services?** No. You may not be paid any compensation or fees directly by the borrower.

(5) **May I charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. You may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, or brokering of a residential mortgage loan.

(6) **May I bring a lawsuit against a borrower for the collection of compensation?** No. Only the company may bring collection actions against borrowers to collect compensation.

(7) **May I work as a licensed loan originator for a consumer loan company located out of the state?** Yes. You may originate loans for any company you are sponsored by who is licensed or exempt from licensing under Washington law.

(8) **May I hire employees or independent contractors to assist me?** No. Only the consumer loan company can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel and loan processors whose work is related to the consumer loan company's activities.

(9) **Do loan processors have to be licensed as loan originators?** W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt consumer loan company and do not hold themselves out as able to conduct the activities of a loan originator.

NEW SECTION

WAC 208-620-710 Loan originator—Licensing. (1) Must I have a license to act as a mortgage loan originator for a consumer loan company? Yes. You must not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this act. You must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry (NMLSR).

(2) **How do I apply for a loan originator license?** Your application consists of filing an on-line application through the NMLSR and providing Washington specific requirements directly to DFI. You must pay an application fee and filing fee through the NMLSR system.

(3) What are the eligibility requirements to become a licensed loan originator?

- (a) Be eighteen years or older.
- (b) Have a high school diploma, an equivalent to a high school diploma, or three years work experience in the industry.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company.

(iii) In addition to supplying the application information, both you and the company intending to sponsor you must be in good standing with the department.

(c) Demonstrate financial responsibility. For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years.

(d) Complete twenty hours of prelicensing education from an NMLSR approved provider. See WAC 208-620-720.

(e) Pass a licensing test. You must take and pass the NMLSR tests that assess your knowledge of the mortgage business and related regulations at the federal and state level. See WAC 208-620-725.

(f) Submit an application. You must complete an application through the NMLSR and provide information

directly to DFI. You must pay application and filing fees to the NMLSR.

(g) Prove your identity. You must provide information to prove your identity.

(h) Provide a bond.

(i) If you work for a company that is exempt from licensing, or uses a bond substitute, you must obtain and maintain an individual bond based on the volume of your mortgage loan origination activity. The bond must be in the following amount:

1. Zero to five million in loans originated:	\$20,000
2. Five million to fifteen million:	\$30,000
3. Fifteen million to thirty million:	\$40,000
4. Thirty million and above:	\$50,000

(ii) If you work for a company that is exempt and is a nonprofit housing organization making loans under housing programs that are funded in whole or in part by federal or state programs if the primary purpose of the programs is to assist low-income borrowers with purchasing or repairing housing or the development of housing for low-income Washington state residents, the bond must be in the following amounts:

1. Zero to twenty million in loans originated:	\$10,000
2. Twenty +:	\$20,000

(4) In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?

(a) General fitness and prior compliance actions. The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) License suspensions or revocations. You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked.

(c) Criminal history. You are not eligible for a loan originator license if you have been convicted of, or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(i) During the seven-year period preceding the date of the application for licensing and registration; or

(ii) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(5) What will happen if my loan originator license application is incomplete? After submitting your on-line

application through the NMLSR and filing the required information and documentation with the department, the department will notify you of any application deficiencies.

(6) How do I withdraw my application for a loan originator license?

(a) Once you have submitted the on-line application through NMLSR you may withdraw the application through NMLSR. You will not receive a refund of the NMLSR filing fee or the amount the department uses to investigate your license application.

(b) The withdrawal of your license application will not affect any license suspension or revocation proceedings in progress at the time you withdraw your application through the NMLSR.

(7) When will the department consider my loan originator license application to be abandoned? If you do not respond as directed by the department, and within fifteen days, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

(8) What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied? See WAC 208-620-615.

(9) May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else? No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

(10) How do I change information on my loan originator license? You must submit an amendment to your license through the NMLSR. You may be charged a fee.

(11) What is an inactive loan originator license? When a licensed loan originator is not sponsored by a licensed or exempt entity, the license is inactive. When a person holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator.

(12) When my loan originator license is inactive, am I subject to the director's enforcement authority? Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

(13) When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year? Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

(14) May I originate loans from a web site when my license is inactive? No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive.

(15) How do I activate my loan originator license? The sponsoring company must submit a sponsorship request for your license through the NMLSR. The department will notify you and the sponsoring company if approved.

(16) When may the department issue interim loan originator licenses? To prevent an undue delay, the director

may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the results of the applicant's background check.

(17) When does my loan originator license expire? The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

(18) How do I renew my loan originator license?

(a) Before the license expiration date you must renew your license through the NMLSR. Renewal consists of:

- (i) Paying the annual assessment fee; and
- (ii) Meeting the continuing education requirement.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

(19) If I let my loan originator license expire, must I apply to get a new license? If you complete all the requirements for renewal before March 1st, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (17) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp by March 1st. If you fail to comply with the renewal request requirements you must apply for a new license.

(20) If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period? Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

(21) May I still originate loans if my loan originator license has expired? No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

(22) May I surrender my loan originator's license? Yes. Only you may surrender your license before the license expires through the NMLSR.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

(23) Must I display my loan originator license where I work as a loan originator? No. Neither you nor the company is required to display your loan originator license.

However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

(24) **If I operate as a loan originator on the internet, must I display my license number (NMLSR unique identifier) on my web site?** Yes. You must display your license number (NMLSR unique identifier), and the license number and name as it appears on the license of the company you represent, on the web site.

(25) **Must I include my loan originator license number (NMLSR unique identifier) on any documents?** You must include your license number (NMLSR unique identifier) immediately following your name on solicitations, correspondence, business cards, advertisements, and residential mortgage loan applications.

(26) **When must I disclose my loan originator license number (NMLSR unique identifier)?** In the following situations you must disclose your loan originator license number (NMLSR unique identifier) and the name and license number of the company you are associated with:

(a) When asked by any party to a loan transaction, including third-party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

(27) **May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

NEW SECTION

WAC 208-620-720 Loan originator—Prelicensing education. Must I complete prelicensing education in order to receive a loan originator license? Yes.

(1) You must complete at least twenty hours of prelicensing education approved by the NMLSR. The prelicensing education must include:

(a) Three hours of federal law and regulations;

(b) Three hours of ethics, which includes instruction on fraud, consumer protection, and fair lending issues;

(c) Two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(d) At least two hours of training specifically related to Washington law.

(2) You will receive credit for having completed the prelicensing education for every state once you have successfully completed the prelicensing education requirements approved by the nationwide mortgage licensing system and registry for any state.

NEW SECTION

WAC 208-620-725 Loan originator—Testing. Must I pass a test prior to becoming a loan originator? Yes.

(1) You must take and pass the NMLSR sponsored loan originator test. The test has two parts; one on federal law and regulation, and one on Washington specific law and regula-

tion. You must receive a score of seventy-five percent or higher to pass the test.

(2) **Where may I find information about the loan originator test?** The NMLSR web site will publish the names and contact information of approved testing providers.

(3) **How much does the loan originator test cost?** Testing costs are set by the test provider and the NMLSR and may be modified from time to time. The NMLSR web site will publish the current testing fee with the testing provider contact information.

(4) **How do I register to take the loan originator test?** Register through the NMLSR web site.

(5) **What topics may be covered in the loan originator test?** At a minimum, the test topics will include ethics, federal and state law and regulation pertaining to mortgage origination, federal and state law and regulation on fraud, consumer protection, nontraditional mortgage products, and fair lending.

(6) **After passing the NMLSR loan originator test, will I have to take it again?** If you fail to maintain a valid license for a period of five years or longer you must retake the test, not taking into account any time during which you were a registered mortgage loan originator.

(7) **How soon after failing the loan originator test may I take it again?** After taking and failing the test you must wait thirty days before taking it again. After failing three consecutive times, you must then wait at least six months before taking the test again.

NEW SECTION

WAC 208-620-730 Loan originator—Continuing education. (1) How many clock hours of loan originator continuing education must I have each year? You must complete a minimum of eight hours of continuing education approved by the nationwide mortgage licensing system and registry which must include at least three hours of federal law and regulations; two hours of ethics (which must include instruction on fraud, consumer protection, and fair lending issues); and two hours of training related to lending standards for the nontraditional mortgage product marketplace. Additionally, the director may require at least one hour of continuing education on Washington law provided by and administered through an approved provider.

(2) **As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(3) **If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement?** Yes. As an instructor of an approved continuing education course, you may receive credit for your annually required loan originator continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

(4) **If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year?** No.

Continuing education credits only apply to the year in which they are taken.

(5) **If I fail to complete the required continuing education, what happens to my loan originator license?** When your license expires, the department will not renew it, and you cannot continue conducting any business under the act. See WAC 208-620-XXX to renew your license if you miss the December 31st renewal deadline.

(6) **How will I know which courses and providers satisfy the continuing education requirement?** NMLSR will publish information about approved continuing education providers on their web site.

(7) **How do I provide the department with proof of the continuing education courses I have completed?**

(a) For SAFE required courses, the course provider will report your continuing education to the NMLSR and DFI will have access to that information.

(b) For Washington specific courses, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

PROPRIETARY REVERSE MORTGAGE PRODUCTS

NEW SECTION

WAC 208-620-800 What definitions are applicable to this section? (1) Advance. A payment from the lender to the borrower.

(2) "FHA-approved reverse mortgage" means a "home equity conversion mortgage" or other reverse mortgage product guaranteed or insured by the federal department of Housing and Urban Development.

(3) "Owner-occupied residence" is the borrower's residence and includes a life estate property the legal title for which is held in the name of the borrower in a reverse mortgage transaction or in the name of a trust, provided the occupant of the property is the beneficiary of that trust.

(4) "Proprietary reverse mortgage loan" is any reverse mortgage loan product that is not a home equity conversion mortgage loan or other federally guaranteed or insured loan.

(5) "Reverse mortgage broker or lender" means a licensee under the Washington state Consumer Loan Act, chapter 31.04 RCW, or a person exempt from licensing pursuant to federal law.

(6) "Reverse mortgage loan" means a nonrecourse consumer credit obligation in which:

(a) A mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the borrower's dwelling;

(b) Any principal, interest, or shared appreciation or equity is due and payable, other than in the case of default, only after:

(i) The consumer dies;

(ii) The dwelling is transferred; or

(iii) The consumer ceases to occupy the dwelling as a dwelling; and

(c) The broker or lender is licensed under Washington state law or exempt from licensing under federal law.

NEW SECTION

WAC 208-620-805 Does this section apply to the FHA approved Home Equity Conversion Mortgage (HECM) product? No. This section does not apply to the HECM product or to any federally administered reverse mortgage product.

NEW SECTION

WAC 208-620-810 What requirements must I meet to make proprietary reverse mortgage products to Washington residents? You must meet the following requirements before offering proprietary reverse mortgage loans to Washington residents:

(1) Obtain and maintain an irrevocable standby letter of credit approved by the director from a financial institution approved by the director in your favor in an amount necessary to fund all reverse mortgage loan requirements anticipated over the next twelve months for loans on your books and those expected to be made over the next twelve months, or three million dollars, whichever is greater. The initial term of the letter of credit must be at least two years.

(a) The financial institution that provides the letter of credit required in subsection (1) of this section may not be affiliated with you.

(b) If you have had a rating of either 4A1 or 5A1 from Dun & Bradstreet credit services for three consecutive years you are exempt from the requirements in subsection (1) of this section.

(2) Maintain a minimum capital of ten million dollars.

You may rely on the capital of your parent to satisfy this requirement. However, for any year in which you rely on your parent's capital, you must provide to the director a certified financial statement of the parent showing a net worth of at least one hundred million dollars as of the close of its most recent fiscal year and a binding written commitment from the parent to you to make a minimum of ten million dollars available to you as a capital contribution in connection with its reverse mortgage lending program.

(3) Subsections (1) and (2) of this section do not apply to you if you:

(a) Only originate proprietary reverse mortgage loans with full disbursement of the proceeds; or

(b) Only originate proprietary reverse mortgage loans that are sold into the secondary market to an investor with either a 4A1 or 5A1 rating from Dun & Bradstreet credit services. You must obtain a written commitment to purchase from the investor prior to the loan closing and must arrange for the delivery of the loans to the investor within ten days of the loan closing.

NEW SECTION

WAC 208-620-820 What specific loan terms and conditions are allowed or required in the proprietary reverse mortgages I make to Washington residents? (1) Loan prepayment.

(a) Prepayment, in whole or in part, or the refinancing of a reverse mortgage loan, must be permitted without penalty at any time during the term of the reverse mortgage loan. For

the purposes of this subsection, penalty does not include any fees, payments, or other charges, not including interest, that would have otherwise been due upon the reverse mortgage being due and payable. However, when a reverse mortgage lender has paid or waived all of the usual fees or costs associated with a reverse mortgage loan, a prepayment penalty may be imposed, provided the penalty does not exceed the total amount of the usual fees or costs that were initially absorbed or waived by the reverse mortgage lender.

(b) You may not impose a prepayment penalty under this subsection if the prepayment is caused by the occurrence of the death of the borrowers.

(c) You must provide no less than thirty days prior written notice of any permissible prepayment penalty under this section.

(2) Interest rate. A reverse mortgage loan may provide for a fixed or adjustable interest rate or combination thereof, including compound interest, and may also provide for interest that is contingent on the value of the property upon execution of the loan or at maturity, or on changes in value between closing and maturity.

(3) Late advances.

(a) If you make a late advance you must pay a late charge of ten percent of the entire amount that should have been advanced to the borrower. A late advance is a scheduled monthly advance that you do not mail or electronically transfer to the borrower on or before the first business day of the month, or within five business days of the date you receive the borrower's request, or such other regularly scheduled contractual date.

(b) For each additional day you fail to make the advance, you must pay interest on the late advance at the interest rate stated in the loan documents. If the loan documents provide for an adjustable interest rate, the rate in effect when the late charge first accrues is used. You must pay late charges from your funds and they may not be added to the unpaid principal balance.

(c) You forfeit the right to interest and monthly servicing fee for any months you fail to make a timely advance.

(4) Loan acceleration. The reverse mortgage loan may become due and payable upon the occurrence of any one of the following events:

(a) The home securing the loan is sold or title to the home is otherwise transferred;

(b) All borrowers cease occupying the home as a principal residence, except as provided in subsection (5) of this section; or

(c) A defaulting event occurs which is specified in the loan documents.

(5) Repayment. Repayment of the reverse mortgage loan is subject to the following additional conditions:

(a) Temporary absences from the home not exceeding one hundred eighty consecutive days do not cause the mortgage to become due and payable;

(b) Extended absences from the home exceeding one hundred eighty consecutive days, but less than one year, do not cause the mortgage to become due and payable if the borrower has taken prior action that secures and protects the home in a satisfactory manner, as specified in the loan documents;

(c) Your right to collect reverse mortgage loan proceeds is subject to the applicable statute of limitations for written loan contracts. Notwithstanding any other provision of law, the statute of limitations commences on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement;

(d) If the borrower mortgaged one hundred percent of the full value of the house, the amount owed will be the lesser amount of:

(i) The fair market value of the house, minus the sale costs; or

(ii) The outstanding balance of the loan.

(e) If the borrower mortgaged less than one hundred percent of the full value of the house, the amount owed by the borrower must not be greater than the outstanding balance of the loan or the percentage of the fair market value (minus sale costs, as provided in the contract), whichever amount is less.

(f) The lender must enforce the debt only through the sale of the property and must not obtain a deficiency judgment against the borrower.

(6) Fee disclosure. Using conspicuous, bold sixteen-point or larger type, you must disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable, and that ends when repayment in full is made.

(7) Deed of trust disclosure. The first page of any deed of trust securing a reverse mortgage loan must contain the following statement in sixteen-point boldface type: "This deed of trust secures a reverse mortgage loan."

(8) Ancillary products. You or any other party that participates in the origination of a reverse mortgage loan must not require an applicant for a reverse mortgage to purchase an annuity, insurance, or another product as a condition of obtaining a reverse mortgage loan. You or the broker of a reverse mortgage loan must not:

(a) Offer an annuity to the borrower prior to the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement;

(b) Refer the borrower to anyone for the purchase of an annuity prior to the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement;

(c) Provide marketing information or annuity sales leads to anyone regarding the prospective borrower or receive any compensation for such an annuity sale or referral; or

(d) You or any other party that participates in the origination of a reverse mortgage loan must maintain safeguards, acceptable to the department of financial institutions, to ensure that you do not provide reverse mortgage borrowers with any other financial or insurance products and that individuals participating in the origination of a reverse mortgage loan have no ability or incentive to provide the borrower with any other financial or insurance product.

(9) Borrower counseling. Prior to accepting a final and complete application for a reverse mortgage loan or assessing any fees, you must refer the prospective borrower to an independent housing counseling agency approved by the federal department of Housing and Urban Development for counseling. The counseling must meet the standards and require-

ments established by the federal department of Housing and Urban Development for reverse mortgage counseling. You must provide the borrower with a list of at least five independent housing counseling agencies approved by the federal department of Housing and Urban Development, including at least two agencies that can provide counseling by telephone. Telephone counseling will only be used for counseling at the borrower's request. You must create and maintain a form that includes the borrower's signature for telephone counseling requests.

(10) Counseling certification. You must not accept a final and complete application for a reverse mortgage loan from a prospective applicant or assess any fees upon a prospective applicant without first receiving a certification from the applicant or the applicant's authorized representative that the applicant has received counseling from an agency as described in subsection (9) of this section. The certification must be signed by the borrower and the agency counselor, and must include the date of the counseling and the names, addresses, and telephone numbers of both the counselor and the borrower. Electronic facsimile copy of the housing counseling certification satisfies the requirements of this subsection. You must maintain the certification in an accurate, reproducible, and accessible format for the term of the reverse mortgage.

(11) Minimum age. You may not make a reverse mortgage loan to any Washington state resident unless that resident is a minimum of sixty years of age as of the date of execution of the loan.

(12) Advances. Except for the initial disbursement of moneys to the closing agent, you must issue advances directly to the borrower, or his or her legal representative, and not to an intermediary or third party.

(13) Rescission rights. The borrower in a proprietary reverse mortgage transaction has the same right to rescind the transaction as provided in the Truth in Lending Act, Regulation Z, 12 C.F.R. Sec. 226.

(14) Property appraisals. Prior to execution of the loan and at the end of the loan term, you must obtain an independent appraisal of the property value, or use the current year's tax assessment valuation of the property. You must provide copies of these appraisals to the borrower within five days of the borrower's written request, provided the borrower has paid for the appraisal.

NEW SECTION

WAC 208-620-825 What other program information must I submit to the director for approval before offering or making proprietary reverse mortgages? (1) A description of all proprietary reverse mortgage products available to borrowers.

(2) A copy of each proprietary loan product contract.

(3) A copy of all disclosures provided to borrowers for all proprietary reverse mortgage products.

(4) A copy of the projected total cost of credit disclosure provided to borrowers. The projected total cost of credit disclosure must reflect at a minimum the following factors, as applicable:

(a) All costs and charges to the consumer;

(b) All advances to and for the benefit of the consumer;

(c) Any shared appreciation or equity in the dwelling that you are entitled under the contract to receive;

(d) Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements);

(e) Each of the assumed annual appreciation rates for the dwelling:

(i) Zero percent;

(ii) Four percent;

(iii) Eight percent;

(f) Each of the following assumed loan periods:

(i) Two years;

(ii) The actuarial life expectancy of the consumer to become obligated on the reverse mortgage transaction (as of the consumer's most recent birthday). If there is more than one consumer, the period must be the actuarial life expectancy of the youngest consumer as of that consumer's most recent birthday;

(g) Reserved.

(5) Your complaint processing policies and procedures.

(6) A copy of all notes and mortgages used in proprietary reverse mortgage loan transactions.

(7) If third party originators are used, copies of all due diligence policies and procedures for their use and copies of all compensation and incentive policies and procedures.

(8) A copy of your underwriting policy.

(9) A description of your title search methods.

(10) A copy of your policy for paying subsequent liens.

(11) A copy of your appraisal practices.

NEW SECTION

WAC 208-660-830 What disclosures must I provide to a borrower? (1) Counseling disclosure. You must provide the following plain language statement in conspicuous bold sixteen-point type or larger, prior to receiving a complete and final loan application: "Important notice to reverse mortgage loan applicant: A reverse mortgage is a complex financial transaction that provides a means of using the equity you have built up in your home, or the value of your home, as a way to access home equity. If you decide to obtain a reverse mortgage loan, you will sign binding legal documents that will have important legal, tax, and financial implications for you and your estate. It is very important for you to understand the terms of the reverse mortgage and its effect. Before entering into this transaction, you are required by law to consult with an independent loan counselor. A list of approved counselors will be provided to you by the lender or broker. You may also want to discuss your decision with family members or others on whom you rely for financial advice."

(2) Loan statements. You or the servicer must provide an annual, or more frequent, or upon a change, a disclosure statement to the borrower, providing details of the loan advances, balance, other terms, and the name and telephone number of the lender's employee or agent who has been specifically designated to respond to inquiries concerning reverse mortgage loans.

NEW SECTION

WAC 208-620-850 What is the process I must follow to obtain the department's approval of my proprietary reverse mortgage product? Reserved.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-----------------|---|
| WAC 208-620-270 | Can I make a loan subject to the act without first getting a license? |
| WAC 208-620-285 | If my application is incomplete when I file it with the department, what will happen? |
| WAC 208-620-410 | May I sell other types of products from my licensed location? |
| WAC 208-620-470 | Do I need to notify the department if I move the location of my office? |
| WAC 208-620-475 | Must I notify the department if I cease doing business in this state if I am doing business in other states? |
| WAC 208-620-512 | If I pull a credit report on a consumer who has identified a specific property on a purchase and sales agreement or contract, or is refinancing a specific property, is that enough to trigger the required disclosures under RESPA and TILA? |

WSR 09-19-127**PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed September 22, 2009, 12:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-029.

Title of Rule and Other Identifying Information: The department is amending chapter 388-828 WAC, Division of developmental disabilities (DDD) assessment, and chapter 388-826 WAC, Voluntary placement program.

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://www.dshs.->

wa.gov/msa/rpau/docket.html or by calling (360) 664-6094, on October 27, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 28, 2009.

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 DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 27, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by October 7, 2009, 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 these rules is to amend chapter 388-828 WAC, DDD assessment rules, and chapter 388-826 WAC, Voluntary placement, regarding the implementation of a standardized tool for determining the number of respite hours clients may receive when they are approved for voluntary placement services in a licensed foster home. The standardized tool will replace DDD's existing negotiated process for determining the amount of annual respite clients may receive when they are approved for these voluntary placement services.

Reasons Supporting Proposal: Implementation of a standardized tool for determining annual respite allocations will provide clients, providers, and the public in general with information that explains how DDD determines the number of annual respite hours clients may be eligible to receive when they are approved for voluntary placement services in a licensed foster home. The standardized tool will promote consistency in service determination so that clients with similar assessed support needs receive similar levels of service.

Statutory Authority for Adoption: RCW 71A.12.010 and 71A.12.030.

Statute Being Implemented: Title 71A 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: Mark Eliason, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-2517; Implementation: Nichole Jensen, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3403; and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3426.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has identified fifty-three clients who are currently receiving voluntary placement services in licensed foster homes. Licensed foster home providers are not classified as small business. In addition, DDD has analyzed the proposed new rules and amendments and has determined that overall costs to licensed foster home providers will be minor, if at all. This is based on a cost-neutral approach to determining annual respite levels that is fair and equitable for all clients receiving voluntary placement services. Based on this information, DDD has concluded that 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 Mark Eliason, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-2517, fax (360) 407-0955, e-mail eliasmr@dshs.wa.gov.

September 10, 2009
Stephanie E. Vaughn
Rules Coordinator

NEW SECTION

WAC 388-826-0077 Are there limits to the respite care I can receive if I receive voluntary placement services? The following limitations apply to the respite care you can receive when approved for voluntary placement services:

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

(2) Prior approval by the DDD regional administrator or designee is required:

(a) To exceed fourteen days in a calendar per month for out-of-home respite; or

(b) To pay for more than eight hours in a twenty-four hour period of time for respite care in any setting other than your place of residence.

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

(a) If respite is provided in a private home, the home must be licensed;

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

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

(4) DDD cannot pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(5) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN.

(6) Respite cannot replace daycare while your foster parent is at work.

(7) Respite cannot replace natural supports available to the child while in foster care. Family members will not be paid to provide respite.

(8) If you reside in a licensed staffed residential home or group care facility, you are not eligible to receive respite care.

NEW SECTION

WAC 388-828-5985 How does DDD determine your unadjusted respite assessment level if DDD has authorized you to receive voluntary placement services per chapter 388-826 WAC? DDD determines your unadjusted respite assessment level for voluntary placement services using the following table:

If your Protective Supervision Support Level is:	And your behavioral acuity level is:	Then your unadjusted respite assessment level is:
0	None	1
0	Low	1
0	Medium	2
0	High	2
1	None	1
1	Low	1
1	Medium	2
1	High	3
2 or 3	None	2
2 or 3	Low	2
2 or 3	Medium	2
2 or 3	High	4
4	None	2
4	Low	2
4	Medium	3
4	High	4
5	None	3
5	Low	3
5	Medium	4
5	High	5
6	None	3
6	Low	3
6	Medium	4
6	High	5

NEW SECTION

WAC 388-828-6005 How does DDD determine your voluntary placement services support score per chapter 388-826 WAC?

If your unadjusted respite assessment level for voluntary placement services in WAC 388-828-5985 is:	Then your voluntary placement services support score is:
1	240
2	240
3	409
4	578
5	747

NEW SECTION

WAC 388-828-6006 How does DDD determine the number to use in the adjustment of your voluntary placement services score? DDD determines the amount of the adjustment for your voluntary placement services support score using the following tables:

If you are authorized to receive voluntary placement services per chapter 388-826 WAC and		Your ADL support needs level for the SIS per WAC 388-828-5480			
		None	Low	Medium	High
Your medical acuity level per WAC 388-828-5700	None	288	288	321	337
	Low	288	288	321	337
	Medium	288	343	402	443
	High	288	443	619	693

Example: If your ADL support needs level is "medium" and your medical acuity level is "low," the amount of your adjustment is 321.

NEW SECTION

WAC 388-828-6007 How does DDD determine the number of respite hours you may receive annually if you are receiving voluntary placement services? DDD determines the number of respite hours you may receive annually by adding your voluntary services support score in WAC 388-828-6005 to your adjusted voluntary services support rating score in WAC 388-828-6006.

Example: If your voluntary placement services support score is 240 and your adjusted voluntary placement services score is 321, the number of respite hours you may receive annually is 561.

WSR 09-19-128
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Juvenile Rehabilitation Services)
 [Filed September 22, 2009, 12:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-073.

Title of Rule and Other Identifying Information: The department is amending chapter 388-720 WAC, Collection of costs of support, treatment, and confinement of juveniles under RCW 13.40.220.

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://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on October 27, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 28, 2009.

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 DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., October 27, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by October 13, 2009, 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: This rule has not been updated since 2004.

It is necessary to revise this rule to more accurately reflect (1) current gross personal income levels used to calculate obligation to reimburse the department, and (2) current costs of institutional care for juveniles in legal custody of the department.

Other anticipated changes are intended to: (1) Clarify rule language; (2) allow use of additional information available to the department in establishing financial obligation; (3) revise percentage base of gross income used to calculate reimbursement obligation; (4) apply federal poverty guidelines to reimbursement calculations; and (5) to establish periodic recalculation of residential care cost, removing fixed cost of care from rule.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 13.40.220(3).

Statute Being Implemented: RCW 13.40.220.

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: Lee Mosley, JRA, 1115 Washington Street, Olympia, WA 98504-5720, (360) 902-8092; Implementation: Kathleen Gregory, OFR/FSA, 4450 10th Avenue S.E., Lacey, WA 98503-2850, (360) 664-5549; and Enforcement: Pat Buker, OFR/FSA, 4450 10th Avenue S.E., Lacey, WA 98503-2850, (360) 664-5473.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business will be affected. This rule affects only individual persons who are determined to be financially obligated to reimburse the department for expenses related to the care and custody of a dependent juvenile.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vii) exempts rules which concern "liability for care of dependents" from the requirement for a cost-benefit analysis.

September 17, 2009
 Stephanie E. Vaughn
 Rules Coordinator

AMENDATORY SECTION (Amending Order 3752 [WSR 00-22-019], filed 10/20/00, effective 11/20/00)

WAC 388-720-0010 Definitions. ~~((1) "Juvenile" means juvenile offender sentenced to confinement in the department, other than an offender for whom a parent is approved to receive adoption support under chapter 74.13 RCW.~~

~~(2) "Department" means the department of social and health services, state of Washington.~~

~~(3) "Gross income" means the total income from all sources, received by the parent, the juvenile, or other children of the parent remaining in the household, other than a stepchild, as determined by the department.~~

~~(4) "Parent" means the parent of the juvenile or other person legally obligated to care for and support the juvenile, not including a stepparent.~~

~~(5) "Parents and dependents" means the juvenile's parent or parents, a stepparent living in the home who has no income, any child on whom the parent may claim a federal income tax deduction, not including the juvenile confined to the department, and any stepchild for whom the parent is the sole means of support)) "Department" means the department of social and health services, state of Washington.~~

~~"Dependent" means the juvenile's parent or parents, a registered domestic partner, a stepparent living in the home who has no income, any child, stepchild or adult family member on whom the parent may claim a federal income tax deduction, not including the juvenile confined to the department.~~

~~"Federal Poverty Guidelines" means the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services (HHS) under the authority of 42 U.S.C. 9902(2).~~

~~"Gross income" means the total income, as determined by the department, from all sources, received by the legally obligated person, the legally obligated person's spouse or registered domestic partner, the juvenile, or other children or step-children of the legally obligated person remaining in the household. Child support received for the juvenile will be~~

included as gross income; child support received for other children will not be counted as part of the legally obligated person's gross income.

"Juvenile" means a juvenile offender sentenced to confinement in the department, other than an offender for whom a parent is approved to receive adoption support under chapter 74.13 RCW.

"Legally obligated person", "financially obligated person" and "responsible person" mean the parent or parents of the juvenile or other person or persons, including registered domestic partners, legally obligated to care for and support the juvenile, including a stepparent.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 04-05-080, filed 2/17/04, effective 3/19/04)

WAC 388-720-0020 Cost reimbursement schedule and ability to pay. ~~((As provided for in RCW 13.40.220 the office of financial recovery may negotiate payment schedules and the methods used to satisfy costs of support, treatment and confinement with parents and other legally obligated persons, on behalf of the department. The results of the application of this rule may be appealed as provided for in RCW 13.490.220 (4) and (6) and Part IV Adjudicative Proceedings, of chapter 34.05 RCW, Administrative Procedure Act.)) (1) A parent or other legally obligated person shall pay a percentage of gross income to reimburse the department for the cost of support, treatment and confinement of the juvenile.~~

(2) Gross income, adjusted annually according to the published Federal Poverty Guidelines, shall form the basis to determine obligation to pay.

(3) Ability to pay ((will be)) and obligation to reimburse are determined by ((the)) application of the information provided by a parent or other legally obligated person in the financial information statement and/or by other information available to the department to the reimbursement schedule below:

((Monthly Gross Income	Percentage of Gross Income							
	Ordered for Reimbursement of Costs							
	Number of Parents and Dependents Remaining in Household							
	1	2	3	4	5	6	7	8+
TANF or \$0 - 600	0	0	0	0	0	0	0	0
\$601 - 1000	8%	6%	4%	2%	0	0	0	0
\$1001 - 2000	12%	10%	8%	6%	4%	2%	0	0
\$2001 - 3000	16%	14%	12%	10%	8%	6%	4%	2%
\$3001 - 4000+	18%	16%	14%	12%	10%	8%	6%	4%))

Gross Income as Percentage of Dependents in Home
Federal Poverty Guideline

	1	2	3	4	5	6
150 - 174%	12%	12%	10%	10%	8%	8%
175 - 199%	13%	13%	11%	11%	9%	9%
200 - 224%	14%	14%	12%	12%	10%	10%

<u>225 - 249%</u>	<u>15%</u>	<u>15%</u>	<u>13%</u>	<u>13%</u>	<u>11%</u>	<u>11%</u>
<u>250 - 274%</u>	<u>16%</u>	<u>16%</u>	<u>14%</u>	<u>14%</u>	<u>12%</u>	<u>12%</u>
<u>275 - 299%</u>	<u>17%</u>	<u>17%</u>	<u>15%</u>	<u>15%</u>	<u>13%</u>	<u>13%</u>
<u>300 - 399%</u>	<u>18%</u>	<u>18%</u>	<u>16%</u>	<u>16%</u>	<u>14%</u>	<u>14%</u>
<u>400%+</u>	<u>20%</u>	<u>20%</u>	<u>18%</u>	<u>18%</u>	<u>16%</u>	<u>16%</u>

Reimbursement Obligation: Assessed Percentage of Gross Income

~~((4))~~ (4) Within fifteen days of receipt of the financial information statement, ~~((a parent or other))~~ the legally obligated person shall complete, sign and mail the statement to the department.

(5) Based on the statement, if returned, and on other information available to it, the department shall determine the ~~((parent's))~~ legally obligated person's gross income, the number of parents or registered domestic partners and dependents remaining in the household, and the reimbursement obligation, and shall serve on the ~~((parent))~~ legally obligated person a notice and finding of financial responsibility.

~~((2))~~ (6) If a ~~((parent or))~~ legally obligated person fails to timely provide a financial statement and insufficient information is available to the department to determine ability to pay, the reimbursement obligation shall be ~~((twenty-three hundred dollars per month))~~ the current monthly average (marginal) institutional cost of care as determined by the department.

~~((3))~~ ~~If the juvenile's parents or other legally obligated person reside in separate households, each parent shall be liable for reimbursement.~~

(4) The gross income of a parent shall be reduced by the amount the parent pays in spousal maintenance to the juvenile's parent, which is gross income to the receiving parent. The gross income of a parent or other legally obligated person shall be reduced by the amount of current child support paid for any child, including the juvenile offender. This credit shall be available when the support is paid to any section of the department or to any other person legally entitled to receive those support payments, pursuant to court order or administrative order for a child the parent did not claim as a dependent under the reimbursement schedule.

~~((5))~~ Reimbursement)) (7) Assessed obligation for reimbursement may not exceed the institutional average daily rate (full cost of care) as determined by the department.

~~((6))~~ (8) The reimbursement obligation commences the day the juvenile enters the custody of the department, regardless of when the notice and finding of financial responsibility is received by the parent. ~~((A))~~ The monthly reimbursement obligation shall be reduced on a pro rata basis for any days in which the juvenile was not in the custody of the department.

~~((7))~~ (9) If the juvenile's parents or other legally obligated persons reside in separate households, each shall be liable for reimbursement.

(10) The gross income of a legally obligated person shall be reduced by the amount the person pays in spousal maintenance to the juvenile's parent, which is gross income to the receiving parent.

(11) The gross income of a legally obligated person shall be reduced by the amount of current child support paid for any child, including the juvenile offender. This credit shall be available when the support is paid to any section of the

department or to any other person legally entitled to receive those support payments, pursuant to court order or administrative order for a child the legally obligated person did not claim as a dependent under the reimbursement schedule.

(12) The ~~((parent or other))~~ legally obligated person of the juvenile shall be exempt from the payment of the cost of the juvenile's care in the state facility if:

(a) The ~~((parent or other))~~ legally obligated person receives adoption support or is eligible to receive adoption support for the juvenile offender; or ~~((if))~~

(b) The ~~((parent, or other))~~ legally obligated person, or such person's child, spouse, registered domestic partner, or spouse's child ~~((;))~~ or a dependent person in the household was the victim of the offense for which the juvenile was committed to the department.

(13) As provided for in RCW 13.40.220, the office of financial recovery, on behalf of the department, may negotiate with legally obligated persons the payment schedules and methods used to satisfy costs of support, treatment and confinement.

AMENDATORY SECTION (Amending Order 3752 [WSR 00-22-019], filed 10/20/00, effective 11/20/00)

WAC 388-720-0030 ((Hearing)) Modifications. ~~((A parent may request a hearing under RCW 13.40.220(5) to contest a notice and finding of financial responsibility issued by the department. The department shall ensure the hearing is governed by chapter 34.05 RCW and chapter 388-02 WAC. The sole issues at the hearing include whether the:~~

(1) Person receiving the notice and finding of financial responsibility is a parent of the juvenile; and

(2) Department correctly:

(a) Determined the parent's gross income and the number of parents and dependents; and

(b) Calculated the reimbursement obligation in accordance with the reimbursement schedule as described under WAC 388-720-0020))

(1) A legally obligated person may submit a modified financial statement upon a change in gross income or in the number of persons residing in the household only if the change decreases the reimbursement obligation by one hundred dollars per month or more. A decrease may be granted only from the date on which the request for modification is made, and may not be applied retroactively.

(2) A legally obligated person shall file a financial statement modification if a change in gross income or the number of persons residing in the household increases the reimbursement obligation by one hundred dollars per month or more. An increase may be applied retroactively from the date of the change in income.

(3) The department will issue a new notice and finding of financial responsibility upon receipt of a modified financial

statement as defined in subsections (1) or (2) of this section. The department may also issue a new notice based upon its own review of information available to it if the conditions of subsection (1) or (2) of this section are met.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending Order 3752 [WSR 00-22-019], filed 10/20/00, effective 11/20/00)

WAC 388-720-0040 ((~~Modifications~~)) Hearing. (1) ~~((A parent may modify the parent's financial statement upon a change in gross income or in the number of persons residing in the household only if the change decreases the reimbursement obligation by one hundred dollars per month or more. A decrease may be granted only from the date on which the request for modification is made, and may not be applied retroactively))~~ A legally obligated person may request a hearing pursuant to RCW 13.40.220(6) and chapter 34.05 RCW to contest a notice and finding of financial responsibility issued by the department.

(2) ~~((A parent shall file a financial statement modification if a change in gross income or the number of persons residing in the household increases the reimbursement obligation by one hundred dollars per month or more. An increase may be applied retroactively.~~

(3) ~~The department will issue a new notice and finding of financial responsibility upon receipt of a modified financial statement as defined in subsections (1) or (2) of this section. The department may also issue a new notice based upon its own review if the conditions of subsection (1) or (2) of this section are met)~~ The sole issues which may be considered at the hearing are whether the:

(a) Person receiving the notice and finding of financial responsibility is a person financially obligated for the care and support of the juvenile; and

(b) Department, as described under WAC 388-720-0020 correctly:

(i) Determined the legally obligated person's gross income and determined the number of parents in the household, including registered domestic partners, and dependents;

(ii) Determined exemptions; and

(iii) Calculated the reimbursement obligation in accordance with the reimbursement schedule as described under WAC 388-720-0020.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 03-01-044, filed 12/10/02, effective 1/10/03)

WAC 388-720-0050 Powers of the administrative law judge. The administrative law judge ~~((in the final order rendered))~~ after the hearing conducted in accordance with WAC ~~((388-720-0030))~~ 388-720-0040, in the final order rendered shall:

(1) Include the name and age of the juvenile ((in that final order)). ((The administrative law judge shall also indicate))

(2) Include the ((parent's or other)) legally obligated person's monthly ((ability)) obligation amount for the period of

the juvenile's confinement beginning with the date the child enters the custody of the department. ~~((The administrative law judge shall))~~

(3) Not establish ((in the final order)) any amount constituting a repayment figure of any accrued obligation of the ((parent but shall indicate)) legally obligated person.

(4) State ((in the final order)) that any accrued obligation shall be paid by the ((parent)) legally obligated person to the department's office of financial recovery (OFR) and that OFR will be responsible for determining the method of repayment of the parent's accrued obligation.

~~((The administrative law judge shall also))~~ (5) Include a statement ((in the final order)) that the ((parent's)) responsible person's financial obligation is collectible by OFR and that should the ((parent)) legally obligated person fail to comply with any payment plan entered into by OFR and the ((parent)) legally obligated person, or the ((parent)) legally obligated person fails to pay the amount set out in the final order, OFR shall be authorized to take legal collection action to recover the amounts due from the ((parent)) legally obligated person. Legal collection action can include, but is not limited to:

~~((1))~~ (a) The filing of liens against the real and personal property of the ((parent)) responsible person; or

~~((2))~~ (b) The issuance of a garnishment order against the wages, bank accounts, or other property of the responsible persons.

WSR 09-19-130
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Division of Consumer Services)
[Filed September 22, 2009, 1:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-061.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-660 WAC) under the Mortgage Broker Practices Act (chapter 19.146 RCW).

Hearing Location(s): John A. Cherberg Senate Building, Senate Hearing Room 1, Capitol Campus, Capitol Way, Olympia, WA 98504, on November 5, 2009, at 3-5 p.m.

Date of Intended Adoption: November 24, 2009.

Submit Written Comments to: Elizabeth Hampton, P.O. Box 41200, Olympia, WA 98504-120 [98504-1200], e-mail elizabeth.hampton@dfi.wa.gov, fax (360) 586-5068, by November 13, 2009.

Assistance for Persons with Disabilities: Contact Elizabeth Hampton by October 30, 2009, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement chapter 528, Laws of 2009, the S.A.F.E. Act, and to amend the rules generally for clarity and consistency. Rule amendments are necessary to provide specificity and guidance to the laws' requirements.

Reasons Supporting Proposal: Specific information in the rules is necessary to guide the industry in complying with the laws.

Statutory Authority for Adoption: Chapter 43.320 RCW, chapter 528, Laws of 2009.

Statute Being Implemented: Chapter 19.146 RCW.

Rule is necessary because of federal law, the S.A.F.E. Act, Title V of Public Law 110-289.

Name of Proponent: Department of financial institutions, governmental.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendments will not impose more than minor costs on the businesses impacted by the proposed rules.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to the proposed rules.

September 22, 2009

Deborah Bortner, Director

Division of Consumer Services

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-005 Purpose, scope and coverage. (1) What is the purpose of the Mortgage Broker Practices Act? The purpose of the Mortgage Broker Practices Act is to establish a state system of licensure and rules of practice and conduct for mortgage brokers and loan originators, to promote honesty and fair dealing with citizens, and to preserve public confidence in the lending and real estate community.

(2) What is the purpose of the Mortgage Broker Practices Act rules? The purpose of these rules is to administer and interpret the Mortgage Broker Practices Act in order to govern the activities of licensed mortgage brokers, loan originators, and other persons subject to the act.

(3) What is the scope and coverage of the Mortgage Broker Practices Act and these rules? There are four criteria to determine the scope and coverage of the Mortgage Broker Practices Act and these rules. All of the criteria must be met in order for a person or entity to fall under the scope and coverage of the act and these rules. The criteria are:

(a) The persons or entities conducting business;

(b) The type of transactions performed when conducting the business;

(c) The identification of residential real estate; and

(d) The location of the mortgage broker, loan originator, potential borrower, and residential real estate.

(4) What persons or entities are covered? The Mortgage Broker Practices Act and these rules apply to all persons or entities defined as mortgage brokers or loan originators under RCW 19.146.010(~~(12)~~, or loan originators under RCW 19.146.010(10)). However, certain mortgage brokers and loan originators may be exempt from all or part of the act under RCW 19.146.020 as discussed in WAC 208-660-008.

(5) What types of transactions are covered? The Mortgage Broker Practices Act and these rules cover the

(~~making or~~) assisting (~~in obtaining of~~) to obtain any "residential mortgage loan" defined in RCW 19.146.010(~~(15)~~) and WAC 208-660-006. (~~The terms "making" and "assisting" are defined under "mortgage broker" in WAC 208-660-006.~~) Violations of RCW 19.146.0201, however, are not limited to residential mortgage loan transactions.

(6) What is residential real estate? Residential real estate is real property upon which is constructed or intended to be constructed, a single family dwelling, or multiple family dwelling of four or less units. See examples in WAC 208-660-006, "residential real estate."

(7) Does the location of the mortgage broker, loan originator, potential borrower, and residential real estate affect whether the transaction is covered under the Mortgage Broker Practices Act? If the mortgage broker, loan originator, potential borrower, or residential real estate is located in Washington, the transaction is covered by the Mortgage Broker Practices Act and these rules. However, the director may choose to defer to other jurisdictions where doing so would, in the director's sole discretion, achieve the purposes of the Mortgage Broker Practices Act.

(8) What are some examples of transactions falling under the scope and coverage of the Mortgage Broker Practices Act and these rules?

(a) A loan originator employed with Mortgage Broker, Inc. with a physical office in Redmond, Washington takes a loan application from a Kirkland, Washington resident for the purchase of a home located in Bellevue, Washington. Mortgage Broker, Inc. is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (~~(1)(a)(i)~~). The home located in Bellevue meets the definition of residential real estate and the purchaser intends to reside in the home.

(b) A loan originator with a physical office in Spokane, Washington takes a loan application from a Yakima, Washington resident for the purchase of a home located in Oregon. The mortgage broker is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (~~(1)(a)(ii)~~). The home located in Oregon meets the definition of residential real estate and the purchaser intends to reside in the home.

(c) A loan originator with a physical office in Reno, Nevada working for a Nevada mortgage broker takes a loan application from a Nevada resident for the purchase of a home located in Olympia, Washington. The mortgage broker is not exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (~~(1)(a)(ii)~~). The home located in Washington meets the definition of residential real estate and the purchaser intends to reside in the home.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

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

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

"Advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited

to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages.

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

"Annual loan volume" means the aggregate of the principal loan amounts brokered by the licensee as reflected in the annual mortgage broker report or call report.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which ~~((shall))~~ includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought ~~((, and any other information deemed necessary by the loan originator))~~. An application may be in writing or electronically submitted, including a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

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

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

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

"Business day" means Monday through Friday excluding federally recognized bank holidays.

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

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

"Compensation or gain" means remuneration, benefits, or an increase in something having monetary value, including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock,

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

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

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

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

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

"Consumer Protection Act" means chapter 19.86 RCW.

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

- A general partner, officer, director, or employer of another person;
 - Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of another person; or
 - Has similar status or function in the business as a person in this definition.
- "Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:
- Has been convicted of the crime in any jurisdiction;
 - Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;
 - Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or
 - Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

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

"Director" means the director of financial institutions.

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

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

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

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

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, Director of the Office of Thrift Supervision, National Credit Union Administration, and Federal Deposit Insurance Corporation.

Federal statutes and regulations used in these rules are:

- "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.
- "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 CFR Part 202.
- "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.
- "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).
- "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 CFR Parts 313-314.
- "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.
- "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 CFR Part 203.
- "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

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

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

"S₂A₂F₂E₂" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ((("HERA"), Public Law No.)) (HERA), P.L. 110-289, effective July 30, 2008.

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

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

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

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

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

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

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

- Is the person instructed about when, where and how to work?
- Is the person guaranteed a regular wage?
- Is the person reimbursed for business expenses?
- Does the person maintain a separate business?
- Is the person exposed to potential profits and losses?
- Is the person provided employee benefits such as insurance, a pension plan, or vacation or sick pay?

"Licensee" means:

- A mortgage broker licensed by the director; or
- The principal(s) or designated broker of a mortgage broker; or
- A loan originator licensed by the director; or

- Any person subject to licensing under RCW 19.146.200; or
- Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

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

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

"Loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain:

- Takes a residential mortgage loan application for a mortgage broker; or
- Offers or negotiates terms of a mortgage loan ~~(for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain).~~

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

"Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(e) Offering to engage in any activity, or act in any capacity, described in (a) through (d) of this subsection.

"Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

For purposes of further defining "loan originator," "taking a residential mortgage loan application" includes solicit-

ing, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.

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

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

"Loan processor" means ~~((a natural person))~~ an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt ((mortgage broker)) from licensing, under chapter 19.146 RCW. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms.

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

"Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan. A mortgage broker either prepares a residential mortgage loan for funding by another entity or table-funds the residential mortgage loan. See the definition of "table funding." (These are the two activities allowed under the MBPA.)

For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 24 CFR Part 3500, Section 3500 (2)(b).

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

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

"Mortgage Broker Practices Act" means chapter 19.146 RCW.

"Mortgage loan originator" means the same as "loan originator."

"Nationwide Mortgage Licensing System and Registry (NMLSR)" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

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

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

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

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

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

"Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of:

(a) A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and

(b) Is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

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

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

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

- Residential real estate includes, but is not limited to:
 - A single family home;
 - A duplex;
 - A triplex;
 - A fourplex;
 - A single condominium in a condominium complex;
 - A single unit within a cooperative;
 - A manufactured home when the home and real property together will secure the residential mortgage loan; or
 - A fractile, fee simple interest in any of the above.

- Residential real estate does not include:

- An apartment building or dwelling of five or more units;
- A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings; or
- Any dwelling on leased or rented land or space, such as dwellings in a manufactured home park unless the mortgage broker treats such property as residential real estate.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, or Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008.

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

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

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

"Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

"Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

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

WAC 208-660-007 Good standing. (1) **What does good standing mean?** For the purposes of the act and these rules, good standing means that the applicant, licensee, or other person subject to the act demonstrates financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the act and these rules. In determining good standing the director will consider the following factors,

and any other evidence relevant to good standing as defined in this rule:

(a) Whether the applicant or licensee has paid all fees due to the director or the NMLSR.

(b) Whether the mortgage broker licensee has filed their mortgage broker annual report or quarterly call reports.

(c) Whether the mortgage broker licensee has filed and maintained the required surety bond or had its surety bond canceled or revoked for cause.

(d) Whether the mortgage broker licensee has maintained a designated broker in compliance with the act and these rules.

(e) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization or ability to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years.

(f) Whether the applicant, licensee, or other person subject to the act has been convicted of, or pled guilty or nolo contendere to, in a domestic, foreign, or military court to:

(i) A gross misdemeanor involving dishonesty or financial misconduct((,-Ø#)) within the prior seven years;

(ii) A felony((-)) within the prior seven years; or

(iii) A felony that involved an act of fraud, dishonesty, breach of trust, or money laundering at any time preceding the date of application.

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

(h) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(i) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

(j) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(k) Whether the licensee, or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(l) Whether the licensee or other person subject to the act has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(2) Under what circumstances may the department conduct a good standing review of an applicant, mortgage broker licensee, designated broker, or exempt mortgage

broker? The department may conduct a good standing review when:

(a) Processing an application for a new mortgage broker branch office license.

(b) Processing an application for appointment of a different designated broker (both the licensed mortgage broker, including those individuals to whom the license was granted, and the proposed designated broker must meet good standing).

(c) Processing a request for recognition as an exempt mortgage broker under RCW 19.146.020((4)).

(3) When will an applicant, licensee, or other person subject to the act receive notice from the department of their failure to meet a determination of good standing? If the department conducts a good standing review, the department will notify the applicant, licensee, or other person subject to the act that they have failed to meet the department's good standing requirement within ten business days of the department's receipt of any application or request that requires a determination of good standing. See subsection (2) of this section. For purposes of the notice required by this section, a statement of charges filed and served on the licensee is sufficient notice of a lack of good standing.

(4) What recourse does an applicant, licensee, or other person subject to the act have when the department has determined that they are not in good standing? The applicant, licensee, or other person subject to the act may request a brief adjudicative proceeding under the Administrative Procedure Act, chapter 34.05 RCW, to challenge the department's determination. See WAC 208-660-009.

~~**((5) What department determinations may be challenged through a brief adjudicative proceeding?**~~ Subsection (1)(a) through (l) of this section may be challenged through a brief adjudicative process.

~~**(6) What specific sections of the Administrative Procedure Act are adopted by the director to administer brief adjudicative proceedings?**~~ The director adopts RCW 34.05.482 through 34.05.494 to administer brief adjudicative proceedings requested by an applicant or licensee, or conducted at the director's discretion.

~~**(7) Who conducts the brief adjudicative proceeding?**~~ Brief adjudicative proceedings are conducted by a presiding officer designated by the director. The presiding officer must have department expertise in the subject matter, but must not have personally participated in the department's determination of good standing, or work in the department's division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

~~**(8) When and how will the presiding officer issue a decision?**~~ Within ten business days of the final date for submission of materials, or oral argument, if any, the presiding officer must make a written initial order.)

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-008 Exemptions ((from licensing)). (1) Who is exempt from all provisions of the act? Any person doing business under the laws of the state of Washington or

the United States and any federally insured depository institution doing business under the laws of any other state relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof.

(2) Who is exempt from licensing as a mortgage loan originator?

(a) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual; or

(b) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

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

(a) Take a residential mortgage loan application for a mortgage broker;

(b) Offer or negotiate terms of a mortgage loan for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

(c) Assist a person in obtaining or applying to obtain a residential mortgage loan, for compensation or gain; or

(d) Hold yourself out as being able to perform any of the above services.

~~((2))~~ **(4) Are insurance companies exempt from the Mortgage Broker Practices Act?** Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington state office of the insurance commissioner are exempt from the Mortgage Broker Practices Act.

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

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

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

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

(a) If you are an attorney licensed in Washington and if the mortgage broker activities are incidental to your profes-

sional duties as an attorney, you are exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(c).

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

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

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

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

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

(ii) The affiliate of the bank requires continuing education for the exclusive agents that meets the same or similar requirements approved by the director for licensed loan originators;

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

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

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

(C) Has been subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil,

or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

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

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

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

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

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

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

~~(9)) (7) Are ((the)) independent contractor loan originators ((of a mortgage broker)) exempt from licensing ((under RCW 19.146.020 (1)(b), (c), (e), and (g) themselves exempt))?~~ No. ((After January 1, 2007;)) An independent contractor working as a loan originator ((for a mortgage broker exempt under RCW 19.146.020 (1)(b), (c), (e), and (g)) must hold a loan originator license.

~~((10)) (8) What other persons or entities are exempt from the Mortgage Broker Practices Act?~~

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

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

(c) Registered mortgage loan originators, or any individual required to be registered, employed by entities exempt from the act.

