

WSR 10-02-017
WITHDRAWAL OF PROPOSED RULES
GAMBLING COMMISSION
 (By the Code Reviser's Office)
 [Filed December 29, 2009, 8:14 a.m.]

WAC 230-14-047, proposed by the gambling commission in WSR 09-13-020 appearing in issue 09-13 of the State Register, which was distributed on July 1, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
 Washington State Register

WSR 10-02-035
PROPOSED RULES
HORSE RACING COMMISSION
 [Filed December 30, 2009, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-089.

Title of Rule and Other Identifying Information: WAC 260-24-580 Safety equipment for assistant starters.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 11, 2010, at 9:30 a.m.

Date of Intended Adoption: February 11, 2010.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by February 8, 2010.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 8, 1010 [2010], TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the intended amendments is to require all assistant starters or anyone appointed by the official starter to wear safety vests.

Reasons Supporting Proposal: To attempt to reduce or avoid any injuries that may occur while handling horses in the starting gate.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

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

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

December 30, 2009
 Douglas L. Moore
 Deputy Secretary

AMENDATORY SECTION (Amending WSR 09-03-008, filed 1/8/09, effective 2/8/09)

WAC 260-24-580 Starter and assistant starters. (1)
 The starter is responsible for the following duties:

(a) Approve all horses which have never started to ensure that the horse is familiar with, and capable of, breaking from the starting gate.

(b) Ensure all participants have an equal opportunity to a fair start;

(c) Supervise the assistant starters;

(d) Provide a sufficient number of assistant starters for each race;

(e) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions, or assign a foreman to act in his behalf, before post time for each race;

(f) Assess and make recommendations to the board of stewards on the ability of each person applying for an initial jockey license in breaking from the gate and working a horse in the company of other horses;

(g) Load horses into the gate in any order necessary to ensure a safe and fair start;

(h) Recommend to the stewards horses that should be scratched because a horse at the starting gate is refusing to load or is unruly.

(2) The starter will place and remove horses on the starter's list for poor or unruly behavior in the starting gate. Horses placed on the starter's list will be refused entry until the horse has been satisfactorily schooled in the starting gate. Schooling will be under the direct supervision of the starter or his designee.

(3) The starter has complete authority over the starting gate, the starting of horses, and the authority to give orders, which are not in conflict with these rules.

(4) The starter will appoint all assistant starters. Assistant starters must first demonstrate they are adequately trained to safely handle horses in the starting gate. In emergencies the starter may appoint qualified individuals to act as substitute assistant starters.

All assistant starters, and anyone appointed by the starter to act as a substitute assistant starter, must wear a securely fastened safety vest, which meets the shock-absorbing protection required in WAC 260-12-180(2).

(5) Assistant starters may not:

(a) Handle or take charge of any horse in the starting gate without the expressed permission of the starter;

(b) Impede the start of a race;

(c) Strike a horse with a whip;

(d) Use a device, unless approved by the stewards, to assist in the loading of a horse into the starting gate;

(e) Slap, boot or otherwise dispatch a horse from the starting gate;

(f) Strike or use abusive language to a jockey; or

(g) Accept or solicit any gratuity or payment other than his/her regular salary, directly or indirectly, for services in starting a race.

(6) The starter and assistant starters will report all unauthorized activities to the stewards.

WSR 10-02-039
PROPOSED RULES
HORSE RACING COMMISSION

[Filed December 30, 2009, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-048.

Title of Rule and Other Identifying Information: Public records repeal sections of chapter 260-08 WAC and adopt new chapter 260-09 WAC.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 11, 2010, at 9:30 a.m.

Date of Intended Adoption: February 11, 2010.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by February 8, 2010.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 8, 1010 [2010], TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This would repeal certain sections of chapter 260-08 WAC that deal with public records and adopt a new chapter, chapter 260-09 WAC to conform to the Washington state model rule dealing with public record requests.

Reasons Supporting Proposal: This complies with the recommended model rule for public records.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

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

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

December 30, 2009

Douglas L. Moore

Deputy Secretary

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 260-08-620 Requests for public records.
- WAC 260-08-630 Copying fees.
- WAC 260-08-650 Review of denials of public records.
- WAC 260-08-660 Protection of public records.

Chapter 260-09 WAC

PUBLIC RECORDS

NEW SECTION

WAC 260-09-010 Authority and purpose. (1) The purpose of these rules is to establish the procedures the commission will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the commission and establish processes for both requestors and the commission staff that are designed to best assist members of the public in obtaining such access.

(2) The purpose of the chapter is to also provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. These rules will be interpreted in favor of disclosure. In carrying out its responsibilities, the commission will be guided by the provisions of the public records law of the state of Washington.

NEW SECTION

WAC 260-09-020 Agency description—Contact information—Public records officer. (1) The commission is responsible for licensing, regulating and supervising all horse racing meets in the state where the parimutuel system is used. The commission also approves and regulates satellite locations and simulcasting, and licenses and regulates advance deposit wagering. The commission's central office is located at 6326 Martin Way, Suite 209, Olympia, WA 98516-5578. The commission has field offices at Emerald Downs in Auburn, WA, and nonprofit meets while in operation.

(2) Any person wishing to request access to public records of the commission, or seeking assistance in making such a request should contact the public records officer of the commission. Information is also available at the commission's web site at www.whrc.wa.gov.

(3) The public records officer will oversee compliance with accessing public records the act but another commission staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee will provide the "fullest assistance" to requestors; create and maintain for use by the public and commission employees an index to public records of the commission; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the commission.

NEW SECTION

WAC 260-09-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the commission. Records must be inspected at the offices of the commission.

(2) Organization of records. The commission will take reasonable actions to protect records from damage and disorganization. A requestor may not take records from commission offices without the permission of the public records officer or designee. A variety of records is available on the commission web site at www.whrc.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(3) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the commission should make the request in writing, fax, or e-mail addressed to the public records officer and include the following information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any e-mail address;

(iv) Identification of the public records adequate for the public records officer or designee to locate the records; and

(v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Standard photocopies will be provided at fifteen cents per page.

(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

NEW SECTION

WAC 260-09-040 Processing of public records requests—General. (1) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying;

(b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(2) Consequences of failure to respond. If the commission does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(3) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible

for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(4) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the commission believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(5) Inspection of records.

(a) Consistent with other demands, the commission will promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the commission notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the commission may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(6) Providing copies of records. After inspection is complete, the public records officer or designee will make the requested copies or arrange for copying.

(7) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(8) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the commission has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(9) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the commission has closed the request.

(10) Later discovered documents. If, after the commission has informed the requestor that it has provided all available records, the commission becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

NEW SECTION

WAC 260-09-050 Processing of public records requests—Electronic records. (1) The process for requesting electronic public records is the same as for requesting paper public records.

(2) When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

NEW SECTION

WAC 260-09-060 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the commission for inspection and copying: Chapter 10.97 RCW.

(2) The commission is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

WAC 260-09-070 Costs of providing copies of public records. (1) There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page. (There is no charge for photocopies of twenty pages or less.)

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The commission will not charge sales tax when it makes copies of public records.

(2) Costs for electronic records. The cost of electronic copies of records shall be one dollar for information on a CD-ROM. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(3) Costs of mailing. The commission may also charge actual costs of mailing, including the cost of the shipping container.

(4) Payment. Payment may be made by cash, check, or money order to the Washington horse racing commission.

NEW SECTION

WAC 260-09-080 Review of denials of public records. (1) Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition will include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer will promptly provide the petition and any other relevant information to the executive secretary of the commission. The executive secretary will immediately consider the petition and either affirm or reverse the denial within two business days following the commission's receipt of the petition, or within such other time as commission and the requestor mutually agree to.

(3) Review by the attorney general's office. If the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

WSR 10-02-065

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed January 4, 2010, 9:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-031.

Title of Rule and Other Identifying Information: Revise real estate licensing rules.

Hearing Location(s): 2000 4th Avenue West, 2nd Floor Conference Room, Olympia, WA, on February 9, 2010, at 9:30 a.m.

Date of Intended Adoption: February 9, 2010, or after.

Submit Written Comments to: Jerry McDonald, P.O. Box 2445, Olympia, WA, e-mail jmcdonald@dol.wa.gov, fax (360) 570-7051, by January 11, 2010.

Assistance for Persons with Disabilities: Contact Chris Waterman by January 7, 2010, TTY (360) 664-8885 or (360) 664-6524.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is completely new real estate licensing law that goes into effect on July 1, 2010, and will require a review of all current administrative codes and new rules to implement the statutes.

Reasons Supporting Proposal: Statute requires director with advice and approval of the real estate commission to establish rules.

Statutory Authority for Adoption: RCW 18.85.041.

Statute Being Implemented: RCW 18.85.035, 18.85.-141, 18.85.191, 18.85.211, 18.85.231, 18.85.241, 18.85.255, 18.85.265, 18.85.275, 18.85.285.

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

Name of Proponent: Department of licensing, Washington real estate commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA, (360) 664-6525.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules are for individual applicants. The department of licensing and the real estate commission utilized interested parties to participate in the rule-making process.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is exempt from the provisions of this statute.

January 4, 2010

Walt Fahrer

Rules Coordinator

DEFINITIONS AND BRIEF ADJUDICATIVE PROCEEDINGS

NEW SECTION

WAC 308-124-300 Definitions. Words and terms used in this chapter shall have the same meaning as each has under chapter 18.85 RCW unless otherwise clearly provided in this chapter, or the context in which they are used in this chapter clearly indicates that they be given some other meaning.

(1) "Branch manager" is the natural person who holds a managing broker's license and has delegated authority by the designated broker to manage a single physical location of a branch office. The department shall issue an endorsement for "branch managers."

(2) "Affiliated licensees" are the natural persons licensed as brokers or managing brokers employed by a firm and who are licensed to represent the firm in the performance of any of the acts specified in chapter 18.85 RCW.

(3) "Prospect procurement" is initiating contact with a prospective buyer, seller, landlord or tenant for the purpose of engaging in a sale, lease or rental of real estate or a business opportunity, and the contact is initiated under a promise of compensation.

(4) "Brokerage service contracts" include, but are not limited to, purchase and sale agreements, lease or rental agreements, listings, options, agency agreements, or property management agreements.

(5) "Branch office" means:

(a) A separate physical office of the real estate firm; and
(b) Has a different mailing address of the main firm office; and

(c) Uses the real estate firm's UBI (unified business identifier) number.

NEW SECTION

WAC 308-124-305 Application of brief adjudicative proceedings. The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings conducted by request, and/or at the discretion of the director pursuant to RCW 34.05.482, for the categories of matters set forth in WAC 308-09-525.

NEW SECTION

WAC 308-124-310 Preliminary record in brief adjudicative proceedings. (1) The preliminary record with respect to an application for an original or renewal license, for approval of an education course or curriculum, or for the proper issuance of a cease and desist order shall consist of:

(a) The application for the license, renewal, or approval and all associated documents; or the cease and desist order and all associated documents;

(b) All documents relied upon by the program in proposing to deny the license, renewal, or approval; or all documents relied upon by the program in issuing a cease and desist order; and

(c) All correspondence between the applicant for license, renewal, or approval and the program regarding the application; or all correspondence between the respondent and the program regarding the issuance of the cease and desist order.

(2) The preliminary record with respect to determination of compliance with a previously issued final order or agreement shall consist of:

(a) The previously issued final order or agreement;

(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the license holder and the program regarding compliance with the final order or agreement; and

(d) All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

(3) The preliminary record with respect to the determination of nonpayment or default by the license holder on a federally or state-guaranteed education loan or service-conditional scholarship shall consist of:

(a) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state-guaranteed education loan or service-conditional scholarship; or

(b) A written release, if any, issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.