(d) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the transaction.

~~((11)) (9) When is a CLI provider exempt from the licensing requirements of the act?~~ A CLI provider is exempt from the licensing requirements of the act:

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

(b) When a real estate broker or salesperson licensed in Washington, acting as a CLI provider and a real estate agent,

obtains financing for a real estate transaction involving a bona fide sale of real estate and does not receive either:

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

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

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

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

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

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

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

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

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

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

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

~~((12)) (10) When is a CLI provider required to have a mortgage broker license?~~

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

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

(c) Example - License not required: A CLI provider uses an internet-based CLI system in which various interactive informational tools are present, including an online "prequalification" tool. Based upon borrower's self-declared data input, borrower receives an indication of borrower's "maximum affordable loan amount," based upon standard norms of debt-to-income ratio and loan-to-value ratio, and also subject

to verification of information, availability and suitability of loan products, and independent underwriting by any lender. The borrower indicates a desire for follow-up from one or more lenders by inputting personal contact information and pressing "submit." A number of lenders receive only the personal identity information of borrower and not any financial information. However, the CLI system has been programmed (and may be continuously reprogrammed) to route personal contact information to certain lenders based upon borrower's "prequalification" data input and the lending criteria of each of the lenders for whom CLI provider has a relationship. None of borrower's self-declared financial information is actually submitted to any of the lenders whose criteria match borrower's profile. Loan originators from lender A and lender B initiate contact with borrower based solely on borrower's contact information. Lender A and lender B, through their assigned loan originators, contact borrower with the object of beginning and hopefully completing a loan application. In this example, CLI provider has not taken a loan application.

~~((13))~~ **(11) Must the CLI provider provide any disclosures?**

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

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

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

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

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

~~((14))~~ **(12) Are CLI system providers subject to enforcement under the act?** Yes. CLI system providers are responsible for any violations of the act and will be subject to any applicable fines or penalties.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-155 Mortgage brokers—General. (1) May I originate residential mortgage loans in Washington without a license? No. Mortgage brokers and loan originators must have a valid Washington license, or be exempt from licensing pursuant to RCW 19.146.020, in order to originate residential mortgage loans. There is no "one-time, one loan" exception.

(2) May I originate a Washington residential mortgage loan using the license of an already licensed or exempt Washington mortgage broker and then split the proceeds with that mortgage broker? No. Mortgage broker licenses may only be used by the person named on the license. Mortgage broker licenses may not be transferred, sold, traded, assigned, loaned, shared, or given to any other person. Two individually licensed mortgage brokers may

originate a loan. Each licensee is itemized in the disclosures and is paid their proportionate share of fees in relation to the work provided at the loan closing. Federal laws may prohibit this cobrokering.

(3) As a licensed mortgage broker, am I responsible for the actions of my employees and independent contractors? Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

(4) Who at the licensed mortgage broker company is responsible for the licensee's compliance with the act and these rules? The designated broker, principals, and owners with supervisory authority are responsible for the licensee's compliance with the act and these rules.

(5) What is the nature of my relationship with the borrower? You have a fiduciary relationship with the borrower. See RCW 19.146.095.

~~(6) ((Under what circumstances may a mortgage broker charge the borrower a fee, commission, or other compensation for services rendered by the mortgage broker in obtaining a loan for the borrower? The mortgage broker))~~ **May I charge upfront broker fees when assisting the borrower in applying for a loan?** No. You may only charge the borrower a fee, commission, or other compensation for the preparation, negotiation, and brokering of a residential mortgage loan when the loan is closed on the terms and conditions agreed upon by you and the borrower (~~and the mortgage broker~~).

~~(7) ((Under what circumstances may a mortgage broker charge the borrower a fee, commission, or other type of compensation for services rendered))~~ **May I charge fees when the loan does not close ((at all)), or does not close on the terms and conditions agreed upon by me and the borrower ((and the mortgage broker))?** ((A mortgage broker)) You may charge a fee, and may bring a suit for collection of the fee, not to exceed three hundred dollars, for services rendered, for the preparation of documents, or for the transfer of documents in the borrower's file which were prepared for, or paid for by, the borrower if:

(a) ~~((The mortgage broker has))~~ You have obtained a written commitment from a lender on the same terms and conditions agreed upon by you and the borrower (~~and the mortgage broker~~); and

(b) The borrower fails to close on a loan through no fault of ~~((the mortgage broker))~~ yours; and

(c) The fee is not otherwise prohibited by the Truth in Lending Act.

(8) As a mortgage broker, may I solicit or accept fees from a borrower in advance to pay third-party providers? Yes. However, prior to accepting the funds, you must provide the borrower in writing a notice identifying the specific third-party provider goods and services the funds are to be used for. Additionally, you must not charge the borrower more for the third-party provider goods and services than the actual costs of the goods and services charged by the provider. Once you have the funds you must then:

(a) Deposit the funds in a trust account pursuant to the act and these rules (see WAC 208-660-410 on Trust accounting);

(b) Refund any fees collected for goods or services not provided.

(9) **What is a "written commitment from a lender on the same terms and conditions agreed upon by the borrower and mortgage broker"?** The written commitment is a written agreement or contract between the mortgage broker and lender containing mutually acceptable loan provisions and terms. The lender must be one with whom the mortgage broker maintains a written correspondent or loan brokerage agreement as required by RCW 19.146.040(3). The mutually acceptable loan provisions and terms must be the same terms and conditions set forth in the most recent good faith estimate signed by both the borrower and the mortgage broker.

(10) ~~((What action must a mortgage broker take to activate a loan originator license? To activate a loan originator license, the licensed mortgage broker))~~ **How do I sponsor a loan originator?** You must file a sponsorship request through the NMLSR.

(11) **What action must a mortgage broker take to terminate a working relationship with a loan originator?** The licensed mortgage broker must process the termination through the NMLSR.

(12) **When must I update my record in the NMLSR after I terminate employment with a loan originator?** You must process the termination through the NMLSR within five business days of the termination.

(13) **Are there any loan originator compensation models I am prohibited from using?** Yes. You are prohibited from using a compensation model for loan originators based on a loan's interest rate or other terms.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-163 Mortgage brokers—Licensing.

(1) **How do I apply for a mortgage broker license?** Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR ~~((system))~~.

(a) **Appoint a designated broker.** You must appoint a designated broker who meets the requirements of WAC 208-660-250.

(b) **Submit an application.** You must complete an on-line application ~~((in a form prescribed by the director))~~ through the NMLSR.

(c) **Pay the application and license fees.** You will have to pay application fees to cover the costs of processing the application. You must also pay a separate annual license fee. See WAC 208-660-550, Department fees and costs.

(d) **Prove your identity.** You must provide information about the identity of owners, principals, officers, and the designated broker, including fingerprints.

(e) **Provide a surety bond.** Mortgage brokers must have a surety bond ~~((of twenty to sixty thousand dollars depending on the average number of loan originators representing))~~ based upon the annual loan volume of the mortgage broker. See WAC 208-660-175 (1)(e).

(2) **What information will the department consider when deciding whether to approve a mortgage broker**

license application? The department considers the financial responsibility, character, and general fitness of the applicant, principals, and the designated broker.

(3) **Why does the department consider financial responsibility, character, and general fitness before issuing a mortgage broker license?** One of the purposes of the act is to ensure that mortgage brokers and loan originators deal honestly and fairly with the public. Applicants, principals, and designated brokers who have demonstrated their financial responsibility, character, and general fitness to operate their businesses honestly, fairly, and efficiently are more likely to deal honestly and fairly with the public.

(4) **What specific information will the department consider to determine if the mortgage broker business will be operated honestly, fairly, and in compliance with applicable law?**

(a) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, ~~((revoked,))~~ or restricted within the prior five years.

(b) Whether the applicant ~~((licensee or other person subject to the act has been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, within the prior seven years))~~ has ever had a license revoked under this chapter or any similar state statute, including a license for insurance, securities, consumer lending, or escrow.

(c) Whether the applicant, licensee, or other person subject to the act has been convicted of, or pled guilty or nolo contendere to, in a domestic, foreign, or military court to:

(i) A gross misdemeanor involving dishonesty or financial misconduct within the prior seven years;

(ii) A felony within the prior seven years; or

(iii) A felony that involved an act of fraud, dishonesty, breach of trust, or money laundering at any time preceding the date of application.

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

~~((e))~~ (e) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

~~((f))~~ (f) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

~~((g))~~ (g) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

~~((h))~~ (h) Whether the licensee or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee,

or with an assurance of discontinuance entered into with the director or director's designee.

~~((H))~~ (I) Whether the licensee or other person subject to the act has interfered with an investigation, or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(5) **What will happen if my mortgage broker license application is incomplete?** ~~((The department will reject and return the entire application package to you with a notice identifying the incomplete, missing, or inaccurate information. You must follow the department's directions to correct the problems. You can then resubmit the application package.))~~ If your application is incomplete your file will be marked "pending-deficient" in the NMLSR. The department will either identify each deficiency or respond that there are multiple deficiencies and ask you to contact the department. You are responsible for reviewing your record and responding to each issue.

(6) **How do I withdraw my application for a mortgage broker license?** ~~((Send the department a written request, in a form prescribed by the department, to withdraw your mortgage broker license application.))~~ You may request to withdraw the application through the NMLSR.

(7) **When will the department consider my mortgage broker license application (~~package~~) abandoned?** ~~((If you do not respond to the department within ten business days from the date of the department's second request for information, your application is considered abandoned. You may reapply by submitting a new application per subsection (1) of this section.))~~ If you do not respond as directed by the department's request for information and within fifteen business days, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

(8) **What are my rights if the director denies my application for a mortgage broker license?** You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied, that you wish to have a hearing. See also WAC 208-660-009.

Upon denial of your mortgage broker license application, and provided the department finds no unlicensed activity, the department will return your surety bond, and refund any remaining portion of the license fee that exceeds the department's actual cost to investigate the license ((fee and any unused portion of the application fee)).

(9) **What Washington law protects my rights when my application for a mortgage broker license is denied, or my mortgage broker license is suspended or revoked?** The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease

and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions. See also WAC 208-660-009.

(10) **May I advertise my business while I am waiting for my mortgage broker license application to be processed?** No. It is a violation of the act for nonlicensed, non-exempt mortgage brokers or loan originators to hold themselves out as mortgage brokers or loan originators in Washington.

(11) **May I originate Washington residential mortgage loans while waiting for my mortgage broker license application to be processed?** No. You may not originate loans prior to receiving your mortgage broker license.

(12) **How do I change information on my mortgage broker license?** You must file a license amendment application through the NMLSR. ~~((You must file the amendment application within thirty days of the change occurring.))~~ See also WAC 208-660-400.

(13) **When does a mortgage broker license expire?** The mortgage broker license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(14) **When may the department issue interim mortgage broker licenses?** To prevent an undue delay, the director may issue interim mortgage broker licenses, including branch office licenses, with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

~~((For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in licensing uniformity and provide data repositories of licensing information.))~~

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the result of the applicant's background check.

~~(15) ((May the department issue replacement licenses with an expiration date? Yes. In order to create and maintain a licensing system with expiration or renewal dates that are uniform, the department may issue new licenses with expiration dates to existing license holders. The new licenses will expire annually.~~

~~(16))~~ **How do I renew my mortgage broker license?**

(a) Before the license expiration date you must:

(i) File the mortgage broker annual report or quarterly call reports, and any other required notices, with the director. See WAC 208-660-400((Reporting requirements)).

(ii) Complete a renewal request through the NMLSR.

(iii) Show evidence that your designated broker completed the required annual continuing education.

~~((iii))~~ Verify the surety bond is adequate for the average number of loan originators, including all locations.))

(iv) Pay the annual license assessment fee.

(b) The renewed license is valid for the term listed on the license or until surrendered, suspended, or revoked.

~~((17))~~ **(16) If I let my mortgage broker license expire must I apply to get a new license?** If you complete all the requirements for renewal ~~((within forty-five days of the expiration date))~~ on or before February 28th each year, you may renew an expired license. However, if you renew your license ~~((during this forty-five day period))~~ after the expiration, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection ~~((16))~~ **(15)** of this section for the license renewal requirements.

During this ~~((forty-five day))~~ two-month period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

~~((Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or a department "date received" stamp within the forty-five days.))~~ If you fail to comply with the renewal request requirements ~~((within forty-five days))~~ by March 1st of each year, you must apply for a new license.

~~((18))~~ **(17) May I still conduct my mortgage broker business if my mortgage broker license has expired?** No. If your mortgage broker license expires, you must not conduct any business under the act that requires a license until you renew your license.

~~((19))~~ **(18) What should I do if I wish to close my mortgage broker business?** You may surrender the mortgage broker license by ~~((notifying the department, in a form prescribed by the department, of your intention to stop doing mortgage loan business in Washington))~~ submitting a surrender request through the NMLSR and submitting a completed departmental closure form. Surrendering your license does not change your civil or criminal liability, or your liability for any administrative actions arising from any acts or omissions occurring before you surrender your license. Contact the Washington department of revenue to find out how to handle any unclaimed funds in your trust account.

~~((20))~~ **(19) May I transfer, sell, trade, assign, loan, share, or give my mortgage broker license to another person or company?** No. A mortgage broker license authorizes only the person named on the license to conduct the business at the location listed on the license. See also WAC 208-660-155(2).

~~((21))~~ **(20) Must I display my mortgage broker license?** Yes. Your mortgage broker license must be prominently displayed at the licensed location.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-175 Mortgage brokers—Surety bond.

(1) What are the surety bond requirements for licensed mortgage brokers?

(a) Mortgage brokers must at all times have a valid surety bond on file with the director. The surety bond must be provided on a form prescribed by the department.

(b) The surety bond amount must be ~~((between twenty thousand dollars and sixty thousand dollars depending on the annual average number of loan originators representing the~~

~~mortgage broker))~~ based upon the annual loan origination volume of the licensee in the state of Washington.

(c) When the mortgage broker initially applies for a license, the dollar amount of the surety bond must be ~~((sufficient to cover the number of licensed loan originators you intend to employ in your first year of business))~~ a minimum of thirty thousand dollars.

(d) The surety bond must list the ~~((full name and any trade or doing business as names used by the))~~ mortgage broker's full name, unified business identifier (UBI), and NMLSR unique identifier. ~~((The surety bond must list the licensee's main physical address including street number, street name and direction, suite number, city, county, and state.))~~

(e) The surety bond must be signed by a principal of the mortgage broker as well as an authorized representative of the insurance company listed as surety. The power-of-attorney must identify the signing representative as authorized by the insurance company. The insurance company must include their surety bond number and seal on the surety bond form.

The following chart shows the surety bond amount required for the annual ~~((average number of loan originators))~~ loan origination volume of the licensee in the state of Washington:

((Average Number of Loan Originators	Minimum Required Bond Amount
up to 3.0	\$20,000
more than 3.0, up to 6.0	\$30,000
more than 6.0, up to 9.0	\$40,000
more than 9.0, up to 15.0	\$50,000
more than 15.0	\$60,000

~~((2))~~ **May I provide security in a form other than a surety bond?** No. Beginning January 1, 2007, the director will not accept an alternative to a surety bond.)

<u>Loan Volume in Millions</u>	<u>Bond Amount</u>
<u>\$30+</u>	<u>\$60,000</u>
<u>\$10 to \$30</u>	<u>\$45,000</u>
<u>\$0 to \$10</u>	<u>\$30,000</u>

~~((3))~~ **(2) Who provides mortgage broker surety bonds?** To purchase a surety bond, contact your insurance broker. A list of insurance companies that underwrite Washington surety bonds in Washington is available from the Washington state office of the insurance commissioner's web site.

~~((4))~~ **(3) What do I do with the surety bond once I receive it from my insurance company?** You must sign the original surety bond ~~((Then))~~ and include the surety bond and the attached power-of-attorney with your license application package.

~~((5))~~ **(4) What happens to my mortgage broker license if my surety bond is canceled?** Failure to maintain a surety bond is a violation of the act and may result in an enforcement action against you.

~~((6))~~ **(5) May I change surety bond companies?** Yes. You may change your insurance provider at any time. Your current insurance company will issue a cancellation notice

for your existing surety bond. The cancellation notice may be effective no less than thirty days following the director's receipt of the cancellation notice.

Prior to the cancellation date of the existing surety bond, you must have on file with the department a replacement surety bond. The replacement surety bond must be in effect on or before the cancellation date of the prior surety bond.

~~((7))~~ **(6) Why must I carry a surety bond to have a mortgage broker license?** The surety bond protects the state and any persons who suffer loss by reason of violations of any provision of the act or these rules by ~~((the licensee, its))~~ you or your employees~~((s))~~ or independent contractors.

~~((8))~~ **(7) Who may make a claim against a licensed mortgage broker's surety bond?** The director, or any person, including a third-party provider, who has been injured by a violation of the act, may make a claim against a bond.

~~((9))~~ **(8) How may I make a claim against a licensed mortgage broker's surety bond?** The department can provide you with the name of a licensed mortgage broker's surety bond provider. Contact the surety bond company and follow its required procedures to make your claim.

~~((10))~~ **How may I make a claim against a certificate of deposit, an irrevocable letter of credit, or other instrument that the director has permitted to be filed instead of a surety bond?** File your claim against a certificate of deposit, an irrevocable letter of credit, or other instrument directly with the department, in a form prescribed by the department. After January 1, 2007, the department will only accept surety bonds; any claims arising over violations occurring after January 1, 2007, will be against a bond.

~~((11))~~ **(9) How long does the bond claim procedure take?** The time to complete a bond claim may vary among bonding companies. If the claimant is not a borrower, final judgment will not be entered prior to one hundred eighty days after the claim is filed.

~~((12))~~ **(10) When must I file a bond claim?** A bond claim must be filed within one year of the date of the act that causes the claim.

NEW SECTION

WAC 208-660-176 Mortgage brokers—Recovery fund in lieu of surety bond. (1) **What if the surety bond required in WAC 208-660-175 is not reasonably available in the insurance market?** If the director determines that the bond required is not reasonably available due to the insurance market or other product availability issue, the director must waive the requirements for the bond.

(2) **If a recovery fund is created, how will it be funded?** All licensees will pay a fee at application and renewal, in addition to all license application fees, through the NMLSR, to fund the recovery fund.

(3) **How much will the recovery fund fees be?**

(a) Two hundred fifty dollars for the main office location;

(b) One hundred fifty dollars for each branch office; and

(c) One hundred dollars for each mortgage loan originator.

(4) **Will the fund have a cap or maximum?** After the fund has been in existence for three years, and periodically

thereafter, the director may determine the maximum fund amount needed based upon claims made.

(5) **What happens to any interest that accrues on the mortgage recovery fund balance?** All interest that accrues in the fund will be added to the balance of the fund.

(6) **Can the department use any of the recovery fund money?** Yes. On an annual basis the department may apply up to fifty thousand dollars to fund the department's expenses in administering the mortgage recovery fund.

(7) **What is the procedure for recovery from the fund?**

(a) A claimant must obtain a money judgment from a superior court that includes findings of violations of this act against a mortgage broker or mortgage loan originator.

(b) The final money judgment must be obtained after January 1, 2010, after execution has been returned unsatisfied and the judgment has been recorded.

(c) The person in (a) of this subsection must file a verified claim with the court in which the judgment was entered, and on twenty days' written notice to the director and to the judgment debtor, may apply to the court for an order directing payment from the mortgage recovery fund of any unpaid amount on such judgment.

(d) After giving notice and the opportunity for a hearing to the person seeking recovery, to the judgment debtor and to the department, the court may enter an order requiring the director to pay from the mortgage recovery fund the amount the court finds payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied as to the proof of all matters required to be shown under subsection (a) of this section, and that the person seeking recovery from the mortgage recovery fund has satisfied all requirements of this section.

(e) If the court finds that the aggregate amount of claims against a mortgage broker or mortgage loan originator exceeds the limits set forth in WAC 208-660-175, the court must reduce proportionately the amount the court finds payable on the claim.

(f) When the director receives notice that a hearing is scheduled under this section, the director may enter an appearance, file a response, appear at the hearing or take any other appropriate action as he or she deems necessary to protect the mortgage recovery fund from spurious or unjust claims and to ensure compliance with the requirements for recovery under this section.

(g) The department must provide the court with information concerning the mortgage recovery fund necessary to enable the court to carry out its duties under this section.

(8) **What must a person show at the hearing on the recovery fund claim?** The person seeking recovery from the mortgage recovery fund must show:

(a) That the judgment has not been discharged in bankruptcy and is based on facts allowing recovery under the act;

(b) That the person is not a spouse of the judgment debtor, or the personal representative of the spouse;

(c) That the person is not a mortgage broker or mortgage loan originator as defined by this chapter who is seeking to recover any compensation regarding the mortgage loan transaction which is the subject of the money judgment upon

which a claim against the mortgage recovery fund is based; and

(d) That, based on the best available information, the judgment debtor lacks sufficient nonexempt assets in this or any state to satisfy the judgment.

(9) What may recovery funds obtained be used for?

(a) Any recovery on the money judgment received by the judgment creditor before payment from the mortgage recovery fund must be applied by the judgment creditor to reduce the judgment creditor's actual damages which were awarded in the judgment.

(b) A recovery from the fund will not include punitive damages awarded by a court.

(10) What is the statute of limitations for a claim from the recovery fund? A verified claim against the recovery fund must be filed within one year of the date of termination of all court proceedings concerning the judgment, including appeals.

(11) What types of claims will the fund award money on?

(a) The fund will be used to reimburse persons awarded actual damages resulting from acts constituting violations of the act by a mortgage broker or mortgage loan originator who was licensed, or required to be licensed, under this chapter at the time that the act was committed.

(b) Payments from the mortgage recovery fund may not be made to:

(i) Any licensee whose acts were found by a court to be violations of this chapter and a basis of the court's award of a money judgment to a person injured by such violations;

(ii) Any person who acquires a mortgage loan where acts associated with the origination of such loan are found by a court to be violations of this chapter and a basis for a judgment obtained by a person injured by such violations; or

(iii) The spouse, the personal representative of the spouse of the judgment debtor or the personal representative of the judgment debtor.

(12) Will the department revoke my license if a claim is made against the recovery fund based on my actions?

(a) The director may revoke a license issued under this chapter if the director is required by court order under this section to make a payment from the mortgage recovery fund based on a money judgment that includes findings of violations of this chapter by such licensee.

(b) A person whose license has been revoked under this subsection is not eligible to be considered for the issuance of a new license under this chapter until the person has repaid in full, plus interest at the current legal rate, the amount paid from the mortgage recovery fund resulting from that person's violation of this chapter.

(c) This section does not limit the authority of the director to take disciplinary action against a licensee under this chapter for a violation of this chapter or of rules promulgated or orders issued pursuant to this chapter. The repayment in full to the mortgage recovery fund of all obligations of a licensee under this chapter does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

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

WAC 208-660-180 Mortgage brokers—Main office.

(1) Must a licensed mortgage broker have a designated broker? Yes. Licensed mortgage broker companies must have an approved designated broker at all times.

(2) How many designated brokers may a mortgage broker have? ~~((The mortgage broker must have a qualified designated broker at all times.))~~ The mortgage broker may appoint only one individual to be the designated broker at any given time. The designated broker need not be a principal of the licensee.

It is a prudent business practice to have more than one qualified individual working for the licensee who could be appointed as the designated broker.

(3) If my designated broker leaves, may I continue to operate my mortgage broker business? Yes. You may continue to operate your mortgage broker business. However, you must notify the department within five business days of the loss of or change of your designated broker. You must then replace the designated broker within thirty days of the loss or change of the designated broker. If you need more than thirty days to replace the designated broker, you must seek approval from the department. Failure to replace your designated broker, or receive approval from the director for an extension, may result in an enforcement action against you.

(4) What must I do to replace my designated broker? You must apply ~~((, in a form prescribed by the department,))~~ through the NMLSR for approval of the new designated broker. The new designated broker must meet the requirements of WAC 208-660-250(1). You and the new designated broker ~~((and the licensee including those individuals to whom the license was granted,))~~ must meet the good standing requirements of WAC 208-660-007.

(5) What must I do if I sell all or part of my mortgage broker company? See WAC 208-660-400(13).

(6) After my mortgage broker license is approved, may I change my business structure? Yes. You must follow the notification requirements of WAC 208-660-400(12).

(7) May a licensed mortgage broker share an office with a licensed real estate broker? Yes. A licensed mortgage broker may share an office with a licensed real estate broker. The mortgage broker location must be licensed as a main or branch mortgage broker office.

(8) If a licensed mortgage broker shares an office with a licensed real estate broker, what must the mortgage broker do to notify the public that the office is shared? The licensed mortgage broker must clearly identify the mortgage broker business as separate from the real estate business to the public on any signage, advertising, or other material identifying the businesses.

(9) May I add a trade name (or "DBA") to my mortgage broker license? Yes. You may add a trade or "DBA" name to the mortgage broker license if you first apply to the department, in a form prescribed by the department, and receive department approval. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the trade name; or

(b) Use your mortgage broker ((license number)) unique identifier together with the trade name.

(10) May the department deny an application for a proposed DBA name because it is similar to an existing licensee name? Yes. The director may deny an application for a proposed DBA name if the proposed DBA name is similar to a currently existing licensee name.

(11) May I conduct my mortgage broker business from more than one location? Yes. You may establish one or more branch offices under your license. See WAC 208-660-195 for information on licensing branch offices.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-195 Mortgage brokers—Branch offices. (1) **May I open branch offices under my mortgage broker license?** Yes. A licensed mortgage broker may submit license application(s) to the department through the NMLSR to establish branch office(s) under the existing mortgage broker license. Each branch office must be licensed and must pay an annual license fee. See WAC 208-660-550, Department fees and costs.

(2) **If my branch offices are under separate ownership, does that limit my liability for their activities?** No. Licensed mortgage brokers are responsible for the activity and violations at their branch offices regardless of the structure or label given the branch offices. Licensure of a branch office creates a direct line of responsibility from the main office to the branch.

(3) **If my branch offices are under separate ownership, what level of supervision must I maintain?** Because branch offices, regardless of their business structure, are not independent from your license and surety bond, you are responsible for the conduct of anyone conducting business under your license. You must have a written supervisory plan. The details of the plan, and how you implement the plan for your branch offices, must take into account the number of branch offices, their location, and the number of individuals working at the branch offices. You must maintain your written supervisory plan as part of your business books and records.

(4) **How do I apply for a mortgage broker branch office license?** As the licensed mortgage broker, you must apply for a branch office license through the NMLSR and receive ((a branch office license)) approval from the department before operating from any location other than your licensed location. You must be in good standing((, and may need to increase the amount of the surety bond)). You will have to pay application and annual assessment fees for the branch office(s). See WAC 208-660-550, Department fees and costs.

(5) **What does the department consider when reviewing an application for a branch office license?** The department considers:

(a) Whether the mortgage broker is in good standing. See WAC 208-660-007.

(b) ~~((Whether the amount of the mortgage broker's surety bond is sufficient to cover the loan originators that will be working from the branch office.~~

~~((e))~~ Whether the physical address listed in the application can be verified as a branch office location.

(6) **Must I display my branch office license?** Yes. Your mortgage broker branch office license must be prominently displayed in the branch office.

(7) **If I am an internet company, how do I display my license?** You must display your license information, as it appears on your license, including any or all business names, and the license ((number)) unique identifier, on your web site. The information must also include a list of the states in which you are licensed.

(8) **How do I change information on my mortgage broker branch office license?** You must file a license amendment through the NMLSR ~~((within thirty days of))~~ at least ten days prior to the change occurring.

(9) **Does my branch office license expire?** The license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(10) **How do I renew my mortgage broker branch office license?**

(a) Before the expiration date, the licensed mortgage broker must((:

~~(i) Verify the surety bond is adequate for the licensee's average number of loan originators.~~

~~((ii))~~ submit ((a)) an on-line renewal and pay the branch office annual assessment fee through the NMLSR.

(b) The renewed mortgage broker branch office license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(11) **If my mortgage broker branch office license expires, must I apply for a new license?** If you complete all the requirements for renewal ~~((within forty-five days of the expiration date))~~ by February 28th, each year, you may renew an existing license. However, if you renew your license during this ~~((forty-five day))~~ two-month period, in addition to paying the annual assessment on your branch office license, you must pay an additional fifty percent of your annual assessment for that branch. See subsection (10) of this section for the license renewal requirements.

During this ~~((forty-five day))~~ two-month period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

~~((Any renewal requirements received by the department must be evidenced by either a postmark or "date received" stamp within the forty-five days.))~~ If you fail to comply with the renewal request requirements ~~((within forty-five days))~~ by February 28th, each year, you must apply for a new license.

(12) **If my mortgage broker branch office license has expired, may I still conduct my mortgage broker business from that location?** No. Once the mortgage broker branch office license has expired, you must not conduct any business under the act that requires a license until you renew your license.

(13) **If my mortgage broker main office license expires, may I still conduct my mortgage broker business from a branch office?** No. Once the mortgage broker main office license expires, you must not conduct any business under the act that requires a license from any location until you renew the main office license.

(14) **May I add a trade name (or "DBA") to my mortgage broker branch office license?** Yes. You may add a trade name, or "DBA" name, to the mortgage broker branch office license if you first apply to the department, in a form prescribed by the director, and receive department approval. The branch office trade name must at all times be identified as connected with the mortgage broker's license name as it appears on the mortgage broker license. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the branch office trade name; or

(b) Use the branch office trade name and mortgage broker branch office license ((number)) unique identifier together.

(c) See WAC 208-660-180(10).

(15) **How must I identify my mortgage broker branch office(s)?** The branch office must be prominently identified as a branch or division of the licensed mortgage broker so as not to appear to be an independent enterprise.

(16) **Does my branch office have to be a physical location?** Yes. The physical location may be at a commercial or residential address but does not have to be in Washington. See WAC 208-660-420, Out-of-state mortgage brokers and loan originators.

(17) **Must I have a branch manager?** No. Although you may appoint one, the act does not require a branch manager. ((The licensee)) You and the designated broker are responsible for the business conducted at all locations.

(18) **If I appoint a branch manager, must he or she be licensed? If the branch manager performs any of the functions of a mortgage broker or loan originator, he or she must be licensed. If they do not perform those functions, they must not be paid a commission or salary based upon the number of transactions closed.**

(19) **Must I have a designated broker at each branch?** No. ((The licensed mortgage broker)) You may have only one designated broker who is responsible for the mortgage broker business at all locations.

(20) **If I want to move my licensed company under the sponsorship of another mortgage broker, what must be completed before the licensed loan originators can start transacting business under the sponsorship of the other mortgage broker? The loan originators may begin doing business when the other mortgage broker has filed for approval of a new branch office with the NMLSR, has sponsored each of the licensed loan originators through the NMLSR and you have filed the trust account paperwork with the department, you may transact business under the new mortgage broker for up to thirty days without a new license.**

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-250 Designated brokers—General. (1) How do I become a designated broker?

(a) Be eighteen years or older.

(b) Have a high school diploma, an equivalent to a high school diploma, or two years experience in the industry in addition to the experience required in (e) of this subsection. The experience must meet the criteria in (e) of this subsection.

(c) You must pass the Washington designated broker test. See WAC 208-660-260, Designated brokers—Testing. If you will originate loans, you must also take and pass the loan originator national and Washington specific tests and apply for and receive a loan originator license.

(d) You must be appointed to the designated broker position by the licensed mortgage broker through an application and approval process with the department and the NMLSR.

(e) You must have a minimum of two years experience lending or originating residential mortgage loans.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company; or

(f) In addition to supplying the application information, both you and the licensed mortgage broker must be in good standing with the department((-)); or

(g) ~~((Financial background.~~

(h)) Demonstrate financial responsibility, character and general fitness.

(2) How do I demonstrate financial responsibility? The department will review your credit history to determine if you have outstanding judgments (except judgments involving medical expenses); current outstanding tax liens or other government liens and filings; foreclosures within the last

three years; or a pattern of seriously delinquent accounts within the past three years.

Specifically, you are not eligible to become a designated broker if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

~~((ii)) You may not be eligible to become a designated broker if your financial background during the two years prior to the appointment application shows a history of unpaid debts.~~

~~(2))~~ **(3) May I work as the designated broker for more than one company?** Yes. You may be the designated broker for more than one licensee.

~~((3))~~ **(4) As the designated broker, must I hold a loan originator's license?** Yes. ~~((A designated broker approved by the department will be given a loan originator license if they do not already have one. If the designated broker already has a loan originator license, that license will be added to the licensed mortgage broker's list of loan originators.~~

~~(4))~~ **If you perform any of the functions of a loan originator, you must apply for and receive a loan originator license.**

(5) May I work as the designated broker for one licensee and a licensed loan originator for another licensee? Yes. If you want to originate loans for a mortgage broker different from the mortgage broker for whom you are the designated broker, you must ~~((apply to the department for an additional loan originator license))~~ amend your license information through the NMLSR to reflect the new relationship and the second company must sponsor you. Federal law may prohibit a mortgagee from hiring employees who work for more than one mortgage broker or who have multiple employers.

~~((5))~~ **(6) May a designated broker hire employees or independent contractors apart from the employees or independent contractors working for the mortgage broker licensee?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against a designated broker having employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

~~((6))~~ **(7) As a designated broker, what reporting requirements must I comply with?** See WAC 208-660-400, Reporting requirements.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-260 Designated brokers—Testing. (1) **Must I pass a test prior to becoming a designated broker?** Yes. You must take and pass ~~((a test prior to becoming a designated broker))~~ the Washington designated broker test. See subsection (3) of this section if you are going to originate loans. See WAC 208-660-250(1) if you have never been a designated broker.

(2) **If I am currently a designated broker, will I have to take the test again?** You will only have to ~~((take the designated broker test again))~~ retake tests if you stop working

~~((as a designated broker))~~ in the industry for five years or longer.

(3) **If I am currently a designated broker that originates loans, will I have to take the loan originator test and obtain a loan originator license?** ~~((No. The department will provide you with a loan originator license automatically because you are a designated broker. Your loan originator license will renew in conjunction with the renewal of the mortgage broker main office you work with. If you stop acting as a designated broker, your loan originator license will become inactive. See WAC 208-660-350(12). You can reactivate the license by becoming affiliated with the same or another licensed mortgage broker as a loan originator. If you do not renew your license as provided in WAC 208-660-350(19), the license will expire.))~~ Yes. You must take and pass the national and state NMLSR tests and obtain the necessary prelicensing education prior to acting as a loan originator.

(4) **Where can I get information about the designated broker test?** ~~((The department will publish the names and contact information of approved testing providers on the department web site.))~~ Go to the NMLSR web site for information about approved providers and course.

(5) **What topics may be covered in the designated broker test?** See WAC 208-660-600(3).

(6) **How soon after failing the designated broker test may I take it again?** After failing the test three consecutive times you must wait at least fourteen days before taking the test again.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-270 Designated brokers—Continuing education. (1) **Where can I get information about continuing education?** The ~~((department))~~ NMLSR will publish a list of approved courses and ~~((approved professional organizations offering courses of education))~~ providers. The ~~((course))~~ providers ~~((and professional organizations))~~ will have detailed information about the continuing education courses they offer. The department will accept the continuing education courses approved by the NMLSR for designated broker continuing education.

(2) **As a designated broker, how many ~~((clock))~~ hours of continuing education must I have?** The continuing education requirement for designated brokers ~~((will be in the form of approved courses))~~ is nine hours. ~~((While the individual clock hours may vary, you must complete three courses, of no less than three hours each, annually.))~~ You may receive one credit ~~((for one course))~~ by attending ~~((three))~~ one or more mortgage broker commission meeting(s).

(3) **As a designated broker, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) **If I teach ~~((an approved))~~ a continuing education course approved by the NMLSR, may I use my course as credit toward my annual continuing education requirement?** Yes. As an instructor of ~~((an))~~ a NMLSR approved

continuing education course, you may receive credit for your annually required designated broker continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

~~(5) ((How do I receive credit toward my continuing education requirement when I teach an approved continuing education course? When you renew your license and seek to get credit for continuing education, submit your approved continuing education course material for the course(s) you taught during the year. The department will credit you with completing two continuing education courses for each one approved course you teach.~~

~~(6)) Is ethics a required continuing education ((course)) topic for designated brokers? Yes. You must take ((an)) two hours of ethics ((continuing education course in your first)) each year ((of acting)) you act as a designated broker. ((However, if you teach an approved continuing education course on ethics during your first year working as a designated broker, teaching that course will satisfy your ethics continuing education requirement.~~

~~(7) As a designated broker, if I take a continuing education course approved for multiple jurisdictions, will the department accept it as part of my continuing education requirement? If any state has continuing education requirements or standards at least as stringent as Washington's, that state's notification of satisfactory completion of continuing education may be approved by the department as meeting the continuing education requirements under the act and these rules.~~

~~(8)) The topics for ethics include fraud, consumer protection, and fair lending issues. You must not take the same course in the same or successive years.~~

~~(6) If I accumulate more than the required designated broker continuing education course credits during a year, may I carry-over the excess credit to the next year? No. Continuing education credits only apply to the year in which they are taken.~~

~~((9)) (7) How do I provide the department with proof of the continuing education courses I have completed?~~

~~(a) For S.A.F.E. required courses, the course provider will report your continuing education to the NMLSR and DFI will have access to that information.~~

~~(b) For Washington specific courses, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.~~

~~((10)) (8) If I fail to complete the required continuing education, what happens to my license? When your license expires, the department will not renew it and you cannot continue conducting any business under the act. See WAC 208-660-350(20) to renew your license within ((forty-five days of it expiring.~~

~~(11) If the department reissues my license and the new expiration date does not coincide with the prior annual assessment period, will the department still give me credit for the continuing education courses I have taken in preparation for meeting the old annual assessment date? Yes. The department will give you credit for the continuing education courses you have taken. You will not~~

~~lose any credits due to the department's license expiration date adjustment)) two months after expiration.~~

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-300 Loan originators—General. (1) May I work as a loan originator for more than one mortgage broker? Yes.

(2) How do I obtain approval to work for more than one mortgage broker? Using the NMLSR, the company will submit a sponsorship request. The department will notify you ((when the relationship is approved. The department will notify you)) and others associated with your license upon approval of your request. The NMLSR will charge a fee for the additional relationship. See also WAC 208-660-550.

(3) If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker? No. You may take an application for only one mortgage broker at a time in any one transaction. Prior to presenting yourself to a specific borrower as licensed to originate mortgage loans, you must state who you represent. You must clearly identify the mortgage broker by name and address on the application, on all disclosures, authorization forms, and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

(4) May I work from any location when I am a licensed loan originator? No. You can only work from a licensed location. The licensed location can be the main company office, or any licensed branch.

(5) May a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with? No. Only the borrower may submit a written request to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.

(6) Who owns loan files? Loan files are the property of the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents. ~~((The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.~~

~~(6)) (7) May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions? Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:~~

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS, AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER, OR LENDER OF YOUR CHOOSING."

~~((7))~~ **(8) As a loan originator, may I be paid directly by the borrower for my services?** No. As a loan originator, you may not be paid any compensation or fees directly by the borrower. All compensation and fees must go through escrow.

~~((8))~~ **(9) May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. A loan originator may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

~~((9))~~ **(10) As a loan originator, may I be paid my portion of the mortgage broker fee directly from the loan closing?**

(a) Yes. If authorized in the mortgage broker's demand, the settlement service provider may pay your portion of the mortgage broker fee directly to you, provided however, that the HUD-1 or equivalent settlement statement has the following information:

(i) Your name as it appears on your loan originator license;

(ii) Your loan originator license ~~((number))~~ unique identifier; and

(iii) The amount to be paid to you by the settlement service provider.

(b) You must provide a copy of the HUD-1 or equivalent settlement statement to the licensed mortgage broker within twenty-four hours of your receipt of funds from closing.

~~((10))~~ **(11) May a loan originator bring a lawsuit against a borrower for the collection of compensation?** No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

~~((11))~~ **(12) May I work as a licensed loan originator for a mortgage broker located out of the state?** Yes. You may originate loans for any mortgage broker ~~((you are affiliated with))~~ who sponsors you and who is licensed under Washington law.

~~((12))~~ **(13) May a licensed loan originator hire employees or independent contractors to assist in the mortgage broker licensee's activities?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

~~((13))~~ **(14) Do loan processors have to be licensed as loan originators?** W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt mortgage broker and do not hold themselves out as able to conduct the activities of a mortgage broker or loan originator. Independent contractor loan processors must be licensed as a

mortgage broker, mortgage broker branch office, or loan originator.

~~((14))~~ **(15) May loan processors work on files from an unlicensed location?** A loan processor may work on loan files from an unlicensed location under the following circumstances:

(a) The loan files are in electronic format and the loan processor accesses the files directly from the licensed mortgage broker's main computer system. The loan processor may not maintain any electronic files on any computer system other than the system belonging to the licensed mortgage broker.

(b) The loan processor does not conduct any of the activities of a licensed loan originator.

(c) The licensed mortgage broker must have safeguards in place for the computer system that safeguards borrower information.

AMENDATORY SECTION (Amending WSR 09-12-111, filed 6/2/09, effective 7/3/09)

WAC 208-660-350 Loan originators—Licensing. (1) How do I apply for a loan originator license? Your application consists of an on-line filing through the NMLSR and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLSR system. You also must:

(a) **Be eighteen years or older.**

(b) **Have a high school diploma, an equivalent to a high school diploma, or three years experience in the industry. The experience must meet the criteria in WAC 208-660-250 (1)(e)(i) and (ii).**

(c) **Pass a licensing test.** You must take and pass ~~((a test that assesses your knowledge of the mortgage business and related regulations))~~ the national and state components of the NMLSR tests. See WAC 208-660-360, Loan originators—Testing.

(d) **Submit an application.** You must ~~((complete))~~ submit an on-line application ((in a form prescribed by the director)) through the NMLSR.

(e) **Prove your identity.** You must provide information to prove your identity.

(f) **Pay the application fee.** You must pay an application fee for your application, as well as an administrative fee to the NMLSR. See WAC 208-660-550, Department fees and costs.

(2) In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) License suspensions or revocations.

(i) You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked within five years of the filing of the present application.

(ii) You are not eligible for a loan originator license if you have ever had a license issued under the Mortgage Broker Practices Act or the Consumer Loan Act or any similar state statute revoked.

(iii) For purposes of this subsection, a "similar statute" may include states involving other financial services, such as insurance, securities, escrow or banking.

(c) Criminal history.

(i) You are not eligible for a loan originator license if you have ever been convicted of a felony involving an act of fraud, dishonesty, breach of trust, or money laundering.

(ii) You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony not involving fraud, dishonesty, breach of trust, or money laundering, within seven years of the filing of the present application.

(d) Financial background.

(i) The department will investigate your financial background including a review of your credit report to determine if you have demonstrated financial responsibility including, but not limited to, an assessment of your current outstanding judgments (except judgments solely as a result of medical expenses); current outstanding tax liens or other government liens and filings; foreclosure within the last three years; or a pattern of seriously delinquent accounts within the past three years.

(ii) Specifically, you are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

~~((ii) You may not be eligible to receive a loan originator license if your financial background during the two years prior to the appointment application shows a history of unpaid debts.))~~

(3) What will happen if my loan originator license application is incomplete? After submitting your on-line application through the NMLSR, the department will notify you of any application deficiencies.

(4) How do I withdraw my application for a loan originator license? Once you have submitted the on-line application through NMLSR you may withdraw the application through NMLSR. You will not receive a refund of the NMLSR application fee but you may receive a partial refund of your licensing fee if the fee exceeds the department's actual cost to investigate the license application.

(5) When will the department consider my loan originator license application to be abandoned? If you do not respond ~~((within ten business days to))~~ as directed by the department's ((second)) request for information and within fifteen business days, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply

by submitting a new application package and new application fee.

(6) What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied? Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request a hearing. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied. See also WAC 208-660-009.

(7) How will the department provide me with my loan originator license? The department may use any of the following methods to provide you with your loan originator license:

(a) ~~((A printed paper license sent to you by regular mail.))~~ (b) A license sent to you electronically that you may print.

~~((c))~~ (b) A license verification available on the department's web site and accessible for viewing by the public.

(8) May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else? No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

(9) How do I change information on my loan originator license? You must submit an amendment to your license through the NMLSR. You may be charged a fee.

(10) What is an inactive loan originator license? When a licensed loan originator is not sponsored by a licensed or exempt company, the license is inactive. ~~((When a person holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator.~~

~~((11) When my loan originator license is inactive, am I subject to the director's enforcement authority? Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.~~

~~((12))~~ If a licensed loan originator works for a consumer loan company (chapter 31.04 RCW) as a W-2 employee, they may continue to do business under their inactive license until June 30, 2010, or until the company goes onto the NMLSR and sponsors their license.

(11) When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year? Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

~~((13) May I originate loans from a web site when my license is inactive? No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive.~~

~~((14))~~ **(12) How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the NMLSR. The department will notify you and all the companies you are working with of the new working relationship if approved.

~~((15))~~ **(13) When may the department issue interim loan originator licenses?** To prevent an undue delay, the

director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license.

~~((For purposes of this section, undue delay includes the adjustment of license expiration or renewal dates to coincide with the implementation of systems designed to assist in uniformity and provide data repositories of licensing information.))~~

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the results of the applicant's background check.

~~((16))~~ **(14) When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

~~((17))~~ **(15) How do I renew my loan originator license?**

(a) Before the license expiration date you must renew your license through the NMLSR. Renewal consists of:

- (i) Pay the annual assessment fee; and
- (ii) Meet the continuing education requirement.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

~~((18))~~ **(16) If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal ~~((within forty-five days of the expiration date))~~ on or before February 28th each year, you may renew an existing license. However, if you renew your license during this ~~((forty-five day))~~ two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection ~~((17))~~ **(15)** of this section for the license renewal requirements.

During this ~~((forty-five day))~~ two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp ~~((within the forty-five days))~~ prior to March 1st each year. If you fail to comply with the renewal request requirements ~~((within the forty-five days))~~ prior to March 1st, you must apply for a new license.

~~((19))~~ **(17) If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

~~((20))~~ **(18) May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

~~((21))~~ **(19) What happens to the loan applications I originated before my loan originator license expired?** Existing loan applications must be processed by the licensed mortgage broker or another licensed loan originator working for the mortgage broker.

~~((22))~~ **(20) May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires through the NMLSR.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

~~((23))~~ **(21) Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

~~((24))~~ **(22) If I operate as a loan originator on the internet, must I display my ~~((license))~~ unique identifier number on my web site?** Yes. You must display your ~~((license))~~ NMLSR unique identifier number, and the ~~((license))~~ NMLSR unique identifier number and name as it appears on the license of the licensed mortgage broker you represent, on the web site.

~~((25))~~ **(23) Must I include my ~~((loan originator license))~~ NMLSR unique identifier number on any documents?** You must include your ~~((license))~~ unique identifier number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

~~((26))~~ **(24) When must I disclose my loan originator ~~((license))~~ unique identifier number?** In the following situations you must disclose your loan originator ~~((license))~~ unique identifier number and the name and ~~((license))~~ unique identifier number of the mortgage broker you are associated with:

- (a) When asked by any party to a loan transaction, including third party providers;
- (b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;
- (c) When asked by any person who contacts you about a residential mortgage loan;
- (d) When taking a residential mortgage loan application.

~~((27))~~ **(25) May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

(26) Will I have to obtain an individual bond if the company I work for is exempt from licensing? Reserved.

NEW SECTION

WAC 208-660-355 Loan originators—Prelicensing education. (1) Must I obtain prelicensing education before I will be given a license? Yes. You must get 20 hours of prelicensing education from an NMLSR approved

provider. The preclicensing education must include at least three hours of federal law and regulations; three hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; two hours related to lending standards for the nontraditional mortgage product marketplace; and at least two hours of training specifically related to Washington law.

(2) **Who provides preclicensing education?** The NMLSR approves course providers and courses for preclicensing education. See the NMLSR Resource Center for a list of approved providers and courses.

(3) **Must I take continuing education in the year I take the preclicensing education?** No. You will not have a continuing education requirement in the year you meet the preclicensing requirement.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-360 Loan originators—Testing. (1) **Must I pass a test prior to becoming a loan originator?** Yes. You must take and pass ~~((a))~~ the NMLSR national and state tests prior to becoming a loan originator. You must receive a score of seventy-five percent or higher to pass the test.

(2) **Where may I find information about the loan originator test?** ~~((The department will publish the names and contact information of approved testing providers on the department web site.))~~ The NMLSR contracts for its test provider. You will find information on the test provider on the NMLSR web site at www.stateregulatoryregistry.org.

(3) **How much does the loan originator test cost?** Testing costs are set by contract between the test provider and the ~~((department))~~ NMLSR and may be modified from time to time. The department will publish the current testing fee ~~((with the testing provider contact information))~~ on its web site or you may find it on the NMLSR web site at www.stateregulatoryregistry.org.

(4) **How do I register to take the loan originator test?** The department will ~~((publish registration information with the testing provider contact information))~~ provide a link to the NMLSR test provider on its web site.

(5) **What topics may be covered in the loan originator test?** At a minimum, the test topics will include ethics, federal and state law and regulation pertaining to mortgage origination, federal and state law and regulation on fraud, consumer protection, nontraditional mortgage products, and fair lending. ~~((See WAC 208-660-600.))~~

(6) **After passing the loan originator test, will I have to take it again?** You must retake the loan originator test if you have not been a loan originator within the past five years.

(7) **If I have taken and passed the state loan originator test, must I take the NMLSR state test?** If you are licensed on or before July 30, 2009, and you took your loan originator test after May 2007, you will not be required to take the NMLSR state test if you remain licensed.

(8) **How soon after failing the loan originator test may I take it again?** ~~((After taking and failing the test three consecutive times, you must then wait at least fourteen days before taking the test again.))~~ An individual may retake a test

three consecutive times with each consecutive taking occurring at least thirty days after the preceding test. After failing three consecutive tests, an individual must wait at least six months before taking the test again.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-370 Loan originators—Continuing education. (1) **How many hours of continuing education must I have each year to renew my license?**

(a) You must have at least eight hours to satisfy the federal requirement. The eight hours of education must include three hours of federal law and regulations; two hours of ethics on fraud, consumer protection, and fair lending issues; and two hours on lending standards for the nontraditional mortgage product marketplace.

(b) You must have at least one additional hour of continuing education to satisfy the Washington requirement.

(2) **Who approves the continuing education for loan originators?**

(a) The NMLSR approves all education that meets the federal requirement.

(b) Washington has approved providers and courses that can provide education to meet the Washington requirement until the end of 2010.

(3) **Where may I get information about continuing education for loan originators?**

(a) The ~~((department will publish a list of the approved professional organizations that provide continuing education, and approved individual courses on the department's web site. The professional organizations will have detailed information about the continuing education courses they offer. See also WAC 208-660-600.~~

~~((2))~~ **How many clock hours of loan originator continuing education must I have each year?** You must complete a minimum of eight hours annually.

~~((3))~~ NMLSR web site will have information about the approved NMLSR courses.

(b) Washington will have information about the Washington approved courses and providers meeting the Washington requirement on its web site through 2010.

(4) **As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

~~((4))~~ (5) **If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement?** Yes. Up until December 31, 2009, as an instructor of an approved continuing education course, you may receive two continuing education credits for ~~((your annually required loan originator continuing education courses from the))~~ each course~~((s))~~ hour you teach. ~~((You will receive credit at the rate of one course taught equaling two continuing education course credits.~~

~~((5))~~ If approved as an NMLSR course provider you may receive two credit hours for each one hour taught.

(6) How do I receive credit toward my continuing education requirement when I teach an approved continuing education course? When you renew your license at the end of 2009 and seek to get credit for continuing education, submit to the department documentation evidencing approval of the continuing course you taught. The department will credit you with completing two continuing education courses for each one approved course you teach.

~~((6))~~ **(7) Is ethics a required continuing education course for loan originators?** Yes. You must take at least two ethics hours annually. The annual ethics credits must include the topics of fraud, consumer protection, and fair lending.

~~((7))~~ **(8) If I take a loan originator continuing education course approved ~~((for multiple jurisdictions,))~~ by the NMLSR will the department accept it as part of my continuing education requirement?** Yes. ~~((There will be))~~ The NMLSR approved continuing education courses ~~((that meet the requirements for all states))~~ will satisfy the federal requirement. Individual states will have individual state specific requirements.

~~((8))~~ **(9) If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

~~((9))~~ **(10) If I fail to complete the required continuing education, what happens to my loan originator license?** When your license expires, the department will not renew it, and you cannot continue conducting any business under the act. See WAC 208-660-350 ~~((48))~~ (XX) to renew your license within ~~((forty five days))~~ two months of it expiring. See also, WAC 208-660-350 ~~((49))~~ (XX).

~~((10))~~ **How will I know which courses and providers satisfy the continuing education requirement?** The department will approve continuing education courses offered by course providers and will approve professional organizations offering courses. The providers, courses, and contact information will be listed on the department's web site.)

(11) How do I provide the department with proof of the continuing education courses I have completed? For the federal continuing education, the NMLSR will provide the process for receiving and calculating your continuing education. For Washington specific continuing education, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

~~((12))~~ **If the department reissues my license and the new expiration date does not coincide with the prior annual assessment period, will the department still give me credit for the continuing education courses I have taken in preparation for meeting the prior annual assessment date?** Yes. The department will give you credit for the continuing education courses you have taken. You will not lose any credits due to the department's license expiration date adjustment.)

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-400 Reporting requirements and notices to the department. (1) **As a licensed mortgage broker, what annual report must I provide to the department?** You must file a mortgage broker annual report, in a form prescribed by the director. The report must include:

(a) The total number of residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year; and

(b) The total dollar volume (principal loan amounts) of the residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year. In the case of an open or closed end home equity line of credit, the amount to be reported is the loan or line of credit limit.