(4) The preliminary record with respect to all other issues subject to a brief adjudicative hearing shall consist of:

(a) All documents relied upon by the program in proposing disciplinary action as provided under RCW 18.235.110; and

(b) All correspondence between the license holder and the program regarding alleged violations.

NEW SECTION

WAC 308-124-315 Conduct of brief adjudicative proceedings. (1) Brief adjudicative proceedings shall be conducted by a presiding officer for brief adjudicative proceedings designated by the director. The presiding officer for brief adjudicative proceedings shall not have personally participated in the decision which resulted in the request for a brief adjudicative proceeding.

(2) The parties or their representatives may present written documentation. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

(3) The presiding officer for brief adjudicative proceedings may, in his or her discretion, entertain oral argument from the parties or their representatives.

(4) No witnesses may appear to testify.

(5) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for the decision.

(6) The presiding officer for brief adjudicative proceedings shall not issue an oral order. Within ten days of the final date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings shall enter an initial order.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124-007	Meetings.
WAC 308-124-021	Definitions.
WAC 308-124-025	Application of brief adjudicative proceedings.
WAC 308-124-035	Preliminary record in brief adjudicative proceedings.
WAC 308-124-045	Conduct of brief adjudicative proceedings.

LICENSING PROCESSESNEW SECTION

WAC 308-124A-700 Application for a license—Fingerprinting. (1) New applicants applying for their first broker's license under chapter 18.85 RCW will be required to submit a fingerprint card.

(2) Applicants applying for their first managing broker's license using alternative qualifications will be required to submit a fingerprint card.

(3) Fingerprint cards and background checks are required for every active renewal every six years. If the department background check was within the last six years, then no new background check is required to activate a license.

(4) An application submitted without the required fingerprint card is considered incomplete.

(5) When a fingerprint card is rejected, the licensee or applicant must submit to the department a new fingerprint card within twenty-one calendar days of written notice to the address of record with the real estate program. Failure to submit a new fingerprint card will result in a suspension of the real estate license until the fingerprint card is received by the department.

(6) If the fingerprint card is rejected, the applicant must pay a new fee for fingerprinting and background processing.

NEW SECTION

WAC 308-124A-705 Application examination process. (1) Any person desiring to take an examination for a broker license must:

(a) Contact the testing service at least one day prior to the desired test date to schedule and pay for an examination.

(b) On the day of the examination, the candidate shall submit a completed examination application together with any supporting documents, including evidence satisfactory to the department of having successfully completed an approved sixty clock hour fundamentals course, and a thirty-hour practices course approved by the real estate program to the testing service.

(2) Any person desiring to take a broker or managing broker license examination who received clock hours in another jurisdiction must:

(a) Submit proof of education to be substituted for clock hours required under WAC 308-124A-755. After receiving written notice that the qualifications for the examination have been verified by the department, the candidate shall contact the testing service at least one day prior to the desired test date to schedule and pay for an examination.

(b) Provide a completed examination application to the testing service on the day of the examination.

NEW SECTION

WAC 308-124A-707 Exam scheduling. (1) Candidates requesting a morning or afternoon exam will be scheduled immediately for an examination and will be provided a registration number confirming their reservation. On the day of the examination, the candidate shall submit the approved completed examination application to the testing service.

(2) A candidate shall be assessed the full examination fee for any examination in which the candidate fails to provide two days notice to the testing service for changing their examination date or for failing to arrive and take an examination at the time the examination is scheduled or rescheduled.

NEW SECTION

WAC 308-124A-710 Successful applicants must apply for a license. Examination results are valid for one year only. Any person who has passed the examination for broker or managing broker must become licensed within one year from the date of such examination. You will be required to take and pass another examination if you do not comply with this provision.

NEW SECTION

WAC 308-124A-713 Application for managing broker license examination—Other qualification or related experience. Applications for a managing broker license examination by persons who do not possess three years of actual experience as a full-time broker as required by RCW 18.85.111 who show qualification by reason of practical experience in a business allied with or related to real estate shall be submitted to the real estate program. The application shall be accompanied by a letter requesting approval of alternative qualifications or experience and indicating the basis for such approval. The letter must include a detailed personal history or work resume, with supporting documentation, and a letter from each of five business references describing from personal knowledge the qualifications and experience of the applicant. The following guidelines are provided as examples of experience which may qualify in lieu of three years of full-time broker experience:

(1) Postsecondary education with major study in real estate together with one year experience as a real estate broker or one year experience under the provisions of subsections (2) through (7) of this section.

(2) Experience as an attorney at law with practice in real estate transactions for not less than one year.

(3) Five years' experience, with decision-making responsibility, in closing real estate transactions for escrow companies, mortgage companies, or similar institutions.

(4) Five years' experience with a commercial bank, savings and loan association, title company or mortgage company, involving all details of real estate transactions.

(5) Five years' experience as a real property fee appraiser or salaried appraiser.

(6) Five years' experience in all phases of land development, construction, financing, selling and leasing of residences, apartments or commercial buildings.

(7) Five years' experience in real estate investment, property management, or analysis of investments or business opportunities.

All time periods referenced in WAC 308-124A-713 shall be within the last seven years prior to the date of application.

NEW SECTION

WAC 308-124A-715 Unsuccessful managing broker applicants—Alternate qualifications. The managing broker applicant who is approved to take the exam based upon alternate qualifications and subsequently fails the exam is not permitted to repeat the exam unless they satisfy the requirements in RCW 18.85.111.

NEW SECTION

WAC 308-124A-720 Application for real estate examination, licensed in another jurisdiction. (1) Any person applying for a broker or managing broker examination who is actively licensed in the same or greater capacity in another jurisdiction and has maintained his or her license in good standing or who was actively licensed in the same or greater capacity in good standing within the preceding six

months is only required to take the Washington law portion of the examination.

(2) Any person applying to take the examination under this section shall submit evidence of licensure in another jurisdiction by a license verification form completed by the licensure authority in such jurisdiction.

(3) After receiving notification that the qualifications for the examination have been verified by the department, the candidate shall contact the testing service at least one day prior to the desired test date to schedule and pay for an examination. Candidates requesting a morning or afternoon exam shall be scheduled immediately for an examination and will be provided with a registration number confirming their reservation. On the day of the examination, the candidate shall submit at the test site the approved examination application and any supporting documents required by the department.

(4) The director, upon advice of the Washington state real estate commission, may consider entering into written recognition agreements with other jurisdictions which license brokers and managing brokers similarly to Washington state. The recognition agreement(s) shall require the other jurisdiction to grant the same licensing process to licensees of Washington state as is offered by Washington state to license applicants from other jurisdictions.

NEW SECTION

WAC 308-124A-725 Application for license or endorsement. A person who desires to be licensed as a real estate broker, managing broker or endorsed as a branch manager or designated broker, shall make application on a form approved by the director and the broker and managing broker application shall be signed by the designated broker to whom the license will be issued. The branch manager may sign for the designated broker for licenses to be issued to that branch office.

NEW SECTION

WAC 308-124A-727 Application as broker license for interim period. Applicants for a broker's license may commence working on or after the postmark date of delivery to the department, or on or after the date of hand delivery to the real estate program, of the following:

- (1) Notice of passing the examination;
- (2) License application form;
- (3) Fingerprint card; and
- (4) License and fingerprint fees.

The completed license application form shall serve as an interim license for a period up to forty-five days unless grounds exist to take disciplinary action against the license under RCW 18.235.130 and 18.85.361.

NEW SECTION

WAC 308-124A-730 Broker, managing brokers—Termination of services. (1) A person licensed as a broker or managing broker may perform duties and activities only under the direction and supervision of a licensed managing broker, branch manager or designated broker and as a representative of the firm. This licensed relationship may be ter-

minated unilaterally by either the broker, managing broker, branch manager or designated broker.

(a) All terminations shall be by written notice by the broker or managing broker, or branch manager to the designated broker or the designated broker's delegated representative; or by the designated broker to the broker, managing broker or branch manager.

(b) All notices of termination shall be given to the real estate program without delay and such notice shall be accompanied by and include the surrender of the real estate license.

(c) The managing broker, branch manager or designated broker may not condition his or her surrender of license to the real estate program upon performance of any act by the broker or managing broker.

(d) If the license cannot be surrendered because the managing broker or designated broker is conditioning the surrender of the license, the licensee shall so advise the department in writing.

(e) Upon receipt of the licensee's written statement about the conditioned release of the license, the real estate program shall process the release or license transfer.

(f) The termination date shall be the postmark date, fax date or date the license is hand delivered to the real estate program.

(2) If the license cannot be surrendered to the real estate program because the license has been lost, the licensee and the responsible managing broker, branch manager or the designated broker shall submit a letter of release. No license transfers shall be permitted unless the license is surrendered or the letter of release is submitted and filed with the real estate program.

NEW SECTION

WAC 308-124A-735 Firm applicants for licenses—Proof required. The minimum qualifications for a firm license are:

(1) An officer in the corporation, a manager or member in the limited liability company, a partner in the limited liability partnership or a general partner in the partnership, shall be designated as the broker and shall separately qualify for a valid designated broker's license. The firm and the designated broker are each required to pay a license and license renewal fee.

(2) If the applicant is a partnership or limited liability partnership, it shall furnish a copy of its partnership or limited liability partnership agreement.

(3) If the firm is a corporation, the firm shall furnish a copy of the articles of incorporation.

(4) If the applicant is a sole proprietorship, it shall furnish a completed application and a fee.

(5) Licenses issued to firms expire two years from the date of issuance.

NEW SECTION

WAC 308-124A-740 Firm license renewal. Proof required. Applicants for renewal of a firm license shall furnish proof of current master business license renewed by authority of the secretary of state.

NEW SECTION

WAC 308-124A-750 Application for managing broker license examination—Clock hour requirements. (1) Applicants for the managing broker's examination shall have successfully completed ninety clock hours of approved real estate instruction in addition to any other clock hours completed and used to satisfy requirements of chapter 18.85 RCW. Instruction must include a course in advanced real estate law, a course in real estate brokerage management, and a course in business management. All courses completed to satisfy this requirement must be approved subject matter as defined in WAC 308-124H-820 and be at least thirty clock hours in length and include a comprehensive examination. Courses must be completed within three years prior to applying for the managing broker's examination.

(2) Courses in advanced real estate law, real estate brokerage management, and business management, used to satisfy continuing education requirements within three years of applying for the managing broker's examination shall satisfy the requirements of subsection (1) of this section provided the applicant successfully completed a comprehensive examination. Licensees will be required to provide additional approved course work if they have submitted real estate law, brokerage management, or business management education classes to satisfy any other continuing educational requirements.

NEW SECTION

WAC 308-124A-755 Substitution of clock hours. (1) The director may allow for substitution of the clock hour requirements in RCW 18.85.141 and 18.85.111 if the individual is qualified by completing equivalent educational course work in any institution of higher education or degree granting institution.

(2) Individuals requesting approval for real estate equivalent educational course work shall submit a transcript of course work completed from an institution of higher education or a degree granting institution together with an application for the license examination. The department may also require certification from an authorized representative of the institution of higher education or degree granting institution that the course work satisfies the department's prescribed course content or curriculum for a given course(s).

NEW SECTION

WAC 308-124A-760 Grading of examinations. (1) To pass the broker examination a minimum scaled score of 70 is required on each portion. The broker examination shall consist of two portions:

(a) The national portion consisting of questions that test general real estate practices; and

(b) The state portion consisting of questions that test on Washington laws and regulations related to real estate licensing.

(2) To pass the managing broker examination a minimum scaled score of 75 is required on each portion. The managing broker examination shall consist of two portions:

(a) The national portion consisting of questions that test general real estate brokerage practices; and

(b) The state portion consisting of questions that test on Washington laws and regulations related to real estate licensing, and the closing/settlement process.