(c) Beginning in 2011, instead of the mortgage broker annual report you must file the quarterly NMLSR call report.

(2) **When must I provide the mortgage broker annual report to the department?** You must provide the completed report to the department by March 31st of each year. ~~((The first annual report, for activity occurring in 2007, must be received by the department before or on March 31, 2008.))~~

(3) **What period of time must the mortgage broker annual report cover?** The mortgage broker annual report must cover the prior calendar year from January 1st to December 31st.

(4) **What action will the department take if I fail to file my mortgage broker annual report?**

(a) When the report is over thirty days late, the department may begin an enforcement action against you.

(b) When your license is due for renewal, the department will not renew it if you have not filed your annual report.

(5) ~~((How do I notify the department when I want to change information on my mortgage broker or loan originator license?~~ You must file a license amendment through the NMLSR within thirty days of the change occurring.

~~(6) As a designated broker or loan originator, must I notify the department if I change my residential address or telephone number?~~ Yes. Whether your license is active or inactive, you must notify the department, through the NMLSR, within thirty days of a change in your residential address and telephone number.

~~(7) As a designated broker or loan originator must I notify the department if I change my name?~~ Yes. Whether your license is active or inactive, you must notify the department, through NMLSR, within thirty days of a name change.

~~(8))~~ **What are my quarterly filing requirements?**

(a) In addition to any other annual financial statement you must file annual quarterly reports through the NMLSR. The NMLSR will prescribe the content and form of the report.

(b) The reports are due within forty-five days from the end of each quarter:

- First quarter - May 15th;
- Second quarter - August 14th;
- Third quarter - November 14th;
- Fourth quarter - February 14th.

(c) If you fail to submit the report within forty-five days of the end of the quarter as indicated in subsection (2) of this

section, you will not be able to renew your license or registration.

(6) Will the filing of the fourth quarter call report satisfy the annual report requirement? The director may accept the fourth quarter call report in lieu of your mortgage broker annual report.

(7) As a licensed mortgage broker what are my reporting responsibilities when something of significance happens to my business?

(a) Prior notification required. You must notify the director through amendment to the NMLSR twenty days prior to a change of:

(i) Principal place of business or any of its branch offices;

(ii) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(iii) Legal or trade name; or

(iv) A change of ownership control of ten percent or more. The department will consider the qualifications of the new people and notify you whether or not the proposed change is acceptable. You may have to submit fingerprint cards for new controlling people directly to DFI.

(b) Post notification within ten days. You must notify the director through the NMLSR or in writing to the director within ten days after an occurrence of any of the following:

(i) Change in mailing address, telephone number, fax number, or e-mail address;

(ii) Cancellation or expiration of its Washington state master business license;

(iii) Change in standing with the Washington secretary of state;

(iv) Change in its standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(v) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340;

(vi) Receipt of notification of cancellation of your surety bond;

(vii) Receipt of notification of license revocation proceedings against you in any state;

(viii) If you, or any officer, director, or principal is convicted of a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(ix) Name and mailing address of your registered agent if you are out-of-state.

(c) Post notification within twenty days. You must notify the director in writing within twenty days after the occurrence of any of the following developments:

(i) The filing of a felony indictment or information related to lending or brokering activities against you, or any officer, board director, or principal, or an indictment or information involving dishonesty against you, or any officer, board director, or principal;

(ii) The receipt of service of notice of the filing of any material litigation against you; or

(iii) The change in your residential address or telephone number.

(8) Must I notify the department of the physical address of my mortgage broker books and records? Yes. You must provide the physical address of your mortgage bro-

ker books and records in your initial license application through NMLSR. If the location of your books and records changes, you must provide the department, through the NMLSR, with the new physical address within five business days of the change.

(9) Must I notify the department if my designated broker leaves, or is no longer my designated broker? Yes. You must notify the department, through NMLSR, within five business days of the loss of or change of status of your designated broker. See WAC 208-660-180(3).

~~**(10) (When and how do I change the information about my registered agent?**~~ Within five business days of the change, you must file a statement of change through the NMLSR.

~~**(11) If I am a registered agent under the act, must I notify the department if I resign?**~~ Yes. You must provide the department with your statement of resignation letter at least thirty-one days prior to the intended effective date. You must also provide a copy of the resignation letter to the licensed mortgage broker. The department will terminate your appointment thirty-one days after receiving your resignation letter.

~~**(12) Must I notify the department if I change the business structure of my company? When must I notify the department?**~~ If the change to your business adds officers, directors, or principal stockholders owning ten percent or more of the company, you must notify the department, through the NMLSR, at least thirty days prior to the change. The department will consider the qualifications of the new people and notify you whether or not the proposed change is acceptable. You may have to submit fingerprint cards for new controlling people directly to DFI.

~~**(13) (11) What are my responsibilities when I sell my business?**~~

(a) At least thirty days prior to the effective date of sale, you must notify the department of the pending sale by completing the following: Update and file all required information through the NMLSR for your main and any branch offices, including updating information about the location of your books and records.

(b) You must give written notice to borrowers whose applications or loans are in process, advising them of the change in ownership.

(c) You must give written notice to third party providers that have or will provide services on loans in process, and all third-party providers you owe money to, bringing accounts payable current.

~~**(d) (Surrender all physical licenses to DFI.**~~

~~**(e)**~~ You must reconcile the trust account and return any funds to the borrowers or others to whom they belong, or transfer funds into a new trust account at the borrower's direction. If excess funds still remain and are unclaimed, follow the procedures provided by the department of revenue's unclaimed property division.

~~**(14) (12) Must I notify the department if I cease doing business in this state?**~~ Yes. You must notify the department within twenty days after you cease doing business in the state by updating your record and filing a surrender through the NMLSR, and filing your Mortgage Broker annual report directly with DFI.

~~((15))~~ **(13) Must I notify the department of changes to my trust account?** Yes. You must notify the department within five business days of any change in the status, location, account number, or other particulars of your trust account, made by you or the federally insured financial institution where the trust account is maintained. A change in your trust account includes the addition of a trust account.

~~((16) Must I notify the department of changes to my Washington master business license?~~ Yes. You must notify the department within five business days of any changes to your Washington master business license made by you or the agency issuing the license.

~~(17) Must I notify the department of changes to my standing with the Washington secretary of state?~~ Yes. You must notify the department within five business days of any changes to your standing with the Washington secretary of state made by you or the secretary of state.

~~(18))~~ **(14) What must I do if my licensed mortgage broker company files for bankruptcy?**

(a) ~~((Chapter 7 bankruptcy. If you are a licensed mortgage broker that files for a Chapter 7 bankruptcy, you must:~~

~~(i))~~ Notify the director ~~((and surrender your mortgage broker license))~~ within ten business days ~~((of))~~ after filing the bankruptcy.

~~((ii) Provide the department with a mortgage broker annual report for the calendar year preceding the filing within ten business days of filing the bankruptcy.~~

~~(b) Chapter 11 bankruptcy. If your licensed mortgage broker company files for a Chapter 11 bankruptcy, you must notify the director within ten business days of filing the bankruptcy.~~

~~(c) Chapter 13 bankruptcy. If your licensed mortgage broker company files for a Chapter 13 bankruptcy, you must:~~

~~(i) Notify the director and surrender your mortgage broker license within ten business days of filing the bankruptcy.~~

~~(ii) Provide the department with a mortgage broker annual report for the calendar year preceding the filing within ten business days of filing the bankruptcy.~~

~~(19))~~ **(b) Respond to the department's request for information about the bankruptcy.**

(15) If I am a designated broker and file for personal bankruptcy, what are my reporting responsibilities? A designated broker must notify the department in writing within ten business days of filing for bankruptcy protection.

~~((20))~~ **(16) If I am a designated broker and file for personal bankruptcy, what action may the department take?** The director may require the licensed mortgage broker to replace you with another designated broker.

~~((21))~~ **(17) If I am a loan originator and file for personal bankruptcy, what are my reporting responsibilities?** A licensed loan originator must notify the director in writing within ten business days of filing for bankruptcy protection.

~~((22))~~ **(18) If I am a loan originator and file for personal bankruptcy, what action may the department take?** Depending on the circumstances, the director may revoke or condition your license.

~~((23))~~ **(19) When may I apply for a license after surrendering one due to my personal bankruptcy filing?** If you surrendered your license, you may apply for a license at

any time. However, the department may deny your license application for three years after the bankruptcy has been discharged provided that no new bankruptcies have occurred or are in progress.

~~((24) When may I apply for a license after the department has revoked my license due to my personal bankruptcy filing?~~ The director will not issue a license to any person who has had their license revoked within five years of applying. While you may apply at any time, the application will be denied until the five years have elapsed. For this reason it is important for you to consider a surrender of your license rather than allowing it to be revoked.

~~(25))~~ **(20) Who in the mortgage broker company must notify the department if they are charged with or convicted of a crime?** Licensees, whether on active or inactive license status, must notify the department in writing within ten business days of being:

(a) Charged by indictment or information with any felony, or a gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(b) Convicted of any felony, or any gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(c) Convicted of any felony involving fraud, dishonesty, breach of trust, or money laundering in any jurisdiction.

(d) Convicted outside of Washington for any crime that if charged in Washington would constitute a felony, or gross misdemeanor for dishonesty or financial misconduct.

~~((26))~~ **(21) Who in the mortgage broker company must notify the department if they are the subject of an administrative enforcement action?** Licensees, whether holding active or inactive licenses, must notify the department in writing within ten business days of the occurrence if:

(a) Charged with any violations by an administrative authority in any jurisdiction; or

(b) The subject of any administrative action, including a license revocation action, in any jurisdiction.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-410 Trust accounting. (1) **What are trust funds?** Trust funds are all funds received from borrowers, or on behalf of borrowers, for payments to third-party providers. The funds are considered to be held in trust immediately upon receipt. Trust funds include, but are not limited to, borrower deposits for appraisal fees, credit report fees, title report fees, and similar fees to be paid for services rendered by third-party providers in the borrower's loan transaction.

(2) **Are lock-in agreement fees paid by a borrower to the mortgage broker considered trust funds?** Yes, these fees are considered trust funds and must be deposited in the mortgage broker's trust account, unless the check is made payable to the lender. If the check is made payable to the lender, the mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the lender pursuant to any agreement with the lender, or within three business days of receiving the funds.

(3) Must I have a trust account if I receive funds from borrowers for the payment of third-party providers?

Yes. All funds received from borrowers, or on behalf of borrowers, for payments to third-party providers are trust funds and are considered held in trust immediately upon receipt. You must deposit those funds in a trust account in your name as it appears on your license, or if exempt in the name of the exempt broker, in a federally insured financial institution's branch located in this state within three business days of receiving the funds. The funds must remain on deposit until disbursed to the third-party provider except as permitted by the act and these rules. The mortgage broker is responsible for depositing, holding, disbursing, accounting for and otherwise safeguarding the funds in accordance with the act and these rules.

(4) Must I have a trust account if I do not receive any trust funds? No. If you do not accept trust funds at any point before, during, or after a loan transaction, a trust account is not required.

(5) Must I have a trust account if I am a mortgage broker exempt from licensing under the act? Mortgage brokers exempt under RCW 19.146.020 (1)(a), (b), (c), (d), ~~((f), (h))~~ and (g) are not required to have a trust account even if they receive trust funds. ~~(Mortgage brokers exempt under RCW 19.146.020 (1)(e) and (g), and 19.146.020(4) are required to comply with RCW 19.146.050 and these rules.)~~

(6) What does it mean to receive trust funds "on behalf of borrowers"? Trust funds are identified by purpose rather than source. Funds received by the mortgage broker from the borrower for the payment of third-party provider services are trust funds. Funds received from relatives of borrowers, the seller in a real estate transaction, or an escrow company or lender reimbursing a mortgage broker for payments advanced are trust funds. Funds deposited to a borrower's subaccount by the mortgage broker as an advance are funds received on behalf of the borrower and are trust funds.

(7) What forms of payment must trust funds take? Trust funds may be in any form that allows deposit into the trust account, including, but not limited to, cash, check, or any electronic transmission of funds, including, but not limited to bank wires, ACH authorization, credit card or debit transactions, or on-line payments through a web site.

(8) How do I receive trust funds through electronic transmission?

(a) The trust funds must be transmitted directly from the borrower, or other person on behalf of the borrower, into your trust account, in a federally insured financial institution located in the state of Washington.

(b) Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity. Electronic transmissions must be included in the monthly trust account reconciliation.

(9) When must I deposit trust funds? You must deposit all funds you receive, that are required to be held in trust, before the end of the third business day following your receipt of the funds.

(10) How must I document deposits?

(a) You must document all deposits to the trust account(s) by having a bank deposit slip which has been val-

idated by bank imprint, or an attached deposit receipt which bears the signature of an authorized representative of the mortgage broker indicating that the funds were actually deposited into the proper account(s).

(b) You must post the deposit of funds by wire transfer or any means other than cash, check, or money order in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the federally insured financial institution or transferring entity. You must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

(11) May I deposit funds other than trust funds into my trust account? You may advance your own funds into the trust account(s) to prevent a disbursement in excess of an individual borrower's subaccount, provided that the exact sum of deficiency is deposited and detailed records of the deposit and its purpose are maintained in the trust ledger and the trust account(s) check register. Any deposits of your own funds into the trust account(s) must be held in trust in the same manner as funds paid by borrowers for the payment of third-party providers and treated accordingly in compliance with the act and these rules.

(12) May a loan originator accept trust funds? A loan originator may not solicit or receive fees for a third-party provider of goods or services except that a loan originator may transfer funds from a borrower to a licensed mortgage broker, exempt mortgage broker, or third-party provider, if the loan originator does not deposit, hold, retain, or use the funds for any purpose other than the payment of bona fide fees to third-party providers. The funds must be in the form of a check made payable to a licensed mortgage broker, exempt mortgage broker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

(13) May a mortgage broker accept and hold a check from a borrower that is made payable to a third-party provider and intended to be used to pay for third-party provider services without depositing the check into a trust account? Yes. The check must be payable to a specific third-party provider. The payee line may not be left blank. The mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the third-party provider within the time frames and requirements established in RCW 19.146.020(12).

(14) May a loan originator accept and hold a check from a borrower that is made payable to a third party and intended to be used to pay for third-party provider services? A loan originator may only hold a borrower's check for the purpose of transferring the funds from the borrower to the licensed mortgage broker, exempt mortgage broker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

(15) Is a lender or mortgage broker, or agent or employee of a lender or mortgage broker, considered a

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

(16) If a mortgage broker receives funds from a third party, such as a closer, or a lender, as reimbursement for advancements for the payment of third-party provider services, are these funds considered trust funds? Yes, all funds received by the mortgage broker on behalf of the borrower for the payment of third-party providers are considered trust funds.

(17) What books and records must I keep regarding my trust account? You must maintain as part of your books and records:

(a) A trust account deposit register and copies of all validated deposit slips or signed deposit receipts for each deposit to the trust account;

(b) A record of all invoices for payments made on behalf of a borrower including but not limited to payments for appraisals, credit reports, title cancellations, and verification of deposit;

(c) A ledger for each trust account. Each ledger must contain a separate subaccount ledger sheet for each borrower from whom funds are received for payment of third-party providers. Each receipt and disbursement pertaining to such funds must be posted to the ledger sheet at the time the receipt or disbursement occurs. Entries to each ledger sheet must show the date of deposit, identifying check or instrument number, amount and name of remitter. Offsetting entries to each ledger sheet must show the date of check or electronic transmission, check number or identifying electronic transmission number, amount of check or electronic transmission, name of payee and invoice number if any. Canceled or closed ledger sheets must be identified by time period and borrower name or loan number;

(d) A trust account check register consisting of a record of all deposits to and disbursements from the trust account whether by check or electronic transmission;

(e) Reconciled trust account bank statements;

(f) A monthly trial balance of the ledger of trust accounts, and a reconciliation of the ledger of trust accounts with the related bank statement(s) and the related check register(s). The reconciled balance of the trust account(s) must at all times equal the sum of:

(i) The outstanding amount of funds received from or on behalf of borrowers for payment of third-party providers; and

(ii) The outstanding amount of any deposits into the trust fund of the mortgage broker's own funds in accordance with subsection (11) of this section; and

(g) A printed and dated source document file to support any changes to existing accounting records.

Any alternative records you propose for use must be approved in advance by the director.

(18) What is a "subaccount"? A "subaccount" is a recordkeeping segregation of each borrower's funds held in the mortgage broker's single deposit trust account that holds the aggregated funds for the mortgage broker's clients. Alternatively, the mortgage broker may establish a separate bank account for each borrower. When added together, individual

subaccounts must exactly equal the total of funds held in trust.

(19) May I transfer funds between a borrower's subaccounts? If a borrower has more than one loan application pending with a mortgage broker, the mortgage broker must maintain a separate subaccount ledger for each loan application. The borrower must consent to any transfer of trust account funds between the individual subaccounts associated with these pending loan applications. The consent must be maintained in the borrower's loan file and referenced in the borrower's subaccount ledger sheets.

(20) May I be reimbursed for funds that I have advanced into the trust account?

(a) If you deposit your own funds into the trust account as provided in subsection (11) of this section, you may receive reimbursement for such deposit at closing into your general business bank account provided:

(i) All third-party provider's charges associated with your deposit have been paid;

(ii) The HUD-1 Settlement Statement provided to the borrower clearly reflects the line item, "deposit paid by broker," and the amount deposited;

(iii) The HUD-1 Settlement Statement provided to the borrower clearly reflects the line item, "reimbursement to broker for funds advances," and the amount reimbursed; and

(iv) Any funds disbursed by escrow at closing to you for payment of unpaid third-party providers' expenses charged or to be charged to you are deposited into the borrower's subaccount of the trust account.

(b) If you advance your own funds into the trust account as provided in subsection (11) of this section, and the loan does not close, the funds remain the property of the borrower.

(21) May I disburse trust funds through electronic transmission? Yes. You may disburse trust funds from the trust account by electronic transmission. Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

Electronic transmission(s) must be included in the monthly trust account reconciliation.

(22) How must I handle trust account disbursements?

(a) Disbursements from trust accounts may be by electronic transmission or manual check. If a manual check is used, the check must on its face identify the specific third-party provider transaction or borrower refund, except as specified in this section. If an electronic transmission is used, each transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

(b) Disbursements may be made from the trust account(s) for the payment of bona fide third-party providers' services rendered in the course of the borrower's loan origination, if the borrower has consented in writing to the payment. Such consent may be given at any time during the application process and in any written form, provided that it contains sufficient detail to verify the borrower's consent to the use of trust funds. No disbursement on behalf of the borrower may be made from the trust account until the borrower's or broker's deposit of sufficient funds into the trust account(s) is available for withdrawal.

(23) **What are the requirements concerning the checks I write from my trust account?** You must use checks that are prenumbered by the supplier (printer) unless you use an automated check writing system which numbers all checks in sequence. All trust account checks must have the words "trust account" on the front. If you use an automated program that writes checks, the check number must appear in the magnetic coding which also identifies the account number for readability by federally insured financial institution computers and the program may assign suffixes or subaccount codes before or after the check number for identification.

(24) **What disbursements are prohibited?** Among other prohibited disbursements, no disbursement may be made from a borrower's subaccount:

(a) In excess of the amount held in the borrower's subaccount (commonly referred to as a disbursement in excess);

(b) In payment of a fee owed to any employee of the mortgage broker or in payment of any business expense of the mortgage broker;

(c) For payment of any service charges related to the management or administration of the trust account(s);

(d) For payment of any fees owed to the mortgage broker by the borrower, or to transfer funds from the subaccount to any other account; and

(e) For the payment of fees owed to the broker under RCW 19.146.070 (2)(a).

(25) **When may a mortgage broker transfer excess funds from a borrower subaccount?**

(a) A mortgage broker may, in the case of a closed and funded transaction, transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account in full or partial payment of fees owed to the mortgage broker upon determination that all third-party providers' expenses have been accurately reported in the loan closing documents and have been paid in full, and that the borrower has received credit in the loan closing documents for all funds deposited in the trust account.

(b) Each mortgage broker must maintain a detailed audit trail for any disbursements from the borrower's subaccount(s) into the mortgage broker's general business bank account, including documentation in the form of a final HUD-1 Settlement Statement form showing that credit has been received by the borrower in the closing and funding of the transaction. The disbursements must be made by a check drawn or electronic transmission on the trust account and deposited directly into the mortgage broker's general business bank account.

(26) **What if there are funds remaining in a borrower's subaccount after all third-party providers have been satisfied?** Any remaining funds in a borrower's subaccount must be returned to the borrower within five business days of the determination that all payments to third-party providers owed by the borrower have been satisfied.

(27) **What if the mortgage broker cannot locate a borrower in order to remit excess funds in the borrower's subaccount?** The mortgage broker must follow the procedures provided by the department of revenue's unclaimed property division to handle any trust funds held for a borrower who cannot be located.

(28) **Is a mortgage broker responsible for all disbursements out of the trust account?** Yes. A mortgage broker is responsible for all disbursements from the trust account whether disbursed by personal signature, signature plate, signature of another person authorized to act on its behalf, or any authorized electronic transfer.

(29) **If a mortgage broker receives a check from closing that includes both the mortgage broker's fee and a payment or payments for third-party providers, how does the mortgage broker lawfully handle the funds?** The mortgage broker may either:

(a) Split the check at the teller window at the time of deposit and route any moneys due to third-party providers to an approved trust account, and moneys due to its general account; or

(b) Deposit the entire check into the trust account. After paying any and all moneys due to third-party providers and insuring that the borrower has received credit for all funds deposited in the trust account, the mortgage broker may transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account. This amount must be equal to the fee disclosed on the final HUD-1 Settlement Statement, less any amounts already received by the mortgage broker, and must be duly recorded in the trust subaccount ledger. The mortgage broker may not transfer moneys from the trust account to its general business bank account before the loan is closed.

(30) **Is the mortgage broker allowed to transfer funds out of the trust account for any reason other than for payment to a third-party provider?** The mortgage broker may transfer the borrower's funds out of the trust account by check back to the borrower or to any party so instructed in writing by the borrower. A mortgage broker, when complying with these rules, may transfer excess trust funds to itself; however, failure to comply with these rules is a serious violation punishable by imprisonment, other penalties, or both as authorized by the act.

(31) **How do I pay a third-party provider's fees if escrow disburses the funds to me and I don't have a trust account?** You must return the funds to escrow for proper disbursement, or maintain a trust account for such incidental occurrences.

(32) **If I choose not to have a trust account, and a closing agent did not follow written instructions and issued a check to me after closing that has fees in it for third-party providers, may I deposit the check into my business account and pay those third-party providers immediately?** No. You must not deposit those fees into your business account under any circumstances.

(33) **After closing, if an escrow agent, title company, or lender wires funds into my general account that are intended for third-party providers, will the department take action against me for a violation of the trust fund requirements?** Provided that the number of times funds are mistakenly wired to your general account is immaterial compared to the total number of loans you closed and you can provide proof that you took the following steps, the department will not take action against you for a violation of the trust account requirements under RCW 19.146.050:

(a) You gave the escrow agent, title company, or lender clear written instruction not to send funds intended for third-party providers to you; and you forwarded all funds mistakenly wired to your general account to the proper party on or before the end of the third business day after receipt; or

(b) You provided accurate wire instruction for the trust account and the funds transmitter caused the error by accidentally placing the funds into your general account, and within one day you transfer all trust funds to your trust account.

(34) How does a mortgage broker disburse funds from a subaccount when there is more than one borrower due to receive those funds? When disbursing funds back to the borrowers, a mortgage broker must make the trust account disbursement check payable to all borrowers with the term "and" written between each borrower's name. When disbursing funds to another party instructed by the borrowers, all borrowers must sign the written notice of instruction.

(35) May mortgage brokers using an interest-bearing trust account keep the interest? No. Mortgage brokers using an interest bearing account must refund or credit to the borrower the interest earned on the borrower's subaccount. The refund or credit to the borrower may be made either at closing or upon withdrawal or denial of the borrower's loan application.

(36) Are there any separate requirements for a computerized accounting system? Yes. The requirements are as follows:

(a) Your computer system must provide the capability to back up data files;

(b)(i) You must print the following documents at least once per month and retain them as part of your books and records:

- (A) Trust account deposit register;
- (B) Trust account check register;
- (C) Trial balance ledger;

(ii) You must print each subaccount at closure and retain the closure document as part of your books and records;

(c) You must ensure that all written checks are included within your computer accounting system; and

(d) You must print your computer-generated reconciliations of the trust account at least once each month and retain the printouts as a part of your books and records.

(37) Are there penalties for violating trust account requirements under RCW 19.146.050? A violation of this section is a class C felony and may be punishable by imprisonment. In addition, a mortgage broker or other person violating this section may be subject to penalties as enumerated under RCW 19.146.220.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-420 Out-of-state mortgage brokers and loan originators. (1) **May I be a licensed mortgage broker in Washington without a physical office in Washington?** Yes. You are not required by the act to have a physical location in Washington.

(2) **May I be a licensed mortgage broker in Washington and have branch offices both in Washington and out-**

side of Washington? Yes. However, each of your branch offices that offer Washington residential mortgage loans must hold a Washington license, even if the location is outside Washington.

(3) **May my mortgage broker business be conducted entirely on the internet?** Yes. But you must have a license for all locations including those that offer loans by mail or internet.

(4) **May I work as a loan originator in Washington if I do not have a physical location in Washington?** Yes. You may originate Washington loans from any location licensed under the act, inside or outside of Washington.

(5) **May I work as a licensed loan originator for a licensed mortgage broker that is out of the state?** Yes, as long as the location from which you work is licensed under the act.

(6) **If my mortgage broker business is not located in Washington, where must I keep my records?** If your business is located outside of Washington, you may either maintain the books and records at a location in Washington, or pay the department's travel expenses to the out-of-state location to examine the books and records. Travel expenses may include, but are not limited to, transportation, meals, and lodging.

(7) **What additional requirements must I comply with if my business does not have a physical location in Washington?** You must continuously maintain a registered agent in Washington and provide the department, through the NMLSR, with the registered agent's name, physical and mailing address, and written consent to be the registered agent.

(8) **How do I change the information about my registered agent?** You must update the information in the NMLSR within ~~((five))~~ ten business days from the change.

(9) **If I am a registered agent under the act, what must I do to resign as registered agent?**

(a) Provide the department with a statement of resignation at least thirty-one days prior to the intended effective date of your resignation.

(b) Provide a copy of the statement of resignation to the licensed mortgage broker.

(c) The department will terminate your appointment on the thirty-first day after the date on which the statement of resignation was delivered.

~~((10) Where must the director initiate lawsuits arising under the act against out-of-state licensees? Lawsuits initiated by the director under the act must be initiated in the superior court of Thurston County, Washington.))~~

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-430 Disclosure requirements. (1) **What disclosures must I make to borrowers and when?** Within three business days of receiving a borrower's loan application, or receiving money from a borrower for third-party provider services, you, as a mortgage broker or loan originator on behalf of a mortgage broker, must make all disclosures required by RCW 19.146.030 (1), (2), (3), and 19.144.020. The one page disclosure summary required by RCW 19.144.020 must be dated when provided to the bor-

rower. The disclosures must be in a form acceptable to the director.

(2) **What is the disclosure required under RCW 19.146.030(1)?** A full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not determinable. This subsection does not require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

The specific content of the disclosure required under RCW 19.146.030(1) is identified in RCW 19.146.030(2).

(3) **What is the disclosure required under RCW 19.146.030(2)?** Mortgage brokers must disclose the following content:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.

Disclosure in compliance with the requirements of the Truth-in-Lending Act and Regulation Z, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of RESPA and Regulation X, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change;

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower, to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(e) Whether and under what conditions any lock-in fees are refundable to the borrower; and

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(4) **What is the disclosure required under RCW 19.144.020?** See WAC 208-600-200.

(5) **How do I disclose my yield spread premium (YSP) from the lender?**

(a) You ~~((should))~~ must disclose the YSP ~~((in the 800 series of lines))~~ as a dollar amount credited to the borrower on the GFE. ((The YSP must be listed using the words "yield spread premium" and expressed as a dollar amount or dollar amount range.))

(b) You must direct the settlement service provider to disclose the YSP in the 800 series of lines on the HUD-1 or equivalent settlement statement. The YSP must be listed using the words "yield spread premium" and expressed as a dollar amount.

(c) Failure to properly disclose the yield spread premium (YSP) is a violation of RCW 19.146.0201 (6) and (11), and RESPA.

(6) **Are there additional disclosure requirements related to interest rate lock-ins?** Yes. Pursuant to RCW 19.146.030(3), if subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then within three business days the mortgage broker or loan originator must deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which must include a copy of the disclosure made under subsection (3)(c) of this section.

(7) **What must I disclose to the borrower if they do not choose to enter into a lock-in agreement?** If a lock-in agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change.

(8) **Will a lock-in agreement always guarantee the interest rate and terms?** No. A lock-in agreement may or may not be guaranteed by the mortgage broker or lender. The lock-in agreement must clearly state whether the lock-in agreement is guaranteed by the mortgage broker or lender.

(9) **Must a mortgage broker enter into a lock-in agreement with a borrower?** No. The statute does not require a mortgage broker to enter into a lock-in agreement with a borrower.

(10) **Are there any model forms that suffice for the disclosure content under RCW 19.146.030(2)?** Yes. The following model forms are acceptable forms of disclosure:

(a) For RCW 19.146.030 (2)(a), mortgage brokers are encouraged to use the federal truth-in-lending disclosure form for mortgage loan transactions provided under the Truth-in-Lending Act and Regulation Z, as now or hereafter amended. However, the federal truth-in-lending disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(a). The delivery of disclosures is governed by RCW 19.146.030(1).

(b) For RCW 19.146.030 (2)(b), mortgage brokers are encouraged to use the federal good faith estimate disclosure form provided under the Real Estate Settlement Procedures

Act and Regulation X, as now or hereafter amended. However, the federal good faith estimate disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(b). The delivery of disclosures is governed by RCW 19.146.030(1).

(c) For RCW 19.146.030 (2)(c), (d), (e), (f) and (3), the department encourages mortgage brokers to use the department published model disclosure forms that can be found on the department's web site.

(11) May my mortgage broker fees increase following the disclosures required under RCW 19.146.030(1)? Pursuant to RCW 19.146.030(4), a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written good faith estimate disclosure required in RCW 19.146.030 (1) and (2)(b), unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

(12) Are there any situations in which fees that benefit the mortgage broker can increase without additional disclosure? Yes, there are two possible situations where an increase in the fees benefiting the mortgage broker may increase without the requirement to provide additional disclosures. These situations are:

(a) The additional disclosure is not required if the borrower's closing costs, excluding prepaid escrowed costs of ownership, on the final settlement statement do not exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower. For purposes of this section "prepaid escrowed costs of ownership" mean any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan; or

(b) The fee or set of fees that benefit the mortgage broker are disclosed as a percentage of the loan amount and the increase in fees results from an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower; and

(ii) The fee or set of fees that are calculated as a percentage of the loan amount have been disclosed on the initial written disclosure as both a percentage of the loan amount and as a dollar amount based upon the assumed loan amount used in the initial written disclosure; and

(iii) The total aggregate increase in the fee or set of fees that benefit the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

This section does not apply to the disclosure required in RCW 19.144.020.

(13) What action may the department take if I improperly disclose my mortgage broker fees on the good faith estimate and HUD-1/1A statement (~~on lines other than 808 through 811~~)? If you fail to disclose your mortgage broker fees as required, the department may request,

direct, or order you to refund those fees to the borrower (~~For example, if you disclose your mortgage broker fees as loan origination fees or discount points, the department may find that this is a deceptive practice and take action against you as indicated~~) if the result of that disclosure resulted in confusion or deception to the borrower.

(14) May the department take action against a mortgage broker when mortgage broker fees are disclosed incorrectly on the HUD-1/1A and the incorrect disclosure was made by an independent escrow agent, title company, or lender? If the mortgage broker can show the department that they disclosed their fees correctly on the good faith estimate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the HUD-1/1A, and the independent escrow agent, title company, or lender has not followed the instructions, the department may not take action against the mortgage broker.

(15) What action may the department take if I fail to provide additional disclosures as required under RCW 19.146.030(4)? Generally, the department may request, direct, or order you to refund fees.

(16) How will the department determine whether to request, direct or order me to refund fees to the borrowers? Generally, the department will make its determination by answering the following questions:

(a) Has an initial good faith estimate disclosure of costs been provided to the borrower in accordance with RCW 19.146.030 (1) and (2)(b)?

(b) Were any subsequent good faith estimate disclosures of costs provided to the borrower no less than three business days prior to the signing of the loan closing documents? Additionally, was the subsequent disclosure accompanied by a clear written explanation of the change?

(c) How were the costs disclosed in each good faith estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the final settlement statement exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower no less than three business days prior to the signing of the loan closing documents?

(e) If the costs at closing did exceed the most recent disclosure of costs was the need to charge the fee reasonably foreseeable at the time the written disclosure was provided?

(f) If the costs at closing did exceed the most recent disclosure of costs did the mortgage broker provide a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed, no less than three business days prior to the signing of the loan closing documents?

(17) If I failed to provide the initial good faith estimate or TILA disclosure under RCW 19.146.030 (1) and (2)(a) and (b) what action may the department take? If you have not provided the initial good faith estimate or TILA disclosure as required, including both delivery and content requirements, the department may request, direct or order you to refund to the borrower fees that inured to your benefit.

(18) If I received trust funds from a borrower, but failed to provide the disclosures as required in RCW 19.146.030 (1) and (2), what action may the department

take? If you did not provide the disclosures as required, including both delivery and content requirements, the department may request, direct, or order you to refund to the borrower any trust funds they have paid regardless of whether you have already expended those trust funds on third-party providers.

(19) **Under what circumstances must I redisclose the initial disclosures required under the act?** Generally, any loan terms or conditions that change must be redisclosed to the borrower no less than three business days prior to the signing of the loan closing documents. Some examples are:

- (a) Adjustable rate loan terms, including index, margin, and any changes to the fixed period.
- (b) The initial fixed period.
- (c) Any balloon payment requirements.
- (d) Interest only options and any changes to the options.
- (e) Lien position of the loan.
- (f) Terms and the number of months or years for amortization purposes.
- (g) Prepayment penalty terms and conditions.
- (h) Any other term or condition that may be specific to a certain loan product.

(20) ~~((Must I provide the written disclosures required under RCW 19.146.030 if all I do is obtain a credit report on a consumer who has identified a specific property for a purchase and sales agreement or contract, or a refinance loan? Yes. At that point, you have collected enough information on behalf of the consumer for you to anticipate a credit decision under RESPA's Regulation X, 24 CFR Sections 3500 et seq. and you must provide the consumer with all required disclosures. See the definition of "application" in these rules.~~

(21)) **If a loan application is canceled or denied within three days of application must I provide the disclosures required under RCW 19.146.030?** If you have not used any borrower trust funds and those funds have been returned to the borrower in conformance with these rules, the disclosures pursuant to RCW 19.146.030 are not required.

~~((22))~~ (21) **Is a mortgage broker that table funds a loan exempt from disclosures?** No. A mortgage broker must provide all disclosures required by the act, and disclose all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

~~((23) What must I disclose to a potential borrower when I advertise my business or services to them using information about their current loan? You must disclose the source from which you obtained the information about the borrower's current loan when the information was not obtained by soliciting, making a residential loan, or assisting that potential borrower in obtaining or applying to obtain a residential mortgage loan. If the information was provided by a company that searched public records and provided you the information, the "source" is the company that provided the records, not "public records."~~

(24)) (22) **What must I provide to the borrower if I am unable to complete a loan for them and they have paid for services from third-party providers?** If you are unable to complete a loan for the borrower for any reason, and if the borrower has paid you for third-party provider services, and the borrower makes a written request to you, you must pro-

vide the borrower with copies of the product from any third-party provider, including, but not limited to, an appraisal, title report, or credit report. You must provide the copies within five business days of the borrower's request.

The borrower may also request that you provide the originals of the documents to another mortgage broker or lender of the borrower's choice. By furnishing the originals to another mortgage broker or lender, you are conveying the right to use the documents to the other broker or lender. You must, upon request by the other broker or lender, provide written evidence of the conveyance. You must provide the originals to the mortgage broker or lender within five business days of the borrower's request.

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-450 Recordkeeping requirements. (1) What business books and records must I keep to comply with the act? The following books and records for your business must be available to the department.

- (a) **Mortgage transaction documents.**
 - (i) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);
 - (ii) The initial rate sheet or other supporting rate information;
 - (iii) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;
 - (iv) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures are: The good faith estimate, truth in lending disclosures, Equal Credit Opportunity Act disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;
 - (v) Documents and records of compensation paid to employees and independent contractors;
 - (vi) An accounting of all funds received in connection with loans, including a trust account statement with supporting data;
 - (vii) Rate lock agreements and the supporting rate sheets or other rate supporting document;
 - (viii) Settlement statements (the final HUD-1 or HUD-1A);
 - (ix) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;
 - (x) Records of any fees refunded to applicants for loans that did not close;
 - (xi) All file correspondence and logs; and
 - (xii) All mortgage broker contracts with lenders and all other correspondence with the lenders.
- (b) **Advertisements.** All advertisements placed by or at the request of the mortgage broker that mention rates or fees, and the corresponding rate sheets for the advertised rates. The copies must include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile, or computer network.

The record of each advertisement must include the date or dates of publication, the name of the publisher if advertised by newsprint, radio, television or telephone information line, or in the case of a flyer, the dates, methods and areas of distribution.

(c) **Trust accounting records.** See WAC 208-660-410, Trust accounting.

(d) **Other.** All other books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation. Examples include, but are not limited to, personnel files, company policy and procedure documents, training materials, records evidencing compliance with applicable federal laws and regulations, and complaint correspondence and supporting documents. See also the department's *Mortgage Broker Examination Manual*, available on the department web site.

(2) **What books and records must I keep for my trust account?** See WAC 208-660-410, Trust accounting.

(3) **How long must I keep my books and records to comply with the act?**

(a) You must keep the books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation for a minimum of twenty-five months.

(b) You must keep the mortgage transaction documents described in subsection (1)(a) of this section for a minimum of three years. It may be a prudent business practice to keep your books and records longer (~~than twenty-five months~~). For example, if a consumer's loan becomes an adjustable rate mortgage (~~after a two-year fixed mortgage rate term~~), the consumer may become unhappy that the terms of their mortgage have changed and file a complaint against you. The department must begin an investigation into the complaint. If you do not have the records to show proof of proper disclosures and all other compliance with state and federal laws, the department may rely solely on the consumer's records as evidence in the case.

(4) **Where must I keep my business records?**

(a) You must keep all books and records in a location that is on file with and readily available to the department during normal business hours. In the event of a department examination, the location must have the work space and resources that are conducive to business operations. A readily available location may include places of business, personal residences, computers, safes, or vaults. See WAC 208-660-400(8) for the reporting requirements if the address changes.

(b) If your usual business location is outside of Washington, you may either maintain the books and records at a readily available location in Washington, or pay the department's expenses to travel to the location to examine the books and records stored out-of-state. Travel costs may include, but are not limited to, transportation costs, meals, and lodging.

(5) **May I keep my books and records electronically?** Yes. You may keep the required records described in subsection (1) of this section by electronic display equipment if you can meet all of the following requirements:

(a) The equipment must be made available to the department for the purposes of an examination or investigation;

(b) The records must be stored exclusively in a nonrewriteable and nonerasable format;

(c) The hardware or software needed to display the records must be maintained during the required retention period under subsection (3) of this section.

If the department requests the books and records in hard copy, you must provide it in that form and within the time frame requested or directed by the department.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-500 Prohibited practices. (1) What may I request of an appraiser? You may request an area or market survey. While there are no strict definitions of these terms, generally they refer to general information regarding a region, area, or plat. The information usually includes the high, low and average sales price, numbers of properties available for sale or that have been sold within a set period, marketing times, days on market, absorption rate or the mixture of different property types in the specified area, among other possible components. An area survey does not contain sufficient information or is not so defining as to allow an appraiser or reader to determine the value of a specified property or property type.

(2) **How may I discuss property values with an appraiser, prior to the appraisal, without the discussion constituting improperly influencing the appraiser?** You may inform the appraiser of your opinion of value, the borrower's opinion of value, or the list or sales price of the property. You are prohibited from telling the appraiser the value you need or that is required for your loan to be successful.

(3) **What business practices are prohibited?** The following business practices are prohibited:

(a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engaging in any unfair or deceptive practice toward any person.

(c) Obtaining property by fraud or misrepresentation.

(d) Soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(e) Charging discount points on a loan which does not result in a reduction of the interest rate. Some examples of discount point misrepresentations are:

(i) A mortgage broker or lender charging discount points on the good faith estimate or settlement statement payable to the mortgage broker or any party that is not the actual lender on the resident mortgage loan.

(ii) Charging loan fees or mortgage broker fees that are represented to the borrower as discount points when such fees do not actually reduce the rate on the loan, or reflecting loan origination fees or mortgage broker fees as discount points.

(iii) Charging discount points that are not mathematically determinable as the same direct reduction of the rate available to any two borrowers with the same program and underwriting characteristics on the same date of disclosure.

(f) Failing to clearly and conspicuously disclose whether a payment advertised or offered for a residential mortgage loan includes amounts for taxes, insurance, or other products sold to the borrower. This prohibition includes the practice of misrepresenting, either orally, in writing, or in any advertising materials, a loan payment that includes only principal and interest as a loan payment that includes principal, interest, tax, and insurance.

(g) Failing to provide the exact pay-off amount of a loan you own or service as of a certain date five or fewer business days after being requested in writing to do so by a borrower of record or their authorized representative.

(h) Failing to record a borrower's payment, on a loan you own or service, as received on the day it is delivered to any of the licensee's locations during its regular working hours.

(i) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department.

(j) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower in order to verify that the asset is not otherwise insured.

(k) Willfully filing a lien on property without a legal basis to do so.

(l) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction.

(m) Failing to reconvey title to collateral, if any, within thirty days when the loan is paid in full unless conditions exist that make compliance unreasonable.

(n) Failing to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law.

(o) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan. An example is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted.

(p) Engage in bait and switch advertising.

Bait and switch means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While bait and switch will be determined by the facts of a case, the following examples, alone or in combination, may exhibit a bait and switch practice:

(i) A deceptive change of loan program from fixed to variable rate.

(ii) A deceptive increase in interest rate.

(iii) The misrepresentation of discount points. This may include discount points that have a different rate buydown effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.

(iv) A deceptive increase in fees or other costs.

(v) A deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance

or other reserved items, while leading the borrower to believe that such amounts are included.

(vi) Additional undisclosed terms such as prepayment penalties or balloon payments, or deceiving borrowers about the effect of disclosed terms.

(vii) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first and second mortgages to achieve the originally promised loan amount.

(viii) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.

(ix) Advertising or offering rates, programs, or terms that are not actually available at the time. See WAC 208-660-440(~~(4)~~) (5).

(q) Engage in unfair or deceptive advertising practices. Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace.

(r) Negligently making any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department.

(s) Making any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(t) Advertising a rate of interest without clearly and conspicuously disclosing the annual percentage rate implied by the rate of interest.

(u) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).

(v) Failing to pay third-party providers within the applicable timelines.

(w) Collecting or charging, or attempting to collect or charge, or use or propose any agreement purporting to collect or charge any fees prohibited by the act.

(x) Acting as a loan originator and real estate broker or salesperson, or acting as a loan originator in a manner that violates RCW 19.146.0201(14).

(y) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

(z) Intentionally delay closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(aa) Steering a borrower to less favorable terms in order to increase the compensation paid to the company or mortgage loan originator.

(4) What federal guidance has the director adopted for use by the department in determining if a violation under subsection (3)(b) of this section has occurred? The director has adopted the following documents:

(a) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators "Guidance on Nontraditional Mortgage Product Risks" (released November 14, 2006); and

(b) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and

National Association of Consumer Credit Administrators "Statement on Subprime Mortgage Lending," effective July 10, 2007 (published in the Federal Register at Vol. 72, No. 131).

(5) **What must I do to comply with the federal guidelines on nontraditional mortgage loan product risks and statement on subprime lending?** You must adopt written policies and procedures implementing the federal guidelines that are applicable to your mortgage broker business. The policies and procedures must be maintained as a part of your books and records and must be made available to the department upon request.

(6) **When I develop policies and procedures to implement the federal guidelines, what topics must be included?** The policies and procedures must include, at a minimum, the following:

(a) **Consumer protection.**

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions. Specifically:

- Borrowers must be advised of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated. For example, loan products with low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin must be adequately described to the borrower. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments.

- Borrowers must be advised as to the maximum amount their monthly payment may be if the interest rate increases to its maximum rate under the terms of the loan.

- Borrowers must be advised as to the maximum interest rate that can occur under the terms of the loan.

- Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.

- Borrowers must be made aware of any pricing premium based on reduced documentation.

(b) **Control standards.**

(i) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

(ii) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the mortgage

broker annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products.

(7) **May I charge a loan origination fee or discount points when I originate but do not make a loan?** No. You may not charge a loan origination fee or discount points as described in Regulation X, Part 3500, Appendix A.

(8) **What mortgage broker fees may I charge?** You may charge a mortgage broker fee that was agreed upon between you and the borrower as stated on a good faith estimate disclosure form or similar document provided that such fee is disclosed in compliance with the act and these rules.

(9) **How do I disclose my mortgage broker fees on the good faith estimate and settlement statement?** You must disclose or direct the disclosure of your fees on ~~((lines 808 through 811 of))~~ the good faith estimate and HUD-1/1A Settlement Statement or similar document.

(10) **May I charge the borrower a fee that exceeds the fee I initially disclosed to the borrower?** Pursuant to RCW 19.146.030(4), you may not charge any fee that benefits you if it exceeds the fee you initially disclosed unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the initial disclosure was provided; and

(b) You have provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. See WAC 208-660-430 for specific details, disclosures, and exceptions implementing RCW 19.146.030(4).

AMENDATORY SECTION (Amending WSR 06-23-137, filed 11/21/06, effective 1/1/07)

WAC 208-660-510 Director and department powers—Examination authority. (1) **Why is the department authorized to examine my business?** The department is authorized to examine your business to determine your compliance with the act.

(2) **When may the department examine my business?** The department may examine your business ~~((if you have obtained a mortgage broker main or branch office license within the last five years.~~

~~(3) **How many times may the department examine my business in a five year period?** Your business may be examined once during the first five years of licensing. This applies to the main office and each branch office. However, if violations are found during an examination, the department may conduct additional examinations to follow up with the correction of these violations. The time frame of any additional examination will depend, in part, on the department's assessment of the continuing risk associated with the violations found during the previous examination.~~

~~(4)) at any time.~~

(3) Will the department give me advance notice of an examination?

(a) The department will generally give you advance notice of at least thirty days of a routine examination to allow you to compile the requested documents and prepare for the examiner's arrival. However, you and the department may

agree on an earlier date for the examination. Extensions of time beyond that are at the director's discretion.

(b) The department will not give you advance notice of "for cause" examinations. "For cause" means the department may have reason to believe you have violated the act.

~~((5))~~ **(4) What are the protocols for an examination of my business?** The examination protocols are detailed in the department's Mortgage Broker Examination Manual. A summary of the manual is available on the department's web site.

The basic protocols include, but are not limited to:

(a) **Frequency of examinations.** The department's examination frequency will be determined using appropriate measurements of risk and random selection.

The primary purpose for measuring risk to determine the examination schedule and frequency cycle is to help the department identify those mortgage brokers whose compliance practices display potential weaknesses requiring examination attention. These same measurements of risk assist the department in determining the need for expanding the scope of an examination or expanding the initial examination time period. The protocols for measuring risk may include, but are not limited to:

- (i) The history of licensing;
- (ii) Known enforcement issues or problems;
- (iii) The number and severity of complaints;
- (iv) The licensee's responsiveness to department inquiries;
- (v) The licensee's volume of loan activity;
- (vi) The number of licensed locations and staff size;
- (vii) Prior examination or investigation results; and
- (viii) The existence of internal and external systems and controls to ensure compliance.

(b) **Advance notice.** You will generally receive a department notice listing the documents the department will examine at your business. Your preparation before the arrival of the department examiners will help the examination proceed more efficiently. The department will make every effort to minimize the impact of the examination on your business.

(c) **A preexamination meeting at your business.** The department examiner(s) will meet with you upon arrival at your business location.

(d) **The on-site review at your business.** The department examiner will conduct the examination of your business.

(e) **An exit meeting after you have provided all the requested information, and the examiner has completed the preliminary analysis.** The examiner(s) may request additional information from you. After receiving that information and completing the preliminary analysis, the examiner may discuss the preliminary analysis with you.

(f) **Post examination work and report.** The department examiner will prepare an examination report and submit the report and examination file to the review examiner. After making any necessary changes, the department will deliver the report to you unless the violations are deemed serious and the file is delivered to enforcement.

(g) **Notification of violations and opportunity for response.** The department will document in the examination report any violations or deficiencies identified during the

examination. You will have an opportunity to respond to the examination findings and any violations or deficiencies unless the violations are deemed serious or are repeat violations and the file is delivered to enforcement.

(h) **A possible referral to enforcement.** While any violation of the act or these rules may be referred to enforcement, it is usually the case that only serious or repeat violations are referred. An enforcement action may result in a suspension or revocation of your license, the imposition of fines, the payment of restitution, or a ban from the mortgage broker industry.

~~((6))~~ **(5) What is the scope of the examination of my business?** In general, the scope of the examination will include, but is not limited to:

- (a) Reviewing trust accounting compliance.
- (b) Reviewing loan files.
- (c) Conducting interviews to better understand the business, solicitation practices, transactional events, disclosure compliance, and complaint resolution.

(d) Reviewing the business books and records, including employee records.

~~((7))~~ **(6) When would the department expand the scope of an examination of my business?** If, during an examination, the department finds a clear need to expand the scope of the examination, it may do so. Two examples of a clear need to expand the scope of an examination are:

- (a) When the department finds an apparent violation of trust accounting.
- (b) When apparent violations of the prohibited practices section of the act are discovered. See RCW 19.146.0201 for prohibited practices.

(c) When there are clear systemic violations requiring greater review than is possible in a routine examination.

These examples are illustrative only and do not limit the circumstances under which the department may decide to expand the scope of an examination.

~~((8))~~ **(7) Will I receive notice if the department decides to expand the scope of the examination of my business?** Yes. The department will provide you with five business days' written notice if examination findings clearly identify the need to expand the scope of the examination. See subsection ~~((7))~~ **(6)** of this section for examples of when the department may decide to expand the scope of the examination.

The expanded examination may include a different location and may go beyond the initial five-year time limit.

~~((9))~~ **(8) Will I have to pay for an examination of my business?**

(a) If you are located in Washington, you do not have to pay for the costs of the examination.

(b) If you are located outside of Washington, you will have to pay for the examiner's travel costs. Travel costs include, but are not limited to, transportation costs, meals, and lodging. Travel reimbursement rates are established by the Washington state office of financial management.

(c) If your examination was the result of a referral from enforcement, the department may charge an investigative fee. The department will not charge an investigation fee in an investigation or examination if it is determined that no violation occurred, or when the mortgage broker or loan originator

implements a remedy satisfactory to the complainant and the department, and no department order has been issued.

The department will send you an invoice and you will have thirty days to reimburse the department for the examination and the travel costs. See WAC 208-660-550, Department fees and costs.

~~((10))~~ **(9) May the department consider reports made by independent certified professionals instead of conducting their own examination of a mortgage broker business?** Yes. Instead of examining a mortgage broker's business, the department may consider the reports of independent certified professionals who have examined the mortgage broker using the same standards used by the department (see the standards in the department's Mortgage Broker Examination Manual). The department may then prepare a report of examination that incorporates all or part of the independent certified professional's reports, or the examiner may expand the scope of the examination.

~~((11))~~ **(10) What are the pros and cons of hiring my own independent certified professional versus waiting for a department examination?** The department's cost of examination will not be charged to you directly, although you may experience some minor business interruption. If you hire your own independent certified professional, you will incur the cost of that examination; however, you will control the time and manner in which the examination is conducted. The greatest benefits you may derive from hiring your own independent certified professional are:

- (a) Early notice of problems you may encounter during an examination;
- (b) The ability to correct deficiencies or problems at an early stage when the greatest benefit of correction may be derived;
- (c) The early implementation of a sound compliance program; and
- (d) The ability to control the timing for your convenience.

~~((12))~~ **(11) If I want the department to consider an independent certified professional's report instead of examining my business, how must I make that request, and who submits the report to the department?** When you receive notice from the department that your business is scheduled for an examination, you must notify the department that you wish the department to consider the report of an independent certified professional instead of the department examining your business. The independent certified professional must then submit their report directly to the department, in a form acceptable to the department.

~~((13))~~ **(12) How may the department determine if the independent certified professional's report meets the standards of examination established by the department?** The department will compare the sufficiency of the report submitted by the independent certified professional to the requirements in the department's examination manual. If the report is missing any of the requirements from the manual, the department may require the licensee to provide the missing information.

~~((14))~~ **(13) If the independent certified professional's report is missing information, how may the department obtain the missing information?** The depart-

ment may interview, obtain records from, or otherwise contact the licensee, or with the licensee's permission contact the independent certified professional, if additional information is required for the department's review of the report.

~~((15))~~ **(14) What will the department do if the independent certified professional's report is not sufficient?** If the department determines the report is not sufficient, the department will notify the licensee and schedule an examination of the business.