(3) A passing score for a portion of an examination is valid for a period of six months.

NEW SECTION

WAC 308-124A-765 Reexamination. An applicant who failed the examination or failed to appear for a scheduled examination may apply for reexamination by contacting the testing service to schedule and pay for an examination. Managing broker exam applicants who applied using alternate qualifications and failed the examination must comply with the provisions of WAC 308-124A-750.

NEW SECTION

WAC 308-124A-770 Examination procedures. (1) Each applicant will be required to present one piece of valid government issued photo-bearing identification. Failure to produce the required identification will result in the applicant being refused admission to the examination.

(2) Applicants are prohibited from:

(a) Talking to other examinees during the examination unless specifically directed or permitted to do so by a test monitor.

(b) Attempting to communicate or record any information.

(c) Using unauthorized materials during any portion of the examination.

(d) Removing test materials and/or notes from the testing room.

(e) Disruptive behavior.

(3) Applicants who participate in any activity listed in subsection (2) of this section will be required to turn in their test materials to the test monitor and leave the examination site. Their opportunity to sit for the examination will be forfeited. Their answer sheet will be voided. A voided answer sheet will not be scored and the examination fee will not be refunded. A candidate must then reapply to take the examination.

(4) Any applicant who was removed from the testing site for any of the reasons listed in subsection (2) of this section will be required to submit a letter to the department requesting permission to retest and stating the circumstances of the event. After receipt of the applicant's letter, the department will review the proctor's report and the applicant's letter and may deny testing for up to one year.

NEW SECTION

WAC 308-124A-775 Real estate fees. These fees are applicable to all original licenses, examination services, and fee generating services issued or performed after July 1, 2010, and all renewals for existing licenses with expiration date after July 1, 2010. The fees for an original license and renewal include a ten dollar fee which is assessed for the real

estate research center. The following fees shall be charged by the department of licensing:

Title of Fee	Fee
Real estate broker:	
Application/examination	\$138.25
Reexamination	138.25
Original license	146.25
License renewal	146.25
Late renewal with penalty	172.75
Duplicate license	26.50
Certification	26.50
Name or address change, transfer or license activation	0.00
Real estate managing broker:	
Application/examination	\$138.25
Reexamination	138.25
License renewal	210.00
Late renewal with penalty	236.50
Duplicate license	26.50
Certification	26.50
Name or address change, transfer or license activation	0.00
Real estate firm:	
Original license	\$210.00
License renewal	210.00
Late renewal with penalty	236.50
Name or address change	0.00
Duplicate license	26.50
Certification	26.50
Real estate branch:	
Original license	\$189.50
License renewal	189.50
Late renewal with penalty	216.50
Certification	26.50
Duplicate license	26.50
Name or address change, transfer or license activation	0.00
Fingerprint processing	\$35.25
Fingerprinting fee does not include the cost of obtaining prints. Applicants will be responsible for obtaining their fingerprints for their cards.	

NEW SECTION

WAC 308-124A-780 Reinstatement of a canceled license for nonpayment of renewal fee. Any person desiring to be reinstated as a real estate licensee within two years of cancellation may have their license reinstated by satisfying either of the following options:

(1) Submission of an application to the director providing proof of the following:

(a) Successful completion of sixty clock hours of approved real estate course work completed within one year preceding the application for reinstatement. A minimum of thirty clock hours must include real estate law;

(b) Payment of all back renewal fees with penalty at the current rate; and

(c) Payment of a reinstatement penalty fine of one hundred dollars; or

(2) Satisfy the procedures and qualifications for initial licensing, including the following:

(a) Successful completion of any applicable licensing examinations; and

(b) Successful completion of required courses pursuant to RCW 18.85.101 and/or 18.85.111, whichever is applicable, within three years preceding the application for reinstatement.

(3) Former licensees canceled for nonpayment of fees for periods in excess of two years will be required to satisfy the requirements of subsection (2) of this section.

NEW SECTION

WAC 308-124A-785 Broker first active license renewal. The minimum requirements for a broker to be issued the first renewal of an active license are: The broker has furnished proof of successful completion of ninety clock hours commenced after the date first licensed, from a prescribed curriculum approved by the real estate program, including real estate law, advanced practices and thirty hours in approved continuing education, including the core curriculum.

NEW SECTION

WAC 308-124A-787 Previously licensed salesperson—First active renewal. For individuals licensed as salespersons between July 1, 2008, and July 1, 2010, and whose first license renewal will occur between July 1, 2010, and July 1, 2012, the minimum requirements for the broker first active license renewal are: The broker has furnished proof of successful completion of sixty clock hours commenced after the date first licensed, from a prescribed curriculum approved by the real estate program, including real estate practices and thirty hours in approved continuing education, including the core curriculum and the transitions course. This section is effective until July 1, 2012.

NEW SECTION

WAC 308-124A-790 Continuing education clock hour requirements. A licensee shall submit to the department evidence of satisfactory completion of clock hours, pursuant to RCW 18.85.211, in the manner and on forms prescribed by the department.

(1) A licensee applying for renewal of an active license shall submit evidence of completion of at least thirty clock hours of instruction in a course(s) approved by the real estate program and commenced within thirty-six months of a licensee's renewal date. A minimum of fifteen clock hours must be completed within twenty-four months of the licensee's current renewal date, and a portion of that fifteen must

include three hours of the prescribed core curriculum defined in WAC 308-124A-800. Up to fifteen clock hours of instruction beyond the thirty clock hours submitted for a previous renewal date may be carried forward to the following renewal date. Failure to report successful completion of the prescribed core curriculum clock hours shall result in denial of license renewal.

(2) The thirty clock hours shall be satisfied by evidence of completion of approved real estate courses as defined in WAC 308-124H-820. A portion of the thirty clock hours of continuing education must include three clock hours of prescribed core curriculum defined in WAC 308-124A-800 and three clock hours of prescribed transition course pursuant to RCW 18.85.481(2).

(3) Courses for continuing education clock hour credit shall be commenced after issuance of a first license.

(4) A licensee shall not place a license on inactive status to avoid the continuing education requirement or the post-licensing requirements. A licensee shall submit evidence of completion of continuing education clock hours to activate a license if activation occurs within one year after the license had been placed on inactive status and the last renewal of the license had been as an inactive license. A licensee shall submit evidence of completing the post-licensing requirements if not previously satisfied upon returning to active status.

(5) Approved courses may be repeated for continuing education credit in subsequent renewal periods.

(6) Clock hour credit for continuing education shall not be accepted if:

(a) The course is not approved pursuant to chapter 308-124H WAC and chapter 18.85 RCW;

(b) Course(s) was taken to activate an inactive license pursuant to RCW 18.85.265(3);

(c) Course(s) submitted to satisfy the requirements of RCW 18.85.101 (1)(c), broker's license, RCW 18.85.211, 18.85.111, broker's license and WAC 308-124A-780, reinstatement.

(7) Instructors shall not receive clock hour credit for teaching or course development.

NEW SECTION

WAC 308-124A-800 Defining prescribed core curriculum. A licensee shall submit to the department evidence of satisfactory completion of at least three clock hours of core curriculum continuing education approved by the director. Core curriculum continuing education is a specific course of study, recommended by the real estate commission for approval by the director that provides practical information on contemporary issues relating to the practices of real estate. The commission may recommend multiple core curricula to address residential, commercial, and property management disciplines or may recommend approval of the same core curriculum if appropriate. Core curriculum may be developed in a separate three clock-hour course or may be three clock hours contained within an approved thirty or less clock-hour course. Core curriculum must be completed within twenty-four months of the licensee's renewal date. Core curriculum commenced within thirty-six months but more than twenty-four months prior to the licensee's renewal date, may not

count towards the core curriculum requirement, but may apply as regular continuing education credit for renewal.

NEW SECTION

WAC 308-124A-805 Address on designated broker's endorsement. The address on the designated broker's endorsement will be the location where the designated broker is the managing broker.

The real estate program will register each firm's address where the designated broker accepts endorsement from other firms.

NEW SECTION

WAC 308-124A-815 Firm names—Name prohibited.

(1) Department can deny, suspend, reject firm names or assumed names that are in the department's opinion: Derogatory, similar or the same as other licensed firm names, implies that it is a public agency or government, implies non-profit or research organization.

(2) A real estate firm shall not be issued a license nor advertise in any manner using names or trade styles which are similar to currently issued licenses or imply that the real estate firm is a nonprofit organization, research organization, public bureau or public group. A bona fide franchisee may be licensed using the name of the franchisor with the firm name of the franchisee.

NEW SECTION

WAC 308-124A-825 Change of designated broker.

Submit a statement signed by both the outgoing designated broker and the incoming designated broker, listing all outstanding client trust liabilities, pending transactions, and certifying sufficient funds are in trust to meet client trust liabilities.

NEW SECTION

WAC 308-124A-830 Firm closing—Designated broker responsibility. Designated brokers will be responsible for providing the department a closing firm affidavit when closing the firm.

NEW SECTION

WAC 308-124A-835 Courses completed in other jurisdictions. A course completed in another jurisdiction may be approved for clock hour credit if:

(1) The course was offered by a tax-supported, public technical or community college, or any other institution of higher learning, and the director determines that the course substantially satisfies the general requirements for course approval consistent with the intent of this chapter;

(2) The course was approved to satisfy an education requirement for real estate licensing or renewal and offered by an entity approved to offer the course by the real estate licensing agency in that jurisdiction; or

(3) If the director determines that the course substantially satisfies the general requirements for course approval consistent with the intent of this chapter.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124A-010	Character report.
WAC 308-124A-020	Application for a license—Fingerprinting.
WAC 308-124A-025	Application process to take examination not licensed in another jurisdiction.
WAC 308-124A-030	Successful applicants must apply for license.
WAC 308-124A-040	Unsuccessful broker applicants—Loss of waiver privilege.
WAC 308-124A-110	Application for real estate examination, licensed in another jurisdiction.
WAC 308-124A-120	Application for license—Interim license.
WAC 308-124A-130	Salesperson, associate brokers—Termination of services.
WAC 308-124A-200	Corporate or copartnership applicants for licenses—Proof required.
WAC 308-124A-205	Corporate license renewal—Proof required.
WAC 308-124A-410	Application for broker license examination—Two years sales experience.
WAC 308-124A-420	Application for broker license examination, other qualification or related experience.
WAC 308-124A-422	Application for broker license examination—Clock hour requirements.
WAC 308-124A-425	Substitution of clock hours.
WAC 308-124A-430	Grading of examinations.
WAC 308-124A-440	Reexamination.
WAC 308-124A-450	Examination procedures.
WAC 308-124A-460	Real estate brokers and salespersons and land development representative fees.

WAC 308-124A-570	Reinstatement of a cancelled license for nonpayment of renewal fee.
WAC 308-124A-590	Salesperson first active license renewal—Post license requirements.
WAC 308-124A-595	License activation.
WAC 308-124A-600	Continuing education clock hour requirements.
WAC 308-124A-605	Defining prescribed core curriculum.

REAL ESTATE OFFICE REQUIREMENTS

NEW SECTION

WAC 308-124B-200 Display of licenses. (1) Licenses of the real estate brokers, real estate managing brokers, and branch managers, must be available at the address appearing on the individual license.

(2) All firm and branch office licenses must be displayed in an area visible to the public.

NEW SECTION

WAC 308-124B-205 Change of office location. The real estate designated broker of the firm shall submit within ten days a completed change of address application to the real estate program together with the return of all licenses, completed transfer applications, and payment of the correct fees.