~~((16))~~ **(15) What will the department do if the independent certified professional's report is sufficient?** If the department determines the report is sufficient, the department will prepare a report of examination that incorporates all or part of the independent certified professional's report.

~~((17))~~ **(16) May the department retain professionals or specialists to examine a licensee?** Yes. The department, at its own expense, may retain attorneys, accountants, or other professionals or specialists as examiners, auditors, or investigators to examine a licensee.

~~((18))~~ **(17) Do I receive any reports from the examination?** Yes.

(a) When you have provided all the requested information, and the examiner has completed the preliminary analysis, the examiner will issue an exit report of examination containing preliminary examination findings.

(b) After additional department review, including the consideration of new information, if any, the department will issue a final report of examination.

~~((19))~~ **(18) Must I do anything as a result of the examination?** Yes. You will receive instructions from the department on the actions you must take. For example, if adverse findings or deficiencies were cited in the report of examination, you must respond to those findings.

~~((20))~~ **(19) How do I respond to findings in a report of examination?** You must respond in writing within thirty days of the date the department issues the report of examination. Your response must address any deficiencies noted in the report and describe the corrective actions you have taken.

~~((21))~~ **(20) What will happen if I do not respond to the report of examination?** If you fail to respond to the report of examination, you may be referred to enforcement where further administrative actions may be taken against you.

AMENDATORY SECTION (Amending WSR 08-14-114, filed 6/30/08, effective 7/31/08)

WAC 208-660-550 Department fees and costs. (1) Mortgage broker licenses.

Mortgage broker - license application fee	\$371.00
Mortgage broker - annual assessment (due upon initial licensing, then an annual renewal fee, per location)	\$530.00

Mortgage broker late renewal assessment (fifty percent of annual assessment)	\$265.00
Mortgage broker branch office - license application fee	\$185.00
Mortgage broker branch office - annual assessment (annual renewal fee, per location)	\$530.00
Mortgage broker - license amendment	No fee
Mortgage broker - change of designated broker	\$25.00

(2) Loan originator licenses.

Loan originator - license application fee	\$125.00
Loan originator - annual assessment (not due until first renewal; then an annual renewal fee)	\$125.00
Loan originator late renewal assessment (fifty percent of annual assessment)	\$62.50
Loan originator - cancel association with any mortgage broker	No fee
Loan originator - license amendment - add a mortgage broker relationship	\$50.00
Loan originator - license amendment - other	No fee

((When the realignment of license expiration or renewal dates results in a partial year of licensing, the department will impose a proportionate fee structure to accommodate that realignment.))

(3) Examinations.

(a) In Washington. The department does not charge a licensee located in Washington for the costs of an examination unless the examination is a referral from enforcement. See WAC 208-660-510(8).

(b) Outside of Washington. The department will charge the licensee for travel costs.

(c) If the department hires professionals, specialists, or both to examine an out-of-state licensee, the professional, specialist, or both will be considered examiners for the purpose of billing the licensee for travel costs.

(4) Investigations.

(a) The department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation.

(b) The department will bill the licensee for the costs of services from attorneys, accountants, or other professionals

or specialists retained by the director to aid in the investigation.

(5) **Travel costs.** If the mortgage business is out-of-state, the department will charge the business the travel costs associated with an examination or investigation. Travel costs include, but are not limited to, transportation costs (airfare, rental cars), meals, and lodging.

(6) **How is the annual assessment calculated?** The assessment is a flat rate per license.

(7) **How does the department use license application fees?** The fees collected by the department are used to pay the costs of administering the act.

AMENDATORY SECTION (Amending WSR 09-01-156, filed 12/23/08, effective 1/23/09)

WAC 208-660-600 Administration and facilitation of prelicensing and continuing education. (1) **Who may offer prelicensing and continuing education courses to principals, designated mortgage brokers, and loan originators? Prelicensing and continuing education ((may be)) is offered by((=**

(a)) course providers ((with)) and courses ((of education approved by the director; or

(b) Course providers with courses of education approved by professional organizations)) approved ((by the director)) through NMLSR.

(2) ~~((What does it mean to offer and administer a course of education? Offering and administering a course of education is the creation of a curriculum and the administrative processes to operate and maintain the curriculum. See the department's approval standards in subsections (7) and (14) of this section.~~

~~(3) **What is a "course of education" under the act?** A course of education is formal training that satisfies all or part of the continuing education requirements of the act and these rules.~~

~~(4) **What is a "course provider" under the act?** A course provider is a person or organization that provides continuing education. Course providers may provide education that meets the requirements of the act and these rules by applying for and receiving approval from the department for a specific course of education.~~

~~(5) **What is a "professional organization" under the act?** A professional organization is an organization with at least ten members created for the primary purpose of furthering the professional interests of its members, protecting the public interest, or both. Education must be an essential element of the professional organization's purpose. A professional organization must have the director's approval to offer and administer courses of education.~~

~~(6) **If I am a course provider not affiliated with a professional organization, how do I obtain approval for my courses of education?** You must apply to the department for course approval. If the department approves the course, you will be issued a certificate of approval that will be effective for two years from the date of issuance.~~

~~(7) **What standard is required and what will the department review when considering approval of continuing education provided by course providers not affili-**~~

~~ated with professional organizations?~~ Continuing education courses must provide the course taker with a working knowledge of, and competency in, the subject matter. To ensure this standard, the department will review the following when considering approval of education courses:

- (a) The instructor's experience and qualifications;
- (b) Whether the instructor or proposed course of education has been approved, denied, or rescinded by the department in the past; and
- (c) The course materials and lesson plans for the proposed courses. Each course must run a minimum of three hours; the materials and lesson plans must have the content to support a presentation of this length.

~~(8) If I am a course provider with courses of education approved by a professional organization, may I also offer courses of education unaffiliated with the professional organization?~~ Yes. However, your courses of education unaffiliated with the professional organization must be approved by the department.

~~(9) May the department rescind approval of a course provider's course of education?~~ Yes. The department may rescind approval of a course of education:

- (a) Upon a determination that the course of education does not meet the standards in subsection (7) of this section; or

(b) If the course provider does not provide the required quarterly reports described in subsection (13) of this section.

~~(10) What action must a course provider take if notified by the department that its course of education has been rescinded?~~ The course provider must immediately:

- (a) Cease advertising or soliciting for the course of education;
- (b) Inform registered course takers of the department's rescission of course approval, and cancel the course of education; and
- (c) Refund any fees paid by course takers for the course.

~~(11) May a course provider appeal the department's decision to deny or rescind approval?~~ Yes. A course provider may appeal the department's decision to deny or rescind a course. The course provider must appeal the decision to the department within twenty days of being notified by the department of the decision.

~~(12) If a course provider has appealed the department's denial or rescission of a course of education, must it still take the immediate action in subsection (10) of this section?~~ Yes. A course provider appealing a department decision about a course of education must comply with subsection (10) of this section.

~~(13) I am a course provider who provides approved continuing education courses directly to licensees, or I provide courses with the approval of a professional organization. What reports must I provide to the department?~~ You must provide quarterly reports to the department, in a form prescribed by the director. The reports must be received by the department no later than April 10, July 10, October 10, and January 10 of each year. The reports must contain the following information:

- (a) The course taker's name;
- (b) The course taker's license number, or Social Security number;

- (c) The name of the course;
- (d) The date the course was taken; and
- (e) Whether the course taker received a certificate of satisfactory completion.

If you provide the reports electronically, the data must be encrypted as prescribed by the director.

~~(14) What standards will the department review when considering approving professional organizations to offer and administer courses of education under the act and rules?~~ The department will review the following:

- (a) A description of the course of education curriculum that satisfies the content of continuing education under subsection (22) of this section;
- (b) Whether the professional organization has sufficient procedures and guidelines to:
 - (i) Establish a course(s) of education and approve a course provider(s);
 - (ii) Audit and evaluate an approved course(s) of education and course provider(s);
 - (iii) Remove courses and providers from the professional organization's curriculum;
 - (iv) Provide board reconsideration of denial or removal of a course of education or a course provider;
 - (v) Ascertain the identity of course of education takers;
 - (vi) Issue certificates of satisfactory completion, that include, at a minimum, the course taker's name, the course provider's name, the course title, and the date of course completion;
 - (vii) Collect, hold, disburse and refund course of education fees;

(c) Whether the professional organization requires members to adhere to an established code of conduct or ethics.

~~(15) Is the department liable for a professional organization's decision to approve, deny, or revoke authorization for a course provider to offer courses of education?~~ No. The department is not liable for a professional organization's decision to approve, deny, or revoke a course provider's authorization to provide courses of education for the professional organization.

~~(16) Is the department liable for a course provider's contractual relationship with a professional organization?~~ No. Course providers independently contract with professional organizations and the department is not liable for the consequences of that relationship.

~~(17) May the department remove a professional organization's authorization to offer and administer courses of education?~~ Yes. The department may rescind a professional organization's authorization to offer and administer courses of education:

- (a) Upon a determination that the professional organization fails to meet subsection (14) of this section; or
- (b) If the professional organization fails to provide the required quarterly reports described in subsection (21) of this section.

~~(18) What action must a professional organization take if notified by the department that its authorization has been rescinded?~~ The professional organization must immediately:

- (a) Cease advertising or soliciting for all courses of education;

(b) Inform registered course takers of the department's rescission of approval, and cancel the courses of education; and

(c) Refund any fees paid by course takers for the courses.

~~(19) May a professional organization appeal the department's decision to deny or rescind authorization?~~ Yes. A professional organization may appeal the department's decision to deny or rescind the professional organization's authorization to approve course providers. The professional organization must appeal the decision to the department within twenty days of being notified by the department of the decision.

~~(20) If a professional organization has appealed the department's denial or rescission of authorization, must it still take the immediate action in subsection (18) of this section?~~ Yes. A professional organization appealing a department decision about a course provider or course of education must comply with subsection (18) of this section.

~~(21) When a professional organization is approved by the department to offer continuing education courses to licensees, and does so, what reports must the professional organization provide to the department?~~ The professional organization must provide quarterly reports to the department, in a form prescribed by the director. The reports must be received by the department no later than April 10, July 10, October 10, and January 10 of each year. The reports must contain the following information:

(a) The course taker's name;

(b) The course taker's license number, or Social Security number if not currently licensed;

(c) The name of the course;

(d) The date the course was taken; and

(e) Whether the course taker received a certificate of satisfactory completion.

If you provide the reports electronically, the data must be encrypted as prescribed by the director.

~~(22) How long does department approval for a professional organization to offer continuing education courses last, and may the approval be renewed?~~ Approval of a continuing education course is valid for two years. Approval may be renewed by applying to the director forty-five days prior to expiration of a current approval and providing detailed information about the course(s) and instructor(s) if they are to be changed.

~~(23) What topics must be included as continuing education courses?~~ Continuing education courses must include some or all of the topics listed below. Courses may be designed to cover a range of topics or they may focus in detail on a single topic.

(a) **General.**

(i) Ethics in the mortgage industry.

The responsibilities and liabilities of the profession including instruction on fraud, consumer protection, and fair lending issues.

(ii) Lending standards for nontraditional mortgage products.

(iii) Arithmetical computations common to mortgage lending including without limitation, the computation of annual percentage rate, finance charge, amount financed, payment and amortization.

~~(b) Compliance and internal audit standards.~~

Proper use and application of the department's published standards and guidelines for examinations.

Internal audit and compliance practices, standards, methods and procedures.

Developing policies and procedures for regulatory compliance.

Responding to regulatory inquiries, directives, subpoenas and enforcement orders.

Training and supervision of mortgage professionals.

Establishing, managing, reconciling and reviewing a trust account (trust account compliance under the act and these rules).

~~(c) Washington law and associated regulations.~~

The Mortgage Broker Practices Act.

The Consumer Protection Act.

The Escrow Agent Registration Act.

The Usury Act.

Unfair practices with respect to real estate transactions (RCW 49.60.222).

Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW.

Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW.

Washington principal and agent law.

Any subsequent act or regulation applying to mortgage brokers.

~~(d) Federal law and associated regulations.~~

The Real Estate Settlement Procedures Act.

Truth in Lending Act.

Equal Credit Opportunity Act.

Fair Credit Reporting Act.

Fair Housing Act.

Home Mortgage Disclosure Act.

Community Reinvestment Act.

Gramm-Leach Bliley Act.

Home Ownership Protection Act.

Bank Secrecy Act.

Appraisal regulations.

Underwriting.

The SAFE Act (Title V of the Housing and Economic Reform Act of 2008 ("HERA")) Public Law No. 110-289.

Any subsequent act or regulation applying to mortgage brokers.

~~(e) Mortgage services and products.~~

Conventional.

Reverse mortgages.

FHA mortgages.

VA mortgages.

Nonprime mortgages.

Other products or services deemed relevant to continuing education by the department.

~~(24) May the department audit or review a course of education?~~ Yes. The department may audit or review any continuing education course by registering for the course or attending the course of education unannounced by presenting the course provider with official identification prior to the start of the course. The department will not be charged any fee for official audit or review of the course of education.))

On what topics of education will I be tested?

(a) **Prelicensing education.** The topics of education will be federal law and regulations, ethics (fraud, consumer protection, fair lending) and lending standards for the nontraditional mortgage marketplace.

(b) **Continuing education.** The topics of education will be the same as for prelicensing education, plus Washington specific topics.

(3) **What specific topics should I study in preparation for any of the required tests?**

(a) **General.**

(i) **Ethics in the mortgage industry.**

The responsibilities and liabilities of the profession including instruction on fraud, consumer protection, and fair lending issues.

(ii) **Lending standards for nontraditional mortgage products.**

(iii) **Arithmetical computations common to mortgage lending including without limitation, the computation of annual percentage rate, finance charge, amount financed, payment and amortization.**

(b) **Compliance and internal audit standards.**

Proper use and application of the department's published standards and guidelines for examinations.

Internal audit and compliance practices, standards, methods and procedures.

Developing policies and procedures for regulatory compliance.

Responding to regulatory inquiries, directives, subpoenas and enforcement orders.

Training and supervision of mortgage professionals.

Establishing, managing, reconciling and reviewing a trust account (trust account compliance under the act and these rules).

(c) **Washington law and associated regulations.**

The Mortgage Broker Practices Act.

The Consumer Protection Act.

The Escrow Agent Registration Act.

The Usury Act.

Unfair practices with respect to real estate transactions (RCW 49.60.222).

Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW.

Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW.

Washington principal and agent law.

Any subsequent act or regulation applying to mortgage brokers.

(d) **Federal law and associated regulations.**

The Real Estate Settlement Procedures Act.

Truth in Lending Act.

Equal Credit Opportunity Act.

Fair Credit Reporting Act.

Fair Housing Act.

Home Mortgage Disclosure Act.

Community Reinvestment Act.

Gramm-Leach-Bliley Act.

Home Ownership Protection Act.

Bank Secrecy Act.

Appraisal regulations.

Underwriting.

The S.A.F.E. Act (Title V of the Housing and Economic Reform Act of 2008 ("HERA")) Public Law No. 110-289.

Any subsequent act or regulation applying to mortgage brokers.

(e) **Mortgage services and products.**

Conventional.

Reverse mortgages.

FHA mortgages.

VA mortgages.

Nonprime mortgages.

WSR 09-19-131
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS

[Filed September 22, 2009, 1:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-076.

Title of Rule and Other Identifying Information: The proposed rule provides standards for credit unions in the management of "other real estate owned" (OREO), dealing with the mitigation of losses for loans collateralized by real property or acquired as the result of loan defaults.

Hearing Location(s): John A. Cherberg Building, Senate Office Building, State Capitol Campus, Olympia, Washington 98501, on October 28, 2009, at 2 p.m. to 4 p.m.

Date of Intended Adoption: November 24, 2009.

Submit Written Comments to: Joanne Conrad, P.O. Box 41200, Olympia, WA 98504-1200, e-mail jconrad@dfi.wa.gov, fax (360) 704-6490, by October 28, 2009.

Assistance for Persons with Disabilities: Contact Rhonda Mires by October 28, 2009, rmires@dfi.wa.gov, or (360) 902-8718.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There is no existing rule for credit unions regarding the management of OREO. The purpose of the proposed rule is to provide standards for credit unions handling [handling] portfolios of OREO property. The anticipated effect is that credit unions will be encouraged to follow industry safe and sound practices and develop their own policies on the prudent management of OREO, helping to mitigate possible loss.

Reasons Supporting Proposal: Recent economic problems have increased the holding of foreclosed properties by financial institutions. Many credit unions have limited experience in the management of OREO. This rule will provide useful standards, and enable credit unions to minimize the impact of foreclosures through analysis and management policy.

Statutory Authority for Adoption: RCW 31.12.404, 31.12.426, 31.12.428, 31.12.436, 31.12.516.

Statute Being Implemented: Chapter 31.12 RCW.

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

Name of Proponent: Department of financial institutions, division of credit unions, governmental.

Name of Agency Personnel Responsible for Drafting: Joanne Conrad, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8813; Implementation and Enforcement: Linda Jekel, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8778.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not increase the administrative burden of the regulated financial institutions, but rather provides standards of prudent practice, to mitigate loss through policy development. The policy required in this rule is customized by each credit union to which it applies, and is an express statement of the practice and analysis in which each credit union should prudently engage. If a credit union does not have any OREO, it is not even required to draft an OREO policy; therefore small credit unions with limited real estate exposure will have few, if any, requirements as a result of the proposed rule.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to the proposed rule.

September 22, 2009

Linda K. Jekel, Director
Division of Credit Unions

Chapter 208-476 WAC

CREDIT UNION—OTHER REAL ESTATE OWNED

NEW SECTION

WAC 208-476-010 Reason for rule. Why do credit unions need a rule on the handling of "other real estate owned" (OREO), property legally owned by the credit union as the result of foreclosure, or acquired as the result of default on a loan collateralized by real property? Although most financial institutions that do real estate lending have experienced an occasional foreclosure, the volume and asset value of foreclosed property has significantly increased recently. Due to the economic downturn that began in the fourth quarter of 2007, credit unions are now experiencing a greater number of foreclosures and acquiring portfolios of OREO. Because this type of economic effect is cyclic, it is useful for credit unions to be prepared to handle OREO property in a safe and sound manner. Some credit unions may find their number of OREO properties is becoming more difficult to manage. Some credit unions may be dealing with OREO properties for the first time.

The department of financial institutions (DFI), division of credit unions, is responsible for regulating to protect the integrity of credit unions as cooperative institutions, and to ensure that they remain viable and competitive. RCW 31-12.015. It is important to provide regulatory standards for safe and sound management of OREO. RCW 31.12.005(24).

NEW SECTION

WAC 208-476-020 Rule-making authority. What is DFI's rule-making authority for these OREO rules? The division of credit unions is delegated rule-making authority by the director of DFI. The director's rule-making authority is based upon the Washington Credit Union Act (WCUA),

RCW 31.12.516(2), which allows the director to adopt rules that are reasonable and necessary to carry out the purposes of the WCUA. The director has the power and broad administrative discretion to administer and interpret the provisions of the WCUA. RCW 31.12.516(4). In addition, the director has specific rule-making authority regarding secured or unsecured loans to members. RCW 31.12.426(1).

NEW SECTION

WAC 208-476-030 Authority of director to require reports. What legal authority does DFI have to require special reports from credit unions, accounting for OREO? The director has the statutory authority to require a credit union to file any financial or statistical report the director may require. The director, therefore, has the authority to require special reports on OREO properties held by Washington state chartered credit unions. RCW 31.12.567.

NEW SECTION

WAC 208-476-040 Authority for credit unions to hold real estate. What is the legal authority for a credit union to acquire, hold and dispose of OREO? A Washington state chartered credit union is permitted to own foreclosed and other OREO property, based on its statutory power to make secured and unsecured loans to its members. RCW 31.12.426(1). If the borrower defaults on a loan secured by real property, the credit union has the authority to obtain title to the property as a power incidental to its normal course of business.

NEW SECTION

WAC 208-476-050 Definitions. For purposes of these rules, the following definitions apply:

"Appraisal" means a written report by a certified or licensed appraiser containing sufficient information to support the credit union's evaluation of OREO, taking into consideration market value, analyzing appropriate deductions or discounts, and conforming to generally accepted appraisal standards, unless principles of safe and sound credit union practices require stricter standards.

"DCU" means the division of credit unions of the Washington state department of financial institutions.

"DFI" means the Washington state department of financial institutions.

"Director" means the director of the department of financial institutions, or the director's designee, typically the assistant director of the division of credit unions. RCW 43.320-050.

"Fair value" and "fair market value" mean the cash price that might reasonably be anticipated in a current sale under all conditions requisite to a fair sale, in which the buyer and the seller are each acting prudently, knowledgeably and under no necessity to buy or sell. An appraisal at "fair value" primarily relies upon an estimate of the cash price that might be received upon exposure to the open market for a reasonable time, considering the property type and local market conditions. This is known as the "market data approach." However, an appraisal at "fair value" may, in appropriate cir-

cumstances, be based upon the "cost approach" with regard to real estate improvements, including current replacement cost.

"Foreclosure" means:

(a) The involuntary termination of all rights of a trustor/grantor or mortgagor in the property covered by a deed of trust or mortgage, by means of statutory power of sale or judicial foreclosure; or by

(b) A deed in lieu of foreclosure, the voluntary transfer (usually by quitclaim) of a trustor/grantor's or mortgagor's interest in real estate to the beneficiary of a deed of trust or mortgagee, in lieu of the beneficiary or mortgagee exercising the statutory power of sale or obtaining a judicial decree of foreclosure.

"GAAP" means "generally accepted accounting principles," as codified in the financial accounting standards board accounting standards codification (FASB ASC).

"Other real estate owned" (OREO) means real estate acquired by a credit union in whole or partial satisfaction of a debt owed to a credit union, by means of:

(a) Foreclosure or deed in lieu of foreclosure of the credit union's deed of trust or mortgage; or

(b) Acquisition by the credit union and subsequent foreclosure, or deed in lieu of foreclosure of a superior lien interest.

OREO is then held in inventory until sold.

"OREO" does not mean real property held for the credit union's own business use or expansion under RCW 31.12.-438.

NEW SECTION

WAC 208-476-100 Limitations on holding of OREO. How long is a credit union allowed to hold OREO? OREO must be disposed of as soon as prudent business judgment dictates, and in no case longer than five years, absent special circumstances and discretionary approval by the director. The longer real estate is held, the more speculative an investment it becomes.

When does the holding period begin? The holding period begins on the date that the credit union takes title to the OREO property.

What if the OREO is not sold within the initial holding period? An application to hold other real estate owned beyond the five year initial holding period must be filed no less than six months prior to the end of the initial five years, on a form provided by DFI. In addition to the form, the director may require justifying information, data and reports. The granting of an additional holding period of up to five years is at the regulatory discretion of the director.

NEW SECTION

WAC 208-476-200 Accounting for OREO. What accounting and reporting procedures are credit unions required to follow when accounting for OREO? Accounting and reporting for OREO must comply with GAAP. GAAP applies to accounting and reporting for OREO, regardless of materiality.

Where can GAAP be accessed and researched? The definitive text of U.S. GAAP, as codified, may be found at <http://asc.fasb.org> or as a link from fasb.org.

Can the DCU require charge offs or special reserves for OREO property? Yes, the DCU has authority to require a credit union to charge off or set a special reserve for OREO property. RCW 31.12.545 (2)(c).

NEW SECTION

WAC 208-476-300 Minimal standards for safe and sound OREO management. (1) What basic standards are used to determine the initial and ongoing regulatory acceptability of holding OREO? Holding requirements include, at a minimum, compliance with the following:

(a) Accurate accounting for OREO. Refer to the accounting section of this rule at WAC 208-476-200;

(b) Obtaining independent written appraisals, or determinations of fair value, depending upon the nature of the loan, and updated periodically, to reflect changed market conditions;

(c) Diligent marketing efforts, including a written marketing plan, updated periodically to reflect changed market conditions;

(d) Compliance with any determination, order or directive issued by the director regarding the acquisition, holding, management or disposition of OREO.

(2) Are there requirements for credit union management of OREO? Yes. A credit union that is managing OREO property must have a board-approved policy that assures that the board is regularly informed of the nature and extent of the credit union's OREO holdings. In most cases, this requirement may necessitate the creation of a special assets committee, or some combination of executive staff, to oversee OREO management and report to the board, no less than quarterly.

(3) Are credit unions required to have a written OREO policy? Yes, if a credit union has OREO, the credit union must have a written OREO policy.

(4) What should be included in a credit union OREO policy? At a minimum, the following elements should be covered in a credit union's written OREO policy:

(a) The credit union's staffing requirements for qualified management of OREO;

(b) The credit union's plan to obtain legal advice from an attorney regarding the acquisition, holding and disposition of OREO;

(c) The credit union's intended holding period for OREO;

(d) The appraisal policy, or fair value methodology, for OREO;

(e) The credit union's authorization to expend funds to improve and protect OREO;

(f) The plan to market and dispose of OREO;

(g) Identification of the person responsible for OREO management;

(h) The OREO property management plan;

(i) OREO internal controls;

(j) Special assets committee (or other OREO reporter) responsibilities, including monitoring and reporting plan, and frequency of review by board and management;

(k) The accounting policy for the acquisition, holding and disposition phases of OREO;

(l) Independent audit policy for OREO;

(m) Responsibility for OREO file maintenance, document organization, storage, retrieval and retention.

DFI recognizes that not all of the elements of the policy will apply to every OREO property.

(5) **What should a credit union do if there are questions about the management of OREO?** A credit union may call the division of credit unions at 360-902-8701, if questions arise during the life cycle of OREO ownership. Information is also available on the DCU web site www.dfi.wa.gov/cu/default.htm and in the DCU "*OREO Owner's Manual*" guidance book.

WSR 09-19-132
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 22, 2009, 1:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-079.

Title of Rule and Other Identifying Information: Chapter 296-17A WAC, Classifications for worker's compensation insurance.

Hearing Location(s): Labor and Industries Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on October 28, 2009, at 2:00 p.m.

Date of Intended Adoption: November 30, 2009.

Submit Written Comments to: Ronald Moore, P.O. Box 44140, Olympia, WA 98504-4140, e-mail MOOA235@lni.wa.gov, fax (360) 902-4729, by 5:00 p.m., October 28, 2009.

Assistance for Persons with Disabilities: Contact Karen Chamberlain at (360) 902-4772 or BONA235@lni.wa.gov, by October 27, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department has conducted a review of various classifications and determined that certain classifications are in need of revision for purposes of clarification. Revisions are being considered for WAC 296-17A-0101 Logging machine operators—Inactive subclassification (move to 5005 mechanical logging), 296-17A-5001 Logging—Changing reference from classification 0101 to classification 5005, and 296-17A-5005 Mechanized logging—Create subclassification to report hours from newly inactivated 0101-41 (logging machine operators) and changing references from classification 0101 to classification 5005.

Reasons Supporting Proposal: This rule making will clarify our rules and make them easier to administer and understand.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100, and 51.04.020(1).

Statute Being Implemented: RCW 51.16.035 and 51.16.100.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Karen Chamberlain, Tumwater, (360) 902-4772; Implementation: Ronald C. Moore, Tumwater, (360) 902-4748; and Enforcement: Robert Malooly, Tumwater, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In this case, the agency is exempt from conducting a small business economic impact statement (SBEIS) since the proposed rules set or adjust fees or rates to legislative standards described in RCW 34.05.328 (5)(b)(vi) and because the content of the rules is specifically dictated by statute described in RCW 34.05.328 (5)(b)(v). Preparation of an SBEIS is required when a rule proposal has the potential of placing a more than minor economic impact on business. There are no significant costs as part of this rule making.

A cost-benefit analysis is not required under RCW 34.05.328. The agency is exempt from conducting a cost-benefit analysis since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.328 (5)(b)(vi) and because the content of the rules is specifically dictated by statute described in RCW 34.05.328 (5)(b)(v). Preparation of an evaluation of probable costs is required when a rule proposal has the potential of placing a more than minor economic impact on business. There are no significant costs as part of this rule making.

September 22, 2009

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-0101 Classification 0101.

0101-00 Land clearing: Highway, street and road construction, N.O.C.

Applies to contractors engaged in clearing right of ways for subsurface construction on a new or existing highway, street, or roadway project that is not covered by another classification (N.O.C.). The subsurface is the roadbed foundation consisting of dirt, sand, gravel and/or ballast which has been leveled and compressed. Unless the finished project is a compressed gravel road, the subsurface or sub base is constructed prior to any asphalt or concrete paving activities. Work contemplated by this classification involves the excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, earth excavation, cut and fill work, and bringing the roadbed to grade. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders, rollers, and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210; construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; bridge or tunnel construction including the abutments and approaches which is to be reported separately in classification 0201; felling of trees which is to be reported separately in the applicable logging classification; and logging road

construction which is to be reported separately in classification 6902.

0101-01 Land clearing: Airport landing strips, runways and taxi ways; alleys and parking lots

Applies to contractors primarily engaged in clearing right of ways for subsurface construction on a new or existing airport landing strip, runway, and taxi way. This classification also includes clearing of right of ways for alley and parking lot projects. The subsurface is the foundation consisting of dirt, sand, gravel and/or ballast which has been leveled and compressed. Unless the finished project is compressed gravel, the subsurface or sub base is constructed prior to any asphalt or concrete paving activities. Work contemplated by this classification involves the excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, earth excavation, cut and fill work, and bringing the roadbed or project site to grade. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders, rollers, and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210; construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; and felling of trees which is to be reported separately in the applicable logging classification.

0101-02 Excavation work, N.O.C.

Applies to contractors engaged in general excavation work for others that is not covered by another classification (N.O.C.). Work contemplated by this classification involves excavating or digging of earth to form the foundation hole such as for a wood-frame or nonwood-frame building and side sewer hookups (street to house) when performed as part of the excavation contract. Activities include, but are not limited to, excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, piling or pushing of earth, earth excavation, cut and fill work, backfilling, etc. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210 and felling of trees which is to be reported separately in the applicable logging classification.

0101-03 Grading work, N.O.C.

Applies to contractors engaged in various forms of grading work for others that are not covered by another classification (N.O.C.). Typical equipment used is a grader, but other equipment such as a bulldozer and a front end loader may also be used. Work contemplated by this classification includes, but is not limited to, leveling and grading lands, spreading dirt, sand, gravel and/or ballast to desired contour on farm lands or other tracts of land.

0101-04 Land clearing, N.O.C.

Applies to contractors engaged in general land clearing work that is not covered by another classification (N.O.C.).

This classification includes, but is not limited to, excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, piling or pushing of earth to rearrange the terrain, earth excavation, cut and fill work, backfilling, and slope grooming. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, scrapers, bulldozers, graders and dump trucks.

This classification excludes felling of trees which is to be reported separately in the applicable logging classification.

0101-16 Railroad line: Construction, maintenance and repair, N.O.C.

Applies to contractors engaged in the construction, maintenance and repair of railroad tracks not covered by another classification (N.O.C.), including the dismantling of track and the sale of salvaged track metal and ties. Work contemplated by this classification includes all operations on new or existing main lines, side tracks and spurs to industrial properties. This classification includes, but is not limited to, the laying of rock or ballast, laying of ties and track, installation of crossover frogs and switches, erection of switch stands and switch mechanism, erection of cattle guards, the placing of grade crossing planks, and similar activities related to the laying or relaying of railroad lines and also includes the dismantling of railroad main lines, side tracks and spurs to include track, ties, etc., and the subsequent storage and sale of salvaged material after the railroad line is dismantled.

This classification excludes asphalt surfacing/resurfacing and all concrete construction work which is to be reported separately in the applicable asphalt or concrete construction classification; logging railroad construction which is to be reported separately in classification 6902; and the construction, maintenance, or repair of an elevated railway which is to be reported separately in classification 0508.

0101-17 Retaining wall: Construction or repair when done in connection with road, street and highway construction, N.O.C.

Applies to contractors engaged in the construction or repair of retaining walls in connection with highway, street, or roadway projects that are not covered by another classification (N.O.C.). Retaining walls are often constructed to protect against potential problems such as earth slides or erosion of banks alongside a roadway or overpass. Work contemplated by this classification involves large scale excavation to contour a specific area of earth serving as a retaining wall. Activities include, but are not limited to, excavation, clearing, cut and fill work, backfilling, grading and slope grooming. Fill material used may include dirt, sand, stone or boulder. Equipment used by contractors subject to this classification includes, but is not limited to, scrapers, bulldozers, graders, backhoes and dump trucks.

This classification excludes asphalt surfacing or resurfacing on roadways which is to be reported separately in classification 0210; concrete construction which is to be reported separately in the applicable concrete construction classification; construction specialty services such as the installation of guardrails, lighting standards and striping which is to be reported separately in classification 0219; bridge or tunnel construction including the abutments and approaches which

is to be reported separately in classification 0201; felling of trees by chain saw which is to be reported separately in classification 5001; logging road construction which is to be reported separately in classification 6902; and tunnels and approaches including lining, cofferdam work, shaft sinking and well digging with caissons which is to be reported separately in classification 0201.

0101-36 Tree care and pruning services, N.O.C.

Applies to specialist contractors engaged in providing a variety of tree care services such as tree topping and tree pruning that are not covered by another classification (N.O.C.). Work contemplated by this classification generally takes place in residential areas, parking lots, business parks, shopping malls, or settings adjacent to nonforestry or timberland roadways. A primary purpose of this work is to remove tree or branch hazards from power lines, structures, or buildings. This classification includes, but is not limited to, incidental ground operations such as picking up branches and limbs, operating mobile chip machines used in connection with a tree care service, spraying or fumigating of trees, debris removal and stump removal when conducted by employees of an employer subject to this classification.

This classification excludes tree care services done in connection with an orchard operation which is to be reported separately in classification 4803 when performed by orchard employees; tree care services done in connection with a nursery operation which is to be reported separately in classification 4805; tree care services done in connection with a public or private forest or timberland which is to be reported separately in classification 5004; tree care services done in connection with a Christmas tree farm operation which is to be reported separately in classification 7307; and felling trees which is to be reported separately in classification 5001.

0101-37 Soil remediation

Applies to establishments engaged in various types of remediation of soil contaminated with hazardous or toxic materials. Soil remediation can take place at the site of the contamination, or the contaminated soil may be hauled to another area for remediation. This classification also includes oil spill cleanup on land. Equipment used will include backhoes and front end loaders, as well as other types of dirt moving equipment.

The methods used for soil remediation include, but are not limited to:

- Bio-remediation: Contaminated soil is mixed with nutrients, sawdust, and various other additives. Naturally occurring bacteria in the soil break down the pollutants.

- Encapsulation: Contaminated soil is enclosed in some type of protective material to prevent drainage into surrounding soil.

- Excavation and hauling to an approved disposal site.

- Hot air vapor extraction: A burner unit is mounted on a trailer. Contaminated soil is arranged in layers on which an aluminum perforated pipe system is placed at 2' intervals, with a return pipe on the top layer. The soil stack is enclosed in visqueen, then hot air is pumped into the piping system which creates the steam that is recycled through the system and carries the contaminants back through the catalytic

burner. Because of the catalytic action there are virtually no contaminants exhausted into the atmosphere.

- Soil vapor extraction: A series of holes are bored in the ground and vacuum pumps are used to suck the trapped gases which are drawn through carbon filters for decontamination.

- In situ vitrification: Graphite electrodes are fed into contaminated soil at a specified rate, where high voltage "melts" the organic and inorganic materials in the soil and forms a solid, glasslike substance.

- Land farming: Contaminated soil is deposited and spread out by a farm type spreader on an area of ground dedicated for this purpose. Chemical or manure fertilizer is added to provide a medium for naturally occurring bacteria to thrive. (This part is similar to bio-remediation.) The soil is turned frequently by tillers or rototillers to assist in the aeration of the soil and in the growth of the bacteria. It may take anywhere from a month to two years to cleanse the soil, depending on the volatility of the contaminants. This method is used particularly with soil that is heavily contaminated with oil.

- Mobile incineration: Contaminated soil is loaded onto a conveyor belt which carries it into the hopper of a mobile unit mounted on a lowboy trailer. The unit is heated to burn off the contaminants in the soil. The mobile unit contains a type of dust-collecting mechanism which filters out gases and other undesirable elements so only clean air enters the atmosphere as the refreshed soil is produced. There are various methods of mobile incineration, but the general process and the end result are similar.

- Thermal desorption: A process similar to mobile incineration.

- Stabilization: Concrete landfill cells are created by mixing cement with refuse or other contaminated soil to stabilize the material and reduce the seepage into the surrounding soil.

This classification excludes oil spill cleanup involving diking or ditching work which is to be reported separately in classification 0201.

0101-39 Pool or pond excavation

Placement of pool or pond liners

Applies to contractors engaged in the excavation of pools or ponds. Work contemplated by this classification involves excavating or digging of earth to form the hole such as for a swimming pool or pond. Work contemplated by this classification includes excavation of rocks and boulders, removal of tree stumps, clearing or scraping land of vegetation, grubbing, piling or pushing of earth, earth excavation, cutting, filling or backfilling, etc. Equipment used by contractors subject to this classification includes a variety of earth moving equipment such as, but not limited to, shovels, bulldozers, backhoes and dump trucks. This classification includes the placement of plastic pool and pond liners provided it is not in connection with concrete work.

This classification excludes concrete construction which is to be reported separately in the applicable concrete construction classification.

0101-40 Mowing or chemical spraying of roadway median strips, roadsides, and/or power line right of ways

Applies to contractors engaged in mowing, grooming, picking up litter, and chemical spraying of roadway median strips and edges, roadsides, and power line right of ways. Work contemplated by this classification includes spraying chemicals to control weeds and unwanted vegetation, tall grass, brush, brambles and tree seedlings as part of a roadway, roadside or right of way maintenance contract. Equipment used by contractors subject to this classification includes, but is not limited to, a variety of equipment such as backhoes, tractors, push mowers, brush mowers, weed eaters, as well as hand tools such as machetes, sickles, and pruners.

This classification excludes mowing and/or grooming of roadway median strips, roadsides, and power line right of ways when performed by employees of cities, counties, state agencies, or other municipalities which is to be reported in the classification applicable to the type of municipality performing the work; forest, timber or range land contract work which is to be reported separately in the classification applicable to the work being performed; and the felling and removal of trees by chain saw which is to be reported separately in classification 5001.

Special note: Classification 0301, "landscape construction," and classification 0308, "landscape maintenance," are not to be assigned to mowing and/or grooming of roadway median strips, roadsides, and power line right of ways.

~~((0101-41 Logging machine operators~~

~~This classification applies to employees of a logging company that does not qualify as a mechanized operation but operates equipment such as a feller buncher, processor, forwarder, skidder, log loader, or tower and who are in a protective cab. This classification also applies to firms who contract with logging firms to provide such equipment and operators to a logging site. The operator does not leave the cab to perform duties as part of the logging operation. Equipment used by employers subject to this classification are required to meet WISHA guidelines for roll over protection standards (ROPS) and falling object protection standards (FOPS).~~

~~This classification does not allow a division of an employee's work hours between this classification and any other classification during a work shift.~~

~~This classification excludes all logging activities being performed on the ground which are to be reported separately in classification 5001.~~

~~**Special note:** This classification does not apply to classification 5005 "logging and/or tree thinning—mechanical operations" whereby logging activities are performed exclusively by machine and no employees are on the ground.))~~

AMENDATORY SECTION (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

WAC 296-17A-5001 Classification 5001.

5001-03 Logging, N.O.C.

Applies to establishments engaged in various logging operations not covered by another classification (N.O.C). Typical work contemplated by this classification includes, but is not limited to, high lead or tower logging, ground logging, and team logging with horses. For purposes of this rule, logging is the complete operation of felling, skidding, yard-

ing, delimiting, and bucking of trees into logs or block wood and loading them onto trucks or rail cars.

Definitions:

High Lead or Tower Logging - usually occurs in steep terrain where a metal tower is set-up on a hilltop with a system of heavy cables running down the hillside and fastened to a stump or tree and has other smaller cables with chokers hanging from it. A choker is wrapped around each fallen tree and pulled back to the landing site.

Helicopter logging - includes ground crews that work with the use of helicopters to hoist fallen trees or bucked log lengths to the landing side.

Chokers - chains or cables which are attached to the fallen trees for skidding to the landing site.

Ground logging - usually occurs on relatively flat land; fallen trees are moved to a landing by a skidder, cat or shovel.

Bucking - stripping or delimiting tree of branches and cutting the tree to desired log lengths.

Skidding - process of dragging the fallen logs to the landing site.

Landing - place where the fallen logs are brought for sorting and loading onto log trucks.

Yarding - usually performed at the landing site with use of a log loader to sort the logs by species, length and diameter, prior to loading onto log trucks.

This classification excludes flight crews of helicopters used in helicopter logging which are to be reported separately in classification 6803; log hauling which is to be reported separately in classification 5003; logging road construction which is to be reported separately in classification 6902; logging machine operators which are to be reported separately in classification ((0101)) 5005-01; and mechanical or mechanized logging operations which are to be reported separately in classification ((5005)) 5005-00 provided the classification has been approved by the classification services section.

5001-04 Shake, shingle bolt, and post cutting

Applies to establishments engaged in the cutting of shakes, shingle bolts (blocks), and fence posts in the woods. For the purposes of this rule, this classification includes all operations performed in the woods such as, but not limited to, the felling of trees, stripping or delimiting of branches, and all further cutting or splitting of trees/logs to produce shakes, shingle bolts or fence posts. This classification includes all transporting of shakes, shingle bolts or fence posts from the cutting site when conducted by employees of employers subject to this classification.

5001-05 Firewood cutting

Applies to establishments engaged in the cutting of firewood in the woods. For the purposes of this rule, this classification includes all operations performed in the woods such as, but not limited to, the felling of trees, stripping or delimiting of branches, and all further cutting or splitting of trees/logs to produce firewood. This classification includes all transporting of log lengths, rounds or split wood from the cutting site when conducted by employees of employers subject to this classification.

5001-06 Sawmill operations conducted in the woods in connection with logging operations

Applies to establishments operating a temporary or portable sawmill operation in the woods. This type of work is usually performed on privately owned land. A portable sawmill and saw tables, similar to those at a permanent sawmill location, are transported directly to the logging site. Log lengths are fed through a circular saw that is capable of producing various sized rough cut timber, blocks, boards and planks. This classification includes all transporting of rough cut timber, blocks, boards and planks from the cutting and/or sawing site when conducted by employees of employers subject to this classification.

This classification excludes sawmill operations which are not conducted in the woods in connection with a logging operation which is to be reported separately in the applicable sawmill classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-5005 Classification 5005.

5005-00 Logging and/or tree thinning - mechanized operations

(to be assigned only by classification services staff)

Applies to establishments engaged in mechanized logging or tree thinning operations. For purposes of this classification, mechanized logging is defined as the entire process of felling, removal (skidding), yarding, processing, delimiting, bucking and loading of trees/logs by machine. This classification can be used by a logging contractor only if the entire side is being logged using methods and equipment described in this rule. If any portion of the side is being logged by conventional methods the entire operation must be reported in classification 5001 - Logging, N.O.C. or ~~((0101))~~ 5005-01 Logging Machine Operators. *For example*, an employer that subcontracts to fell trees with a feller/buncher or processor but is not involved in the removal (skidding) of the trees, the processing (delimiting and bucking) of the trees and the loading of trees is excluded from classification ~~((5005))~~ 5005-00 and is to be reported in classification ~~((5001))~~ 5001 - Logging, N.O.C. or ((0101)) 5005-01 Logging Machine Operators. Any employer whose operation includes any manual felling, removal, processing, or loading of trees is excluded from classification ~~((5005))~~ 5005-00 and is to be reported in classification 5001 - Logging, N.O.C. Work contemplated by this classification includes the falling of trees with a machine such as a feller buncher or processor; skidding logs to the landing with use of a grapple skidder or forwarder; delimiting logs with a mechanized delimeter such as a stroke delimeter, processor, CTR or harvester; and loading logs onto log trucks with a mechanical loader or shovel. Equipment used by employers subject to this classification will consist of the following:

Feller/buncher - used to fell trees and place felled trees into stacks (bunches) for removal to the log landing for further processing. The operator of this machine does not leave the cab of the machine in the performance of duties in the logging operation.

Processor - used to fell trees, delimit them, buck tree to desired log length and stack the bunches for removal to the landing where they will be segregated by general grade and

loaded onto log trucks. A processor is sometimes used at the landing to delimit trees and buck them to log length, especially when the trees are felled by a feller/buncher. The operator of this machine does not leave the cab of the machine in the performance of duties in the logging operation.

Grapple skidder - is used to remove (ground skid) stacks (bunches) of felled trees from the woods to the landing. The industry refers to both the skidder and the bulldozers as a tractor. The two are distinguished from one another in that the skidder is a tire-driven tractor and the bulldozer is a track-driven tractor. A bulldozer equipped with a grapple is an acceptable piece of equipment to be used in the removal of trees. The operator of either the grapple skidder or bulldozer equipped with grapple does not leave the cab of the machine in the performance of duties in the logging operation.

Forwarder - is used to remove logs as cut by a processor from the woods to an awaiting log truck or to be stacked in piles for a future pick up by a log truck. This is a small specialized tractor equipped with a self-loader and a log bunk. The operator of this machine does not leave the machine in the performance of duties in the logging operation.

Harvester - is used at the landing of the logging side to delimit trees and buck trees to desired log length. This machine can also be used to load logs onto log trucks. The operator of this machine does not leave the cab of the machine in the performance of duties in the logging operation.

Loader - is used at the landing to load logs onto log trucks. The operator of this machine does not leave the cab of the machine in the performance of duties in the logging operation.

This classification excludes log hauling which is to be reported separately in classification 5003, logging road construction which is to be reported separately in classification 6902, logging machine operators which are to be reported separately in classification ~~((0101))~~ 5005-01, and logging operations which are to be reported separately in classification 5001.

Special notes: If any portion of the logging contract is performed manually or by hand, the establishment does not qualify for this classification. If any portion of the logging contract is subcontracted out to another business and is performed manually or by hand, then none of the businesses involved in the logging contract will qualify for this classification and are to be reported separately in classification 5001 or ~~((0101))~~ 5005-01.

All equipment used by employers subject to this classification must meet WISHA guidelines for Roll Over Protection Standards (ROPS) and Falling Object Protection Standards (FOPS).

See classification 5206 (WAC 296-17-675) for permanent shop/yard operations.

5005-01 Logging machine operators

(to be assigned only by classification services staff)

This classification applies to employees of a logging company that does not qualify as a mechanized operation but operates equipment such as a feller buncher, processor, forwarder, skidder, log loader, or tower and who are in a protective cab. This classification also applies to firms who contract with logging firms to provide such equipment and oper-

ators to a logging side. The operator does not leave the cab to perform duties as part of the logging operation. Equipment used by employers subject to this classification are required to meet WISHA guidelines for roll over protection standards (ROPS) and falling object protection standards (FOPS).

This classification excludes all logging activities being performed on the ground which are to be reported separately in classification 5001.

Special note: This classification does not apply to classification 5005-00 "logging and/or tree thinning - mechanical operations" whereby logging activities are performed exclusively by machine and no employees are on the ground.

WSR 09-19-137
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 22, 2009, 4:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-082.

Title of Rule and Other Identifying Information: 2010 industrial insurance premium rates - chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance.

Hearing Location(s): Tukwila Labor and Industries Office (Bob Malooly), 12806 Gateway Drive, Tukwila, WA 98168, on October 27, at 1 p.m.; at the Labor and Industries Bldg (Bob Malooly), 7273 Linderson Way S.W., Tumwater, WA 98501, on October 28, at 10 a.m.; at the Vancouver Red Lion Quay (Mike Ratko), 100 Columbia Street, Vancouver, WA 98660, on October 28, at 10 a.m.; at the Bellingham Quality Inn (Mike Ratko), 100 East Kellogg Road, Bellingham, WA 98226, on October 29, at 1 p.m.; at the Spokane Airport Ramada (Mike Ratko), Spokane International Airport, Spokane, Washington 99219, on October 30, at 9 a.m.; and at the Hampton Inn Richland (Mike Ratko), 486 Bradley Boulevard, Richland, WA 99352, on October 30, at 2 p.m.

Date of Intended Adoption: November 30, 2009.

Submit Written Comments to: Ronald Moore, P.O. Box 44140, Olympia, WA 98504-4140, e-mail mooa235@lni.wa.gov, fax (360) 902-4748, by 5:00 p.m., November 7, 2009.

Assistance for Persons with Disabilities: Contact office of information and assistance by October 20, 2009, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule proposal will amend the tables of classification base premium rates, experience rating plan parameters, experience modification factor calculation limitations and retrospective rating plan size groupings for the workers' compensation insurance program for calendar year 2010. Classification base rates are amended so that the base rates reflect updated loss and payroll experience and the proposed decision to increase premium rates an overall average 7.6% per hour worked.

For this proposal the department is submitting two sets of base rate tables (WAC 296-17-895 and 296-17-89502) and two sets of retro rating table 1 (WAC 296-17-920). The multiple tables are necessary pending a decision on rules proposed (see WSR 09-16-142) for retrospective rating WAC 296-17-90445 Valuation of coverage period. This proposed rule changes how occupational disease claims are included in retrospective rating adjustment calculations. The proposal provides that chargeable claim costs are assigned to retro and nonretro employers, and that claim costs not assigned to any employer will be eliminated from the retro processes through the calculation of the performance adjustment factor. The decision to adopt or not adopt this pending rule will determine which rating tables will be used for the 2010 industrial insurance rates. If this rule is not adopted the result could mean an increase in premium rates an overall average of 9.3% per hour worked.

This proposal amends WAC 296-17-855 Experience modification, 296-17-875 Table I, 296-17-880 Table II, 296-17-885 Table III, 296-17-890 Table IV, 296-17-895 Industrial insurance accident fund base rates and medical aid base rates by class of industry, 296-17-89502 Industrial insurance accident fund, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications, 296-17-89504 Horse racing industry industrial insurance, medical aid, and supplemental pension by class, 296-17-90492 Table I (Retro), and 296-17-920 Assessment for supplemental pension fund.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 51.16.035 (Base rates), 51.32.073 (Supplemental pension), 51.08.010 (Retrospective rating), and 51.04.020(1) (General authority).

Statute Being Implemented: RCW 51.16.035, 51.32.073, and 51.18.010.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: JoAnne Smith, Tumwater, Washington, (360) 902-4777; Implementation: Ronald C. Moore, Tumwater, Washington, (360) 902-4748; and Enforcement: Robert Malooly, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In this rule making the agency is exempt from preparing a small business economic impact statement when the proposed rules set or adjust fees or rates pursuant to legislative standards. This exemption is described in RCW 34.05.310 (4)(f).

A cost-benefit analysis is not required under RCW 34.05.328. In this rule making, the agency is exempt from conducting a cost-benefit analysis since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.328 (5)(b)(vi).

September 22, 2009

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

WAC 296-17-855 Experience modification. The basis of the experience modification shall be a comparison of the actual losses charged to an employer during the experience period with the expected losses for an average employer reporting the same exposures in each classification. The comparison shall contain actuarial refinements designed to weigh the extent to which the actual experience is credible, due consideration being given to the volume of the employer's experience. Except for those employers who qualify for an adjusted experience modification as specified in WAC 296-17-860 or 296-17-865, the experience modification factor shall be calculated from the formula:

$$\text{EXPERIENCE MODIFICATION FACTOR} = \frac{\text{Credible Actual Primary Loss} + \text{Credible Actual Excess Loss}}{\text{Expected Loss}}$$

Where

$$\text{Credible Actual Primary Loss} = \text{Actual Primary Loss} \times \text{Primary Credibility} + \text{Expected Primary Loss} \times (100\% - \text{Primary Credibility})$$

$$\text{Credible Actual Excess Loss} = \text{Actual Excess Loss} \times \text{Excess Credibility} + \text{Expected Excess Loss} \times (100\% - \text{Excess Credibility})$$

The meaning and function of each term in the formula is specified below.

For each claim, the actual primary loss is the first dollar portion of the claim costs, which has been shown in actuarial studies, to have the greater credibility in predicting future experience. These amounts are summed over all claims. For each claim in excess of \$20,112 the actual primary loss shall be determined from the formula:

$$\text{ACTUAL PRIMARY LOSS} = \frac{50,280}{(\text{Total loss} + 30,168)} \times \text{total loss}$$

For each claim, less than \$20,112 the full value of the claim shall be considered a primary loss.

For each claim, the excess actual loss is the remaining portion of the claim costs, which have been shown in actuarial studies to have less credibility in predicting future experience. The excess actual loss for each claim shall be determined by subtracting the primary loss from the total loss. These amounts are summed over all claims.

For any claim without disability benefits (time loss, partial permanent disability, total permanent disability or death) either actually paid or estimated to be paid, the total actual losses for calculating the primary loss and excess loss shall first be reduced by the lesser of ((\$1,790)) \$1,950 or the total cost of the claim. Here are some examples for these claims:

Total Loss	Total Loss (after deduction)	Primary Loss	Excess Loss
200	-	-	-
2,000	((210))	((210))	-
	<u>50</u>	<u>50</u>	

Total Loss	Total Loss (after deduction)	Primary Loss	Excess Loss
20,000	((18,210))	((18,210))	-
	<u>18,050</u>	<u>18,050</u>	
200,000	((198,210))	((43,638))	((154,572))
	<u>198,050</u>	<u>43,634</u>	<u>154,416</u>
2,000,000	((217,994))	((44,168))	((173,826))
	<u>220,638</u>	<u>44,232</u>	<u>176,406</u>

Note: The deduction, ((\$1,790)) \$1,950, is twice the average case incurred cost of these types of claims occurring during the three-year period used for experience rating. On average this results in reducing the average actual loss about seventy percent for these types of claims adjusted. This is done to help make the transition between the two different experience rating methods better by helping make the change in experience factor reasonable for small changes to the actual losses. The \$2,000,000 loss is limited by the Maximum Claim Value before the reduction of ((\$1,790)) \$1,950 is applied.