NEW SECTION

WAC 308-124B-210 Advertising. A firm must operate under their firm name or an assumed name as licensed. All advertising or solicitations without limitation for brokerage services, to include the internet-based advertising, web pages, e-mail, newspaper, and other visual media must include the firm name or an assumed name as licensed.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124B-030	Franchise advertising.
WAC 308-124B-100	Office identification.
WAC 308-124B-110	Display of licenses.
WAC 308-124B-120	Change of office location.
WAC 308-124B-130	Names prohibited.
WAC 308-124B-140	Multiple business usage of office.
WAC 308-124B-145	Two or more real estate businesses in same location.

WAC 308-124B-150	Office requirement for brokers actively licensed in another jurisdiction.
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LICENSE RESPONSIBILITIES

NEW SECTION

WAC 308-124C-105 Required records. The designated broker is required to keep the following on behalf of the firm:

- (1) Trust account records:
 - (a) Duplicate receipt book or cash receipts journal recording all receipts;
 - (b) Sequentially numbered, nonduplicative checks with check register, cash disbursements journal or check stubs;
 - (c) Validated duplicate bank deposit slips or daily verified bank deposit;
 - (d) Client's accounting ledger summarizing all moneys received and all moneys disbursed for each real estate or business opportunity transaction or each property management account, contract or mortgage collection account;
 - (e) In conjunction with (d) of this subsection, separate ledger sheets for each tenant (including security deposit), lessee, vendee or mortgagor; for automated systems, the ledger sheets may be a computer generated printout which contains required entrees;
 - (f) Reconciled bank statements and canceled checks for all trust bank accounts.
- (2) Other records:
 - (a) An accurate, up-to-date log of all agreements or contracts for brokerages services submitted by the firm's affiliated licensees.
 - (b) A legible copy of the transaction or contracts for brokerage services shall be retained in each participating real estate firm's files.
 - (c) A transaction folder containing all agreements, receipts, contracts, documents, leases, closing statements and correspondence for each real estate or business opportunity transaction, and for each rental, lease, contract or mortgage collection account.
 - (d) All required records shall be maintained at one location where the firm is licensed. This location may be the main or any branch office.

NEW SECTION

WAC 308-124C-110 Accuracy and accessibility of records. (1) Accuracy. All required real estate records shall be accurate, posted and kept up to date.

(2) Location. All required real estate records shall be kept at an address where the real estate firm is licensed to maintain a real estate office. Transactions that have been closed for at least one year can be maintained at one central facility located in Washington. Transactions not stored at the firm location must be available upon demand of the department and maintained in a manner to be readily retrievable. A listing of all transactions must be maintained at the firm's licensed office for all the transactions stored at the remote facility. All records shall be retained and available for

inspection by the director or the director's authorized representative for a minimum of three years.

(3) Alternative storage. Records may be stored on permanent storage media, such as optical disk or microfilm, or other storage media, provided the retrieval process does not permit modification of the documents. Retrieval must be possible at the firm's licensed office and allow for viewing and printing the document in its original form. The permanent media storage shall be nonerasable and prevent changes to the stored documents or records. The designated broker must maintain equipment at firm's location in good repair to allow viewing and printing upon demand by the department. The storage media must be indexed to allow for immediate retrieval of all documents.

NEW SECTION

WAC 308-124C-115 Suit or complaint notification.

Every licensee shall, within twenty days after service or knowledge thereof, notify the real estate program of the following:

(1) Any criminal complaint, information, indictment, or conviction (including a plea of guilty or nolo contendere) in which the licensee is named as a defendant.

(2) Entry of a civil court order, verdict, or judgment, against the licensee in any court of competent jurisdiction in which the subject matter therein involves any real estate or business-related activity by the licensee. Notification is required regardless of any pending appeal.

NEW SECTION

WAC 308-124C-125 Designated broker responsibilities. Designated broker responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Ensuring accessibility of the firm's offices and records to the director's authorized representatives, and ensure that copies of required records are made available upon demand.

(4) Ensuring monthly reconciliation of trust bank accounts are completed, up-to-date and accurate.

(5) Ensuring monthly trial balances are completed, accurate and up-to-date.

(6) Ensuring that the trial balance and the reconciliation show the account(s) are in balance.

(7) Ensuring policies or procedures are in place to account for safe handling of customer or client funds or property.

(8) Maintaining up-to-date written assignments of delegations of managing brokers and branch manager duties. The delegation agreement(s) must be signed by all parties to the agreement. Delegations must:

(a) Only be made to managing brokers licensed to the firm.

(b) Address duties of record maintenance, advertising, trust accounting, safe handling of customer/client funds and

property, authority to bind, review of contracts, modify or terminate brokerage service contracts on behalf of the firm, supervision of brokers and managing brokers, and heighten supervision of brokers that are licensed for less than two years.

(c) Address hiring, transferring and releasing licensees to or from the firm.

(9) Maintaining, implementing and following a written policy that addresses:

(a) Referral of home inspectors in compliance with Washington Administrative Code.

(b) Levels of supervision of all brokers and managing brokers of the firm.

(c) The review of all brokerage service contracts which involve any affiliated licensee of the firm that has been licensed for less than two years. This review must be completed by the designated broker or their delegated managing broker within five calendar days of client's signature and shall be evidenced by the reviewer's initials and date on the first page of the documents.

(10) Ensuring that all persons performing real estate brokerage services on behalf of the firm and the firm itself are appropriately licensed.

(11) Ensuring affiliated licensees submit their transaction documents to the designated broker or delegated managing broker in a timely manner.

(12) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

NEW SECTION

WAC 308-124C-130 Branch manager responsibilities. Branch manager responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Ensuring accessibility of the firm's offices and records to the director's authorized representatives, and ensuring that copies of required records are made available upon demand.

(4) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

(5) Following the written policy on referral of home inspectors.

(6) Ensuring all persons employed, contracted or representing the firm at the branch location are appropriately licensed.

(7) Overseeing of the branch licensees, employees and contractors.

(8) Ensuring brokers, managing brokers and branch managers are timely submitting their transaction documents to the designated broker or delegated managing broker, if delegated.

(9) Hiring, transferring and releasing licensees to and from the branch.

(10) All activity within the branch office including supervision of brokers and managing brokers, and heightened

supervision of brokers that are licensed for less than two years.