For each employer, the primary credibility and the excess credibility determines the percentage weight given to the corresponding actual primary losses and the actual excess losses, included in the calculation of the experience modification, based on the volume of expected losses. Primary credibility and excess credibility values are set forth in Table II.

An employer's expected losses shall be determined by summing the expected loss for each of the three years of the experience period, which are calculated by multiplying the reported exposure in each classification during the year by the corresponding classification expected loss rate and rounding the result to the nearest cent. Classification expected loss rates by year are set forth in Table III.

Expected losses in each classification shall be multiplied by the classification "Primary-Ratio" to obtain "expected primary losses" which shall be rounded to the nearest cent. Expected excess losses shall then be calculated by subtracting expected primary losses from expected total losses rounded to the nearest cent. Primary-Ratios are also set forth in Table III.

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

WAC 296-17-895 Industrial insurance accident fund base rates and medical aid base rates by class of industry. Industrial insurance accident fund and medical aid fund base rates by class of industry shall be as set forth below.

((Base Rates Effective January 1, 2009))

Class	Accident Fund	Medical Aid Fund
0101	1.4201	0.7919
0103	1.8731	1.0883
0104	0.9743	0.5776
0105	1.3340	0.9448
0107	1.5385	0.7554

((Base Rates Effective January 1, 2009			((Base Rates Effective January 1, 2009		
Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
0108	0.9743	0.5776	1005	9.5086	5.0081
0112	0.7665	0.4485	1007	0.3929	0.2295
0201	3.0830	1.2529	1101	0.7735	0.5553
0202	3.4809	1.8499	1102	1.5531	0.8588
0210	1.3189	0.6465	1103	1.3179	0.8681
0212	1.5467	0.7824	1104	0.5364	0.4678
0214	1.6053	0.7553	1105	0.9318	0.5859
0217	1.1233	0.6366	1106	0.3199	0.3192
0219	1.1082	0.7109	1108	0.6549	0.4734
0301	0.6143	0.4811	1109	1.5631	1.1391
0302	2.3051	1.0352	1301	0.6644	0.3747
0303	2.1201	0.9602	1303	0.2283	0.1678
0306	1.1379	0.5825	1304	0.0313	0.0228
0307	1.0150	0.5969	1305	0.4609	0.3486
0308	0.5073	0.4317	1401	0.4643	0.3943
0403	1.8060	1.1964	1404	0.8011	0.6283
0502	1.5731	0.7752	1405	0.6416	0.4908
0504	1.7700	1.1499	1407	0.4924	0.4428
0507	3.0409	2.0125	1501	0.6417	0.4109
0508	2.2983	1.0135	1507	0.6234	0.4252
0509	2.0795	1.0417	1701	0.9739	0.6308
0510	1.7460	1.1258	1702	2.5254	1.0630
0511	1.8024	0.9758	1703	1.0537	0.3926
0512	1.8408	0.9556	1704	0.9739	0.6308
0513	0.8190	0.4795	1801	0.5388	0.3835
0514	2.1075	1.1506	1802	0.7997	0.5498
0516	1.7158	0.9922	2002	0.7511	0.6038
0517	2.0148	1.2441	2004	0.9427	0.7552
0518	1.6702	0.8978	2007	0.5193	0.4051
0519	2.2845	1.2724	2008	0.3369	0.2565
0521	0.6278	0.3759	2009	0.3815	0.3530
0601	0.6876	0.4100	2101	0.6651	0.5401
0602	0.8974	0.4551	2102	0.5103	0.4543
0603	1.2107	0.5791	2104	0.2978	0.3377
0604	1.0350	0.7875	2105	0.5766	0.4591
0606	0.5603	0.4171	2106	0.4157	0.3654
0607	0.5815	0.3832	2201	0.2458	0.1994
0608	0.3748	0.2554	2202	0.7393	0.5364
0701	2.5621	0.8113	2203	0.4607	0.3990
0803	0.4786	0.3529	2204	0.2458	0.1994
0901	1.6702	0.8978	2401	0.5295	0.3538
1002	1.0846	0.7437	2903	0.6258	0.5344
1003	0.8101	0.5813	2904	0.7088	0.5718
1004	0.5915	0.3431	2905	0.5638	0.5072

((Base Rates Effective January 1, 2009			((Base Rates Effective January 1, 2009		
Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
2906	0.3395	0.2840	3903	1.0222	1.0146
2907	0.5290	0.4463	3905	0.1413	0.1547
2908	1.0958	0.7203	3906	0.4769	0.4227
2909	0.3813	0.3349	3909	0.2487	0.2507
3101	0.8945	0.5634	4002	1.5304	0.8604
3102	0.2893	0.2229	4101	0.3429	0.2565
3103	0.5700	0.4152	4103	0.4425	0.4299
3104	0.6574	0.4421	4107	0.1690	0.1352
3105	0.7457	0.5906	4108	0.1595	0.1353
3303	0.4440	0.3465	4109	0.2099	0.1680
3304	0.4435	0.4226	4201	0.8231	0.4123
3309	0.4256	0.3217	4301	0.5923	0.5603
3402	0.5644	0.4175	4302	0.6974	0.5380
3403	0.2136	0.1620	4304	0.9344	0.8358
3404	0.5176	0.4135	4305	1.3197	0.7852
3405	0.2979	0.2621	4401	0.4028	0.3654
3406	0.2054	0.1967	4402	0.8173	0.6911
3407	0.8455	0.5224	4404	0.5382	0.4726
3408	0.1921	0.1522	4501	0.1749	0.1947
3409	0.1584	0.1481	4502	0.0392	0.0374
3410	0.2711	0.2471	4504	0.1011	0.1194
3411	0.5181	0.3454	4601	0.7613	0.5948
3412	0.6489	0.3729	4802	0.3222	0.2955
3414	0.5931	0.4101	4803	0.2626	0.3063
3415	0.8920	0.6069	4804	0.5044	0.4592
3501	1.1007	0.7991	4805	0.2692	0.2691
3503	0.2598	0.3053	4806	0.0566	0.0530
3506	1.1511	0.6000	4808	0.4804	0.4246
3509	0.3861	0.3638	4809	0.3350	0.3336
3510	0.3533	0.3053	4810	0.1237	0.1406
3511	0.6999	0.5424	4811	0.2627	0.2910
3512	0.3329	0.3418	4812	0.3909	0.3642
3513	0.4440	0.4103	4813	0.1411	0.1479
3602	0.1308	0.1085	4900	0.2965	0.1511
3603	0.4577	0.3961	4901	0.0758	0.0528
3604	0.7790	0.7499	4902	0.1184	0.0869
3605	0.5653	0.3873	4903	0.1678	0.1350
3701	0.2893	0.2229	4904	0.0268	0.0256
3702	0.4543	0.3588	4905	0.3333	0.3588
3708	0.6364	0.4331	4906	0.0983	0.0785
3802	0.1999	0.1676	4907	0.0518	0.0479
3808	0.4682	0.2971	4908	0.0770	0.1114
3901	0.1501	0.1699	4909	0.0373	0.0642
3902	0.4600	0.4107	4910	0.4714	0.3805

((Base Rates Effective January 1, 2009			((Base Rates Effective January 1, 2009		
Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
4911	0.0611	0.0492	6303	0.0722	0.0561
5001	7.2480	3.4652	6304	0.3606	0.3977
5002	0.6387	0.4508	6305	0.0954	0.1005
5003	2.4263	1.2277	6306	0.3201	0.2588
5004	0.8974	0.6738	6308	0.0671	0.0581
5005	0.6526	0.3922	6309	0.1936	0.1780
5006	1.7310	0.8658	6402	0.2597	0.2501
5101	0.9327	0.6884	6403	0.1624	0.1733
5103	0.7072	0.6748	6404	0.2345	0.2224
5106	0.7072	0.6748	6405	0.5954	0.4214
5108	0.8683	0.7836	6406	0.1118	0.1183
5109	0.5732	0.4017	6407	0.2674	0.2463
5201	0.4313	0.3162	6408	0.4230	0.3305
5204	0.9572	0.6534	6409	0.8370	0.5244
5206	0.4430	0.2869	6410	0.2856	0.2492
5207	0.1518	0.1709	6501	0.1624	0.1442
5208	0.8149	0.6490	6502	0.0366	0.0309
5209	0.7339	0.5598	6503	0.0883	0.0534
5300	0.1172	0.0927	6504	0.3398	0.3873
5301	0.0371	0.0315	6505	0.0908	0.1183
5302	0.0185	0.0154	6506	0.1002	0.1021
5305	0.0500	0.0503	6509	0.3408	0.3423
5306	0.0590	0.0576	6510	0.5165	0.3006
5307	0.6305	0.4024	6511	0.3539	0.3415
5308	0.0809	0.0687	6512	0.1913	0.1532
6103	0.0742	0.0842	6601	0.1878	0.1707
6104	0.3463	0.3269	6602	0.5114	0.4383
6105	0.3871	0.2718	6603	0.3522	0.2687
6107	0.1275	0.1596	6604	0.0827	0.0777
6108	0.4337	0.4229	6605	0.2896	0.3348
6109	0.1051	0.0807	6607	0.1633	0.1429
6110	0.6270	0.5057	6608	0.6594	0.2789
6120	0.2949	0.2233	6620	4.0932	2.6961
6121	0.3840	0.2842	6704	0.1594	0.1301
6201	0.3319	0.2288	6705	0.6642	0.8191
6202	0.6250	0.5460	6706	0.2851	0.2866
6203	0.0836	0.1150	6707	3.7267	4.7882
6204	0.1147	0.1158	6708	6.8366	9.4509
6205	0.2645	0.2269	6709	0.2634	0.2708
6206	0.2276	0.1997	6801	0.6947	0.4762
6207	0.9275	1.1319	6802	0.5344	0.4384
6208	0.2111	0.2389	6803	1.0751	0.4951
6209	0.3054	0.3003	6804	0.3131	0.2620
6301	0.1543	0.0837	6809	4.6022	4.8001

((Base Rates Effective
January 1, 2009

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Base Rates Effective
January 1, 2010

Class	Accident Fund	Medical Aid Fund
6901	0.0000	0.0619
6902	1.2039	0.5354
6903	8.2570	4.4850
6904	0.5186	0.2985
6905	0.4324	0.3028
6906	0.0000	0.3028
6907	1.3282	1.0454
6908	0.4708	0.3619
6909	0.1132	0.1088
7100	0.0319	0.0277
7101	0.0248	0.0200
7102	3.0489	4.9215
7103	0.7006	0.4465
7104	0.0307	0.0293
7105	0.0311	0.0288
7106	0.1931	0.1909
7107	0.1990	0.2367
7108	0.1788	0.1952
7109	0.1289	0.1308
7110	0.3673	0.2290
7111	0.4592	0.2625
7112	0.6442	0.5805
7113	0.3484	0.3457
7114	0.4421	0.4636
7115	0.5541	0.5533
7116	0.6570	0.5633
7117	1.6550	1.4537
7118	1.3613	1.2231
7119	1.3686	1.0544
7120	6.2512	4.8373
7121	5.8067	4.5171
7122	0.4794	0.5044
7200	1.3937	0.8325
7201	1.6940	0.9449
7202	0.0359	0.0229
7203	0.1029	0.1602
7204	0.0000	0.0000
7205	0.0000	0.0000
7301	0.4830	0.4187
7302	0.9645	0.8427
7307	0.4597	0.4214
7308	0.3087	0.3690
7309	0.2283	0.2551
7400	1.6940	0.9449))

Class	Accident Fund	Medical Aid Fund
<u>0101</u>	<u>1.4171</u>	<u>0.8290</u>
<u>0103</u>	<u>1.9338</u>	<u>1.2162</u>
<u>0104</u>	<u>1.0096</u>	<u>0.6354</u>
<u>0105</u>	<u>1.3556</u>	<u>0.9833</u>
<u>0107</u>	<u>1.5715</u>	<u>0.7938</u>
<u>0108</u>	<u>1.0096</u>	<u>0.6354</u>
<u>0112</u>	<u>0.7694</u>	<u>0.4834</u>
<u>0201</u>	<u>3.3385</u>	<u>1.3070</u>
<u>0202</u>	<u>3.7335</u>	<u>2.0036</u>
<u>0210</u>	<u>1.3643</u>	<u>0.6803</u>
<u>0212</u>	<u>1.5700</u>	<u>0.8234</u>
<u>0214</u>	<u>1.7231</u>	<u>0.8805</u>
<u>0217</u>	<u>1.1270</u>	<u>0.6759</u>
<u>0219</u>	<u>1.2680</u>	<u>0.8069</u>
<u>0301</u>	<u>0.6707</u>	<u>0.5364</u>
<u>0302</u>	<u>2.3884</u>	<u>1.1450</u>
<u>0303</u>	<u>2.1114</u>	<u>1.0183</u>
<u>0306</u>	<u>1.1288</u>	<u>0.6136</u>
<u>0307</u>	<u>1.0347</u>	<u>0.6405</u>
<u>0308</u>	<u>0.5270</u>	<u>0.4717</u>
<u>0403</u>	<u>1.8851</u>	<u>1.2485</u>
<u>0502</u>	<u>1.5522</u>	<u>0.8223</u>
<u>0504</u>	<u>1.8623</u>	<u>1.2855</u>
<u>0507</u>	<u>3.1354</u>	<u>2.1578</u>
<u>0508</u>	<u>2.3390</u>	<u>1.0577</u>
<u>0509</u>	<u>2.3461</u>	<u>1.1925</u>
<u>0510</u>	<u>1.8754</u>	<u>1.2515</u>
<u>0511</u>	<u>1.8230</u>	<u>1.0339</u>
<u>0512</u>	<u>1.8524</u>	<u>1.0148</u>
<u>0513</u>	<u>0.8355</u>	<u>0.5102</u>
<u>0514</u>	<u>2.1954</u>	<u>1.2756</u>
<u>0516</u>	<u>1.7452</u>	<u>1.0601</u>
<u>0517</u>	<u>2.2429</u>	<u>1.4494</u>
<u>0518</u>	<u>1.6739</u>	<u>0.9394</u>
<u>0519</u>	<u>2.2514</u>	<u>1.3304</u>
<u>0521</u>	<u>0.6528</u>	<u>0.4036</u>
<u>0601</u>	<u>0.7014</u>	<u>0.4297</u>
<u>0602</u>	<u>0.9119</u>	<u>0.4800</u>
<u>0603</u>	<u>1.3023</u>	<u>0.6556</u>
<u>0604</u>	<u>1.0991</u>	<u>0.8748</u>
<u>0606</u>	<u>0.5892</u>	<u>0.4476</u>

<u>Base Rates Effective</u> <u>January 1, 2010</u>			<u>Base Rates Effective</u> <u>January 1, 2010</u>		
<u>Class</u>	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>	<u>Class</u>	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>
0607	0.6405	0.4453	2201	0.2549	0.2160
0608	0.3793	0.2749	2202	0.7879	0.5985
0701	2.6692	0.8643	2203	0.4773	0.4394
0803	0.5012	0.3928	2204	0.2549	0.2160
0901	1.6739	0.9394	2401	0.6002	0.3776
1002	1.1556	0.8052	2903	0.6590	0.5855
1003	0.8526	0.6326	2904	0.7282	0.5975
1004	0.6353	0.3850	2905	0.6153	0.5586
1005	10.0027	5.4183	2906	0.3636	0.3214
1007	0.4178	0.2336	2907	0.5502	0.4716
1101	0.8323	0.6186	2908	1.1640	0.8225
1102	1.6845	0.9535	2909	0.4014	0.3672
1103	1.3856	0.9186	3101	0.8596	0.5807
1104	0.5841	0.5301	3102	0.3026	0.2349
1105	0.9692	0.6107	3103	0.5839	0.4394
1106	0.3297	0.3397	3104	0.6910	0.4946
1108	0.6918	0.5210	3105	0.7751	0.6618
1109	1.6232	1.1602	3303	0.4543	0.3759
1301	0.6755	0.4030	3304	0.4710	0.4735
1303	0.2296	0.1777	3309	0.4301	0.3308
1304	0.0325	0.0245	3402	0.6066	0.4628
1305	0.5022	0.3979	3403	0.2269	0.1753
1401	0.4683	0.4139	3404	0.5421	0.4520
1404	0.8551	0.6952	3405	0.3139	0.2830
1405	0.6934	0.5449	3406	0.2340	0.2224
1407	0.5018	0.4713	3407	0.9562	0.5987
1501	0.6745	0.4526	3408	0.2141	0.1754
1507	0.6612	0.4698	3409	0.1607	0.1541
1701	1.0210	0.6847	3410	0.2693	0.2555
1702	2.5362	1.0757	3411	0.5572	0.3813
1703	1.1360	0.4290	3412	0.7240	0.4160
1704	1.0210	0.6847	3414	0.6268	0.4499
1801	0.5465	0.3923	3415	0.9404	0.6604
1802	0.8426	0.6411	3501	1.1501	0.8573
2002	0.7986	0.6569	3503	0.2669	0.3257
2004	0.9340	0.7782	3506	1.1081	0.6052
2007	0.5582	0.4592	3509	0.3939	0.3892
2008	0.3639	0.2948	3510	0.3614	0.3151
2009	0.4009	0.3796	3511	0.7003	0.5643
2101	0.7088	0.5904	3512	0.3638	0.3723
2102	0.5491	0.5042	3513	0.4852	0.4738
2104	0.2933	0.3622	3602	0.1356	0.1148
2105	0.5858	0.4942	3603	0.4839	0.4354
2106	0.4456	0.4007	3604	0.7954	0.7977

<u>Base Rates Effective</u> <u>January 1, 2010</u>			<u>Base Rates Effective</u> <u>January 1, 2010</u>		
<u>Class</u>	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>	<u>Class</u>	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>
3605	0.5918	0.4192	4903	0.1730	0.1435
3701	0.3026	0.2349	4904	0.0279	0.0273
3702	0.4686	0.3837	4905	0.3406	0.3978
3708	0.6605	0.4568	4906	0.1024	0.0834
3802	0.2084	0.1845	4907	0.0545	0.0541
3808	0.4888	0.3266	4908	0.0806	0.1218
3901	0.1579	0.1826	4909	0.0382	0.0669
3902	0.4684	0.4432	4910	0.5009	0.4089
3903	1.0645	1.0981	4911	0.0634	0.0524
3905	0.1444	0.1662	5001	8.4242	4.3361
3906	0.4899	0.4481	5002	0.6681	0.4872
3909	0.2702	0.2707	5003	2.6380	1.3541
4002	1.4751	0.8685	5004	0.8890	0.6982
4101	0.3687	0.2912	5005	0.7338	0.4382
4103	0.5002	0.4946	5006	1.8037	0.9098
4107	0.1727	0.1409	5101	0.9643	0.7056
4108	0.1857	0.1589	5103	0.7549	0.7505
4109	0.2167	0.1816	5106	0.7549	0.7505
4201	0.8514	0.4386	5108	0.8738	0.8176
4301	0.6312	0.6235	5109	0.5952	0.4182
4302	0.7332	0.5802	5201	0.4450	0.3385
4304	0.9278	0.8790	5204	1.0081	0.6895
4305	1.4217	0.8551	5206	0.4385	0.2985
4401	0.4275	0.4082	5207	0.1522	0.1736
4402	0.8814	0.7486	5208	0.8554	0.7154
4404	0.5500	0.4857	5209	0.7818	0.6011
4501	0.1831	0.2083	5300	0.1327	0.1029
4502	0.0412	0.0392	5301	0.0393	0.0342
4504	0.1062	0.1284	5302	0.0180	0.0156
4601	0.8262	0.6540	5305	0.0544	0.0554
4802	0.3456	0.3288	5306	0.0569	0.0586
4803	0.2709	0.3226	5307	0.6843	0.4378
4804	0.5040	0.4945	5308	0.0910	0.0973
4805	0.2827	0.2909	6103	0.0785	0.0929
4806	0.0602	0.0591	6104	0.3692	0.3480
4808	0.4878	0.4655	6105	0.4232	0.3039
4809	0.3266	0.3530	6107	0.1442	0.1821
4810	0.1324	0.1525	6108	0.4638	0.4655
4811	0.2869	0.3416	6109	0.1177	0.0910
4812	0.3979	0.3819	6110	0.6429	0.5387
4813	0.1530	0.1654	6120	0.3149	0.2402
4900	0.2575	0.1366	6121	0.3910	0.2994
4901	0.0782	0.0555	6201	0.3403	0.2493
4902	0.1288	0.0962	6202	0.6530	0.5826

<u>Base Rates Effective</u> <u>January 1, 2010</u>			<u>Base Rates Effective</u> <u>January 1, 2010</u>		
<u>Class</u>	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>	<u>Class</u>	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>
6203	0.0925	0.1277	6707	4.0650	5.0433
6204	0.1183	0.1208	6708	7.0901	10.5720
6205	0.2728	0.2393	6709	0.2563	0.2809
6206	0.2415	0.2228	6801	0.7462	0.4947
6207	1.0143	1.2759	6802	0.6026	0.5085
6208	0.2244	0.2592	6803	1.1557	0.5314
6209	0.3077	0.3166	6804	0.3567	0.3226
6301	0.1609	0.0880	6809	4.7521	5.4232
6303	0.0762	0.0610	6901	0.0000	0.0687
6304	0.3542	0.4100	6902	1.2346	0.5839
6305	0.1049	0.1123	6903	8.5839	4.8015
6306	0.3104	0.2629	6904	0.5686	0.3353
6308	0.0699	0.0643	6905	0.4538	0.3325
6309	0.2111	0.1985	6906	0.0000	0.3325
6402	0.2715	0.2652	6907	1.3582	1.0936
6403	0.1738	0.1925	6908	0.4740	0.3841
6404	0.2606	0.2635	6909	0.1230	0.1210
6405	0.6054	0.4414	7100	0.0332	0.0298
6406	0.1197	0.1319	7101	0.0256	0.0213
6407	0.2795	0.2637	7102	3.1418	5.3264
6408	0.4542	0.3596	7103	0.7334	0.4845
6409	0.8423	0.5516	7104	0.0317	0.0323
6410	0.3063	0.2770	7105	0.0298	0.0296
6501	0.1664	0.1496	7106	0.2208	0.2251
6502	0.0357	0.0308	7107	0.2138	0.2577
6503	0.0913	0.0569	7108	0.1890	0.2086
6504	0.3467	0.4042	7109	0.1393	0.1477
6505	0.0950	0.1352	7110	0.3825	0.2465
6506	0.1047	0.1099	7111	0.4967	0.2923
6509	0.3708	0.3856	7112	0.6743	0.6337
6510	0.5342	0.3342	7113	0.3770	0.3843
6511	0.3872	0.3769	7114	0.4426	0.5004
6512	0.1844	0.1476	7115	0.5418	0.5626
6601	0.1992	0.1824	7116	0.6358	0.5641
6602	0.5314	0.4813	7117	1.6923	1.5334
6603	0.3655	0.2939	7118	1.4536	1.3427
6604	0.0828	0.0818	7119	1.4657	1.1602
6605	0.3174	0.3731	7120	6.5297	5.2259
6607	0.1711	0.1566	7121	6.0861	4.8878
6608	0.6901	0.2936	7122	0.5045	0.5382
6620	3.7083	2.4009	7200	1.5557	0.9474
6704	0.1546	0.1354	7201	1.7720	1.0474
6705	0.7293	0.8933	7202	0.0377	0.0240
6706	0.2918	0.3046	7203	0.1054	0.1650

<u>Base Rates Effective</u> <u>January 1, 2010</u>			<u>Base Rates Effective</u> <u>January 1, 2010</u>		
<u>Class</u>	<u>Accident</u> <u>Fund</u>	<u>Medical Aid</u> <u>Fund</u>	<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>
7204	<u>0.0000</u>	<u>0.0000</u>	0514	<u>2.2608</u>	<u>1.2756</u>
7205	<u>0.0000</u>	<u>0.0000</u>	0516	<u>1.7978</u>	<u>1.0601</u>
7301	<u>0.4802</u>	<u>0.4316</u>	0517	<u>2.3119</u>	<u>1.4494</u>
7302	<u>0.9712</u>	<u>0.8900</u>	0518	<u>1.7233</u>	<u>0.9394</u>
7307	<u>0.4627</u>	<u>0.4419</u>	0519	<u>2.3188</u>	<u>1.3304</u>
7308	<u>0.3701</u>	<u>0.4328</u>	0521	<u>0.6726</u>	<u>0.4036</u>
7309	<u>0.2372</u>	<u>0.2761</u>	0601	<u>0.7226</u>	<u>0.4297</u>
7400	<u>1.7720</u>	<u>1.0474</u>	0602	<u>0.9383</u>	<u>0.4800</u>
			0603	<u>1.3396</u>	<u>0.6556</u>
			0604	<u>1.1353</u>	<u>0.8748</u>
			0606	<u>0.6083</u>	<u>0.4476</u>
			0607	<u>0.6606</u>	<u>0.4453</u>
			0608	<u>0.3914</u>	<u>0.2749</u>
			0701	<u>2.7386</u>	<u>0.8643</u>
			0803	<u>0.5177</u>	<u>0.3928</u>
			0901	<u>1.7233</u>	<u>0.9394</u>
			1002	<u>1.1920</u>	<u>0.8052</u>
			1003	<u>0.8800</u>	<u>0.6326</u>
			1004	<u>0.6545</u>	<u>0.3850</u>
			1005	<u>10.2949</u>	<u>5.4183</u>
			1007	<u>0.4301</u>	<u>0.2336</u>
			1101	<u>0.8591</u>	<u>0.6186</u>
			1102	<u>1.7343</u>	<u>0.9535</u>
			1103	<u>1.4286</u>	<u>0.9186</u>
			1104	<u>0.6043</u>	<u>0.5301</u>
			1105	<u>0.9988</u>	<u>0.6107</u>
			1106	<u>0.3417</u>	<u>0.3397</u>
			1108	<u>0.7141</u>	<u>0.5210</u>
			1109	<u>1.6747</u>	<u>1.1602</u>
			1301	<u>0.6958</u>	<u>0.4030</u>
			1303	<u>0.2371</u>	<u>0.1777</u>
			1304	<u>0.0335</u>	<u>0.0245</u>
			1305	<u>0.5188</u>	<u>0.3979</u>
			1401	<u>0.4843</u>	<u>0.4139</u>
			1404	<u>0.8835</u>	<u>0.6952</u>
			1405	<u>0.7162</u>	<u>0.5449</u>
			1407	<u>0.5194</u>	<u>0.4713</u>
			1501	<u>0.6955</u>	<u>0.4526</u>
			1507	<u>0.6822</u>	<u>0.4698</u>
			1701	<u>1.0528</u>	<u>0.6847</u>
			1702	<u>2.6059</u>	<u>1.0757</u>
			1703	<u>1.1664</u>	<u>0.4290</u>
			1704	<u>1.0528</u>	<u>0.6847</u>
			1801	<u>0.5639</u>	<u>0.3923</u>
			1802	<u>0.8700</u>	<u>0.6411</u>

OPTION 2

<u>Base Rates Effective</u> <u>January 1, 2010</u>		
<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>
0101	<u>1.4594</u>	<u>0.8290</u>
0103	<u>1.9928</u>	<u>1.2162</u>
0104	<u>1.0404</u>	<u>0.6354</u>
0105	<u>1.3989</u>	<u>0.9833</u>
0107	<u>1.6166</u>	<u>0.7938</u>
0108	<u>1.0404</u>	<u>0.6354</u>
0112	<u>0.7929</u>	<u>0.4834</u>
0201	<u>3.4286</u>	<u>1.3070</u>
0202	<u>3.8422</u>	<u>2.0036</u>
0210	<u>1.4033</u>	<u>0.6803</u>
0212	<u>1.6154</u>	<u>0.8234</u>
0214	<u>1.7727</u>	<u>0.8805</u>
0217	<u>1.1609</u>	<u>0.6759</u>
0219	<u>1.3068</u>	<u>0.8069</u>
0301	<u>0.6928</u>	<u>0.5364</u>
0302	<u>2.4559</u>	<u>1.1450</u>
0303	<u>2.1713</u>	<u>1.0183</u>
0306	<u>1.1618</u>	<u>0.6136</u>
0307	<u>1.0661</u>	<u>0.6405</u>
0308	<u>0.5451</u>	<u>0.4717</u>
0403	<u>1.9436</u>	<u>1.2485</u>
0502	<u>1.5973</u>	<u>0.8223</u>
0504	<u>1.9208</u>	<u>1.2855</u>
0507	<u>3.2338</u>	<u>2.1578</u>
0508	<u>2.4042</u>	<u>1.0577</u>
0509	<u>2.4135</u>	<u>1.1925</u>
0510	<u>1.9336</u>	<u>1.2515</u>
0511	<u>1.8770</u>	<u>1.0339</u>
0512	<u>1.9067</u>	<u>1.0148</u>
0513	<u>0.8608</u>	<u>0.5102</u>

<u>Base Rates Effective</u> <u>January 1, 2010</u>			<u>Base Rates Effective</u> <u>January 1, 2010</u>		
<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>
<u>2002</u>	<u>0.8253</u>	<u>0.6569</u>	<u>3506</u>	<u>1.1405</u>	<u>0.6052</u>
<u>2004</u>	<u>0.9653</u>	<u>0.7782</u>	<u>3509</u>	<u>0.4080</u>	<u>0.3892</u>
<u>2007</u>	<u>0.5768</u>	<u>0.4592</u>	<u>3510</u>	<u>0.3737</u>	<u>0.3151</u>
<u>2008</u>	<u>0.3760</u>	<u>0.2948</u>	<u>3511</u>	<u>0.7235</u>	<u>0.5643</u>
<u>2009</u>	<u>0.4150</u>	<u>0.3796</u>	<u>3512</u>	<u>0.3770</u>	<u>0.3723</u>
<u>2101</u>	<u>0.7326</u>	<u>0.5904</u>	<u>3513</u>	<u>0.5025</u>	<u>0.4738</u>
<u>2102</u>	<u>0.5682</u>	<u>0.5042</u>	<u>3602</u>	<u>0.1402</u>	<u>0.1148</u>
<u>2104</u>	<u>0.3049</u>	<u>0.3622</u>	<u>3603</u>	<u>0.5006</u>	<u>0.4354</u>
<u>2105</u>	<u>0.6056</u>	<u>0.4942</u>	<u>3604</u>	<u>0.8240</u>	<u>0.7977</u>
<u>2106</u>	<u>0.4609</u>	<u>0.4007</u>	<u>3605</u>	<u>0.6105</u>	<u>0.4192</u>
<u>2201</u>	<u>0.2635</u>	<u>0.2160</u>	<u>3701</u>	<u>0.3125</u>	<u>0.2349</u>
<u>2202</u>	<u>0.8134</u>	<u>0.5985</u>	<u>3702</u>	<u>0.4842</u>	<u>0.3837</u>
<u>2203</u>	<u>0.4939</u>	<u>0.4394</u>	<u>3708</u>	<u>0.6812</u>	<u>0.4568</u>
<u>2204</u>	<u>0.2635</u>	<u>0.2160</u>	<u>3802</u>	<u>0.2155</u>	<u>0.1845</u>
<u>2401</u>	<u>0.6185</u>	<u>0.3776</u>	<u>3808</u>	<u>0.5040</u>	<u>0.3266</u>
<u>2903</u>	<u>0.6817</u>	<u>0.5855</u>	<u>3901</u>	<u>0.1639</u>	<u>0.1826</u>
<u>2904</u>	<u>0.7524</u>	<u>0.5975</u>	<u>3902</u>	<u>0.4849</u>	<u>0.4432</u>
<u>2905</u>	<u>0.6366</u>	<u>0.5586</u>	<u>3903</u>	<u>1.1033</u>	<u>1.0981</u>
<u>2906</u>	<u>0.3761</u>	<u>0.3214</u>	<u>3905</u>	<u>0.1499</u>	<u>0.1662</u>
<u>2907</u>	<u>0.5689</u>	<u>0.4716</u>	<u>3906</u>	<u>0.5069</u>	<u>0.4481</u>
<u>2908</u>	<u>1.2008</u>	<u>0.8225</u>	<u>3909</u>	<u>0.2799</u>	<u>0.2707</u>
<u>2909</u>	<u>0.4153</u>	<u>0.3672</u>	<u>4002</u>	<u>1.5193</u>	<u>0.8685</u>
<u>3101</u>	<u>0.8864</u>	<u>0.5807</u>	<u>4101</u>	<u>0.3808</u>	<u>0.2912</u>
<u>3102</u>	<u>0.3125</u>	<u>0.2349</u>	<u>4103</u>	<u>0.5181</u>	<u>0.4946</u>
<u>3103</u>	<u>0.6028</u>	<u>0.4394</u>	<u>4107</u>	<u>0.1785</u>	<u>0.1409</u>
<u>3104</u>	<u>0.7130</u>	<u>0.4946</u>	<u>4108</u>	<u>0.1920</u>	<u>0.1589</u>
<u>3105</u>	<u>0.8013</u>	<u>0.6618</u>	<u>4109</u>	<u>0.2240</u>	<u>0.1816</u>
<u>3303</u>	<u>0.4695</u>	<u>0.3759</u>	<u>4201</u>	<u>0.8759</u>	<u>0.4386</u>
<u>3304</u>	<u>0.4880</u>	<u>0.4735</u>	<u>4301</u>	<u>0.6538</u>	<u>0.6235</u>
<u>3309</u>	<u>0.4441</u>	<u>0.3308</u>	<u>4302</u>	<u>0.7573</u>	<u>0.5802</u>
<u>3402</u>	<u>0.6263</u>	<u>0.4628</u>	<u>4304</u>	<u>0.9605</u>	<u>0.8790</u>
<u>3403</u>	<u>0.2343</u>	<u>0.1753</u>	<u>4305</u>	<u>1.4645</u>	<u>0.8551</u>
<u>3404</u>	<u>0.5603</u>	<u>0.4520</u>	<u>4401</u>	<u>0.4426</u>	<u>0.4082</u>
<u>3405</u>	<u>0.3247</u>	<u>0.2830</u>	<u>4402</u>	<u>0.9112</u>	<u>0.7486</u>
<u>3406</u>	<u>0.2423</u>	<u>0.2224</u>	<u>4404</u>	<u>0.5688</u>	<u>0.4857</u>
<u>3407</u>	<u>0.9853</u>	<u>0.5987</u>	<u>4501</u>	<u>0.1900</u>	<u>0.2083</u>
<u>3408</u>	<u>0.2212</u>	<u>0.1754</u>	<u>4502</u>	<u>0.0427</u>	<u>0.0392</u>
<u>3409</u>	<u>0.1664</u>	<u>0.1541</u>	<u>4504</u>	<u>0.1103</u>	<u>0.1284</u>
<u>3410</u>	<u>0.2788</u>	<u>0.2555</u>	<u>4601</u>	<u>0.8533</u>	<u>0.6540</u>
<u>3411</u>	<u>0.5747</u>	<u>0.3813</u>	<u>4802</u>	<u>0.3578</u>	<u>0.3288</u>
<u>3412</u>	<u>0.7455</u>	<u>0.4160</u>	<u>4803</u>	<u>0.2814</u>	<u>0.3226</u>
<u>3414</u>	<u>0.6467</u>	<u>0.4499</u>	<u>4804</u>	<u>0.5220</u>	<u>0.4945</u>
<u>3415</u>	<u>0.9701</u>	<u>0.6604</u>	<u>4805</u>	<u>0.2930</u>	<u>0.2909</u>
<u>3501</u>	<u>1.1872</u>	<u>0.8573</u>	<u>4806</u>	<u>0.0623</u>	<u>0.0591</u>
<u>3503</u>	<u>0.2773</u>	<u>0.3257</u>	<u>4808</u>	<u>0.5050</u>	<u>0.4655</u>

<u>Base Rates Effective</u> <u>January 1, 2010</u>			<u>Base Rates Effective</u> <u>January 1, 2010</u>		
<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>
<u>4809</u>	<u>0.3387</u>	<u>0.3530</u>	<u>6108</u>	<u>0.4805</u>	<u>0.4655</u>
<u>4810</u>	<u>0.1375</u>	<u>0.1525</u>	<u>6109</u>	<u>0.1215</u>	<u>0.0910</u>
<u>4811</u>	<u>0.2980</u>	<u>0.3416</u>	<u>6110</u>	<u>0.6645</u>	<u>0.5387</u>
<u>4812</u>	<u>0.4120</u>	<u>0.3819</u>	<u>6120</u>	<u>0.3251</u>	<u>0.2402</u>
<u>4813</u>	<u>0.1587</u>	<u>0.1654</u>	<u>6121</u>	<u>0.4037</u>	<u>0.2994</u>
<u>4900</u>	<u>0.2650</u>	<u>0.1366</u>	<u>6201</u>	<u>0.3512</u>	<u>0.2493</u>
<u>4901</u>	<u>0.0807</u>	<u>0.0555</u>	<u>6202</u>	<u>0.6755</u>	<u>0.5826</u>
<u>4902</u>	<u>0.1329</u>	<u>0.0962</u>	<u>6203</u>	<u>0.0963</u>	<u>0.1277</u>
<u>4903</u>	<u>0.1788</u>	<u>0.1435</u>	<u>6204</u>	<u>0.1226</u>	<u>0.1208</u>
<u>4904</u>	<u>0.0289</u>	<u>0.0273</u>	<u>6205</u>	<u>0.2821</u>	<u>0.2393</u>
<u>4905</u>	<u>0.3537</u>	<u>0.3978</u>	<u>6206</u>	<u>0.2499</u>	<u>0.2228</u>
<u>4906</u>	<u>0.1058</u>	<u>0.0834</u>	<u>6207</u>	<u>1.0547</u>	<u>1.2759</u>
<u>4907</u>	<u>0.0565</u>	<u>0.0541</u>	<u>6208</u>	<u>0.2330</u>	<u>0.2592</u>
<u>4908</u>	<u>0.0841</u>	<u>0.1218</u>	<u>6209</u>	<u>0.3190</u>	<u>0.3166</u>
<u>4909</u>	<u>0.0400</u>	<u>0.0669</u>	<u>6301</u>	<u>0.1656</u>	<u>0.0880</u>
<u>4910</u>	<u>0.5176</u>	<u>0.4089</u>	<u>6303</u>	<u>0.0787</u>	<u>0.0610</u>
<u>4911</u>	<u>0.0655</u>	<u>0.0524</u>	<u>6304</u>	<u>0.3678</u>	<u>0.4100</u>
<u>5001</u>	<u>8.6669</u>	<u>4.3361</u>	<u>6305</u>	<u>0.1088</u>	<u>0.1123</u>
<u>5002</u>	<u>0.6895</u>	<u>0.4872</u>	<u>6306</u>	<u>0.3209</u>	<u>0.2629</u>
<u>5003</u>	<u>2.7139</u>	<u>1.3541</u>	<u>6308</u>	<u>0.0724</u>	<u>0.0643</u>
<u>5004</u>	<u>0.9182</u>	<u>0.6982</u>	<u>6309</u>	<u>0.2185</u>	<u>0.1985</u>
<u>5005</u>	<u>0.7558</u>	<u>0.4382</u>	<u>6402</u>	<u>0.2811</u>	<u>0.2652</u>
<u>5006</u>	<u>1.8553</u>	<u>0.9098</u>	<u>6403</u>	<u>0.1803</u>	<u>0.1925</u>
<u>5101</u>	<u>0.9952</u>	<u>0.7056</u>	<u>6404</u>	<u>0.2701</u>	<u>0.2635</u>
<u>5103</u>	<u>0.7820</u>	<u>0.7505</u>	<u>6405</u>	<u>0.6248</u>	<u>0.4414</u>
<u>5106</u>	<u>0.7820</u>	<u>0.7505</u>	<u>6406</u>	<u>0.1242</u>	<u>0.1319</u>
<u>5108</u>	<u>0.9044</u>	<u>0.8176</u>	<u>6407</u>	<u>0.2893</u>	<u>0.2637</u>
<u>5109</u>	<u>0.6140</u>	<u>0.4182</u>	<u>6408</u>	<u>0.4692</u>	<u>0.3596</u>
<u>5201</u>	<u>0.4594</u>	<u>0.3385</u>	<u>6409</u>	<u>0.8683</u>	<u>0.5516</u>
<u>5204</u>	<u>1.0397</u>	<u>0.6895</u>	<u>6410</u>	<u>0.3169</u>	<u>0.2770</u>
<u>5206</u>	<u>0.4522</u>	<u>0.2985</u>	<u>6501</u>	<u>0.1721</u>	<u>0.1496</u>
<u>5207</u>	<u>0.1580</u>	<u>0.1736</u>	<u>6502</u>	<u>0.0369</u>	<u>0.0308</u>
<u>5208</u>	<u>0.8841</u>	<u>0.7154</u>	<u>6503</u>	<u>0.0941</u>	<u>0.0569</u>
<u>5209</u>	<u>0.8072</u>	<u>0.6011</u>	<u>6504</u>	<u>0.3600</u>	<u>0.4042</u>
<u>5300</u>	<u>0.1370</u>	<u>0.1029</u>	<u>6505</u>	<u>0.0990</u>	<u>0.1352</u>
<u>5301</u>	<u>0.0406</u>	<u>0.0342</u>	<u>6506</u>	<u>0.1086</u>	<u>0.1099</u>
<u>5302</u>	<u>0.0186</u>	<u>0.0156</u>	<u>6509</u>	<u>0.3844</u>	<u>0.3856</u>
<u>5305</u>	<u>0.0564</u>	<u>0.0554</u>	<u>6510</u>	<u>0.5505</u>	<u>0.3342</u>
<u>5306</u>	<u>0.0590</u>	<u>0.0586</u>	<u>6511</u>	<u>0.4009</u>	<u>0.3769</u>
<u>5307</u>	<u>0.7052</u>	<u>0.4378</u>	<u>6512</u>	<u>0.1905</u>	<u>0.1476</u>
<u>5308</u>	<u>0.0944</u>	<u>0.0973</u>	<u>6601</u>	<u>0.2062</u>	<u>0.1824</u>
<u>6103</u>	<u>0.0815</u>	<u>0.0929</u>	<u>6602</u>	<u>0.5498</u>	<u>0.4813</u>
<u>6104</u>	<u>0.3822</u>	<u>0.3480</u>	<u>6603</u>	<u>0.3776</u>	<u>0.2939</u>
<u>6105</u>	<u>0.4367</u>	<u>0.3039</u>	<u>6604</u>	<u>0.0857</u>	<u>0.0818</u>
<u>6107</u>	<u>0.1500</u>	<u>0.1821</u>	<u>6605</u>	<u>0.3296</u>	<u>0.3731</u>

Base Rates Effective
January 1, 2010

Class	Accident Fund	Medical Aid Fund
6607	0.1771	0.1566
6608	0.7091	0.2936
6620	3.8224	2.4009
6704	0.1599	0.1354
6705	0.7580	0.8933
6706	0.3025	0.3046
6707	4.2258	5.0433
6708	7.3968	10.5720
6709	0.2658	0.2809
6801	0.7694	0.4947
6802	0.6229	0.5085
6803	1.1880	0.5314
6804	0.3690	0.3226
6809	4.9330	5.4232
6901	0.0000	0.0687
6902	1.2694	0.5839
6903	8.8369	4.8015
6904	0.5856	0.3353
6905	0.4683	0.3325
6906	0.0000	0.3325
6907	1.4032	1.0936
6908	0.4898	0.3841
6909	0.1274	0.1210
7100	0.0344	0.0298
7101	0.0265	0.0213
7102	3.2872	5.3264
7103	0.7561	0.4845
7104	0.0328	0.0323
7105	0.0308	0.0296
7106	0.2288	0.2251
7107	0.2222	0.2577
7108	0.1961	0.2086
7109	0.1444	0.1477
7110	0.3943	0.2465
7111	0.5116	0.2923
7112	0.6980	0.6337
7113	0.3907	0.3843
7114	0.4593	0.5004
7115	0.5616	0.5626
7116	0.6576	0.5641
7117	1.7508	1.5334
7118	1.5043	1.3427
7119	1.5140	1.1602
7120	6.7454	5.2259
7121	6.2874	4.8878

Base Rates Effective
January 1, 2010

Class	Accident Fund	Medical Aid Fund
7122	0.5231	0.5382
7200	1.6026	0.9474
7201	1.8251	1.0474
7202	0.0389	0.0240
7203	0.1101	0.1650
7204	0.0000	0.0000
7205	0.0000	0.0000
7301	0.4967	0.4316
7302	1.0049	0.8900
7307	0.4790	0.4419
7308	0.3844	0.4328
7309	0.2463	0.2761
7400	1.8251	1.0474

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

WAC 296-17-89502 Industrial insurance accident fund, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications. The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

((Base Rates Effective
January 1, 2009

Class	Accident Fund	Medical Aid Fund	Supplemental Pension Fund
0540	0.0230	0.0121	0.0007
0541	0.0138	0.0066	0.0007
0550	0.0305	0.0132	0.0007
0551	0.0190	0.0078	0.0007))

OPTION 1

Base Rates Effective
January 1, 2010

Class	Accident Fund	Medical Aid Fund	Supplemental Pension Fund
0540	0.0220	0.0132	0.0008
0541	0.0141	0.0071	0.0008
0550	0.0295	0.0137	0.0008
0551	0.0193	0.0084	0.0008

OPTION 2

((RETROSPECTIVE RATING PLANS A, A1, A2, A3, AND B
STANDARD PREMIUM SIZE RANGES

Effective January 1, 2009

Base Rates Effective
January 1, 2010

<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Supplemental Pension Fund</u>
0540	0.0226	0.0132	0.0008
0541	0.0145	0.0071	0.0008
0550	0.0303	0.0137	0.0008
0551	0.0198	0.0084	0.0008

<u>Size Group Number</u>	<u>Standard Premium Range</u>
63	\$4,875 - \$5,888
62	5,889 - 7,072
61	7,073 - 8,415
60	8,416 - 9,955
59	9,956 - 11,719
58	11,720 - 13,699
57	13,700 - 15,959
56	15,960 - 18,359
55	18,360 - 20,889
54	20,890 - 23,549
53	23,550 - 26,369
52	26,370 - 29,309
51	29,310 - 32,399
50	32,400 - 35,639
49	35,640 - 39,039
48	39,040 - 42,479
47	42,480 - 45,939
46	45,940 - 49,739
45	49,740 - 53,959
44	53,960 - 58,659
43	58,660 - 63,859
42	63,860 - 69,699
41	69,700 - 76,219
40	76,220 - 83,509
39	83,510 - 91,729
38	91,730 - 100,999
37	101,000 - 111,499
36	111,500 - 122,799
35	122,800 - 134,999
34	135,000 - 148,499
33	148,500 - 163,199
32	163,200 - 179,599
31	179,600 - 196,599
30	196,600 - 215,499
29	215,500 - 236,799
28	236,800 - 261,099
27	261,100 - 289,199
26	289,200 - 321,399
25	321,400 - 358,499
24	358,500 - 401,899
23	401,900 - 452,999
22	453,000 - 512,799
21	512,800 - 584,299

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

WAC 296-17-89504 Horse racing industry industrial insurance, medical aid, and supplemental pension by class.

((Base Rates Effective
January 1, 2009

<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Supplemental Pension Fund</u>
6614	46*	48*	+
6615	302*	327*	+
6616	13*	11*	+
6617	103*	91*	+
6618	99*	50*	+
6622	501**	508**	+
6623	101**	83**	+))

Base Rates Effective
January 1, 2010

<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Supplemental Pension Fund</u>
6614	59*	65*	1
6615	357*	377*	1
6616	13*	11*	1
6617	111*	98*	1
6618	99*	50*	1
6622	654**	720**	1
6623	148**	121**	1

* These rates are calculated on a per license basis for parimutuel race tracks and are base rated.

** These rates are calculated on a per 12 horse stalls for parimutuel race tracks and are base rated.

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

WAC 296-17-90492 Table I.

((RETROSPECTIVE RATING PLANS A, A1, A2, A3, AND B
STANDARD PREMIUM SIZE RANGES
Effective January 1, 2009

Size Group Number	Standard Premium Range
20	584,300 - 670,599
19	670,600 - 774,099
18	774,100 - 901,499
17	901,500 - 1,059,999
16	1,060,000 - 1,288,999
15	1,289,000 - 1,604,999
14	1,605,000 - 2,051,999
13	2,052,000 - 2,621,999
12	2,622,000 - 3,348,999
11	3,349,000 - 4,438,999
10	4,439,000 - 6,147,999
9	6,148,000 - 8,861,999
8	8,862,000 - 12,839,999
7	12,840,000 - 18,909,999
6	18,910,000 - 29,399,999
5	29,400,000 - 46,399,999
4	46,400,000 - 99,999,999))
	& Over

OPTION 1

RETROSPECTIVE RATING PLANS A, A1, A2, A3, AND B STAN-
DARD PREMIUM SIZE RANGES
Effective January 1, 2010

Size Group Number	Standard Premium Range
63	\$5,175 - \$6,250
62	6,251 - 7,507
61	7,508 - 8,933
60	8,934 - 10,568
59	10,569 - 12,440
58	12,441 - 14,539
57	14,540 - 16,939
56	16,940 - 19,489
55	19,490 - 22,179
54	22,180 - 24,999
53	25,000 - 27,989
52	27,990 - 31,109
51	31,110 - 34,389
50	34,390 - 37,829
49	37,830 - 41,439
48	41,440 - 45,089
47	45,090 - 48,769
46	48,770 - 52,799

RETROSPECTIVE RATING PLANS A, A1, A2, A3, AND B STAN-
DARD PREMIUM SIZE RANGES
Effective January 1, 2010

Size Group Number	Standard Premium Range
45	52,800 - 57,279
44	57,280 - 62,269
43	62,270 - 67,789
42	67,790 - 73,989
41	73,990 - 80,909
40	80,910 - 88,649
39	88,650 - 97,379
38	97,380 - 107,199
37	107,200 - 118,399
36	118,400 - 130,399
35	130,400 - 143,299
34	143,300 - 157,599
33	157,600 - 173,199
32	173,200 - 190,699
31	190,700 - 208,699
30	208,700 - 228,799
29	228,800 - 251,399
28	251,400 - 277,199
27	277,200 - 306,999
26	307,000 - 341,199
25	341,200 - 380,599
24	380,600 - 426,599
23	426,600 - 480,899
22	480,900 - 544,399
21	544,400 - 620,299
20	620,300 - 711,899
19	711,900 - 821,699
18	821,700 - 956,999
17	957,000 - 1,124,999
16	1,125,000 - 1,367,999
15	1,368,000 - 1,703,999
14	1,704,000 - 2,177,999
13	2,178,000 - 2,782,999
12	2,783,000 - 3,554,999
11	3,555,000 - 4,711,999
10	4,712,000 - 6,525,999
9	6,526,000 - 9,406,999
8	9,407,000 - 13,629,999
7	13,630,000 - 20,069,999
6	20,070,000 - 31,209,999
5	31,210,000 - 49,259,999
4	49,260,000 - & Over

OPTION 2

RETROSPECTIVE RATING PLANS A, A1, A2, A3, AND B STAN-
DARD PREMIUM SIZE RANGES
Effective January 1, 2010

<u>Size Group Number</u>	<u>Standard Premium Range</u>	<u>Standard Premium Range</u>
<u>63</u>	<u>\$5,270</u>	<u>\$6,365</u>
<u>62</u>	<u>6,366</u>	<u>7,645</u>
<u>61</u>	<u>7,646</u>	<u>9,097</u>
<u>60</u>	<u>9,098</u>	<u>10,762</u>
<u>59</u>	<u>10,763</u>	<u>12,669</u>
<u>58</u>	<u>12,670</u>	<u>14,809</u>
<u>57</u>	<u>14,810</u>	<u>17,249</u>
<u>56</u>	<u>17,250</u>	<u>19,849</u>
<u>55</u>	<u>19,850</u>	<u>22,579</u>
<u>54</u>	<u>22,580</u>	<u>25,459</u>
<u>53</u>	<u>25,460</u>	<u>28,509</u>
<u>52</u>	<u>28,510</u>	<u>31,689</u>
<u>51</u>	<u>31,690</u>	<u>35,029</u>
<u>50</u>	<u>35,030</u>	<u>38,529</u>
<u>49</u>	<u>38,530</u>	<u>42,209</u>
<u>48</u>	<u>42,210</u>	<u>45,919</u>
<u>47</u>	<u>45,920</u>	<u>49,659</u>
<u>46</u>	<u>49,660</u>	<u>53,769</u>
<u>45</u>	<u>53,770</u>	<u>58,329</u>
<u>44</u>	<u>58,330</u>	<u>63,419</u>
<u>43</u>	<u>63,420</u>	<u>69,039</u>
<u>42</u>	<u>69,040</u>	<u>75,349</u>
<u>41</u>	<u>75,350</u>	<u>82,399</u>
<u>40</u>	<u>82,400</u>	<u>90,279</u>
<u>39</u>	<u>90,280</u>	<u>99,169</u>
<u>38</u>	<u>99,170</u>	<u>109,199</u>
<u>37</u>	<u>109,200</u>	<u>120,499</u>
<u>36</u>	<u>120,500</u>	<u>132,799</u>
<u>35</u>	<u>132,800</u>	<u>145,899</u>
<u>34</u>	<u>145,900</u>	<u>160,499</u>
<u>33</u>	<u>160,500</u>	<u>176,399</u>
<u>32</u>	<u>176,400</u>	<u>194,199</u>
<u>31</u>	<u>194,200</u>	<u>212,499</u>
<u>30</u>	<u>212,500</u>	<u>232,999</u>
<u>29</u>	<u>233,000</u>	<u>255,999</u>
<u>28</u>	<u>256,000</u>	<u>282,299</u>
<u>27</u>	<u>282,300</u>	<u>312,599</u>
<u>26</u>	<u>312,600</u>	<u>347,499</u>
<u>25</u>	<u>347,500</u>	<u>387,599</u>
<u>24</u>	<u>387,600</u>	<u>434,499</u>
<u>23</u>	<u>434,500</u>	<u>489,699</u>

RETROSPECTIVE RATING PLANS A, A1, A2, A3, AND B STAN-
DARD PREMIUM SIZE RANGES
Effective January 1, 2010

<u>Size Group Number</u>	<u>Standard Premium Range</u>	<u>Standard Premium Range</u>
<u>22</u>	<u>489,700</u>	<u>554,399</u>
<u>21</u>	<u>554,400</u>	<u>631,699</u>
<u>20</u>	<u>631,700</u>	<u>724,999</u>
<u>19</u>	<u>725,000</u>	<u>836,899</u>
<u>18</u>	<u>836,900</u>	<u>974,599</u>
<u>17</u>	<u>974,600</u>	<u>1,145,999</u>
<u>16</u>	<u>1,146,000</u>	<u>1,393,999</u>
<u>15</u>	<u>1,394,000</u>	<u>1,734,999</u>
<u>14</u>	<u>1,735,000</u>	<u>2,217,999</u>
<u>13</u>	<u>2,218,000</u>	<u>2,834,999</u>
<u>12</u>	<u>2,835,000</u>	<u>3,620,999</u>
<u>11</u>	<u>3,621,000</u>	<u>4,798,999</u>
<u>10</u>	<u>4,799,000</u>	<u>6,645,999</u>
<u>9</u>	<u>6,646,000</u>	<u>9,579,999</u>
<u>8</u>	<u>9,580,000</u>	<u>13,879,999</u>
<u>7</u>	<u>13,880,000</u>	<u>20,439,999</u>
<u>6</u>	<u>20,440,000</u>	<u>31,779,999</u>
<u>5</u>	<u>31,780,000</u>	<u>50,159,999</u>
<u>4</u>	<u>50,160,000</u>	<u>& Over</u>

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

WAC 296-17-920 Assessment for supplemental pension fund. The amount of ~~((41.8))~~ 48.5 mils ~~(((\$0.0418))~~ (\$0.0485) shall be retained by each employer from the earnings of each worker for each hour or fraction thereof the worker is employed. The amount of money so retained from the employee shall be matched in an equal amount by each employer, except as otherwise provided in these rules, all such moneys shall be remitted to the department on or before the last day of January, April, July and October of each year for the preceding calendar quarter, provided self-insured employers shall remit to the department as provided under WAC 296-15-060. All such moneys shall be deposited in the supplemental pension fund.

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

WAC 296-17-875 Table I.

Primary Losses for Selected Claim Values Effective January 1, ~~((2009))~~ 2010

<u>CLAIM VALUE</u>	<u>PRIMARY LOSS</u>
5,000	5,000
10,000	10,000
15,000	15,000

CLAIM VALUE	PRIMARY LOSS
20,112	20,112
29,834	25,000
44,627	30,000
69,102	35,000
100,000	38,627
117,385	40,000
200,000	43,690
((217,994))	((44,168)) <u>44,279</u>
<u>222,588**</u>	

** Maximum claim value

PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, ((2009)) 2010

Maximum Claim Value = \$((217,994)) 222,588
 Average Death Value = \$((217,994)) 222,588

Expected Losses	Primary Credibility	Excess Credibility
20,945 - 21,661	37%	7%
21,662 - 22,398	38%	7%
22,399 - 23,153	39%	7%
23,154 - 23,932	40%	7%
23,933 - 24,733	41%	7%
24,734 - 25,561	42%	7%
25,562 - 26,418	43%	7%
26,419 - 27,307	44%	7%
27,308 - 28,232	45%	7%
28,233 - 29,197	46%	7%
29,198 - 30,209	47%	7%
30,210 - 31,276	48%	7%
31,277 - 32,407	49%	7%
32,408 - 33,615	50%	7%
33,616 - 34,918	51%	7%
34,919 - 36,345	52%	7%
36,346 - 37,937	53%	7%
37,938 - 38,099	54%	7%
38,100 - 39,771	54%	8%
39,772 - 42,010	55%	8%
42,011 - 63,580	56%	8%
63,581 - 70,078	57%	8%
70,079 - 100,096	57%	9%
100,097 - 103,097	57%	10%
103,098 - 130,299	58%	10%
130,300 - 142,614	58%	11%
142,615 - 160,691	59%	11%
160,692 - 182,130	59%	12%
182,131 - 191,267	60%	12%
191,268 - 221,648	60%	13%
221,649 - 222,035	61%	13%
222,036 - 252,995	61%	14%
252,996 - 261,164	61%	15%
261,165 - 284,149	62%	15%
284,150 - 300,681	62%	16%
300,682 - 315,498	63%	16%
315,499 - 340,198	63%	17%
340,199 - 347,044	64%	17%
347,045 - 378,789	64%	18%
378,790 - 379,714	64%	19%
379,715 - 410,737	65%	19%

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

WAC 296-17-880 Table II.

PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, ((2009)) 2010

Maximum Claim Value = \$((217,994)) 222,588
 Average Death Value = \$((217,994)) 222,588

Expected Losses	Primary Credibility	Excess Credibility
((1 - 7,182	12%	7%
7,183 - 7,666	13%	7%
7,667 - 8,157	14%	7%
8,158 - 8,652	15%	7%
8,653 - 9,153	16%	7%
9,154 - 9,662	17%	7%
9,663 - 10,176	18%	7%
10,177 - 10,697	19%	7%
10,698 - 11,225	20%	7%
11,226 - 11,760	21%	7%
11,761 - 12,304	22%	7%
12,305 - 12,854	23%	7%
12,855 - 13,413	24%	7%
13,414 - 13,982	25%	7%
13,983 - 14,558	26%	7%
14,559 - 15,143	27%	7%
15,144 - 15,740	28%	7%
15,741 - 16,346	29%	7%
16,347 - 16,964	30%	7%
16,965 - 17,594	31%	7%
17,595 - 18,236	32%	7%
18,237 - 18,891	33%	7%
18,892 - 19,560	34%	7%
19,561 - 20,244	35%	7%
20,245 - 20,944	36%	7%

PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, ((2009)) 2010

PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, ((2009)) 2010

Maximum Claim Value = \$((217,994)) 222,588
 Average Death Value = \$((217,994)) 222,588

Maximum Claim Value = \$((217,994)) 222,588
 Average Death Value = \$((217,994)) 222,588

Expected Losses	Primary Credibility	Excess Credibility	Expected Losses	Primary Credibility	Excess Credibility
410,738 - 419,230	65%	20%	1,168,574 - 1,170,048	84%	42%
419,231 - 442,886	66%	20%	1,170,049 - 1,205,724	85%	42%
442,887 - 458,748	66%	21%	1,205,725 - 1,209,566	85%	43%
458,749 - 475,240	67%	21%	1,209,567 - 1,243,133	86%	43%
475,241 - 498,265	67%	22%	1,243,134 - 1,249,083	86%	44%
498,266 - 507,802	68%	22%	1,249,084 - 1,280,796	87%	44%
507,803 - 537,781	68%	23%	1,280,797 - 1,288,601	87%	45%
537,782 - 540,571	69%	23%	1,288,602 - 1,318,721	88%	45%
540,572 - 573,552	69%	24%	1,318,722 - 1,328,116	88%	46%
573,553 - 577,297	69%	25%	1,328,117 - 1,356,909	89%	46%
577,298 - 606,745	70%	25%	1,356,910 - 1,367,633	89%	47%
606,746 - 616,815	70%	26%	1,367,634 - 1,395,361	90%	47%
616,816 - 640,154	71%	26%	1,395,362 - 1,407,151	90%	48%
640,155 - 656,332	71%	27%	1,407,152 - 1,434,082	91%	48%
656,333 - 673,780	72%	27%	1,434,083 - 1,446,666	91%	49%
673,781 - 695,848	72%	28%	1,446,667 - 1,473,073	92%	49%
695,849 - 707,625	73%	28%	1,473,074 - 1,486,184	92%	50%
707,626 - 735,366	73%	29%	1,486,185 - 1,512,339	93%	50%
735,367 - 741,690	74%	29%	1,512,340 - 1,525,700	93%	51%
741,691 - 774,882	74%	30%	1,525,701 - 1,551,881	94%	51%
774,883 - 775,981	75%	30%	1,551,882 - 1,565,217	94%	52%
775,982 - 810,496	75%	31%	1,565,218 - 1,591,703	95%	52%
810,497 - 814,399	75%	32%	1,591,704 - 1,604,733	95%	53%
814,400 - 845,240	76%	32%	1,604,734 - 1,631,807	96%	53%
845,241 - 853,915	76%	33%	1,631,808 - 1,644,251	96%	54%
853,916 - 880,213	77%	33%	1,644,252 - 1,672,196	97%	54%
880,214 - 893,433	77%	34%	1,672,197 - 1,683,767	97%	55%
893,434 - 915,420	78%	34%	1,683,768 - 1,712,874	98%	55%
915,421 - 932,949	78%	35%	1,712,875 - 1,723,284	98%	56%
932,950 - 950,861	79%	35%	1,723,285 - 1,753,845	99%	56%
950,862 - 972,466	79%	36%	1,753,846 - 1,762,800	99%	57%
972,467 - 986,539	80%	36%	1,762,801 - 1,795,111	100%	57%
986,540 - 1,011,982	80%	37%	1,795,112 - 1,836,674	100%	58%
1,011,983 - 1,022,456	81%	37%	1,836,675 - 1,878,538	100%	59%
1,022,457 - 1,051,499	81%	38%	1,878,539 - 1,920,708	100%	60%
1,051,500 - 1,058,616	82%	38%	1,920,709 - 1,963,185	100%	61%
1,058,617 - 1,091,016	82%	39%	1,963,186 - 2,005,974	100%	62%
1,091,017 - 1,095,021	83%	39%	2,005,975 - 2,049,077	100%	63%
1,095,022 - 1,130,534	83%	40%	2,049,078 - 2,092,498	100%	64%
1,130,535 - 1,131,673	84%	40%	2,092,499 - 2,136,242	100%	65%
1,131,674 - 1,168,573	84%	41%	2,136,243 - 2,180,312	100%	66%

PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, (~~2009~~) 2010

Maximum Claim Value = \$((217,994)) 222,588
 Average Death Value = \$((217,994)) 222,588

PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, (~~2009~~) 2010

Maximum Claim Value = \$((217,994)) 222,588
 Average Death Value = \$((217,994)) 222,588

Expected Losses	Primary Credibility	Excess Credibility
2,180,313 - 2,224,711	100%	67%
2,224,712 - 2,269,441	100%	68%
2,269,442 - 2,314,509	100%	69%
2,314,510 - 2,359,916	100%	70%
2,359,917 - 2,405,669	100%	71%
2,405,670 - 2,451,770	100%	72%
2,451,771 - 2,498,221	100%	73%
2,498,222 - 2,545,031	100%	74%
2,545,032 - 2,592,199	100%	75%
2,592,200 - 2,639,732	100%	76%
2,639,733 - 2,687,634	100%	77%
2,687,635 - 2,735,910	100%	78%
2,735,911 - 2,784,562	100%	79%
2,784,563 - 2,833,596	100%	80%
2,833,597 - 2,883,018	100%	81%
2,883,019 - 2,932,829	100%	82%
2,932,830 - 2,983,037	100%	83%
2,983,038 - 3,033,644	100%	84%
3,033,645 - 3,084,657	100%	85%
3,084,658 & over	100%	86%))
1 = 7,397	12%	7%
7,398 = 7,896	13%	7%
7,897 = 8,402	14%	7%
8,403 = 8,912	15%	7%
8,913 = 9,428	16%	7%
9,429 = 9,952	17%	7%
9,953 = 10,481	18%	7%
10,482 = 11,018	19%	7%
11,019 = 11,562	20%	7%
11,563 = 12,113	21%	7%
12,114 = 12,673	22%	7%
12,674 = 13,240	23%	7%
13,241 = 13,815	24%	7%
13,816 = 14,401	25%	7%
14,402 = 14,995	26%	7%
14,996 = 15,597	27%	7%
15,598 = 16,212	28%	7%
16,213 = 16,836	29%	7%
16,837 = 17,473	30%	7%
17,474 = 18,122	31%	7%
18,123 = 18,783	32%	7%

Expected Losses	Primary Credibility	Excess Credibility
18,784 = 19,458	33%	7%
19,459 = 20,147	34%	7%
20,148 = 20,851	35%	7%
20,852 = 21,572	36%	7%
21,573 = 22,311	37%	7%
22,312 = 23,070	38%	7%
23,071 = 23,848	39%	7%
23,849 = 24,650	40%	7%
24,651 = 25,475	41%	7%
25,476 = 26,328	42%	7%
26,329 = 27,211	43%	7%
27,212 = 28,126	44%	7%
28,127 = 29,079	45%	7%
29,080 = 30,073	46%	7%
30,074 = 31,115	47%	7%
31,116 = 32,214	48%	7%
32,215 = 33,379	49%	7%
33,380 = 34,623	50%	7%
34,624 = 35,966	51%	7%
35,967 = 37,435	52%	7%
37,436 = 39,075	53%	7%
39,076 = 39,242	54%	7%
39,243 = 40,964	54%	8%
40,965 = 43,270	55%	8%
43,271 = 65,487	56%	8%
65,488 = 72,180	57%	8%
72,181 = 103,099	57%	9%
103,100 = 106,190	57%	10%
106,191 = 134,208	58%	10%
134,209 = 146,892	58%	11%
146,893 = 165,512	59%	11%
165,513 = 187,594	59%	12%
187,595 = 197,005	60%	12%
197,006 = 228,297	60%	13%
228,298 = 228,696	61%	13%
228,697 = 260,585	61%	14%
260,586 = 268,999	61%	15%
269,000 = 292,674	62%	15%
292,675 = 309,701	62%	16%
309,702 = 324,963	63%	16%
324,964 = 350,404	63%	17%

PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, (~~2009~~) 2010

PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, (~~2009~~) 2010

Maximum Claim Value = \$((~~217,994~~)) 222,588
 Average Death Value = \$((~~217,994~~)) 222,588

Maximum Claim Value = \$((~~217,994~~)) 222,588
 Average Death Value = \$((~~217,994~~)) 222,588

Expected Losses	Primary Credibility	Excess Credibility	Expected Losses	Primary Credibility	Excess Credibility
<u>350.405</u> = <u>357.455</u>	64%	17%	<u>1,123.748</u> = <u>1,127.872</u>	83%	39%
<u>357.456</u> = <u>390.153</u>	64%	18%	<u>1,127.873</u> = <u>1,164.450</u>	83%	40%
<u>390.154</u> = <u>391.105</u>	64%	19%	<u>1,164.451</u> = <u>1,165.623</u>	84%	40%
<u>391.106</u> = <u>423.059</u>	65%	19%	<u>1,165.624</u> = <u>1,203.630</u>	84%	41%
<u>423.060</u> = <u>431.807</u>	65%	20%	<u>1,203.631</u> = <u>1,205.149</u>	84%	42%
<u>431.808</u> = <u>456.173</u>	66%	20%	<u>1,205.150</u> = <u>1,241.896</u>	85%	42%
<u>456.174</u> = <u>472.510</u>	66%	21%	<u>1,241.897</u> = <u>1,245.853</u>	85%	43%
<u>472.511</u> = <u>489.497</u>	67%	21%	<u>1,245.854</u> = <u>1,280.427</u>	86%	43%
<u>489.498</u> = <u>513.213</u>	67%	22%	<u>1,280.428</u> = <u>1,286.556</u>	86%	44%
<u>513.214</u> = <u>523.036</u>	68%	22%	<u>1,286.557</u> = <u>1,319.220</u>	87%	44%
<u>523.037</u> = <u>553.914</u>	68%	23%	<u>1,319.221</u> = <u>1,327.259</u>	87%	45%
<u>553.915</u> = <u>556.788</u>	69%	23%	<u>1,327.260</u> = <u>1,358.283</u>	88%	45%
<u>556.789</u> = <u>590.759</u>	69%	24%	<u>1,358.284</u> = <u>1,367.960</u>	88%	46%
<u>590.760</u> = <u>594.616</u>	69%	25%	<u>1,367.961</u> = <u>1,397.616</u>	89%	46%
<u>594.617</u> = <u>624.947</u>	70%	25%	<u>1,397.617</u> = <u>1,408.662</u>	89%	47%
<u>624.948</u> = <u>635.319</u>	70%	26%	<u>1,408.663</u> = <u>1,437.222</u>	90%	47%
<u>635.320</u> = <u>659.359</u>	71%	26%	<u>1,437.223</u> = <u>1,449.366</u>	90%	48%
<u>659.360</u> = <u>676.022</u>	71%	27%	<u>1,449.367</u> = <u>1,477.104</u>	91%	48%
<u>676.023</u> = <u>693.993</u>	72%	27%	<u>1,477.105</u> = <u>1,490.066</u>	91%	49%
<u>693.994</u> = <u>716.723</u>	72%	28%	<u>1,490.067</u> = <u>1,517.265</u>	92%	49%
<u>716.724</u> = <u>728.854</u>	73%	28%	<u>1,517.266</u> = <u>1,530.770</u>	92%	50%
<u>728.855</u> = <u>757.427</u>	73%	29%	<u>1,530.771</u> = <u>1,557.709</u>	93%	50%
<u>757.428</u> = <u>763.941</u>	74%	29%	<u>1,557.710</u> = <u>1,571.471</u>	93%	51%
<u>763.942</u> = <u>798.128</u>	74%	30%	<u>1,571.472</u> = <u>1,598.437</u>	94%	51%
<u>798.129</u> = <u>799.260</u>	75%	30%	<u>1,598.438</u> = <u>1,612.174</u>	94%	52%
<u>799.261</u> = <u>834.811</u>	75%	31%	<u>1,612.175</u> = <u>1,639.454</u>	95%	52%
<u>834.812</u> = <u>838.831</u>	75%	32%	<u>1,639.455</u> = <u>1,652.875</u>	95%	53%
<u>838.832</u> = <u>870.597</u>	76%	32%	<u>1,652.876</u> = <u>1,680.761</u>	96%	53%
<u>870.598</u> = <u>879.532</u>	76%	33%	<u>1,680.762</u> = <u>1,693.579</u>	96%	54%
<u>879.533</u> = <u>906.619</u>	77%	33%	<u>1,693.580</u> = <u>1,722.362</u>	97%	54%
<u>906.620</u> = <u>920.236</u>	77%	34%	<u>1,722.363</u> = <u>1,734.280</u>	97%	55%
<u>920.237</u> = <u>942.883</u>	78%	34%	<u>1,734.281</u> = <u>1,764.260</u>	98%	55%
<u>942.884</u> = <u>960.938</u>	78%	35%	<u>1,764.261</u> = <u>1,774.983</u>	98%	56%
<u>960.939</u> = <u>979.387</u>	79%	35%	<u>1,774.984</u> = <u>1,806.460</u>	99%	56%
<u>979.388</u> = <u>1,001.640</u>	79%	36%	<u>1,806.461</u> = <u>1,815.684</u>	99%	57%
<u>1,001.641</u> = <u>1,016.135</u>	80%	36%	<u>1,815.685</u> = <u>1,848.964</u>	100%	57%
<u>1,016.136</u> = <u>1,042.341</u>	80%	37%	<u>1,848.965</u> = <u>1,891.774</u>	100%	58%
<u>1,042.342</u> = <u>1,053.130</u>	81%	37%	<u>1,891.775</u> = <u>1,934.894</u>	100%	59%
<u>1,053.131</u> = <u>1,083.044</u>	81%	38%	<u>1,934.895</u> = <u>1,978.329</u>	100%	60%
<u>1,083.045</u> = <u>1,090.375</u>	82%	38%	<u>1,978.330</u> = <u>2,022.081</u>	100%	61%
<u>1,090.376</u> = <u>1,123.747</u>	82%	39%	<u>2,022.082</u> = <u>2,066.153</u>	100%	62%

PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, ((2009)) 2010

Maximum Claim Value = \$((217,994)) 222,588
 Average Death Value = \$((217,994)) 222,588

Expected Losses	Primary Credibility	Excess Credibility
<u>2,066,154</u> = <u>2,110,549</u>	<u>100%</u>	<u>63%</u>
<u>2,110,550</u> = <u>2,155,273</u>	<u>100%</u>	<u>64%</u>
<u>2,155,274</u> = <u>2,200,329</u>	<u>100%</u>	<u>65%</u>
<u>2,200,330</u> = <u>2,245,721</u>	<u>100%</u>	<u>66%</u>
<u>2,245,722</u> = <u>2,291,452</u>	<u>100%</u>	<u>67%</u>
<u>2,291,453</u> = <u>2,337,524</u>	<u>100%</u>	<u>68%</u>
<u>2,337,525</u> = <u>2,383,944</u>	<u>100%</u>	<u>69%</u>
<u>2,383,945</u> = <u>2,430,714</u>	<u>100%</u>	<u>70%</u>
<u>2,430,715</u> = <u>2,477,839</u>	<u>100%</u>	<u>71%</u>
<u>2,477,840</u> = <u>2,525,323</u>	<u>100%</u>	<u>72%</u>
<u>2,525,324</u> = <u>2,573,168</u>	<u>100%</u>	<u>73%</u>
<u>2,573,169</u> = <u>2,621,382</u>	<u>100%</u>	<u>74%</u>
<u>2,621,383</u> = <u>2,669,965</u>	<u>100%</u>	<u>75%</u>
<u>2,669,966</u> = <u>2,718,924</u>	<u>100%</u>	<u>76%</u>
<u>2,718,925</u> = <u>2,768,263</u>	<u>100%</u>	<u>77%</u>
<u>2,768,264</u> = <u>2,817,987</u>	<u>100%</u>	<u>78%</u>
<u>2,817,988</u> = <u>2,868,099</u>	<u>100%</u>	<u>79%</u>
<u>2,868,100</u> = <u>2,918,604</u>	<u>100%</u>	<u>80%</u>
<u>2,918,605</u> = <u>2,969,509</u>	<u>100%</u>	<u>81%</u>
<u>2,969,510</u> = <u>3,020,814</u>	<u>100%</u>	<u>82%</u>
<u>3,020,815</u> = <u>3,072,528</u>	<u>100%</u>	<u>83%</u>
<u>3,072,529</u> = <u>3,124,653</u>	<u>100%</u>	<u>84%</u>
<u>3,124,654</u> = <u>3,177,197</u>	<u>100%</u>	<u>85%</u>
<u>3,177,198</u> & over	<u>100%</u>	<u>86%</u>

Class	((2005)) 2006	((2006)) 2007	((2007)) 2008	Primary Ratio
0202	2.7095	2.5024	2.2426	0.418
0210	1.0292	0.9466	0.8370	0.471
0212	1.2184	1.1214	0.9923	0.472
0214	1.2444	1.1419	1.0035	0.492
0217	0.9368	0.8641	0.7622	0.512
0219	0.9462	0.8762	0.7798	0.489
0301	0.5890	0.5475	0.4841	0.569
0302	1.7372	1.5936	1.4058	0.463
0303	1.5862	1.4569	1.2918	0.441
0306	0.8978	0.8255	0.7275	0.496
0307	0.8328	0.7684	0.6801	0.505
0308	0.5078	0.4734	0.4202	0.567
0403	1.6154	1.4946	1.3168	0.548
0502	1.2311	1.1318	0.9986	0.481
0504	1.5270	1.4170	1.2676	0.472
0507	2.6212	2.4325	2.1752	0.480
0508	1.6792	1.5422	1.3731	0.418
0509	1.5868	1.4630	1.3080	0.426
0510	1.5211	1.4089	1.2506	0.507
0511	1.4512	1.3365	1.1793	0.501
0512	1.4284	1.3166	1.1726	0.449
0513	0.6867	0.6337	0.5594	0.515
0514	1.7034	1.5686	1.3833	0.504
0516	1.4116	1.3042	1.1588	0.481
0517	1.7007	1.5758	1.4079	0.468
0518	1.3137	1.2111	1.0764	0.465
0519	1.8165	1.6784	1.5010	0.440
0521	0.5353	0.4947	0.4378	0.507
0601	0.5686	0.5247	0.4639	0.510
0602	0.7117	0.6536	0.5731	0.518
0603	0.9064	0.8339	0.7430	0.432
0604	0.9595	0.8931	0.7975	0.517
0606	0.5236	0.4859	0.4286	0.568
0607	0.5206	0.4814	0.4233	0.559
0608	0.3269	0.3029	0.2689	0.521
0701	1.7007	1.5501	1.3731	0.386
0803	0.4463	0.4139	0.3649	0.572
0901	1.3137	1.2111	1.0764	0.465
1002	0.9636	0.8943	0.7960	0.509
1003	0.7274	0.6756	0.6018	0.514
1004	0.5011	0.4620	0.4058	0.532
1005	7.6265	7.0229	6.2072	0.475
1007	0.3261	0.3009	0.2659	0.511
1101	0.7185	0.6663	0.5881	0.558
1102	1.2864	1.1866	1.0488	0.496
1103	1.1438	1.0616	0.9494	0.473
1104	0.5376	0.5013	0.4454	0.571
1105	0.7964	0.7373	0.6551	0.499
1106	0.3284	0.3079	0.2769	0.547
1108	0.5909	0.5480	0.4853	0.548
1109	1.4481	1.3457	1.1965	0.527
1301	0.5816	0.5344	0.4621	0.597
1303	0.2141	0.1983	0.1740	0.591
1304	0.0288	0.0268	0.0236	0.565
1305	0.4386	0.4069	0.3580	0.584

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

WAC 296-17-885 Table III.

Expected Loss Rates and Primary Ratios
for Indicated Fiscal Year

Expected Loss Rates in Dollars Per Worker Hour
Effective January 1, ((2009)) 2010

Class	((2005)) 2006	((2006)) 2007	((2007)) 2008	Primary Ratio
((0101	1.1562	1.0670	0.9468	0.480
0103	1.5678	1.4484	1.2836	0.496
0104	0.8114	0.7499	0.6659	0.491
0105	1.2149	1.1258	0.9936	0.557
0107	1.1768	1.0825	0.9605	0.455
0108	0.8114	0.7499	0.6659	0.491
0112	0.6373	0.5886	0.5212	0.498
0201	2.2215	2.0342	1.7997	0.432

Class	((2005)) 2006	((2006)) 2007	((2007)) 2008	Primary Ratio	Class	((2005)) 2006	((2006)) 2007	((2007)) 2008	Primary Ratio
1401	0.4469	0.4187	0.3798	0.461	3501	1.0127	0.9402	0.8336	0.533
1404	0.7793	0.7244	0.6397	0.576	3503	0.2985	0.2810	0.2524	0.586
1405	0.6098	0.5647	0.4936	0.610	3506	0.8906	0.8186	0.7220	0.496
1407	0.4967	0.4642	0.4148	0.549	3509	0.4153	0.3876	0.3421	0.621
1501	0.5680	0.5250	0.4616	0.554	3510	0.3508	0.3265	0.2886	0.593
1507	0.5571	0.5158	0.4552	0.548	3511	0.6453	0.6001	0.5344	0.533
1701	0.8495	0.7869	0.6988	0.503	3512	0.3396	0.3180	0.2846	0.581
1702	1.8111	1.6629	1.4848	0.394	3513	0.4330	0.4067	0.3707	0.464
1703	0.7548	0.6893	0.6055	0.450	3602	0.1265	0.1177	0.1042	0.577
1704	0.8495	0.7869	0.6988	0.503	3603	0.4411	0.4113	0.3665	0.558
1801	0.4614	0.4294	0.3869	0.462	3604	0.7591	0.7122	0.6458	0.506
1802	0.6890	0.6372	0.5627	0.540	3605	0.5074	0.4695	0.4135	0.557
2002	0.7191	0.6692	0.5944	0.550	3701	0.2672	0.2483	0.2204	0.552
2004	0.9173	0.8529	0.7536	0.575	3702	0.4288	0.3982	0.3516	0.579
2007	0.4876	0.4536	0.4032	0.544	3708	0.5698	0.5277	0.4662	0.546
2008	0.3074	0.2862	0.2562	0.511	3802	0.1960	0.1824	0.1612	0.584
2009	0.3874	0.3616	0.3216	0.579	3808	0.4003	0.3705	0.3285	0.512
2101	0.6318	0.5888	0.5258	0.529	3901	0.1713	0.1608	0.1432	0.622
2102	0.5212	0.4862	0.4308	0.588	3902	0.4549	0.4247	0.3790	0.558
2104	0.3335	0.3135	0.2811	0.590	3903	1.0700	1.0036	0.9024	0.545
2105	0.5533	0.5135	0.4518	0.597	3905	0.1539	0.1445	0.1290	0.598
2106	0.4079	0.3802	0.3377	0.569	3906	0.4859	0.4535	0.4028	0.574
2201	0.2389	0.2228	0.1986	0.540	3909	0.2632	0.2462	0.2190	0.603
2202	0.6754	0.6267	0.5551	0.545	4002	1.2877	1.1863	1.0410	0.535
2203	0.4633	0.4318	0.3821	0.584	4101	0.3152	0.2927	0.2596	0.547
2204	0.2389	0.2228	0.1986	0.540	4103	0.4645	0.4337	0.3840	0.612
2401	0.4804	0.4437	0.3876	0.585	4107	0.1570	0.1461	0.1300	0.543
2903	0.6153	0.5734	0.5091	0.570	4108	0.1559	0.1453	0.1290	0.568
2904	0.6711	0.6252	0.5575	0.541	4109	0.1966	0.1831	0.1633	0.538
2905	0.5710	0.5325	0.4719	0.587	4201	0.6706	0.6153	0.5360	0.545
2906	0.3214	0.2992	0.2658	0.566	4301	0.6200	0.5796	0.5157	0.581
2907	0.5212	0.4847	0.4278	0.593	4302	0.6562	0.6092	0.5379	0.569
2908	0.9535	0.8834	0.7846	0.508	4304	0.9406	0.8791	0.7859	0.545
2909	0.3764	0.3511	0.3126	0.563	4305	1.1533	1.0632	0.9289	0.566
3101	0.7551	0.6984	0.6199	0.504	4401	0.3874	0.3624	0.3269	0.511
3102	0.2672	0.2483	0.2204	0.552	4402	0.8352	0.7777	0.6861	0.601
3103	0.5267	0.4894	0.4352	0.524	4404	0.5295	0.4936	0.4385	0.572
3104	0.5776	0.5350	0.4741	0.528	4501	0.1860	0.1741	0.1546	0.630
3105	0.6844	0.6365	0.5667	0.541	4502	0.0384	0.0360	0.0324	0.542
3303	0.4308	0.4002	0.3524	0.586	4504	0.1105	0.1037	0.0925	0.630
3304	0.4656	0.4353	0.3868	0.590	4601	0.7222	0.6716	0.5962	0.546
3309	0.3950	0.3675	0.3273	0.534	4802	0.3232	0.3027	0.2724	0.517
3402	0.5099	0.4733	0.4201	0.541	4803	0.3087	0.2906	0.2609	0.588
3403	0.1942	0.1807	0.1614	0.528	4804	0.5167	0.4821	0.4270	0.595
3404	0.4860	0.4519	0.4011	0.557	4805	0.2888	0.2703	0.2405	0.594
3405	0.2888	0.2691	0.2394	0.570	4806	0.0578	0.0541	0.0484	0.552
3406	0.2095	0.1955	0.1732	0.604	4808	0.4734	0.4427	0.3978	0.518
3407	0.7195	0.6653	0.5894	0.510	4809	0.3614	0.3384	0.3015	0.588
3408	0.1870	0.1733	0.1512	0.622	4810	0.1385	0.1302	0.1168	0.587
3409	0.1730	0.1612	0.1411	0.651	4811	0.2846	0.2672	0.2396	0.588
3410	0.2870	0.2679	0.2371	0.597	4812	0.3995	0.3727	0.3304	0.599
3411	0.4574	0.4234	0.3740	0.541	4813	0.1526	0.1432	0.1283	0.576
3412	0.5295	0.4887	0.4330	0.496	4900	0.2284	0.2107	0.1881	0.434
3414	0.5329	0.4938	0.4363	0.547	4901	0.0657	0.0608	0.0541	0.517
3415	0.7533	0.7003	0.6313	0.450	4902	0.1097	0.1017	0.0894	0.581

Class	((2005)) 2006	((2006)) 2007	((2007)) 2008	Primary Ratio	Class	((2005)) 2006	((2006)) 2007	((2007)) 2008	Primary Ratio
4903	0.1616	0.1497	0.1305	0.635	6305	0.1047	0.0980	0.0873	0.605
4904	0.0271	0.0253	0.0225	0.590	6306	0.3047	0.2833	0.2509	0.569
4905	0.3739	0.3510	0.3136	0.590	6308	0.0668	0.0622	0.0550	0.591
4906	0.0949	0.0881	0.0775	0.597	6309	0.1972	0.1840	0.1634	0.586
4907	0.0515	0.0480	0.0429	0.568	6402	0.2770	0.2585	0.2281	0.627
4908	0.0751	0.0709	0.0648	0.571	6403	0.1789	0.1677	0.1495	0.598
4909	0.0368	0.0350	0.0326	0.541	6404	0.2430	0.2271	0.2022	0.581
4910	0.4473	0.4169	0.3724	0.526	6405	0.5316	0.4928	0.4368	0.540
4911	0.0567	0.0528	0.0472	0.529	6406	0.1219	0.1143	0.1016	0.611
5001	5.5327	5.0944	4.5401	0.426	6407	0.2737	0.2555	0.2267	0.590
5002	0.5848	0.5412	0.4751	0.578	6408	0.3954	0.3674	0.3253	0.572
5003	1.9036	1.7553	1.5641	0.438	6409	0.7155	0.6613	0.5842	0.529
5004	0.8179	0.7624	0.6859	0.478	6410	0.2759	0.2572	0.2292	0.567
5005	0.5412	0.5010	0.4474	0.460	6501	0.1677	0.1562	0.1377	0.611
5006	1.3323	1.2287	1.0987	0.417	6502	0.0351	0.0327	0.0291	0.575
5101	0.8723	0.8090	0.7124	0.576	6503	0.0733	0.0675	0.0592	0.548
5103	0.7195	0.6722	0.5982	0.587	6504	0.3872	0.3636	0.3242	0.619
5106	0.7195	0.6722	0.5982	0.587	6505	0.1045	0.0985	0.0885	0.619
5108	0.8745	0.8153	0.7217	0.599	6506	0.1074	0.1005	0.0894	0.607
5109	0.5085	0.4712	0.4172	0.542	6509	0.3630	0.3398	0.3027	0.590
5201	0.3942	0.3658	0.3236	0.559	6510	0.4305	0.3978	0.3534	0.479
5204	0.8403	0.7807	0.6988	0.486	6511	0.3804	0.3557	0.3159	0.594
5206	0.3796	0.3511	0.3109	0.527	6512	0.1878	0.1750	0.1553	0.550
5207	0.1725	0.1620	0.1445	0.613	6601	0.1901	0.1775	0.1583	0.564
5208	0.7596	0.7068	0.6299	0.535	6602	0.5142	0.4798	0.4270	0.560
5209	0.6645	0.6183	0.5530	0.510	6603	0.3317	0.3080	0.2721	0.569
5300	0.1122	0.1041	0.0915	0.598	6604	0.0854	0.0797	0.0705	0.611
5301	0.0361	0.0336	0.0296	0.599	6605	0.3130	0.2938	0.2628	0.610
5302	0.0176	0.0165	0.0146	0.552	6607	0.1644	0.1534	0.1362	0.570
5305	0.0536	0.0501	0.0444	0.630	6608	0.4807	0.4406	0.3900	0.442
5306	0.0627	0.0584	0.0517	0.623	6620	3.8473	3.5456	3.0606	0.640
5307	0.5669	0.5238	0.4590	0.569	6704	0.1581	0.1469	0.1292	0.600
5308	0.0778	0.0724	0.0643	0.575	6705	0.7956	0.7499	0.6737	0.600
6103	0.0821	0.0770	0.0685	0.626	6706	0.3031	0.2847	0.2563	0.546
6104	0.3599	0.3361	0.2984	0.593	6707	4.1884	3.9195	3.4488	0.705
6105	0.3507	0.3250	0.2872	0.552	6708	7.9211	7.5419	7.0054	0.462
6107	0.1384	0.1304	0.1176	0.604	6709	0.2830	0.2648	0.2353	0.603
6108	0.4554	0.4257	0.3781	0.599	6801	0.6088	0.5619	0.4916	0.591
6109	0.0966	0.0897	0.0795	0.563	6802	0.5230	0.4859	0.4272	0.604
6110	0.6119	0.5696	0.5051	0.563	6803	0.7822	0.7206	0.6484	0.376
6120	0.2751	0.2555	0.2263	0.556	6804	0.2990	0.2783	0.2468	0.577
6121	0.3582	0.3325	0.2938	0.561	6809	4.7269	4.4272	3.9629	0.578
6201	0.2834	0.2631	0.2355	0.494	6901	0.0172	0.0175	0.0176	0.709
6202	0.6046	0.5644	0.5053	0.536	6902	0.9048	0.8310	0.7366	0.440
6203	0.1034	0.0974	0.0869	0.666	6903	6.1881	5.7401	5.2448	0.336
6204	0.1201	0.1124	0.1003	0.593	6904	0.4600	0.4218	0.3616	0.635
6205	0.2643	0.2462	0.2182	0.578	6905	0.3958	0.3654	0.3181	0.617
6206	0.2281	0.2127	0.1887	0.582	6906	0.1623	0.1606	0.1526	0.699
6207	1.0525	0.9947	0.9058	0.534	6907	1.2851	1.1955	1.0596	0.558
6208	0.2366	0.2225	0.1996	0.586	6908	0.4423	0.4105	0.3621	0.574
6209	0.3178	0.2973	0.2650	0.584	6909	0.1163	0.1087	0.0965	0.598
6301	0.1238	0.1143	0.1014	0.477	7100	0.0307	0.0286	0.0258	0.503
6302	0.1972	0.1840	0.1634	0.586	7101	0.0221	0.0206	0.0186	0.473
6303	0.0669	0.0621	0.0552	0.553	7102	4.1506	3.9492	3.6001	0.589
6304	0.4084	0.3835	0.3423	0.601	7103	0.6377	0.5888	0.5140	0.584

Class	<u>(2005)</u> <u>2006</u>	<u>(2006)</u> <u>2007</u>	<u>(2007)</u> <u>2008</u>	Primary Ratio	Class	<u>(2005)</u> <u>2006</u>	<u>(2006)</u> <u>2007</u>	<u>(2007)</u> <u>2008</u>	Primary Ratio
7104	0.0315	0.0293	0.0258	0.626	0508	1.6478	1.5919	1.4330	0.409
7105	0.0328	0.0305	0.0269	0.635	0509	1.7113	1.6581	1.5026	0.401
7106	0.2119	0.1981	0.1751	0.620	0510	1.5550	1.5088	1.3598	0.476
7107	0.2226	0.2096	0.1891	0.577	0511	1.4156	1.3669	1.2167	0.501
7108	0.2003	0.1879	0.1677	0.599	0512	1.3932	1.3500	1.2204	0.427
7109	0.1407	0.1316	0.1167	0.618	0513	0.6680	0.6462	0.5774	0.497
7110	0.3188	0.2949	0.2608	0.517	0514	1.7000	1.6434	1.4680	0.491
7111	0.3786	0.3492	0.3086	0.503	0516	1.3886	1.3451	1.2089	0.470
7112	0.6456	0.6027	0.5368	0.572	0517	1.8369	1.7838	1.6149	0.448
7113	0.3756	0.3519	0.3141	0.579	0518	1.2678	1.2266	1.1005	0.463
7114	0.4994	0.4676	0.4141	0.624	0519	1.7529	1.6999	1.5351	0.438
7115	0.6038	0.5652	0.5024	0.600	0521	0.5298	0.5129	0.4599	0.485
7116	0.6727	0.6273	0.5560	0.573	0601	0.5481	0.5306	0.4753	0.489
7117	1.6959	1.5800	1.3943	0.605	0602	0.6846	0.6603	0.5867	0.498
7118	1.3988	1.3064	1.1618	0.575	0603	0.9434	0.9131	0.8248	0.415
7119	1.3365	1.2407	1.0908	0.590	0604	0.9762	0.9500	0.8602	0.497
7120	5.8516	5.4438	4.8438	0.538	0606	0.5167	0.5008	0.4471	0.551
7121	5.4390	5.0611	4.5060	0.537	0607	0.5520	0.5339	0.4750	0.550
7122	0.5372	0.5032	0.4469	0.616	0608	0.3178	0.3084	0.2774	0.506
7200	1.2220	1.1259	0.9824	0.570	0701	1.7045	1.6400	1.4710	0.373
7201	1.4584	1.3430	1.1735	0.550	0803	0.4471	0.4335	0.3877	0.553
7202	0.0307	0.0284	0.0250	0.540	0901	1.2678	1.2266	1.1005	0.463
7203	0.1257	0.1192	0.1084	0.610	1002	0.9746	0.9462	0.8534	0.485
7204	0.0000	0.0000	0.0000	0.500	1003	0.7361	0.7150	0.6445	0.499
7205	0.0000	0.0000	0.0000	0.500	1004	0.5123	0.4949	0.4399	0.515
7301	0.4674	0.4370	0.3929	0.514	1005	7.6720	7.4154	6.6182	0.457
7302	0.9576	0.8954	0.8032	0.525	1007	0.3219	0.3110	0.2776	0.489
7307	0.4681	0.4376	0.3909	0.550	1101	0.7326	0.7100	0.6347	0.539
7308	0.3471	0.3262	0.2919	0.612	1102	1.3217	1.2784	1.1454	0.468
7309	0.2595	0.2438	0.2181	0.596	1103	1.1538	1.1196	1.0087	0.468
7400	1.4584	1.3430	1.1735	0.550))	1104	0.5619	0.5462	0.4902	0.569
0101	1.1114	1.0759	0.9654	0.468	1105	0.7857	0.7610	0.6826	0.487
0103	1.5650	1.5168	1.3645	0.474	1106	0.3255	0.3181	0.2900	0.530
0104	0.8112	0.7861	0.7065	0.475	1108	0.5995	0.5814	0.5212	0.535
0105	1.1603	1.1243	1.0051	0.536	1109	1.4021	1.3606	1.2236	0.501
0107	1.1546	1.1158	1.0008	0.446	1301	0.5536	0.5328	0.4663	0.578
0108	0.8112	0.7861	0.7065	0.475	1303	0.2020	0.1956	0.1741	0.570
0112	0.6183	0.5990	0.5378	0.482	1304	0.0283	0.0274	0.0245	0.542
0201	2.2598	2.1766	1.9445	0.412	1305	0.4548	0.4407	0.3933	0.565
0202	2.7958	2.7091	2.4476	0.414	1401	0.4377	0.4281	0.3936	0.437
0210	1.0213	0.9855	0.8791	0.463	1404	0.7967	0.7724	0.6895	0.569
0212	1.1915	1.1512	1.0296	0.459	1405	0.6202	0.6000	0.5303	0.594
0214	1.2870	1.2420	1.1077	0.474	1407	0.4914	0.4787	0.4326	0.539
0217	0.9020	0.8723	0.7793	0.496	1501	0.5700	0.5511	0.4900	0.547
0219	1.0322	0.9998	0.8957	0.485	1507	0.5658	0.5478	0.4888	0.538
0301	0.6054	0.5875	0.5266	0.547	1701	0.8544	0.8282	0.7430	0.490
0302	1.7359	1.6757	1.4991	0.444	1702	1.7516	1.6925	1.5272	0.383
0303	1.5459	1.4927	1.3366	0.442	1703	0.7723	0.7427	0.6605	0.428
0306	0.8526	0.8237	0.7354	0.480	1704	0.8544	0.8282	0.7430	0.490
0307	0.8169	0.7906	0.7074	0.497	1801	0.4503	0.4386	0.4003	0.440
0308	0.5054	0.4913	0.4415	0.557	1802	0.6916	0.6714	0.6018	0.526
0403	1.5614	1.5117	1.3509	0.512	2002	0.7252	0.7049	0.6347	0.525
0502	1.1718	1.1319	1.0111	0.467	2004	0.8591	0.8341	0.7472	0.553
0504	1.5718	1.5270	1.3810	0.463	2007	0.5045	0.4905	0.4425	0.525
0507	2.6227	2.5479	2.3041	0.466	2008	0.3224	0.3137	0.2842	0.506

Class	<u>((2005))</u> <u>2006</u>	<u>((2006))</u> <u>2007</u>	<u>((2007))</u> <u>2008</u>	Primary Ratio	Class	<u>((2005))</u> <u>2006</u>	<u>((2006))</u> <u>2007</u>	<u>((2007))</u> <u>2008</u>	Primary Ratio
2009	<u>0.3849</u>	<u>0.3748</u>	<u>0.3378</u>	<u>0.556</u>	3808	<u>0.3972</u>	<u>0.3851</u>	<u>0.3463</u>	<u>0.493</u>
2101	<u>0.6444</u>	<u>0.6266</u>	<u>0.5643</u>	<u>0.525</u>	3901	<u>0.1700</u>	<u>0.1658</u>	<u>0.1496</u>	<u>0.608</u>
2102	<u>0.5281</u>	<u>0.5135</u>	<u>0.4615</u>	<u>0.567</u>	3902	<u>0.4488</u>	<u>0.4372</u>	<u>0.3951</u>	<u>0.551</u>
2104	<u>0.3194</u>	<u>0.3126</u>	<u>0.2847</u>	<u>0.582</u>	3903	<u>1.0714</u>	<u>1.0470</u>	<u>0.9543</u>	<u>0.527</u>
2105	<u>0.5351</u>	<u>0.5190</u>	<u>0.4632</u>	<u>0.582</u>	3905	<u>0.1512</u>	<u>0.1476</u>	<u>0.1339</u>	<u>0.587</u>
2106	<u>0.4149</u>	<u>0.4036</u>	<u>0.3630</u>	<u>0.550</u>	3906	<u>0.4715</u>	<u>0.4588</u>	<u>0.4137</u>	<u>0.548</u>
2201	<u>0.2381</u>	<u>0.2317</u>	<u>0.2092</u>	<u>0.524</u>	3909	<u>0.2641</u>	<u>0.2574</u>	<u>0.2326</u>	<u>0.570</u>
2202	<u>0.6912</u>	<u>0.6706</u>	<u>0.6020</u>	<u>0.529</u>	4002	<u>1.1682</u>	<u>1.1292</u>	<u>1.0078</u>	<u>0.498</u>
2203	<u>0.4575</u>	<u>0.4447</u>	<u>0.3993</u>	<u>0.569</u>	4101	<u>0.3270</u>	<u>0.3175</u>	<u>0.2854</u>	<u>0.533</u>
2204	<u>0.2381</u>	<u>0.2317</u>	<u>0.2092</u>	<u>0.524</u>	4103	<u>0.4931</u>	<u>0.4795</u>	<u>0.4294</u>	<u>0.601</u>
2401	<u>0.5015</u>	<u>0.4829</u>	<u>0.4225</u>	<u>0.587</u>	4107	<u>0.1515</u>	<u>0.1473</u>	<u>0.1328</u>	<u>0.524</u>
2903	<u>0.6155</u>	<u>0.5987</u>	<u>0.5391</u>	<u>0.550</u>	4108	<u>0.1728</u>	<u>0.1677</u>	<u>0.1502</u>	<u>0.568</u>
2904	<u>0.6504</u>	<u>0.6327</u>	<u>0.5723</u>	<u>0.515</u>	4109	<u>0.1949</u>	<u>0.1896</u>	<u>0.1714</u>	<u>0.525</u>
2905	<u>0.5846</u>	<u>0.5682</u>	<u>0.5101</u>	<u>0.567</u>	4201	<u>0.6465</u>	<u>0.6226</u>	<u>0.5498</u>	<u>0.517</u>
2906	<u>0.3292</u>	<u>0.3203</u>	<u>0.2890</u>	<u>0.547</u>	4301	<u>0.6273</u>	<u>0.6113</u>	<u>0.5522</u>	<u>0.554</u>
2907	<u>0.5046</u>	<u>0.4898</u>	<u>0.4380</u>	<u>0.572</u>	4302	<u>0.6517</u>	<u>0.6320</u>	<u>0.5645</u>	<u>0.554</u>
2908	<u>0.9817</u>	<u>0.9529</u>	<u>0.8578</u>	<u>0.493</u>	4304	<u>0.9024</u>	<u>0.8800</u>	<u>0.7982</u>	<u>0.525</u>
2909	<u>0.3750</u>	<u>0.3652</u>	<u>0.3299</u>	<u>0.543</u>	4305	<u>1.1617</u>	<u>1.1197</u>	<u>0.9872</u>	<u>0.552</u>
3101	<u>0.7036</u>	<u>0.6819</u>	<u>0.6116</u>	<u>0.505</u>	4401	<u>0.3994</u>	<u>0.3904</u>	<u>0.3566</u>	<u>0.498</u>
3102	<u>0.2601</u>	<u>0.2526</u>	<u>0.2274</u>	<u>0.525</u>	4402	<u>0.8434</u>	<u>0.8175</u>	<u>0.7291</u>	<u>0.589</u>
3103	<u>0.5159</u>	<u>0.5011</u>	<u>0.4512</u>	<u>0.504</u>	4404	<u>0.5064</u>	<u>0.4929</u>	<u>0.4447</u>	<u>0.536</u>
3104	<u>0.5885</u>	<u>0.5706</u>	<u>0.5119</u>	<u>0.520</u>	4501	<u>0.1824</u>	<u>0.1781</u>	<u>0.1604</u>	<u>0.615</u>
3105	<u>0.6947</u>	<u>0.6759</u>	<u>0.6099</u>	<u>0.534</u>	4502	<u>0.0386</u>	<u>0.0377</u>	<u>0.0342</u>	<u>0.530</u>
3303	<u>0.4184</u>	<u>0.4059</u>	<u>0.3630</u>	<u>0.565</u>	4504	<u>0.1089</u>	<u>0.1064</u>	<u>0.0964</u>	<u>0.615</u>
3304	<u>0.4724</u>	<u>0.4602</u>	<u>0.4155</u>	<u>0.573</u>	4601	<u>0.7463</u>	<u>0.7244</u>	<u>0.6492</u>	<u>0.533</u>
3309	<u>0.3774</u>	<u>0.3668</u>	<u>0.3314</u>	<u>0.509</u>	4802	<u>0.3336</u>	<u>0.3257</u>	<u>0.2966</u>	<u>0.504</u>
3402	<u>0.5219</u>	<u>0.5067</u>	<u>0.4553</u>	<u>0.523</u>	4803	<u>0.3012</u>	<u>0.2944</u>	<u>0.2678</u>	<u>0.576</u>
3403	<u>0.1959</u>	<u>0.1905</u>	<u>0.1723</u>	<u>0.512</u>	4804	<u>0.4924</u>	<u>0.4794</u>	<u>0.4317</u>	<u>0.577</u>
3404	<u>0.4852</u>	<u>0.4716</u>	<u>0.4240</u>	<u>0.542</u>	4805	<u>0.2855</u>	<u>0.2780</u>	<u>0.2507</u>	<u>0.580</u>
3405	<u>0.2917</u>	<u>0.2836</u>	<u>0.2548</u>	<u>0.563</u>	4806	<u>0.0592</u>	<u>0.0577</u>	<u>0.0525</u>	<u>0.538</u>
3406	<u>0.2233</u>	<u>0.2170</u>	<u>0.1943</u>	<u>0.593</u>	4808	<u>0.4690</u>	<u>0.4582</u>	<u>0.4179</u>	<u>0.498</u>
3407	<u>0.7775</u>	<u>0.7523</u>	<u>0.6722</u>	<u>0.503</u>	4809	<u>0.3388</u>	<u>0.3308</u>	<u>0.3003</u>	<u>0.562</u>
3408	<u>0.1984</u>	<u>0.1919</u>	<u>0.1691</u>	<u>0.618</u>	4810	<u>0.1401</u>	<u>0.1370</u>	<u>0.1243</u>	<u>0.577</u>
3409	<u>0.1638</u>	<u>0.1587</u>	<u>0.1409</u>	<u>0.634</u>	4811	<u>0.3016</u>	<u>0.2950</u>	<u>0.2685</u>	<u>0.580</u>
3410	<u>0.2700</u>	<u>0.2624</u>	<u>0.2355</u>	<u>0.578</u>	4812	<u>0.3836</u>	<u>0.3732</u>	<u>0.3360</u>	<u>0.577</u>
3411	<u>0.4654</u>	<u>0.4509</u>	<u>0.4038</u>	<u>0.518</u>	4813	<u>0.1596</u>	<u>0.1558</u>	<u>0.1410</u>	<u>0.572</u>
3412	<u>0.5586</u>	<u>0.5404</u>	<u>0.4843</u>	<u>0.475</u>	4900	<u>0.1898</u>	<u>0.1839</u>	<u>0.1666</u>	<u>0.413</u>
3414	<u>0.5338</u>	<u>0.5175</u>	<u>0.4640</u>	<u>0.523</u>	4901	<u>0.0643</u>	<u>0.0625</u>	<u>0.0562</u>	<u>0.502</u>
3415	<u>0.7721</u>	<u>0.7518</u>	<u>0.6859</u>	<u>0.437</u>	4902	<u>0.1116</u>	<u>0.1081</u>	<u>0.0964</u>	<u>0.561</u>
3501	<u>1.0079</u>	<u>0.9780</u>	<u>0.8769</u>	<u>0.515</u>	4903	<u>0.1563</u>	<u>0.1512</u>	<u>0.1335</u>	<u>0.621</u>
3503	<u>0.2927</u>	<u>0.2865</u>	<u>0.2615</u>	<u>0.562</u>	4904	<u>0.0265</u>	<u>0.0259</u>	<u>0.0234</u>	<u>0.565</u>
3506	<u>0.8239</u>	<u>0.7957</u>	<u>0.7097</u>	<u>0.487</u>	4905	<u>0.3723</u>	<u>0.3639</u>	<u>0.3308</u>	<u>0.571</u>
3509	<u>0.4001</u>	<u>0.3888</u>	<u>0.3485</u>	<u>0.604</u>	4906	<u>0.0929</u>	<u>0.0900</u>	<u>0.0801</u>	<u>0.584</u>
3510	<u>0.3349</u>	<u>0.3251</u>	<u>0.2906</u>	<u>0.579</u>	4907	<u>0.0514</u>	<u>0.0502</u>	<u>0.0454</u>	<u>0.554</u>
3511	<u>0.6143</u>	<u>0.5977</u>	<u>0.5406</u>	<u>0.504</u>	4908	<u>0.0773</u>	<u>0.0765</u>	<u>0.0707</u>	<u>0.560</u>
3512	<u>0.3503</u>	<u>0.3416</u>	<u>0.3092</u>	<u>0.568</u>	4909	<u>0.0368</u>	<u>0.0367</u>	<u>0.0346</u>	<u>0.521</u>
3513	<u>0.4661</u>	<u>0.4564</u>	<u>0.4200</u>	<u>0.468</u>	4910	<u>0.4523</u>	<u>0.4398</u>	<u>0.3969</u>	<u>0.515</u>
3602	<u>0.1231</u>	<u>0.1196</u>	<u>0.1073</u>	<u>0.555</u>	4911	<u>0.0564</u>	<u>0.0548</u>	<u>0.0495</u>	<u>0.514</u>
3603	<u>0.4499</u>	<u>0.4377</u>	<u>0.3942</u>	<u>0.553</u>	5001	<u>6.2704</u>	<u>6.0760</u>	<u>5.4982</u>	<u>0.398</u>
3604	<u>0.7561</u>	<u>0.7406</u>	<u>0.6816</u>	<u>0.488</u>	5002	<u>0.5767</u>	<u>0.5580</u>	<u>0.4958</u>	<u>0.562</u>
3605	<u>0.5027</u>	<u>0.4867</u>	<u>0.4337</u>	<u>0.540</u>	5003	<u>1.9816</u>	<u>1.9178</u>	<u>1.7282</u>	<u>0.421</u>
3701	<u>0.2601</u>	<u>0.2526</u>	<u>0.2274</u>	<u>0.525</u>	5004	<u>0.7844</u>	<u>0.7649</u>	<u>0.6982</u>	<u>0.452</u>
3702	<u>0.4195</u>	<u>0.4071</u>	<u>0.3643</u>	<u>0.561</u>	5005	<u>0.5810</u>	<u>0.5634</u>	<u>0.5081</u>	<u>0.437</u>
3708	<u>0.5594</u>	<u>0.5413</u>	<u>0.4820</u>	<u>0.543</u>	5006	<u>1.3366</u>	<u>1.2943</u>	<u>1.1689</u>	<u>0.402</u>
3802	<u>0.1935</u>	<u>0.1881</u>	<u>0.1689</u>	<u>0.560</u>	5101	<u>0.8349</u>	<u>0.8084</u>	<u>0.7205</u>	<u>0.551</u>

Class	<u>((2005))</u> <u>2006</u>	<u>((2006))</u> <u>2007</u>	<u>((2007))</u> <u>2008</u>	Primary Ratio	Class	<u>((2005))</u> <u>2006</u>	<u>((2006))</u> <u>2007</u>	<u>((2007))</u> <u>2008</u>	Primary Ratio
5103	<u>0.7374</u>	<u>0.7183</u>	<u>0.6479</u>	<u>0.575</u>	6504	<u>0.3715</u>	<u>0.3626</u>	<u>0.3282</u>	<u>0.603</u>
5106	<u>0.7374</u>	<u>0.7183</u>	<u>0.6479</u>	<u>0.575</u>	6505	<u>0.1053</u>	<u>0.1034</u>	<u>0.0945</u>	<u>0.612</u>
5108	<u>0.8239</u>	<u>0.8014</u>	<u>0.7207</u>	<u>0.577</u>	6506	<u>0.1055</u>	<u>0.1029</u>	<u>0.0930</u>	<u>0.588</u>
5109	<u>0.4929</u>	<u>0.4778</u>	<u>0.4283</u>	<u>0.520</u>	6509	<u>0.3741</u>	<u>0.3648</u>	<u>0.3298</u>	<u>0.570</u>
5201	<u>0.3848</u>	<u>0.3731</u>	<u>0.3344</u>	<u>0.546</u>	6510	<u>0.4330</u>	<u>0.4197</u>	<u>0.3771</u>	<u>0.470</u>
5204	<u>0.8431</u>	<u>0.8189</u>	<u>0.7406</u>	<u>0.469</u>	6511	<u>0.3891</u>	<u>0.3787</u>	<u>0.3410</u>	<u>0.570</u>
5206	<u>0.3573</u>	<u>0.3467</u>	<u>0.3121</u>	<u>0.498</u>	6512	<u>0.1693</u>	<u>0.1644</u>	<u>0.1479</u>	<u>0.520</u>
5207	<u>0.1604</u>	<u>0.1566</u>	<u>0.1419</u>	<u>0.586</u>	6601	<u>0.1901</u>	<u>0.1851</u>	<u>0.1671</u>	<u>0.542</u>
5208	<u>0.7742</u>	<u>0.7522</u>	<u>0.6752</u>	<u>0.543</u>	6602	<u>0.5122</u>	<u>0.4986</u>	<u>0.4505</u>	<u>0.540</u>
5209	<u>0.6729</u>	<u>0.6542</u>	<u>0.5907</u>	<u>0.500</u>	6603	<u>0.3289</u>	<u>0.3191</u>	<u>0.2856</u>	<u>0.557</u>
5300	<u>0.1170</u>	<u>0.1133</u>	<u>0.1007</u>	<u>0.577</u>	6604	<u>0.0809</u>	<u>0.0787</u>	<u>0.0706</u>	<u>0.591</u>
5301	<u>0.0357</u>	<u>0.0346</u>	<u>0.0312</u>	<u>0.572</u>	6605	<u>0.3239</u>	<u>0.3165</u>	<u>0.2865</u>	<u>0.602</u>
5302	<u>0.0163</u>	<u>0.0159</u>	<u>0.0143</u>	<u>0.538</u>	6607	<u>0.1651</u>	<u>0.1606</u>	<u>0.1443</u>	<u>0.556</u>
5305	<u>0.0541</u>	<u>0.0526</u>	<u>0.0471</u>	<u>0.618</u>	6608	<u>0.4786</u>	<u>0.4616</u>	<u>0.4139</u>	<u>0.421</u>
5306	<u>0.0570</u>	<u>0.0556</u>	<u>0.0499</u>	<u>0.606</u>	6620	<u>3.1606</u>	<u>3.0426</u>	<u>2.6641</u>	<u>0.605</u>
5307	<u>0.5707</u>	<u>0.5513</u>	<u>0.4893</u>	<u>0.545</u>	6704	<u>0.1452</u>	<u>0.1410</u>	<u>0.1262</u>	<u>0.576</u>
5308	<u>0.0876</u>	<u>0.0855</u>	<u>0.0772</u>	<u>0.595</u>	6705	<u>0.8094</u>	<u>0.7911</u>	<u>0.7181</u>	<u>0.593</u>
6103	<u>0.0828</u>	<u>0.0808</u>	<u>0.0729</u>	<u>0.615</u>	6706	<u>0.2975</u>	<u>0.2909</u>	<u>0.2660</u>	<u>0.525</u>
6104	<u>0.3598</u>	<u>0.3498</u>	<u>0.3136</u>	<u>0.583</u>	6707	<u>4.3172</u>	<u>4.2003</u>	<u>3.7312</u>	<u>0.696</u>
6105	<u>0.3635</u>	<u>0.3523</u>	<u>0.3152</u>	<u>0.537</u>	6708	<u>8.1890</u>	<u>8.1121</u>	<u>7.6401</u>	<u>0.450</u>
6107	<u>0.1496</u>	<u>0.1466</u>	<u>0.1339</u>	<u>0.592</u>	6709	<u>0.2640</u>	<u>0.2576</u>	<u>0.2331</u>	<u>0.577</u>
6108	<u>0.4576</u>	<u>0.4459</u>	<u>0.4026</u>	<u>0.572</u>	6801	<u>0.6067</u>	<u>0.5856</u>	<u>0.5174</u>	<u>0.573</u>
6109	<u>0.1015</u>	<u>0.0985</u>	<u>0.0884</u>	<u>0.537</u>	6802	<u>0.5553</u>	<u>0.5382</u>	<u>0.4786</u>	<u>0.593</u>
6110	<u>0.5943</u>	<u>0.5775</u>	<u>0.5194</u>	<u>0.540</u>	6803	<u>0.8073</u>	<u>0.7821</u>	<u>0.7115</u>	<u>0.363</u>
6120	<u>0.2779</u>	<u>0.2695</u>	<u>0.2416</u>	<u>0.538</u>	6804	<u>0.3334</u>	<u>0.3242</u>	<u>0.2915</u>	<u>0.572</u>
6121	<u>0.3451</u>	<u>0.3347</u>	<u>0.3000</u>	<u>0.542</u>	6809	<u>4.6501</u>	<u>4.5504</u>	<u>4.1372</u>	<u>0.567</u>
6201	<u>0.2803</u>	<u>0.2727</u>	<u>0.2476</u>	<u>0.480</u>	6901	<u>0.0177</u>	<u>0.0187</u>	<u>0.0193</u>	<u>0.706</u>
6202	<u>0.5999</u>	<u>0.5844</u>	<u>0.5292</u>	<u>0.523</u>	6902	<u>0.8990</u>	<u>0.8687</u>	<u>0.7809</u>	<u>0.421</u>
6203	<u>0.1063</u>	<u>0.1039</u>	<u>0.0938</u>	<u>0.658</u>	6903	<u>6.3402</u>	<u>6.1802</u>	<u>5.7143</u>	<u>0.328</u>
6204	<u>0.1166</u>	<u>0.1137</u>	<u>0.1029</u>	<u>0.576</u>	6904	<u>0.4649</u>	<u>0.4461</u>	<u>0.3857</u>	<u>0.622</u>
6205	<u>0.2551</u>	<u>0.2480</u>	<u>0.2230</u>	<u>0.550</u>	6905	<u>0.3917</u>	<u>0.3780</u>	<u>0.3331</u>	<u>0.607</u>
6206	<u>0.2319</u>	<u>0.2255</u>	<u>0.2028</u>	<u>0.573</u>	6906	<u>0.1657</u>	<u>0.1675</u>	<u>0.1635</u>	<u>0.687</u>
6207	<u>1.1101</u>	<u>1.0905</u>	<u>1.0059</u>	<u>0.521</u>	6907	<u>1.2442</u>	<u>1.2076</u>	<u>1.0824</u>	<u>0.544</u>
6208	<u>0.2397</u>	<u>0.2342</u>	<u>0.2125</u>	<u>0.574</u>	6908	<u>0.4209</u>	<u>0.4088</u>	<u>0.3670</u>	<u>0.540</u>
6209	<u>0.3021</u>	<u>0.2948</u>	<u>0.2670</u>	<u>0.560</u>	6909	<u>0.1192</u>	<u>0.1161</u>	<u>0.1044</u>	<u>0.585</u>
6301	<u>0.1226</u>	<u>0.1186</u>	<u>0.1065</u>	<u>0.462</u>	7100	<u>0.0307</u>	<u>0.0300</u>	<u>0.0274</u>	<u>0.485</u>
6302	<u>0.2036</u>	<u>0.1980</u>	<u>0.1778</u>	<u>0.576</u>	7101	<u>0.0219</u>	<u>0.0214</u>	<u>0.0197</u>	<u>0.457</u>
6303	<u>0.0670</u>	<u>0.0650</u>	<u>0.0584</u>	<u>0.545</u>	7102	<u>4.1538</u>	<u>4.0954</u>	<u>3.7945</u>	<u>0.571</u>
6304	<u>0.3824</u>	<u>0.3734</u>	<u>0.3385</u>	<u>0.586</u>	7103	<u>0.6336</u>	<u>0.6108</u>	<u>0.5370</u>	<u>0.586</u>
6305	<u>0.1090</u>	<u>0.1062</u>	<u>0.0954</u>	<u>0.604</u>	7104	<u>0.0308</u>	<u>0.0300</u>	<u>0.0269</u>	<u>0.611</u>
6306	<u>0.2787</u>	<u>0.2710</u>	<u>0.2442</u>	<u>0.539</u>	7105	<u>0.0295</u>	<u>0.0287</u>	<u>0.0256</u>	<u>0.608</u>
6308	<u>0.0660</u>	<u>0.0642</u>	<u>0.0577</u>	<u>0.576</u>	7106	<u>0.2298</u>	<u>0.2233</u>	<u>0.1994</u>	<u>0.618</u>
6309	<u>0.2036</u>	<u>0.1980</u>	<u>0.1778</u>	<u>0.576</u>	7107	<u>0.2292</u>	<u>0.2244</u>	<u>0.2048</u>	<u>0.568</u>
6402	<u>0.2694</u>	<u>0.2617</u>	<u>0.2340</u>	<u>0.612</u>	7108	<u>0.2007</u>	<u>0.1957</u>	<u>0.1768</u>	<u>0.582</u>
6403	<u>0.1826</u>	<u>0.1781</u>	<u>0.1607</u>	<u>0.586</u>	7109	<u>0.1441</u>	<u>0.1403</u>	<u>0.1262</u>	<u>0.604</u>
6404	<u>0.2625</u>	<u>0.2558</u>	<u>0.2308</u>	<u>0.572</u>	7110	<u>0.3167</u>	<u>0.3067</u>	<u>0.2747</u>	<u>0.499</u>
6405	<u>0.5125</u>	<u>0.4972</u>	<u>0.4467</u>	<u>0.520</u>	7111	<u>0.3903</u>	<u>0.3776</u>	<u>0.3378</u>	<u>0.483</u>
6406	<u>0.1242</u>	<u>0.1211</u>	<u>0.1092</u>	<u>0.601</u>	7112	<u>0.6446</u>	<u>0.6276</u>	<u>0.5667</u>	<u>0.558</u>
6407	<u>0.2695</u>	<u>0.2623</u>	<u>0.2361</u>	<u>0.570</u>	7113	<u>0.3868</u>	<u>0.3768</u>	<u>0.3403</u>	<u>0.570</u>
6408	<u>0.3954</u>	<u>0.3838</u>	<u>0.3446</u>	<u>0.548</u>	7114	<u>0.4808</u>	<u>0.4686</u>	<u>0.4219</u>	<u>0.609</u>
6409	<u>0.6890</u>	<u>0.6669</u>	<u>0.5959</u>	<u>0.518</u>	7115	<u>0.5581</u>	<u>0.5441</u>	<u>0.4919</u>	<u>0.574</u>
6410	<u>0.2811</u>	<u>0.2736</u>	<u>0.2468</u>	<u>0.559</u>	7116	<u>0.6116</u>	<u>0.5948</u>	<u>0.5352</u>	<u>0.542</u>
6501	<u>0.1605</u>	<u>0.1558</u>	<u>0.1392</u>	<u>0.589</u>	7117	<u>1.6241</u>	<u>1.5771</u>	<u>1.4118</u>	<u>0.587</u>
6502	<u>0.0321</u>	<u>0.0312</u>	<u>0.0280</u>	<u>0.554</u>	7118	<u>1.4104</u>	<u>1.3725</u>	<u>1.2367</u>	<u>0.553</u>
6503	<u>0.0714</u>	<u>0.0691</u>	<u>0.0615</u>	<u>0.529</u>	7119	<u>1.3516</u>	<u>1.3087</u>	<u>1.1634</u>	<u>0.577</u>

Class	(2005) 2006	(2006) 2007	(2007) 2008	Primary Ratio	Expected Loss Range	Maximum Experience Modification
7120	5.8332	5.6693	5.1095	0.520		
7121	5.4396	5.2875	4.7670	0.520	16,306 - 17,254	0.78
7122	0.5317	0.5175	0.4649	0.607		
7200	1.2944	1.2467	1.0944	0.569	17,255 - 18,236	0.77
7201	1.4446	1.3944	1.2376	0.521	18,237 - 19,253	0.76
7202	0.0305	0.0295	0.0263	0.521	19,254 - 20,305	0.75
7203	0.1225	0.1207	0.1114	0.591	20,306 - 21,391	0.74
7204	0.0000	0.0000	0.0000	0.500	21,392 - 22,514	0.73
7205	0.0000	0.0000	0.0000	0.500	22,515 - 23,673	0.72
7301	0.4450	0.4341	0.3948	0.505	23,674 - 24,867	0.71
7302	0.9260	0.9037	0.8227	0.502	24,868 - 26,098	0.70
7307	0.4522	0.4409	0.3992	0.528	26,099 - 27,366	0.69
7308	0.3895	0.3803	0.3436	0.601	27,367 - 28,669	0.68
7309	0.2574	0.2514	0.2283	0.579	28,670 - 30,011	0.67
7400	1.4446	1.3944	1.2376	0.521	30,012 - 31,386	0.66
Expected Loss Rates in Dollars Per Sq. Ft. of Wallboard Installed					31,387 - 32,802	0.65
					32,803 - 35,007	0.64
					35,008 - 38,006	0.63
Class	(2005) 2006	(2006) 2007	(2007) 2008	Primary Ratio		
((0540	0.0185	0.0170	0.0151	0.487	38,007 - 41,473	0.62
0541	0.0106	0.0098	0.0087	0.465	41,474 - 48,213	0.61
0550	0.0223	0.0205	0.0183	0.400	48,214 & Over	0.60))
0551	0.0137	0.0126	0.0112	0.416))		
0540	0.0173	0.0169	0.0152	0.471	0 = 6,698	0.90
0541	0.0105	0.0101	0.0091	0.444	6,699 = 8,180	0.89
0550	0.0211	0.0205	0.0184	0.394	8,181 = 9,061	0.88
0551	0.0136	0.0132	0.0118	0.411	9,062 = 9,877	0.87
					9,878 = 10,737	0.86
					10,738 = 11,638	0.85
					11,639 = 12,432	0.84
					12,433 = 13,237	0.83
					13,238 = 14,075	0.82
					14,076 = 14,947	0.81
					14,948 = 15,854	0.80
					15,855 = 16,794	0.79
					16,795 = 17,772	0.78
					17,773 = 18,783	0.77
					18,784 = 19,831	0.76
					19,832 = 20,914	0.75
					20,915 = 22,033	0.74
					22,034 = 23,189	0.73
					23,190 = 24,383	0.72
					24,384 = 25,613	0.71
					25,614 = 26,881	0.70
					26,882 = 28,187	0.69
					28,188 = 29,529	0.68
					29,530 = 30,911	0.67
					30,912 = 32,328	0.66
					32,329 = 33,786	0.65

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

WAC 296-17-890 Table IV.

Maximum experience modifications for firms with no compensable accidents: Effective ~~(1/1/2009)~~ **1/1/2010**

Expected Loss Range	Maximum Experience Modification
((1 - 6,503	0.90
6,504 - 7,942	0.89
7,943 - 8,797	0.88
8,798 - 9,589	0.87
9,590 - 10,424	0.86
10,425 - 11,299	0.85
11,300 - 12,070	0.84
12,071 - 12,851	0.83
12,852 - 13,665	0.82
13,666 - 14,512	0.81
14,513 - 15,392	0.80
15,393 - 16,305	0.79

Expected Loss Range	Maximum Experience Modification
<u>33,787</u> = <u>36,057</u>	<u>0.64</u>
<u>36,058</u> = <u>39,146</u>	<u>0.63</u>
<u>39,147</u> = <u>42,717</u>	<u>0.62</u>
<u>42,718</u> = <u>49,659</u>	<u>0.61</u>
<u>49,660</u> & Over	<u>0.60</u>

WSR 09-19-138
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed September 23, 2009, 7:43 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 308-20-210 Fees.

Hearing Location(s): Department of Licensing, Building 2, Conference Room 209, 405 Black Lake Boulevard S.W., Olympia, WA 98502, on October 28, 2009, at 2:00 p.m.

Date of Intended Adoption: October 28, 2009.

Submit Written Comments to: Lawna Knight, Department of Licensing, Cosmetology Program, P.O. Box 9026, Olympia, WA 98507, e-mail lknight@dol.wa.gov, fax (360) 664-2550, by October 20, 2009.

Assistance for Persons with Disabilities: Contact Lawna Knight by October 20, 2009, TTY (360) 664-8885 or (360) 664-6643.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase the fees in the cosmetology program as follows:

	Old fee	New fee
School application	\$175	\$300
School renewal	\$175	\$300
Cosmetologist, barber, manicurist, esthetician and instructor application	\$0	\$25
Cosmetologist, barber, manicurist, esthetician and instructor renewal (per license)	\$40	\$55
Cosmetologist, barber, manicurist, esthetician and instructor late renewal penalty (per license)	\$20	\$55
Salon/shop, personal services, mobile unit application	\$50	\$110
Salon/shop, personal services, mobile unit renewal	\$50	\$110

Reasons Supporting Proposal: Increasing the fees will allow us to cover costs to run the program and maintain a reasonable fund balance.

Statutory Authority for Adoption: RCW 18.16.030, 43.24.086.

Statute Being Implemented: RCW 43.24.086.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Colard, 405 Black Lake Boulevard S.W., (360) 664-6647.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is exempt under RCW 34.05.310(4).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule revision. Washington state department of licensing is not a named agency, therefore, exempt from the provision.

September 23, 2009

Walt Fahrner

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-02-048, filed 12/29/05, effective 2/1/06)

WAC 308-20-210 Fees. In addition to any third-party examinations fees, the following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Cosmetologist:	
<u>License application</u>	<u>\$25.00</u>
Reciprocity license	(\$40.00) <u>50.00</u>
Renewal (two-year license)	((40.00)) <u>55.00</u>
Late renewal penalty	((20.00)) <u>55.00</u>
Duplicate license	15.00
Certification	25.00
Instructor:	
<u>License application</u>	<u>25.00</u>
Reciprocity license	((40.00)) <u>50.00</u>
Renewal (two-year license)	((40.00)) <u>55.00</u>
Late renewal penalty	((20.00)) <u>55.00</u>
Duplicate license	15.00
Certification	25.00
Manicurist:	
<u>License application</u>	<u>25.00</u>
Reciprocity license	((40.00)) <u>50.00</u>

Title of Fee	Fee
Renewal (two-year license)	((40.00)) <u>55.00</u>
Late renewal penalty	((20.00)) <u>55.00</u>
Duplicate	15.00
Certification	25.00
Esthetician:	
<u>License application</u>	<u>25.00</u>
Reciprocity license	((40.00)) <u>50.00</u>
Renewal (two-year license)	((40.00)) <u>55.00</u>
Late renewal penalty	((20.00)) <u>55.00</u>
Duplicate	15.00
Certification	25.00
Barber:	
<u>License Application</u>	<u>25.00</u>
Reciprocity license	((40.00)) <u>50.00</u>
Renewal (two-year license)	((40.00)) <u>55.00</u>
Late renewal penalty	((20.00)) <u>55.00</u>
Duplicate license	15.00
Certification	25.00
School:	
License application	((175.00)) <u>300.00</u>
Renewal (one-year license)	((175.00)) <u>300.00</u>
Late renewal penalty	175.00
Duplicate	15.00
Curriculum review	15.00
Salon/shop:	
License application	((50.00)) <u>110.00</u>
Renewal (one-year license)	((50.00)) <u>110.00</u>
Late renewal penalty	50.00
Duplicate license	15.00
Mobile unit:	
License application	((50.00)) <u>110.00</u>
Renewal (one-year license)	((50.00)) <u>110.00</u>
Late renewal penalty	50.00
Duplicate license	15.00
Personal services:	

Title of Fee	Fee
License application	((50.00)) <u>110.00</u>
Renewal (one-year license)	((50.00)) <u>110.00</u>
Late renewal penalty	50.00
Duplicate license	15.00

WSR 09-19-139
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed September 23, 2009, 7:44 a.m.]

Original Notice.
Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 308-14-200 Court reporter fees.

Hearing Location(s): Department of Licensing, Building 2, Conference Room 102, 405 Black Lake Boulevard S.W., Olympia, WA 98502, on October 27, 2009, at 9:00 a.m.

Date of Intended Adoption: October 28, 2009.

Submit Written Comments to: Lawna Knight, Department of Licensing, Court Reporter Program, P.O. Box 9026, Olympia, WA 98507, e-mail lknight@dol.wa.gov, fax (360) 664-2550, by October 20, 2009.

Assistance for Persons with Disabilities: Contact Lawna Knight by October 20, 2009, TTY (360) 664-8885 or (360) 664-6643.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase fees in the court reporter program as follows:

	Old fee	New fee
Application	\$116	\$150
Renewal	\$61	\$125
Late Renewal Penalty	\$80	\$125

Reasons Supporting Proposal: Increasing the fees will allow us to cover costs to run the program and maintain a reasonable fund balance.

Statutory Authority for Adoption: RCW 18.145.050, 43.24.086.

Statute Being Implemented: RCW 43.24.086.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Colard, 405 Black Lake Boulevard S.W., (360) 664-6647.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is exempt under RCW 34.05.310(4).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule revi-

sion. Washington state department of licensing is not a named agency, therefore, exempt from the provision.

September 23, 2009
Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-16-036, filed 7/23/07, effective 9/1/07)

WAC 308-14-200 Court reporter fees. The following fees shall be charged by the business and professions division, department of licensing:

Title of Fee	Fee
Certification	
Application	\$(416.00) <u>150.00</u>
Renewal	((61.00)) <u>125.00</u>
Late renewal penalty	((80.00)) <u>125.00</u>
Verification	25.00
Duplicate	15.00

**WSR 09-19-140
PROPOSED RULES
DEPARTMENT OF AGRICULTURE**

[Filed September 23, 2009, 7:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-14-123.

Title of Rule and Other Identifying Information: Chapter 16-401 WAC, Nursery inspection fees, the department is proposing to increase nursery dealer license fees and requested inspection fees. In addition, the department is amending the language in order to meet the needs of the nursery industry and in response to recent changes implemented by the federal government.

Hearing Location(s): Washington State Department of Agriculture, 1111 Washington Street S.E., Natural Resources Building, 2nd Floor, Conference Room 259, Olympia, WA 98504-2560, on October 29, 2009, at 1:00 p.m.

Date of Intended Adoption: November 5, 2009.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by October 29, 2009.

Assistance for Persons with Disabilities: Contact Henri Gonzales by October 22, 2009, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 16-401 WAC, Nursery inspection fees, the department is proposing to increase nursery dealer license fees and fees for additional services requested by the industry. In addition, the department is amending the language in order to meet the needs of the nursery industry and in response to recent changes in pro-

cedure implemented by the United States Department of Agriculture's Animal and Plant Health Inspection Service.

Reasons Supporting Proposal: During the 2009 legislative session, the Washington state legislature authorized (as required by Initiative 960) the Washington state department of agriculture to increase the nursery dealer licensing and plant pest inspection and testing fees as necessary to meet the actual costs of conducting business (see chapter 564, Laws of 2009).

This rule establishes the fees charged by the plant services program for activities authorized in chapters 15.13 and 15.14 RCW. The program's revenue is almost solely derived from inspection, testing, and license fees. An increase in fees would enable the program to cover the costs associated with performing these activities.

Statutory Authority for Adoption: RCW 15.13.260, 15.13.280, 15.13.370, and 15.14.015; chapter 34.05 RCW; and chapter 564, Laws of 2009.

Statute Being Implemented: RCW 15.13.260, 15.13.280, 15.13.370, and 15.14.015.

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

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

Name of Agency Personnel Responsible for Drafting: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984; Implementation and Enforcement: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Proposal: This proposal would increase nursery license fees and the fees for phytosanitary services requested by licensed nurseries, as authorized in chapter 15.13 RCW. Phytosanitary services include inspections for plant health (e.g. freedom from quarantine insects and diseases, noxious weeds, and other pests) and quality. This is a companion to a proposal to increase fees for similar requested inspection services authorized under chapter 17.24 RCW and performed mostly by the same program for nonnursery products.

Rule Summary: RCW 15.13.280 requires the department of agriculture (WSDA) to establish a schedule of fees for retail and wholesale nursery dealer licenses based on the gross annual sales of horticulture plants at each place of business. RCW 15.13.370 authorizes the department to provide special inspections or certifications upon request and to prescribe a fee for those services. Chapter 16-401 WAC establishes fees for both nursery dealer licenses and requested services. The fees collected from the fee schedule specified in chapter 16-401 WAC are deposited into the nursery inspection account within the agriculture local fund. The nursery activities of the plant services program are entirely fee-supported. The mission of the plant services program is to enforce the state's nursery standards and facilitate the trade of agriculture products through phytosanitary certification.

In fiscal year 2009, the nursery inspection activity expenses exceeded revenue by \$65,000 because of increasing operating expenses. Prior to 2007, the department had

increased fees for requested services as needed annually at a rate within the mandated office of financial management fiscal growth factor. However, enactment of Initiative 960 in 2007 prohibited state agencies from increasing fees without legislative authority. During the 2009 legislative session, the department was given authority to increase the fees for nursery dealer licenses and for plant pest inspections.

With the intention of stabilizing the nursery inspection account until approximately 2016, the department considered increasing nursery dealer license fees by 20% and fees for requested services by 32%. However, in view of the current economic turndown and after consulting with the WSDA nursery advisory committee, the department decided to mitigate possible economic impacts by reducing the proposed increases substantially and reevaluating the program's financial status in 2010.

Fee Increase	Projected Account Balance 6/30/2011
No fee increase	(\$11,723)
32% for requested services/20% for nursery dealer license in January 2010	\$473,737
16% for requested services/10% for nursery dealer license in January 2010	\$263,193

Average monthly operating expenses for the nursery and requested inspection activities (performed under authority of both chapters 15.13 and 17.24 RCW) of the plant services

	Number of Nurseries	Current Fee	Proposed Fee	Proposed Increase
Gross business sales of horticulture plants less than \$2,500	3,000	\$38.73	\$42.00	\$3.27
Gross business sales of horticulture plants between \$2,500 and \$15,000	1,404	\$82.99	\$91.00	\$8.01
Gross business sales of horticulture plants \$15,000 or more	1,885	\$166.00	\$182.00	\$16.00

The proposal to increase fees for requested services by approximately 16% would affect those nurseries requesting phytosanitary certification for the movement of horticultural plants. Phytosanitary certification is generally required in order for production/wholesale nurseries to be able to comply with requirements of receiving international or interstate markets. Some of these services can also be obtained from the United States Department of Agriculture (USDA); however, the cost of the federal services exceeds the proposed WSDA fees. (See the alternatives section later in this document.) The proposed fee schedule, along with the current fee schedule, is listed below.

Service	Current Fee	Proposed Fee
Hourly rate-business hours	\$34.80	\$40.00
Hourly rate-nonbusiness hours	\$44.45	\$51.00

program are approximately \$115,000. The projected account balance above of \$263,193 is less than three months' operating expenses.

The proposed rule revision will result in no additional reporting, record-keeping, or other compliance requirements for nurseries. Other than the increase in the fee itself, there are no additional equipment, supplies, labor, professional services, or increased administrative costs to small businesses associated with the proposal, and this proposal will not cause small businesses to lose sales or revenue.

Affected Groups and Costs: The proposal to increase the nursery dealer license fees in chapter 16-401 WAC would affect all of the approximately 6,500 licensed businesses that sell horticultural plants. This includes retail garden centers and production nurseries, hardware stores, groceries, and large chain stores. However, the cost for each business would be relatively minor (no more than a \$16 increase per year) and would vary with the size of the business. Nursery dealer licenses for businesses are based on the gross annual sale of horticulture plants. A business with gross annual sales of less than \$2,500 currently pays \$38.73. Under this proposal that would increase \$3.27 to \$42.00. At the top end of the schedule, a business with gross annual sales exceeding \$15,000 currently pays \$166.00. This proposal would increase this license fee by \$16 to \$182.00. Since the nursery dealer license fee schedule is proportional to gross sales, the proposed increase would not have a disproportionate cost impact on small businesses. The proposed nursery dealer license fee schedule and the current fee schedule are listed below.

Service	Current Fee	Proposed Fee
Certificate issued at time of inspection	No charge	No charge
Certificate issued more than twenty-four hours after the inspection	\$16.55	\$19.50
Additional certificates	\$5.20	\$6.50
Fumigation lot or container fee	\$13.80	\$16.00
Certificate of plant health for noncommercial movement	\$6.80	\$6.80
Compliance agreement	\$34.80	\$40.00
Inspection tags or sticker (lots of 250)	\$6.80	\$7.80

A business with a nursery dealer license is allowed without additional fee four hours of phytosanitary inspection services per year, which adequately covers routine growing season inspections for most production/wholesale nurseries. In FY09, approximately one hundred forty nurseries requested services in excess of four hours. Requested services in excess of four hours are charged at the hourly rate established in chapter 16-401 WAC. The fees paid for requested services on an annual basis ranged from \$6.80 (for a single certificate) to \$4,000 for nurseries with large interstate and international markets. In general the largest cost impact of this fee increase would be for these few relatively large nurseries.

Industry Outreach: The proposal to increase nursery dealer license fees and fees for requested services was discussed with the nursery advisory committee on June 12, 2009. The committee recommended a 10% increase for nursery dealer licenses and a 16% increase in fees for requested services. The proposal was also presented to the fruit tree advisory committee and the grapevine advisory committee.

In addition to notifying advisory committees, the plant services program will send a notice of the proposal to all program accounts.

Alternatives: The alternative to increasing nursery dealer license fees and fees for requested services is to leave the current fees unchanged and reduce program staff and services. Currently, there are eleven field personnel stationed throughout the state for the plant services program. Reductions in staff would likely result in longer waiting times for export services, impeding the ability of Washington nurseries to move nursery stock in some markets. It would also decrease the ability of the plant services program to inspect for and take compliance action to prevent shipments carrying harmful pests and nonnative species from moving into commerce, endangering Washington's plant resources.

An alternative source of requested phytosanitary inspection services for international and some domestic shipments is federal, performed by USDA Animal and Plant Health Inspection Service (APHIS). Federal fees for these services are not directly comparable to the WSDA hourly fee, as APHIS charges by the certificate, rather than by the hour. However, the current federal fee of \$98 per certificate appears to be approximately 1.5x to double the proposed state fee for the same service. In addition, some services performed by WSDA are not offered by APHIS.

Conclusion: The fees generated by nursery dealer licenses and requested services fund the plant services program of WSDA. The plant services program is mandated by chapter 15.13 RCW to regulate sales and movement of horticulture plants and to facilitate trade. The proposal to increase nursery dealer licenses by 10% will result in a \$16 increase or less. The proposed approximately 16% increase in fees for requested services will impact a relatively small number of nurseries with extensive multistate and international markets.

A copy of the statement may be obtained by contacting Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-2061, fax (360) 902-2094, e-mail hgonzales@agr.wa.gov.

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

September 23, 2009
 Mary A. Martin Toohey
 Assistant Director

AMENDATORY SECTION (Amending WSR 07-11-011, filed 5/3/07, effective 7/1/07)

WAC 16-401-027 Schedule of fees and charges—Applicable rates and charges. The following rates apply for requested inspection services:

(1) Fee or Charge:	
Hourly rate—business hours	\$(34.80) <u>40.00</u>
Hourly rate—nonbusiness hours	\$(44.45) <u>51.00</u>
Certificate issued at time of inspection	No charge
Certificate issued more than twenty-four hours after the inspection	\$(16.55) <u>19.50</u>
Additional certificates	\$(5.20) <u>6.50</u>
Fumigation lot or container fee	\$(13.80) <u>16.00</u>
Certificate of plant health for noncommercial movement	\$6.80
Compliance agreement	\$(34.80) <u>40.00</u>
Inspection tags or stickers (lots of 250)	\$(6.80) <u>7.80 per lot</u>
((Inspection tags or stickers (minimum 10)	\$0.29 each))

(2) Mileage at the established office of financial management rate (schedule A), per diem and other authorized travel expenses at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections that are not a part of a regular work schedule. Such charge may be prorated among applicants if more than one applicant is provided service during a workday or trip when mileage and/or per diem are applicable.

(3) Inspections for phytosanitary certification, including growing season field inspections, are provided at the applicable hourly rate provided in subsection (1) of this section except where an alternate certification inspection fee is provided in statute, in rule, or by a written agreement between the department and an industry entity, university, or public agency. When growing season field inspections for phytosanitary certification and regulatory inspections are performed simultaneously, the first two hours of inspection each calendar year for nurseries licensed under WAC 16-401-041 (1)(b) or (2)(a); and the first four hours of inspection per calendar year for nurseries licensed under WAC 16-401-041 (1)(c) or (2)(b), are without charge.

There is no additional charge for the first phytosanitary certificate issued at the time of the inspection.

(4) Inspection and certification of nonplant material or equipment for sanitation (freedom from soil or pests) by visual examination or through witnessing a prescribed treatment (steam cleaning, hydro-washing, etc.) is charged at the applicable hourly rate.

(5) Witnessing and certification of fumigation is charged at the applicable hourly rate, plus a per lot or container fee.

(6) The department may also charge fees and/or surcharges for transmittal to federal agencies.

(7) The department may issue a certificate of plant health for noncommercial movement of plant materials between states by unlicensed persons, up to a maximum of five plants, and provided that the plants are brought to a plant services office for inspection.

Note: When two or more types of inspection, provided in this section, are performed simultaneously, only one hourly rate applies. One certificate for one service is issued at no charge.

AMENDATORY SECTION (Amending WSR 07-11-011, filed 5/3/07, effective 7/1/07)

WAC 16-401-041 Nursery dealer license fees. Annual license fees as established below, must accompany the application for nursery dealer license:

- (1) Retail nursery dealer license fee:
 - (a) Gross business sales of horticultural plants and turf less than two thousand five hundred dollars ~~\$(38.73))~~ 42.00
 - (b) Gross business sales of horticultural plants and turf between two thousand five hundred dollars and fifteen thousand dollars, the license fee is ~~\$(82.99))~~ 91.00
 - (c) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more ~~\$(166.00))~~ 182.00
- (2) Wholesale nursery dealer license fee:
 - (a) Gross business sales of horticultural plants and turf less than fifteen thousand dollars ~~\$(82.99))~~ 91.00
 - (b) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more ~~\$(166.00))~~ 182.00
- (3) As provided in RCW 15.13.285, a surcharge of twenty percent of the base rate, in addition to the fees established on all classes of licenses in subsections (1) and (2) of this section, is established.
- (4) Permit fee for those types of sales and organizations exempted from licensing requirements by RCW 15.13.270 \$6.70

WSR 09-19-141
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed September 23, 2009, 7:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-14-121.

Title of Rule and Other Identifying Information: Chapter 16-470 WAC, Quarantine—Agricultural pests, the department is proposing to increase laboratory diagnostic and postentry inspection fees, including hourly fees for these ser-

vices. In addition, the department is amending the language in order to meet the needs of the affected stakeholders in response to recent changes in technology, procedures implemented by the federal government, and industry practices.

Hearing Location(s): Washington State Department of Agriculture, 1111 Washington Street S.E., Natural Resources Building, 2nd Floor, Conference Room 259, Olympia, WA 98504-2560, on October 29, 2009, at 1:00 p.m.

Date of Intended Adoption: November 5, 2009.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by October 29, 2009.

Assistance for Persons with Disabilities: Contact Henri Gonzales by October 22, 2009, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to increase laboratory diagnostic and postentry inspection fees, including hourly fees for these services. In addition, the department is amending the language in order to meet the needs of affected stakeholders in response to recent changes in technology (especially with regard to laboratory tests), procedures implemented by the United States Department of Agriculture's Animal and Plant Health Inspection Service, and industry practices.

Reasons Supporting Proposal: During the 2009 legislative session, the Washington state legislature authorized (as required by Initiative 960) the Washington state department of agriculture (WSDA) to increase the plant pest inspection and testing fees as necessary to meet the actual costs of conducting business (see chapter 564, Laws of 2009).

This rule establishes the fees-for-service charged by the plant services program and pest program for activities authorized in chapter 17.24 RCW. This increase in fees would enable the programs to cover the costs associated with these activities.

Statutory Authority for Adoption: RCW 17.24.021 and 17.24.131; chapter 34.05 RCW; and chapter 564, Laws of 2009.

Statute Being Implemented: RCW 17.24.021 and 17.24.131.

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

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

Name of Agency Personnel Responsible for Drafting: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984; Implementation and Enforcement: Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Proposal: This proposal would increase the fees for requested inspection services and plant pathology testing performed under authority of chapter 17.24 RCW. In general, these are services and tests requested on a voluntary basis by persons who wish to export agricultural and related industry products, so that their shipments comply with the requirements of domestic and international markets. This is a com-

panion to a proposal to increase fees for similar services authorized under authority of chapter 15.13 RCW and performed by the same program.

Rule Summary: RCW 17.24.131 authorizes the director to provide inspection and testing services to facilitate the movement of plant products and to establish a schedule of fees for those services. The fee schedule, established in chapter 16-470 WAC, includes fees for pest inspections, plant pathology testing, and other pest detection activities that may be necessary for the phytosanitary certification of plant products. The department certifies many commodities under chapter 17.24 RCW including: Logs, lumber, hay, grain, pulse crops, seed crops, and nursery stock. Among its several statutory responsibilities, the plant services program and associated plant pathology laboratories provide phytosanitary certification services upon request and deposit collected fees into accounts within the agriculture local fund. Table 1 lists the revenue collected for providing requested services under chapters 17.24 and 15.13 RCW in the previous biennium.

Table 1.

Account	Biennium Revenue
Nursery inspection—Requested services	\$1,115,018.79
Plant pathology lab—Olympia	\$36,437.04
Plant pathology lab—Prosser	\$75,481.03

RCW 17.24.131 requires the department to recover its costs for requested services, including salaries and expenses of personnel providing those services. Prior to 2007, the department was able to offset increasing salaries and expenses by implementing annual incremental fee increases within the mandated fiscal growth factor. However, enactment of Initiative 960 in 2007 prohibited state agencies from increasing fees without legislative authority. During the 2009 legislative session, the department was given authority to increase fees for these services and testing.

Approximately 89% of the revenue listed for the nursery inspection account in Table 1 above comes from requested services performed under chapter 17.24 RCW. The remainder is sourced from requested services performed under chapter 15.13 RCW, which is the subject of a separate rule proposal to increase fees. Without increases in revenue from both statutory sources, the nursery inspection fund balance is projected to be depleted by the end of the current biennium.

With the intention of stabilizing the nursery inspection account until approximately 2016, the department considered increasing fees by 32%. However, in view of the current economic turndown, the department decided to mitigate possible economic impacts by reducing the proposed increases substantially and reevaluating the program's financial status in 2010. Table 2 lists options for fee increases and the projected fund balances for the nursery inspection account (including all of its revenue streams) at the end of the current biennium.

Table 2.

Fee Increase	Projected Fund Balance 6/30/2011
No fee increase	(\$11,723)
32% in January 2010	\$473,737

Fee Increase	Projected Fund Balance 6/30/2011
16% in January 2010	\$263,193

This proposal is for a 16% increase in fees for requested services. The proposed revision will result in no additional reporting, record-keeping, or other compliance requirements. Other than the increase in the fee itself, there are no additional equipment, supplies, labor, professional services, or increased administrative costs to small businesses associated with the proposal, and this proposal will not cause businesses to lose sales or revenue.

Affected Groups and Costs: The proposal to increase fees for requested services in chapter 16-470 WAC will affect all businesses requiring phytosanitary certification services under chapter 17.24 RCW for moving plant products. The WSDA has approximately three hundred customers requesting these services, including forest products companies, brokers, and growers. Hay, logs, lumber, and pulse crops make up the majority of certified products.

Table 3 lists the current and proposed fee schedules.

Table 3.

Service	Current Fee	Proposed Fee
Hourly rate-business hours	\$34.80	\$40.00
Hourly rate-nonbusiness hours	\$44.45	\$51.00
Certificate issued at time of inspection	No charge	No charge
Certificate issued more than twenty-four hours after the inspection	\$16.55	\$19.50
Additional certificates	\$5.20	\$6.50
Fumigation lot or container fee	\$13.80	\$16.00
Nematode test (plant material)	\$36.15	\$38.00
Nematode test (soil)	\$36.15	\$60.00
Bunts and smuts	\$34.80 per hour	\$60.00
Compliance agreement	\$34.80	\$40.00

Industry Outreach: Because of the diversity of customers requesting phytosanitary certification, the department will contact all customers individually. A letter explaining the proposal will be mailed along with their monthly statements to all accounts.

Alternatives: The alternative to increasing fees for requested services is to leave the current fees unchanged and reduce program staff and services. Without additional revenue, the department will not be able to provide phytosanitary certification services at the current level. Reduction in services would likely impede the ability of Washington exporters to move plant products in a timely fashion, not least by increasing turnaround times for certification services and

potentially delaying movement of products through port facilities.

USDA Animal and Plant Health Inspection Service (APHIS) is an alternative source for some of these requested inspection services. Federal fees for these services are not directly comparable to the WSDA hourly fee, as APHIS charges by the certificate, rather than by the hour. However, the current federal fee of \$98 per certificate appears to be approximately 1.5x to double the proposed state fee for the same service. In addition, some services performed by WSDA are not offered by APHIS.

Conclusion: The fees generated by requested services fund a significant portion of the department's nursery inspection account and associated plant pathology testing. The plant services program is mandated by chapter 17.24 RCW to facilitate the movement of plant products through special certifications and to charge a fee for those services that is adequate to recover the cost of providing those services. To maintain the current level of services, a fee increase in requested services is necessary.

A copy of the statement may be obtained by contacting Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560,

((Identity Determination	1 sample	5 samples	10 samples	50 samples	100+ samples
nematode	36.15 ea	33.30 ea	30.55 ea	29.80 ea	27.75 ea))

- (a) Nematode assay (plant material) \$38.00
- (b) Nematode assay (soil) \$60.00
- (c) Assay for dwarf bunt (TCK), Karnal bunt, flag smut \$60.00

Note: ~~((To receive volume rates, samples must be submitted as a unit and identification requests must be for one specific nematode, unless more than one nematode can be detected in a single test without additional inputs.)) Fee is for one sample for one specific organism, unless more than one organism can be detected in a single test without additional inputs.~~

(4) The department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate for projects with at least one of the following characteristics:

- (a) Projects greater than one hundred samples;
- (b) Projects requiring materials not readily available; or
- (c) Projects requiring special handling, multiple phase test procedures, or prolonged incubation periods.

The rate charged shall not be less than the cost to the department of performing the tests.

AMENDATORY SECTION (Amending WSR 07-11-012, filed 5/3/07, effective 7/1/07)

WAC 16-470-917 Schedule of fees and charges— Fees for post entry inspection services. (1) Post entry site inspection and/or permit review and approval ~~(((\$69.85))~~ \$81.00

(2) Subsequent inspections of post entry plant materials are provided at the applicable hourly rate.

(3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

phone (360) 902-2061, fax (360) 902-2094, e-mail hgonza-les@agr.wa.gov.

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

September 23, 2009
Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 07-11-012, filed 5/3/07, effective 7/1/07)

WAC 16-470-912 Schedule of fees and charges— Applicable fees and charges. (1) Hourly rate.

Hourly rate - business hours	(((\$34.80)) <u>\$40.00</u>
Hourly rate - nonbusiness hours	(((\$44.45)) <u>\$51.00</u>

(2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, are charged at the applicable hourly rate plus materials.

(3) ~~((Nematology))~~ Plant pathology laboratory diagnostic fees ~~((are as follows))~~:

10 samples	50 samples	100+ samples
30.55 ea	29.80 ea	27.75 ea))

AMENDATORY SECTION (Amending WSR 03-10-082, filed 5/6/03, effective 6/30/03)

WAC 16-470-921 Schedule of fees and charges—

Miscellaneous fees. (1) Mileage at the established office of financial management rate (schedule A), per diem and other authorized travel expenses at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections or post entry inspections that are not a part of a regular work schedule. Such charges may be prorated among applicants if more than one applicant is provided service during a workday or trip when per diem is applicable.

(2) Postage, special handling services and other miscellaneous costs exceeding five dollars will be charged back to the applicant at the actual cost.

(3) Certificates of inspection, phytosanitary certificates, and other official documents will be provided to the applicant subject to the charges and conditions established in chapter 16-401 WAC.

WSR 09-19-142

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed September 23, 2009, 7:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-179.

Title of Rule and Other Identifying Information: The department is proposing to add a new section to chapter 16-401 WAC that establishes annual licensing and assessment fees for Christmas tree growers.

Hearing Location(s): Washington State Department of Agriculture, 1111 Washington Street S.E., Natural Resources Building, 2nd Floor, Conference Room 259, Olympia, WA 98504-2560, on October 28, 2009, at 9:00 a.m.

Date of Intended Adoption: November 4, 2009.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by October 28, 2009.

Assistance for Persons with Disabilities: Contact Henri Gonzales by October 21, 2009, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to carry out provisions of chapter 15.13 RCW by adopting annual licensing fees, including assessment fees, and a licensing process for Christmas tree growers. The anticipated result is establishment of a Christmas tree program within the Washington state department of agriculture (WSDA).

Reasons Supporting Proposal: During the 2007 legislative session, at the request of the Christmas tree industry, the Washington state legislature adopted amendments to chapter 15.13 RCW (see chapter 335, Laws of 2007) relative to Christmas tree grower licensure. This legislation authorizes the department to adopt rules for annual license fees that may include a base fee and per acre assessment and fee collection methods. During the 2009 legislative session, the Legislature authorized (as required by Initiative 960) the WSDA to establish Christmas tree grower licensing fees (see chapter 564, Laws of 2009).

The intent of the 2007 legislation is to establish a fee-funded program to enhance lines of communication, create a mechanism for the industry to advise WSDA, and furnish pest and certification services to the Christmas tree industry.

Statutory Authority for Adoption: RCW 15.13.311; chapter 34.05 RCW; chapter 335, Laws of 2007; chapter 564, Laws of 2009.

Statute Being Implemented: RCW 15.13.311; chapter 335, Laws of 2007; chapter 564, Laws of 2009.

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

Name of Proponent: Washington chapter of the Pacific Northwest Christmas Tree Association, private.

Name of Agency Personnel Responsible for Drafting: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984; **Implementation and Enforcement:** Mary Toohey, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1907.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Proposal: This proposal would establish a new fee in chapter 16-401 WAC. A Christmas tree grower license fee was authorized in amendments to chapter 15.13 RCW enacted in the 2007 legislative session, and authorization to establish the fee by rule was adopted in the 2009 legislative session.

Rule Background and Summary: Chapter 15.13 RCW authorizes the director to adopt rules establishing a Christmas tree grower license of not more than \$40 base fee, plus an

assessment of not more than \$4 per acre, for a total maximum of \$5,000. Christmas tree growers who sell trees exclusively to the ultimate consumer and who either have less than one acre of trees or harvest fewer than 400 trees annually would be exempt from this requirement. Chapter 15.13 RCW also authorizes the director to establish a Christmas tree advisory committee to advise the department on issues related to Christmas tree licensing. After establishing and consulting with the Christmas tree advisory committee, the department is proposing a Christmas tree grower license annual base fee of \$40 plus \$3 per acre assessment. The licensing period would be February 1 to January 31.

RCW 15.13.470 provides that revenues from the license fees would be deposited in an account within the agriculture local fund. These revenues may be used only for the Washington Christmas tree program, including the funding of market surveys and research related to Christmas trees.

Affected Groups and Costs: This proposal would affect all Christmas tree growers who do not meet the exemption summarized above. If this proposal is adopted, the department expects to license approximately 300 growers. The large majority of these growers are small businesses. The rule proposal consists of an annual base fee of \$40, which would be paid by all growers, regardless of business size, plus an acreage assessment of \$3 per acre. Larger acreages are indicators of larger business volumes, indicating that larger businesses would bear greater licensing costs. This proposal would not have a disproportionate economic effect on small business.

Industry Outreach: In 2007, at the request of the Christmas tree industry, chapter 15.13 RCW was revised to authorize the department to license Christmas tree growers and to adopt rules establishing a fee for the license. The following year Initiative 960 became effective, requiring specific approval from the legislature prior to establishment of new fees such as this. In 2009 the legislature authorized the department to establish a Christmas tree grower license fee as directed in the 2007 amendments to chapter 15.13 RCW. During the interim, the department had established a Christmas tree advisory committee representing the interests of Christmas tree growers in Washington. Among its members are representatives of the Washington chapter of the Pacific Northwest Christmas Tree Association, the Puget Sound Christmas Tree Association, and the Inland Empire Christmas Tree Association. The advisory committee met on July 30, 2009, and recommended the department go forward with this proposal. In mitigation of the economic effects of the rule, an acreage assessment of \$3, rather than the maximum assessment, was recommended by the advisory committee and is proposed.

Other than information necessary to fill out the annual application for license prescribed in RCW 15.13.312, the proposal would result in no additional reporting, record-keeping or other compliance requirements. There are no additional equipment, supplies, labor, professional services, or increased administrative costs associated with the proposal. This proposal would not cause businesses to lose sales or revenue.

Alternatives: RCW 15.13.311 requires Christmas tree growers (unless they fall under the specified exemptions) to

obtain a Christmas tree grower license. Options include a range of base fee (up to \$40) and of acreage assessment (up to \$4 per acre). The proposal was determined with the advice of the membership of the Christmas tree advisory committee, representing various areas and facets of the affected industry. Due to a lack of definitive information about the number of growers and their acreage in this state, data from which to project revenue from this license is lacking at this time.

Conclusion: This proposal would revise chapter 16-401 WAC to establish an annual license fee for Christmas tree growers and application process for this new license. An annual fee of \$40 plus a \$3 per acre assessment was recommended by the Christmas tree advisory committee. If the proposal is adopted, there will be ongoing evaluation of information generated by the requirement, by the department and the advisory committee, so that the program and its fee can be adjusted to meet the needs of the affected industry.

A copy of the statement may be obtained by contacting Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-2061, fax (360) 902-2094, e-mail hgonzales@agr.wa.gov.

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

September 23, 2009
Mary A. Martin Toohey
Assistant Director

NEW SECTION

WAC 16-401-045 Christmas tree grower license fees.

(1) All Christmas tree growers, except those exempted in subsection (5) of this section, must obtain a Christmas tree grower license.

(2) The licensing period for a Christmas tree grower license is February 1st to January 31st.

(3) The annual fee for a Christmas tree grower license is forty dollars plus an acreage assessment of three dollars per acre. The annual Christmas tree grower license fee for any person may not exceed five thousand dollars.

(4) Growers must submit an application for Christmas tree grower license and the annual fee to the department by February 1st.

(5) Any Christmas tree grower owning Christmas trees, whose business consists solely of retail sales to the ultimate consumer, is exempt from the requirements of this section if:

(a) The grower has less than one acre of Christmas trees;
or

(b) The grower harvests, by u-cut or otherwise, fewer than four hundred Christmas trees per year.

WSR 09-19-144
PROPOSED RULES
STATE BOARD OF HEALTH

[Filed September 23, 2009, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-21-034.

Title of Rule and Other Identifying Information: WAC 246-100-072, 246-100-207, 246-100-208, and 246-100-209 amending rules for HIV counseling and testing and partner services (formerly partner notification); makes rule language more consistent with Centers for Disease Control and Prevention (CDC) 2006 revised recommendations for HIV testing and 2008 recommendations for partner services programs for HIV, syphilis, gonorrhea, and chlamydia. Revises standards for HIV pretest and posttest counseling and allows local health officials to contact HIV infected persons directly for partner services.

Hearing Location(s): Holiday Inn Hotel, 17338 International Boulevard, Seattle, WA 98188, on November 4, 2009, at 1:30 p.m.

Date of Intended Adoption: November 4, 2009.

Submit Written Comments to: Brown McDonald, HIV Prevention and Education, Washington State Department of Health, P.O. Box 47840, Olympia, WA 98504-7840, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-3400, by October 30, 2009.

Assistance for Persons with Disabilities: Contact Beth Watkins by October 30, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Health care providers and local health officials cannot implement the revised federal recommendations under current rule language. This proposed revision eliminates specific, detailed requirements for HIV testing, counseling, and partner services that are no longer recommended by the CDC and provides programs the flexibility to meet emerging needs in these related areas. Health care providers will have the flexibility to offer HIV screening to all Washington residents ages thirteen to sixty-four without the requirement to provide detailed pretest counseling (still obtaining informed consent separately, or as part of the consent for a battery of routine tests) prior to prescribing an HIV test. Local health officers will have the flexibility to contact the patient directly for HIV post-test counseling and to offer assistance with notifying the patient's partners - resulting in more exposed partners aware of their exposure and who are tested for HIV.

Reasons Supporting Proposal: This proposal aligns rule language with current CDC recommendations for HIV testing, screening and partner services including: Offering HIV screening for all persons ages thirteen to sixty-four, in all health care settings to effectively reduce the annual incidence of HIV infections; performing HIV screening through informed consent for HIV testing as part of a general consent for care; no longer require pre-test counseling; and directly involve public health officials in partner services. The expected result of this revision is a greater proportion of individuals tested and aware of their HIV status.

Statutory Authority for Adoption: RCW 70.24.130.

Statute Being Implemented: Chapter 70.24 RCW.

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

Name of Proponent: State board of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Brown McDonald, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3421.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Brown McDonald, HIV Prevention and Education, Washington State Department of Health, P.O. Box 47840, Olympia, WA 98504-7840, phone (360) 236-3421, fax (360) 236-3400, e-mail Brown.McDonald@doh.wa.gov.

September 23, 2009
Craig McLaughlin
Executive Director

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

WAC 246-100-072 Rules for notification of partners at risk of human immunodeficiency virus (HIV) infection.

(1) A local health officer or authorized representative shall:

(a) Within ~~((seven))~~ three working days of receipt of a report ~~((indicative))~~ of a previously unreported case of HIV infection, attempt to contact the principal health care provider to ~~((determine))~~:

(i) Seek input on the best means ~~((and the necessity))~~ of conducting a case investigation including partner notification ~~((ease investigation))~~; and

(ii) If appropriate, request that the provider contact the HIV-infected person as required in subsection (2) of this section.

(b) Contact the HIV-infected person ((for the purpose of providing assistance in notifying)) to:

(i) Provide post-test counseling as described under WAC 246-100-209;

(ii) Discuss the need to notify sex or injection equipment-sharing partners, including spouses, that they may have been exposed to and infected with HIV and that they should seek ~~((HIV pretest counseling and))~~ HIV testing ~~((, unless:~~

(i) ~~The principal health care provider recommends that the state or local health officer not meet with the HIV-infected individual for the purpose of notifying partners, including spouses; or~~

(ii) ~~The local health officer determines a partner notification ease investigation is not necessary;~~

(e) Provide assistance notifying partners in accordance with the "HIV Partner Counseling and Referral Services—Guidance"; and

(iii) Offer assistance with partner notification as appropriate.

(c) Unless the health officer or designated representative determines partner notification is not needed or the HIV-infected person refuses assistance with partner notification, assist with notifying partners in accordance with the "Recommendations for Partner Services Programs for HIV Infection, Syphilis, Gonorrhea, and Chlamydial Infection" as published

by the Centers for Disease Control and Prevention, ~~((December 1998))~~ October 2008.

(2) If the local health officer ~~((decides))~~ or designated representative informs the principal health care provider that he or she intends to conduct ~~((the))~~ a partner notification case investigation, the principal health care provider~~((:~~

(a) ~~May provide recommendations to the state or local health officer on the best means of contacting the HIV-infected individual for the purpose of notifying sex or injection equipment-sharing partners, including spouses, that partners may have been exposed to and infected with HIV and that partners should seek HIV pretest counseling and HIV testing; and~~

(b)) shall attempt to inform the HIV-infected person that the local health officer or authorized representative will contact the HIV-infected person for the purpose of providing assistance with the notification of partners.

(3) ~~((If the principal health care provider recommends that the state or local health officer not meet with the HIV-infected individual for the purpose of notifying partners, including spouses, the principal health care provider shall:~~

(a) Inform the HIV-infected individual of the necessity to notify sex and injection equipment-sharing partners, including spouses, that they have been exposed to and may be infected with HIV and should seek HIV testing; and

(b) Provide assistance notifying partners in accordance with the "HIV Partner Counseling and Referral Services—Guidance" as published by the Centers for Disease Control and Prevention, December 1998; and

(e) Inform the local health officer or an authorized representative of the identity of sex or injection equipment-sharing partners known to the provider when the HIV-infected individual either refuses or is unable to notify such partners and confirm notification to the health care provider; and

(d) ~~Upon request of the state or local health officer, report the number of exposed partners, including spouses that have been contacted and offered HIV testing.~~

(4)) A health care provider shall not disclose the identity of an HIV-infected individual or the identity of sex and injection equipment-sharing partners, including spouses, at risk of HIV infection, except as authorized in RCW 70.24.105 or ~~((WAC 246-100-072))~~ in this section.

~~((§))~~ (4) Local health officers and authorized representatives shall:

(a) Use identifying information, ~~((provided))~~ according to this section, on HIV-infected individuals only ~~((for))~~ to:

(i) ~~((Contacting))~~ Contact the HIV-infected individual to provide post-test counseling and, as appropriate, referral to medical care, or to contact sex and injection equipment-sharing partners, including spouses; or

(ii) ~~((Carrying))~~ Carry out an investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024; and

(b) Destroy documentation of referral information established under this subsection, containing identities and identifying information on the HIV-infected individual and at-risk partners of that individual, immediately after notifying partners or within three months of the date information was received, whichever occurs first unless such documentation

is being used in an active investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024.

~~((6))~~ (5) A health care provider may consult with the local health officer or an authorized representative about an HIV-infected individual and the need for notification of partners at any time.

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

WAC 246-100-207 Human immunodeficiency virus (HIV) testing—Ordering—Laboratory screening—Interpretation—Reporting. (1) ~~((Any person))~~ Except for persons conducting seroprevalent studies under chapter 70.24 RCW, or ordering or prescribing an HIV test for another ~~(; except for seroprevalent studies under chapter 70.24 RCW or provided))~~ individual under subsections ~~((2))~~ (4) and ~~((3))~~ (5) of this section or provided under WAC 246-100-208(1), any person ordering or prescribing an HIV test for another individual, shall:

(a) ~~((Provide a brief evaluation of both behavioral and clinical HIV risk factors; and~~

~~(b) Unless the person has been previously tested and declines receipt of information, explicitly provide verbal or written information that is culturally, linguistically, developmentally and, medically appropriate to the individual being tested regarding HIV including:~~

~~(i) The benefits of learning HIV status and the potential dangers of the disease; and~~

~~(ii) A description of ways in which HIV is transmitted and ways in which it can be prevented; and~~

~~(iii) The meaning of HIV test results and the importance of obtaining test results; and~~

~~(iv) As appropriate, the availability of anonymous HIV testing and the differences between anonymous testing and confidential testing; and~~

~~(e) Obtain or ensure explicit verbal or written informed consent of the individual to be tested prior to ordering or prescribing an HIV test, unless excepted under provisions in chapter 70.24 RCW and document the consent of the individual being tested; and~~

~~(d) Recommend and offer or refer for pretest counseling described under WAC 246-100-209 to any person requesting pretest counseling and to any person determined to be at increased risk for HIV as defined by Federal Centers for Disease Control and Prevention published in *Revised Guidelines for HIV Counseling, Testing and Referral, November 9, 2001*. The individual's decision to refuse pretest counseling is not grounds for denying HIV testing; and~~

~~(e) Provide or refer for other appropriate prevention, support or medical services, including Hepatitis services; and~~

~~(f) Provide or ensure successful completion of referral for post test counseling described under WAC 246-100-209 if the HIV test is positive for or suggestive of HIV infection; and~~

~~(g) In the event that the individual tests positive, had a confidential test, and fails to return for post-test counseling;))~~ Obtain the informed consent of the individual, separately or

as part of the consent for a battery of other routine tests provided that the individual is specifically informed in writing or verbally that a test for HIV is included; and

(b) Offer the individual an opportunity to ask questions and decline testing; and

(c) If the HIV test is positive for or suggestive of HIV infection, provide the name of the individual and locating information to the local health officer for follow-up to provide post-test counseling as required by WAC 246-100-209((2)).

(2) The local and state health officer or authorized representative shall periodically make efforts to inform providers in their respective jurisdiction about the September 2006 Centers for Disease Control and Prevention "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings."

(3) Health care providers may obtain a sample brochure about the September 2006 Centers for Disease Control and Prevention "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings" by contacting the department's HIV prevention program at P.O. Box 47840, Olympia, WA 98504.

(4) Any person authorized to order or prescribe an HIV test for another individual may offer anonymous HIV testing without restriction.

~~((3))~~ (5) Blood banks, tissue banks, and others collecting or processing blood, sperm, tissues, or organs for transfusion/transplanting shall:

(a) Obtain or ensure informed specific consent of the individual prior to ordering or prescribing an HIV test, unless excepted under provisions in chapter 70.24 RCW;

(b) Explain that the reason for HIV testing is to prevent contamination of the blood supply, tissue, or organ bank donations;

(c) At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session; and

(d) Inform the individual that the name of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer.

~~((4))~~ (6) Persons subject to regulation under Title 48 RCW and requesting an insured, subscriber, or potential insured or subscriber to furnish the results of an HIV test for underwriting purposes, as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Before obtaining a specimen to perform an HIV test, provide written information to the individual tested explaining:

(i) What an HIV test is;

(ii) Behaviors placing a person at risk for HIV infection;

(iii) The purpose of HIV testing in this setting is to determine eligibility for coverage;

(iv) The potential risks of HIV testing; and

(v) Where to obtain HIV pretest counseling.

(b) Obtain informed specific written consent for an HIV test. The written informed consent shall include:

(i) An explanation of confidential treatment of test result reports limited to persons involved in handling or determin-

ing applications for coverage or claims for the applicant or claimant; and

(ii) That the name of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer; and

~~(iii) ((Requirements under subsection (4)(c) of this section.)) At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session.~~

(c) Establish procedures to inform an applicant of the following:

(i) Post-test counseling specified under WAC 246-100-209~~((2))~~ is required if an HIV test is positive or indeterminate;

(ii) Post-test counseling is done at the time any positive or indeterminate HIV test result is given to the tested individual;

(iii) The applicant is required to designate a health care provider or health care agency to whom positive or indeterminate HIV test results are to be provided for interpretation and post-test counseling; and

(iv) When an individual applicant does not identify a designated health care provider or health care agency and the applicant's HIV test results are positive or indeterminate, the insurer, health care service contractor, or health maintenance organization shall provide the test results to the state or local health department for interpretation and post-test counseling.

~~((5))~~ (7) Laboratories and other places where HIV testing is performed must demonstrate compliance with all of the requirements in the Medical test site rules, chapter 246-338 WAC.

~~((6))~~ (8) The department laboratory quality assurance section shall accept substitutions for enzyme immunoassay (EIA) screening only as approved by the United States Food and Drug Administration (FDA) and a published list or other written FDA communication.

~~((7))~~ (9) Persons informing a tested individual of positive laboratory test results indicating HIV infection shall do so only when:

(a) The test or sequence of tests has been approved by the ~~((United States Food and Drug Administration (FDA))~~ (3)) or the Federal Centers for Disease Control and Prevention as a confirmed positive test result; and

(b) Such information consists of relevant~~((, pertinent))~~ facts communicated in such a way that it will be readily understood by the recipient.

~~((8))~~ (10) Persons may inform a tested individual of the unconfirmed reactive results of an FDA-approved rapid HIV test provided the test result is interpreted as preliminarily positive for HIV antibodies, and the tested ~~((person))~~ individual is informed that:

(a) Further testing is necessary to confirm the reactive screening test result;

(b) The meaning of reactive screening test result is explained in simple terms, avoiding technical jargon;

(c) The importance of confirmatory testing is emphasized and a return visit for confirmatory test results is scheduled; and

(d) The importance of taking precautions to prevent transmitting infection to others while awaiting results of confirmatory testing is stressed.

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

WAC 246-100-208 Counseling standard—AIDS counseling. (1) Principal health care providers providing care to a pregnant woman who intends to continue the pregnancy and is not seeking care to terminate the pregnancy or as a result of a terminated pregnancy shall ((counsel or)):

~~((a) Provide or ensure the provision of AIDS counseling ((for each pregnant woman continuing the pregnancy. This subsection shall not apply when health care is sought in order to terminate a pregnancy or as a result of a terminated pregnancy. "AIDS counseling" for a pregnant woman means:~~

~~(a) Performing a risk screening that includes an assessment of sexual and drug use history as part of the intake process;~~

~~(b) Providing written or verbal information on HIV infection that at a minimum includes:~~

~~(i) All pregnant women are recommended to have an HIV test;~~

~~(ii) HIV is the cause of AIDS and how HIV is transmitted;~~

~~(iii) A woman may be at risk for HIV infection, and not know it;~~

~~(iv) The efficacy of treatments to reduce vertical transmission;~~

~~(v) The availability of anonymous testing, and why confidential testing is recommended for pregnant women;~~

~~(vi) The need to report HIV infection;~~

~~(vii) Public funds are available to assist eligible HIV-infected women receive medical care and other assistance; and~~

~~(viii) Women who decline testing will not be denied care for themselves or their infants)) as defined in WAC 246-100-011(2);~~

~~((c) Obtaining))~~ (b) Obtain the informed consent of the pregnant woman for confidential human immunodeficiency virus (HIV) testing, separately or as part of the consent for a battery of other routine tests provided that the pregnant woman is specifically informed in writing or verbally that a test for HIV is included;

~~((d) Providing HIV testing unless the pregnant woman refuses to give consent;))~~

(c) Offer the pregnant woman an opportunity to ask questions and decline testing;

(d) Order or prescribe HIV testing if the pregnant woman consents;

(e) If the pregnant woman refuses ~~((a confidential test))~~ to consent, ~~((discussing and addressing))~~ discuss and address her reasons for refusal and document in the medical record ~~((that))~~ both her refusal and the provision of education on the benefits of HIV testing; and

(f) ~~If (the risk screening indicates, providing or referring for behavioral change counseling for women who:~~

~~(i) Have or recently have had a sexual partner(s) who is known to be HIV infected or is a man who has sex with another man or is an injection drug user;~~

~~(ii) Uses or recently have used injection drugs;~~

~~(iii) Have signs or symptoms of HIV seroconversion;~~

~~(iv) Currently have or recently have exchanged sex for drugs or money or had a sexually transmitted disease or had multiple sex partners; or~~

~~(v) Express a need for further, more intensive counseling; and~~

~~(g) Basing the behavioral change counseling on the standards defined in WAC 246-100-209 and the recommendations of the federal Centers for Disease Control and Prevention published in *Revised Guidelines for HIV Counseling, Testing and Referral*, and *Revised Recommendations for HIV Screening of Pregnant Women, November 9, 2001*; and~~

~~(h) Offering referrals and providing follow-up to other necessary medical, social and HIV prevention services)) an HIV test is positive for or suggestive of HIV infection, provide the follow-up and reporting as required by WAC 246-100-209.~~

(2) Health care providers may obtain a sample brochure addressing the elements of subsection (1)~~((b))~~ of this section by contacting the department of health's HIV prevention program at P.O. Box 47840, Olympia, WA 98504-7840.

(3) Principal health care providers shall counsel or ensure AIDS counseling as defined in WAC 246-100-011(2) and offer and encourage HIV testing for each patient seeking treatment of a sexually transmitted disease.

(4) Drug treatment programs under chapter 70.96A RCW shall provide or ensure provision of AIDS counseling as defined in WAC 246-100-011(2) for each person in a drug treatment program.

~~((5) Health care providers, persons, and organizations providing AIDS counseling in subsections (3) and (4) of this section shall:~~

~~(a) Assess the behaviors of each individual counseled for risk of acquiring and transmitting human immunodeficiency virus (HIV);~~

~~(b) Maintain a nonjudgmental environment during counseling which:~~

~~(i) Considers the individual's particular circumstances; and~~

~~(ii) Is culturally, linguistically, and developmentally appropriate to the individual being counseled.~~

~~(c) Focus counseling on behaviors increasing the risk of HIV acquisition and transmission;~~

~~(d) Offer or refer for HIV testing and provide or ensure provision of personalized risk reduction education to individuals who are determined to be at increased risk for HIV as defined by Federal Centers for Disease Control and Prevention published in *Revised Guidelines for HIV Counseling, Testing and Referral, November 9, 2001*.~~

~~(6) Persons and organizations providing AIDS counseling may provide additional or more comprehensive counseling than required in this section.)~~

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

WAC 246-100-209 Counseling standards—Human immunodeficiency virus (HIV) pretest counseling—HIV post-test counseling. ~~((+))~~ Health care providers and other persons providing pretest or post-test counseling shall assess the individual's risk of acquiring and transmitting human immunodeficiency virus (HIV) by evaluating information about the individual's possible risk-behaviors and unique circumstances, and as appropriate~~(:)~~:

~~((a))~~ (1) Base counseling on the recommendations of the Federal Centers for Disease Control and Prevention as published in the *Revised Guidelines for HIV Counseling, November 2001*; and

~~((b))~~ (2) Assist the individual to set a realistic behavior-change goal and establish strategies for reducing their risk of acquiring or transmitting HIV; and

~~((c))~~ (3) Provide appropriate risk reduction skills-building opportunities to support the behavior change goal; and

~~((d))~~ (4) Provide or refer for other appropriate prevention, support or medical services, including those services for other bloodborne pathogens~~(-~~

~~(2) Health care providers and other persons providing post-test counseling shall:~~

~~(a) For all individuals tested for HIV, offer at least one individual counseling session at the time HIV test results are disclosed consistent with the requirements in subsection (1) of this section; and~~

~~(b)); and~~

(5) If the individual being counseled tested positive for HIV infection:

~~((i))~~ (a) Provide or arrange for at least one individual in-person counseling session consistent with the requirements in subsection (1) through (4) of this section; and

~~((ii))~~ (b) Unless testing was anonymous, inform the individual that the identity of the individual testing positive for HIV infection will be confidentially reported to the state or local health officer; and

~~((iii))~~ (c) Ensure compliance with the partner notification provisions contained in WAC 246-100-072, and inform the tested person of those requirements; and

~~((iv))~~ (d) Develop or adopt a system to avoid documenting the names of referred partners in the permanent record of the individual being counseled; and

~~((v))~~ (e) Offer referral for alcohol and drug and mental health counseling, including suicide prevention, if appropriate; and

~~((vi))~~ (f) Provide or refer for medical evaluation including services for other bloodborne pathogens, antiretroviral treatment, HIV prevention and other support services; and

~~((vii))~~ (g) Provide or refer for tuberculosis screening.

WSR 09-19-147
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed September 23, 2009, 10:06 a.m.]

Supplemental Notice to WSR 09-16-145.

Preproposal statement of inquiry was filed as WSR 09-10-069.

Title of Rule and Other Identifying Information: WAC 232-16-800 Johnson/Debay's Slough Game Reserve.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on November 6-7, 2009, at 8:30 a.m.

Date of Intended Adoption: November 6-7, 2009.

Submit Written Comments to: Wildlife Program, Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail wildthing@dfw.wa.gov, fax (360) 902-2162, by October 12, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by November 2, 2009, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendment is intended to establish the reserve boundary as it was originally intended to be established in 1997.

Reasons Supporting Proposal: The current reserve boundary proposal would exclude a private parcel from being incorporated into the reserve. The modified proposal will incorporate that private land into reserve status, as was intended in 1997.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.040, 77.12.010.

Statute Being Implemented: RCW 77.12.047, 77.12.-020, 77.12.570, 77.12.210, 77.12.040, 77.12.010.

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: The original CR-102 filing and rule proposal was based on the exclusion of a land parcel that the Washington department of fish and wildlife thought would be available for sale to the state and therefore would not need to be included in the reserve boundaries. Since this initial filing, the private landowner entered into a sales agreement with another private individual, and the parcel is no longer available for state purchase. Therefore, it is recommended that the parcel be included within the reserve boundaries in order to keep the reserve intact as was initially intended in 1997.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2504; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not affect small business or commercial operators.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

September 23, 2009

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 08-197, filed 8/13/08, effective 9/13/08)

WAC 232-16-800 Johnson/Debay's Slough Game Reserve. In Skagit County, beginning at the intersection of Francis Road and Debay's ((~~Slough~~)) Isle Road; then south and west along Francis Road (3090 feet) to white corner marker; then north (1265 feet) to the middle of Debay's Slough (white corner marker); then westerly (2087 feet) along the channel of Debay's Slough to the western tip of the farmed portion of Debay's Island; then northerly (1485 feet) to the south bank of the Skagit River (white corner marker); then easterly (((~~2200~~)) 3750 feet) along the south bank of the Skagit River to fence line (white corner marker); then south along fence line (((~~150~~)) 855 feet) to corner post; then ((~~southeast 1050 feet to fence line; then~~)) east ((~~1090 feet~~)) along fence line (435 feet) to fence intersection; then south (300 feet) along fence line to existing tree line (white corner marker); then continue south (835 feet) to south shoreline of Debay's Slough (white corner marker); then easterly and southerly along the west shoreline of Debay's Slough (1770 feet) to the south side of Debay's ((~~Slough~~)) Isle Road (white corner marker); then east along the south side of Debay's ((~~Slough~~)) Isle Road to the intersection of Francis Road and the point of beginning.

WSR 09-19-148

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed September 23, 2009, 10:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-056 and 08-14-119.

Title of Rule and Other Identifying Information: The department is proposing changes to sections in WAC 388-450-0185, 388-450-0190, 388-450-0195, 388-478-0060, and 388-492-0070.

The department is proposing changes to exercise an option from the 2002 farm bill to treat child support payments made to someone outside of the home as an income exclusion prior to administering the gross income test changes to WAC 388-450-0185.

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://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on October 27, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 28, 2009.

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 DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 27, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by October 13, 2009, 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 department is proposing to amend all necessary sections in Title 388 WAC to implement annual adjustments to standards for WASH-CAP and the Washington Basic Food program. Changes include updates to the following standards for federal fiscal year 2009: Income standard, maximum shelter deduction standard, and standard deduction. The department is proposing to amend all necessary sections in Title 388 WAC to exercise an option from the 2002 farm bill to treat child support payments made to someone outside of the home as an income exclusion prior to administering the gross income test. The department is proposing to amend WAC 388-450-0195 Utility allowances for Basic Food programs, to include clarifying language pertaining to eligibility for the standard utility allowance (SUA).

Reasons Supporting Proposal: These standards are required by federal regulations and approved department waivers. These standards must be adjusted annually in order to determine a client's eligibility and benefit level for WASH-CAP or the Washington Basic Food program. This change will assist low income families in meeting their child support obligations, while enhancing their supply of food. This change reflects a \$1 LIHEAP payment made annually by state of Washington department of commerce to all active Basic Food households to enable them to qualify for the SUA.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.9.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not have an economic impact on small businesses. The proposed changes only affect DSHS clients by setting standards used to determine eligibility and benefit levels for the Washington Basic Food program.

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, "this section does not apply to ... rules of the department of social and

health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

September 18, 2009
Stephanie E. Vaughn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-07-054, filed 3/11/09, effective 4/11/09)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?

We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(1) A standard deduction based on the number of people in your AU under WAC 388-408-0035:

Eligible and ineligible AU members	Standard deduction
1	\$((144)) <u>141</u>
2	\$((144)) <u>141</u>
3	\$((144)) <u>141</u>
4	\$((147)) <u>153</u>
5	\$((172)) <u>179</u>
6 or more	\$((197)) <u>205</u>

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

- (a) Keep work, look for work, or accept work;
- (b) Attend training or education to prepare for employment; or
- (c) Meet employment and training requirements under chapter 388-444 WAC.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) ~~((Legally obligated current or back child support paid to someone outside of your AU:~~

- ~~(a) For a person who is not in your AU; or~~
- ~~(b) For a person who is in your AU to cover a period of time when they were not living with you.~~

~~(6))~~ A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 08-24-050, filed 11/25/08, effective 12/26/08)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food? The

department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or mortgage payments you make ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
- (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
- (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:
 - (i) AU intends to return to the home;
 - (ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and

(iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (5) from your AU's gross income. The result is your AU's net income.

(3) Finally, we subtract one-half of your AU's net income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

- (a) Up to a maximum of four hundred ~~((forty-six))~~ fifty-nine dollars if no one in your AU is elderly or disabled; or
- (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred ~~((forty-six))~~ fifty-nine dollars.

AMENDATORY SECTION (Amending WSR 09-14-018, filed 6/22/09, effective 7/23/09)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food? If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE ~~((4-1-2009))~~ 10-1-2009

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$(1,127) <u>1,174</u>	\$(867) <u>903</u>	\$200	\$(1,430) <u>1,490</u>
2	((1,517)) <u>1,579</u>	((1,167)) <u>1,215</u>	367	((1,925)) <u>2,004</u>
3	((1,907)) <u>1,984</u>	((1,467)) <u>1,526</u>	526	((2,420)) <u>2,518</u>
4	((2,297)) <u>2,389</u>	((1,767)) <u>1,838</u>	668	((2,915)) <u>3,032</u>
5	((2,687)) <u>2,794</u>	((2,067)) <u>2,150</u>	793	((3,410)) <u>3,547</u>
6	((3,077)) <u>3,200</u>	((2,367)) <u>2,461</u>	952	((3,905)) <u>4,061</u>
7	((3,467)) <u>3,605</u>	((2,667)) <u>2,773</u>	1,052	((4,400)) <u>4,575</u>
8	((3,857)) <u>4,010</u>	((2,967)) <u>3,085</u>	1,202	((4,895)) <u>5,089</u>
9	((4,247)) <u>4,416</u>	((3,267)) <u>3,397</u>	1,352	((5,390)) <u>5,604</u>
10	((4,637)) <u>4,822</u>	((3,567)) <u>3,709</u>	1,502	((5,885)) <u>6,119</u>
Each Additional Mem- ber	+((390)) <u>406</u>	+((300)) <u>312</u>	+150	+((495)) <u>515</u>

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or

net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

AMENDATORY SECTION (Amending WSR 09-12-068, filed 5/29/09, effective 7/1/09)

WAC 388-492-0070 How are my WASHCAP food benefits calculated? We calculate your food benefits as follows:

(1) We begin with your gross income.
 (2) We subtract one hundred (~~forty-four~~) forty-one dollars from your gross income to get your countable income.

(3) We figure your shelter cost based on information we receive from Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:

(a) Three hundred dollars or more a month for shelter, we use three hundred seventy-nine dollars as your shelter cost; or

(b) Less than three hundred dollars for shelter, we use one hundred eighty-two dollars as your shelter cost; and

(c) We add the current standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.

(5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(c) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for Basic Food under WAC 388-412-0015.

AMENDATORY SECTION (Amending WSR 08-21-106, filed 10/16/08, effective 11/16/08)

WAC 388-450-0195 Utility allowances for Basic Food programs. (1) For Basic Food, "utilities" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water or sewer;
- (d) Well or septic tank installation/maintenance;
- (e) Garbage/trash collection; and
- (f) Telephone service.

(2) The department uses the amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage pay-

ment to determine your total shelter costs. We use total shelter costs to determine your Basic Food benefits.

(a) If you have heating or cooling costs(;) or receive a low income home energy assistance program (LIHEAP) benefit during the year you get a standard utility allowance (SUA) that depends on your assistance unit's size.

Assistance Unit (AU) Size	Utility Allowance
1	\$352
2	\$362
3	\$373
4	\$384
5	\$394
6 or more	\$405

(b) If your AU does not qualify for the SUA and you have any two utility costs listed above, you get a limited utility allowance (LUA) of two hundred seventy-six dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of forty-two dollars.

WSR 09-19-149
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
 [Filed September 23, 2009, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-155.

Title of Rule and Other Identifying Information: Chapter 392-162 WAC, Special service program—Learning assistance program.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, 600 Washington Street, Olympia, WA 98504, on October 28, 2009, at 9 a.m.

Date of Intended Adoption: October 29, 2009.

Submit Written Comments to: Gayle Pauley, P.O. Box 47200, Olympia, WA 98504-7200, e-mail gayle.pauley@k12.wa.us, fax (360) 725-6100, by October 25, 2009.

Assistance for Persons with Disabilities: Contact Wanda Griffin by October 25, 2009, 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 WAC for revisions made by the 2008-09 legislative session to authorizing RCW 28A.165.075 and provide clarifying language.

Reasons Supporting Proposal: Conform to changes in authorizing legislation and provide clarification.

Statutory Authority for Adoption: RCW 28A.165.075.

Statute Being Implemented: RCW 28A.165.075.

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, Implementation and Enforcement: Gayle Pauley, Office of Superintendent of Public Instruction, (360) 725-6100.

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.

September 23, 2009

Randy I. Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

WAC 392-162-010 Purpose. The purpose of this chapter is to set forth policies and procedures for the administration of and to ensure district compliance with state requirements for a program designed to provide extended learning opportunities to public school students in grades kindergarten through twelve who score below standard for his or her grade level on the statewide assessments and assessments in the basic skills administered by local school districts.

The learning assistance program requirements in this chapter are designed to:

(1) Provide the means by which a school district becomes eligible for learning assistance program funds and the distribution of those funds;

(2) Promote the use of assessment data when developing programs to assist underachieving students; ~~((and))~~

(3) Guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services; and

(4) Guide school districts in providing extended learning opportunities to assist underachieving students and students in grades eleven and twelve who are at risk of not meeting state and local graduation requirements.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

WAC 392-162-020 Definition—Learning assistance program (LAP). As used in this chapter, the term "learning assistance program" means a statewide program designed to enhance educational opportunities for public school students in grades kindergarten through twelve who do not meet state standards by providing supplemental instruction and services to those students.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

WAC 392-162-036 Definition—Extended learning opportunities. As used in this chapter the term "extended learning opportunities" means a program of learning assistance in addition to the required basic education instruction designed to improve the educational performance of under-achieving students selected under WAC 392-162-080. The minimum allocation for the learning assistance program shall provide an extended school day and extended school year for

each level of school and a per student allocation for maintenance, supplies, and operating costs.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

WAC 392-162-054 Definition—District eligibility and distribution of funds. Each school district with an approved program is eligible for state funds provided for the learning assistance program. The funds shall be appropriated for the learning assistance program in accordance with the ~~((Biennial))~~ Omnibus Appropriations Act and RCW 28A.-150.260. The distribution formula is for school district allocation purposes only, but funds appropriated for the learning assistance program must be expended for the purposes of RCW 28A.165.005 through 28A.165.065. The distribution formula shall be based on one or more family income factors measuring economic need.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

WAC 392-162-060 District application. Each district that seeks an allocation from the state for a learning assistance program shall submit an application or significant changes to a previously approved application by July 1st of each year, including the district program plan outlined in WAC 392-162-070, and an annual expenditure plan for approval on electronic forms provided by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

WAC 392-162-068 Program plan. ~~((By July 1st of each year,))~~ (1) A participating school district shall submit the district's plan for using learning assistance funds to the office of the superintendent of public instruction for approval to the extent required under subsection (2) of this section. ~~((Applications must be approved before funds are expended. A school district))~~ The program plan must identify the program activities to be implemented from RCW 28A.165.035 and implement all of the elements in ~~((subsections (1)))~~ (a) through ~~((8))~~ (h) of this ~~((section))~~ subsection. The school district plan shall include the following:

~~((1))~~ (a) District and school-level data ~~((trends in))~~ on reading, writing, and mathematics achievement as reported pursuant to chapter 28A.655 RCW and relevant federal law;

~~((2))~~ (b) Processes used for identifying the under-achieving students to be served by the program, including the identification of school or program sites providing program activities;

~~((3))~~ Assurance that accelerated learning plans are developed and implemented for participating students. Accelerated learning plans may be developed as part of an existing student achievement plan process such as student plans for achieving state high school graduation standards, individual student academic plans, or the achievement plans for groups of students) (c) How accelerated learning plans are developed and implemented for participating students. Accelerated learning plans may be developed as part of an existing

student achievement plan process such as student plans for achieving state high school graduation standards, individual student academic plans, or the achievement plans for groups of students. Accelerated learning plans shall include:

- (i) Achievement goals for students;
- (ii) Roles of the student, parents or guardians, and teachers in the plan;
- (iii) Communication procedures regarding student accomplishments; and
- (iv) Plan reviews and adjustments processes;
- ~~((4))~~ (d) How state level and classroom assessments are used to inform ((LAP)) instruction;
- ~~((5))~~ (e) How focused and intentional instructional strategies have been identified and implemented ((in the LAP program));
- ~~((6))~~ (f) How highly qualified instructional staff are developed and supported in the program and in participating schools;
- ~~((7))~~ (g) How other federal, state, district, and school resources are coordinated with school improvement plans and the district's strategic plan to support underachieving students; and
- ~~((8))~~ (h) How a program evaluation will be conducted ((annually)) to determine direction for the following school year(;
- ~~(9) A description of the extended learning opportunities for eligible eleventh and twelfth grade students who are at risk of not meeting local or state graduation requirements; and~~
- ~~(10) A description of the extended learning opportunities for eligible eighth grade students who have not met standard on the WASL or need additional assistance to successfully enter high school).~~

(2) If a school district has received approval of its plan once, it is not required to submit a plan for approval under RCW 28A.165.045 or this section unless the district has made a significant change to the plan. If a district has made a significant change to only a portion of the plan, the district need only submit a description of the change made and not the entire plan. Plans or descriptions of changes to the plan must be submitted by July 1st as required under this section. The office of the superintendent of public instruction shall establish guidelines for what a "significant change" is.

AMENDATORY SECTION (Amending WSR 08-21-053, filed 10/9/08, effective 11/9/08)

WAC 392-162-072 Program plan—Approved activities. Through the identification of best practices, which maximize the opportunities for student success, services and activities which support the learning assistance program include:

- (1) Extended learning time through extended day, week or year activities;
- (2) Instructional services to provide extended learning opportunities for eligible eleventh and twelfth grade students who are at risk of not meeting local or state graduation requirements as well as eighth grade students ~~((not meeting standard on the Washington assessment of student learning (WASL) or))~~ who need additional assistance for a successful

entry into high school. The instruction services may include, but are not limited to, the following:

- (a) Individual or small group instruction;
- (b) Instruction in English language arts and/or mathematics that eligible students need to pass all or part of the Washington assessment of student learning;
- (c) Inclusion in remediation programs, including summer school;
- (d) Language development instruction for English language learners;
- (e) On-line curriculum and instructional support, including programs for credit retrieval;
- (3) Professional development for certificated and classified staff that focuses on the needs of diverse student populations, specific literacy and mathematics content and instructional strategies, and the use of student work to guide effective instruction;
- (4) Consultant teacher to assist in implementing effective instructional practices by teachers serving participating students;
- (5) Tutoring support for participating students; and
- (6) Outreach activities and support for parents of participating students.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-075 Program approval. A participating school district shall ~~((annually))~~ submit a program plan to the office of the superintendent of public instruction for approval. The program plan must address all of the elements in RCW 28A.165.025 and identify the program activities to be implemented from RCW 28A.165.035.

School districts achieving state reading and mathematics goals as prescribed in chapter 28A.655 RCW shall have their program approved once the program plan and activities submittal is completed.

School districts not achieving state reading and mathematics goals as prescribed in chapter 28A.655 RCW and that are not in a state or federal program of school improvement shall be subject to program approval once the plan components are reviewed by the office of the superintendent of public instruction for the purpose of receiving technical assistance in the final development of the plan.

School districts with one or more schools in a state or federal program of school improvement shall have their plans and activities reviewed and approved in conjunction with the state or federal program school improvement program requirements.

The superintendent of public instruction shall review and approve each district's program. A district's learning assistance program shall not be implemented prior to approval. If a district does not make significant changes to its learning assistance plan, it is only required to develop and submit a new budget and inform the superintendent of public instruction that no significant changes to the program were made by July 1st. If significant program changes have been made, a new application must be submitted to the superintendent of public instruction. Examples of significant changes include, but are not limited to, changes in the required components in

WAC 392-162-068, description of intended uses of funds and the amounts to be expended for approved activities in WAC 392-162-072, number of students to be served by content area and amounts distributed to individual buildings. These changes must be submitted to the superintendent of public instruction by July 1st.

WSR 09-19-150
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed September 23, 2009, 11:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-16-143.

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

Hearing Location(s): Office of Superintendent of Public Instruction Annex, Annex Conference Room, 234 East 8th Avenue, Olympia, WA, on October 27, 2009, at 9:00 to 10:30.

Date of Intended Adoption: December 1, 2009.

Submit Written Comments to: Judy Margrath-Huge, Director, Digital Learning Department, Office of Superintendent of Public Instruction, 4507 University Way N.E., Suite 204, Seattle, WA 98105, e-mail dldinfo@k12.wa.us, fax (206) 616-4595, by October 30, 2009.

Assistance for Persons with Disabilities: Contact Wanda Griffin by (360) 725-6132, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule establishes approval criteria and processes for multi-district online learning providers intending to serve students in grades K through [through] 12 enrolled in Washington public school districts. SSB 5410, chapter 542, Laws of 2009 requires the office of superintendent of public instruction to develop and implement approval criteria and a process for approving multidistrict online providers; a process for monitoring and, if necessary, rescinding the approval of courses or programs offered by an online course provider, and an appeals process. The criteria and processes shall be adopted by rule by December 1, 2009.

Beginning with the 2011-2012 school year, school districts may claim state basic education funding, to the extent otherwise allowed by state law, for students enrolled in online courses or programs only if the online courses or programs are:

- (a) Offered by an approved multidistrict online provider;
- (b) Offered by a school district online learning program if the program serves the district's own resident students and 10% or fewer nonresident students; or
- (c) Offered by a regional online learning program via an interdistrict cooperative programs agreement.

Statutory Authority for Adoption: SSB 5410, chapter 542, Laws of 2009.

Statute Being Implemented: SSB 5410.

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

Name of Proponent: [Superintendent of public instruction], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judy Margrath-Huge, Seattle, Washington, (206) 543-8188.

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

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

September 23, 2009

Randy I. Dorn

Superintendent of

Public Instruction

Online Learning: Approval of Multidistrict Online Providers

Chapter 392-502

Draft Rules for SSB 5410

NEW SECTION

WAC 392-502-001 Authority. The authority for these rules is <<Chapter 542, Laws of 2009>> which authorizes the superintendent of public instruction to adopt rules regarding approval of multidistrict online providers.

NEW SECTION

WAC 392-502-005 Purposes. The purpose of this chapter is to develop and implement criteria and processes for approving multidistrict online providers in order to further online learning opportunities for K-12 students in the state of Washington.

NEW SECTION

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

(1) "Multidistrict online provider" shall mean:

(a) A private or nonprofit organization that enters into a contract with a school district to provide online courses or programs to K-12 students from more than one school district;

(b) A private or nonprofit organization that enters into contracts with multiple school districts to provide online courses or programs to K-12 students from those districts; or

(c) A school district that provides online courses or programs to students who reside outside the geographic boundaries of the school district, subject to the following exceptions:

(i) "Multidistrict online provider" does not include a school district online learning program in which fewer than ten percent of the students enrolled in the program are from other districts under the interdistrict student transfer provisions of RCW 28A.225.225.

(ii) "Multidistrict online provider" also does not include regional online learning programs that are jointly developed and implemented by two or more school districts or an educational service district through an interdistrict cooperative program agreement that addresses, at minimum, how the districts share student full-time equivalency for state basic education funding purposes and how categorical education programs, including special education, are provided to eligible students.

(2) "Online course" shall mean a course that:

(a) Is delivered primarily electronically using the internet or other computer-based methods; and

(b) Is taught by a teacher primarily from a remote location. Students enrolled in an online course may have access to the teacher synchronously, asynchronously, or both.

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

(3) "Online school program" shall mean a school program that:

(a) Is delivered primarily electronically using the internet or other computer-based methods;

(b) Is taught by a teacher primarily from a remote location. Students enrolled in an online program may have access to the teacher synchronously, asynchronously, or both;

(c) Delivers a part-time or full-time sequential program; and

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

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

(4) "Accrediting organizations" shall mean those designated organizations identified by the superintendent of public instruction after consultation with the Washington council for online learning and subsequently published on the superintendent of public instruction website.

(5) "Approval" means that school districts are authorized to claim state basic education funding, to the extent otherwise allowed by state law, for students enrolled in online courses or programs of the approved multidistrict online provider.

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.

NEW SECTION

WAC 392-502-020 Approval process and timeline.

(1) Multidistrict online providers offering online courses or online school programs, either in whole or in part, are subject to the approval criteria, processes and timelines described in this chapter.

(2) Multidistrict online providers that complete the approval process as specified in this subsection, and that receive approval will be listed as an approved multidistrict online provider on the superintendent of public instruction's website.

(3) The superintendent of public instruction shall make a first round of approval decisions by April 1, 2010. Subsequent approval decisions shall be made annually by November 1st of each year. The following table identifies the timelines and due dates for approval decisions. The deadline for submission of an application is 5 p.m. pacific time on the due date. If the listed dates fall on a holiday or weekend, the effective date will be the next business day.

	Application for approval available	Application due date	Approval decisions made by:
Initial approval decisions	December 31, 2009	January 31, 2010	April 1, 2010
Subsequent approval decisions	July 1	September 1	November 1

(4) Any multidistrict online provider that was approved by the digital learning commons or accredited by the northwest association of accredited schools before July 26, 2009, and that meets the state of Washington teacher certification requirements of WAC 392-502-030 is exempt from the initial approval process under this chapter until August 31, 2012, but must comply with the process for renewal of approvals and must comply with approval requirements.

(5) A school district online learning program or regional online learning program jointly developed and implemented by two or more school districts or an educational service district through an interdistrict cooperative program agreement is subject to multidistrict online provider approval requirements if the following conditions are met:

(a) At the end of any school year the program's annual average headcount for that school year includes a number of students that are enrolled in the program from other districts under the interdistrict student transfer provisions of RCW 28A.225.225 that equals or exceeds ten percent of the total program enrollment.

(b) In order to be eligible to claim state basic education funding during the subsequent school year, the program must apply for approval in that year's November approval cycle.

(c) The program may claim state basic education funding in the following school year only if it receives approval as a multidistrict online provider.

(6) A multidistrict online provider seeking approval shall submit an application, using the submission method and application format prescribed by the superintendent of public instruction. The application will be reviewed for full compliance with the approval assurances. The application will also be reviewed and scored as to the degree of compliance with the approval criteria, and must meet or exceed the acceptable scores set by the superintendent of public instruction.

(7) Only those applications that demonstrate full compliance with each assurance, and that demonstrate substantially

acceptable compliance with the approval criteria using a rating system established by the superintendent of public instruction will be approved.

(8) The superintendent will provide each applicant written notification of the results of the application review, including feedback regarding the areas of the application that were not in compliance.

(9) Any modifications to the approval process and timelines will appear on the superintendent of public instruction website by July 1 each year.

NEW SECTION

WAC 392-502-030 Approval assurances and criteria.

(1) To receive approval, multidistrict online providers must meet the following assurances and criteria.

(a) Each of the following assurances must be met before an application will be considered for approval:

(i) Accreditation at the time of the application through an accrediting organization approved by the superintendent of public instruction.

(ii) Courses or programs are aligned with the state of Washington academic standards.

(iii) All teachers are certificated in accordance with state of Washington law.

(iv) For multidistrict online providers that offer high school courses, courses offered by the provider are eligible for high school credit.

(v) Courses meet all credit and content requirements specified in Washington statute and regulation.

(vi) All advanced placement courses are approved via the college board advanced placement course audit.

(vii) Data management systems ensure all student information remains confidential, as required by the federal family educational rights and privacy act (ferpa).

(viii) Web systems meet specified accessibility levels such as those outlined in the world wide web consortium's web accessibility initiative web content accessibility guidelines.

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

(x) Inform the office of superintendent of public instruction in writing of any significant changes to the program.

(b) The following approval criteria categories must be addressed in the application and must meet a substantially acceptable level of quality using a rating system established by the superintendent of public instruction:

(i) The provider's course content and instructional design incorporates sufficient rigor, depth, and breadth to teach the standards being addressed, details the course goals and outcomes, organizes materials and content for ease of use and access, and incorporates strategies to support student engagement.

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

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

(iv) The provider engages in course evaluation and management using strategies for obtaining feedback about the courses or programs and has established processes for quality assurance and updating content.

(v) Student support provisions are made to enhance the student's experience and academic success by incorporating appropriate policies and systems for access to information, monitoring student progress, and avenues for complaints.

(vi) Mentor support processes and access are built into the provider's systems to allow mentors to support student success.

(vii) Technology requirements and support are clearly described and the provider's course platform contains standards for ease of navigation.

(viii) The provider is committed to providing staff development and support including training and evaluation of their online teachers.

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

(2) Detailed approval criteria shall be posted on the superintendent of public instruction website by December 31, 2009, and any subsequent modifications to the criteria will be posted to the superintendent of public instruction website by July 1 each year to be used in the next review cycle and after review by the online learning advisory committee and the state board of education.

(3) When developing local or regional online learning programs, school districts shall incorporate the approval criteria developed by the superintendent of public instruction into the program design.

NEW SECTION

WAC 392-502-040 Appeal of the superintendent's decision.

(1) Provider applicants not approved may file an appeal to the superintendent of public instruction for reconsideration within 15 business days of notification of denial. The provider must provide specific, objective information that details the basis for their appeal.

(2) The superintendent of public instruction shall act upon the appeal and notify the applicant in writing whether the appeal was approved or denied within 45 business days. This deadline for acting on the appeal may be extended if additional information is required from the applicant.

NEW SECTION

WAC 392-502-050 Approval duration and conditions for approval.

(1) Approval will be for the four subsequent consecutive full school years.

(a) Multidistrict online providers that met the grandfathering criteria of SSB 5410, section 3.3, are granted initial approval until August 31, 2012, and must complete the renewal process prior to that date.

(2) Multidistrict providers that have been approved shall be required to provide information to the superintendent of public instruction on the following:

- (a) Online course provider's overall instructional program.
- (b) Content of individual online courses and online school programs.
- (c) Direct link to the online provider's website.
- (d) Registration information for online learning programs and courses.
- (e) Teacher qualifications.
- (f) Student-to-teacher ratios.
- (g) Course completion rates as defined by the superintendent of public instruction.
- (h) Other evaluative and comparative information requested by the superintendent of public instruction.

(3) Approved multidistrict online providers must do the following during their approval period:

- (a) Carry out the program or courses described in the approval application.
- (b) Abide by the assurances listed in WAC 392-502-030 and certified in the application process.
- (c) Maintain the approval criteria listed in WAC 392-502-030.

NEW SECTION

WAC 392-502-060 Rescinding approvals. (1) Approved multidistrict online providers that fail to comply with the conditions of approval in WAC 392-502-050, may be subject to rescindment of approval.

(2) Process for rescindment.

(a) An approved multidistrict online provider will be notified in writing by the superintendent of public instruction when there is substantial evidence that it is not meeting one or more of the approval conditions and that rescindment is being considered. The notification shall state the specific areas of concern.

(b) The provider will be invited to submit a corrective action plan with a timeline to address the specific areas of concern.

(c) The superintendent of public instruction shall consider the corrective action plan and make the following determinations regarding the plan:

- (i) Whether it satisfactorily addresses the specific areas of concern.
- (ii) Whether additional corrective actions are necessary.
- (iii) Determine the type of ongoing monitoring.
- (iv) Or whether the plan is substantially incomplete and the approval should be immediately rescinded. Before making this decision, the superintendent shall provide an opportunity for the multidistrict online provider to clarify and adjust the plan.

(d) Recognizing the serious nature of rescindment and its potential impact on students, districts, and providers, the superintendent of public instruction will only rescind approvals if the multidistrict online provider is unable or unwilling to take the identified corrective actions to bring the courses or programs into compliance with the approval assurances and criteria. If the superintendent of public instruction deter-

mines that a multidistrict online provider's approval must be rescinded, the implementation of the rescindment shall, to the greatest extent possible, be timed to prevent unnecessary disruption to the education of the students.

(e) The superintendent of public instruction reserves the right to immediately rescind approval of any provider where conditions exist that jeopardize academic or fiscal integrity or compromise the health and safety of students or staff.

(3) Rescinded providers are permitted to submit for re-approval during any subsequent approval application period.

NEW SECTION

WAC 392-502-070 Renewal process. (1) The approval period is four years, and the renewal process is the same as the approval process.

(2) Approved multidistrict online providers must apply for renewal no later than the approval cycle during the fourth year of approval in order to maintain uninterrupted approval for the following school year.

NEW SECTION

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

(a) Offered by a multidistrict online provider approved by the superintendent of public instruction,

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

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

(2) Criteria shall be established by the superintendent of public instruction to allow online courses that have not been approved by the superintendent of public instruction to be eligible for state funding if the course is in a subject matter in which no courses have been approved and, if it is a high school course, the course meets state of Washington high school graduation requirements. These criteria will be posted on the superintendent of public instruction website by December 31, 2009, and any modifications to those will appear by July 1 each year after review by the online learning advisory committee and the state board of education.

WSR 09-19-151
PROPOSED RULES
DEPARTMENT OF
GENERAL ADMINISTRATION

[Filed September 23, 2009, 11:42 a.m.]

Continuance of WSR 09-17-130.

Preproposal statement of inquiry was filed as WSR 09-14-103.

Title of Rule and Other Identifying Information: New chapter 236-17 WAC, Use of the public areas of the capitol campus, this rule will establish how the department of general administration will consider appropriate time, place and manner criteria in evaluating and approving requests for use of the public areas of the capitol buildings and grounds.

This notice of proposed rule making extends the public comment period for WSR 09-17-130 from September 22 to October 1, 2009.

Date of Intended Adoption: October 21, 2009.

Submit Written Comments to: Jack Zeigler, P.O. Box 41000, Olympia, WA 98504-1000, e-mail jack.zeigler@ga.wa.gov, by October 1, 2009.

Assistance for Persons with Disabilities: Contact Ken Skillen, kskille@ga.wa.gov or (360) 902-7481.

Name of Proponent: Department of general administration, governmental.

Name of Agency Personnel Responsible for Drafting: Martin Casey, GA, 210 11th Avenue S.W., P.O. Box 41000, Olympia, WA 98501, (360) 902-7225; Implementation: Pattie Williams, GA, 416 Sid Snyder Avenue, Legislative Building, Room 111, P.O. Box 41034, Olympia, WA 98504-1034, (360) 902-8885; and Enforcement: Chief John Batiste, WSP, 210 11th Avenue S.W., P.O. Box 42600, Olympia, WA 98504-2600, (360) 596-4101.

September 23, 2009
Linda Villegas Bremer
Director