(11) If delegated - client/customer funds or property:

(a) Ensuring monthly reconciliation of trust bank accounts are completed, up-to-date and accurate.

(b) Ensuring monthly trial balances are completed, accurate and up-to-date.

(c) Ensuring that the trail balance and the reconciliation show the account(s) are in balance.

(d) Safe handling of customer/client funds and property.

(e) Ensuring policies or procedures are in place to account for safe handling of customer or client funds or property.

(12) If delegated - other duties:

(a) Record maintenance.

(b) Proper and legal advertising.

(c) Review of contracts.

(d) Modify or terminate brokerage service contracts on behalf of the firm.

(e) Following and implementing the designated brokers written policy:

(i) On referral of home inspectors.

(ii) Addressing levels of supervision of all brokers and managing brokers.

(iii) That includes a review of all brokers (with less than two years of licensure) transactions within five calendar days of client's signature.

This review must be evidenced with the designated broker or delegated managing broker's initials and date on each brokerage service contract.

NEW SECTION

WAC 308-124C-135 Managing broker responsibilities. Managing broker responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

(4) Keeping the real estate program informed of his or her current mailing address.

NEW SECTION

WAC 308-124C-137 Managing broker delegated responsibilities. If delegated by the designated broker, the managing brokers responsibilities include, but are not limited to, ensuring:

(1) Monthly reconciliation of trust bank accounts are completed, up-to-date and accurate.

(2) Monthly trial balances are completed, accurate and up-to-date.

(3) The trial balance and the reconciliation show the account(s) are in balance.

(4) Policies or procedures are in place to account for safe handling of customer or client funds or property.

(5) Required records are maintained and up-to-date.

(6) Advertising is proper and legal.

(7) Timely review of contracts.

(8) Brokerage service contracts are modified or terminated appropriately on behalf of the firm.

(9) Persons employed, contracted or representing the firm that the managing broker has delegated authority to supervise are appropriately licensed.

(10) Brokers and managing brokers timely submit their transaction documents to the designated broker or delegated managing broker, if delegated.

(11) Proper and adequate supervision of brokers and managing brokers, and heighten supervision of brokers that are licensed for less than two years.

(12) Accessibility of the firm's offices and records to the director's authorized representatives, and must ensure that copies of required records are made available upon demand.

(13) All affiliated licensees are following the designated brokers written policy on:

(a) Referral of home inspectors.

(b) Levels of supervision for all brokers and managing brokers.

(c) All brokers' (with less than two years of licensure) transactions are reviewed within five calendar days of client's signature.

This review must be evidenced with the designated broker or delegated managing broker's initials and date on the first page of each brokerage service contract.

NEW SECTION

WAC 308-124C-140 Broker responsibilities. Broker responsibilities include, but are not limited to:

(1) Assuring all real estate brokerage services in which he/she participated are in accordance with chapters 18.85, 18.86, 18.235 RCW and the rules promulgated thereunder.

(2) Cooperating with the department in an investigation, audit or licensing matter.

(3) Being knowledgeable of chapters 18.85, 18.86, and 18.235 RCW and their related rules.

(4) Keeping the real estate program informed of his or her current mailing address.

(5) Following the written policy on referral of home inspectors.

(6) Being appropriately licensed.

(7) Following licensing laws and rules regarding:

(a) Safe handling of customer/client funds and property.

(b) Timely delivery of transaction documents, brokerage service contracts and customer/client funds or property.

(c) Proper and legal advertising.

(d) Modifying or terminating brokerage service contracts on behalf of the firm.

NEW SECTION

WAC 308-124C-145 Broker responsibilities (with less than two years experience). Broker responsibilities (with less than two years experience) include, but are not limited to:

(1) All the responsibilities listed in WAC 308-124C-140.

(2) Being subject to a heightened degree of supervision for the initial two years of licensing which includes:

(a) Participating in all required reviews of real estate brokerage agreements and services by the designated broker or appointed managing broker.

(b) Submitting evidence of completion of department required clock hour education courses to the designated broker or appointed managing broker.

(c) Securing advice or assistance from the designated broker or appointed managing broker when offering brokerage services beyond the broker's level of expertise.

(d) Timely submission of brokerage service contracts, documents and funds to the appropriate managing broker or designated broker.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124C-010	Licensee's responsibilities.
WAC 308-124C-020	Required records.
WAC 308-124C-030	Accuracy and accessibility of records.
WAC 308-124C-040	Suit or complaint notification.
WAC 308-124C-050	Home inspector referrals.

BROKERAGE SERVICE REQUIREMENTS AND PROCEDURES

NEW SECTION

WAC 308-124D-200 Checks—Payee requirements.

All checks received as earnest money, security or damage deposits, rent, lease payments, contract or mortgage payments on real property or business opportunities owned by clients shall be made payable to the real estate firm as licensed, unless it is mutually agreed in writing by the principals that the deposit shall be paid to the lessor, the seller or an escrow agent named in the agreement. The designated broker shall retain a copy of the written agreement.

NEW SECTION

WAC 308-124D-205 Negotiating agreements and closing. The real estate licensee shall be responsible for negotiating the agreement between seller and purchaser as follows:

(1) The real estate licensee shall furnish or cause to be furnished to each buyer and to each seller in every real estate or business opportunity transaction wherein the licensee provides brokerage services, at the time the transaction is closed, a complete detailed closing statement as it applies to the buyer and a complete detailed closing statement as it applies to the seller. The firm shall retain a copy of all closing statements of the respective buyers and sellers wherein the licensee provides brokerage services for all transactions even though funds are not handled by a licensee and closing is done elsewhere.

(2) The closing statements of all real estate or business opportunity transactions in which a real estate firm participates shall show the date of closing, the total purchase price of the property, an itemization of all adjustments, money, or things of value received or paid showing to whom each item is credited and/or to whom each item is debited. The dates of the adjustments shall be shown, together with the names of the payees, makers and assignees of all notes paid or made or assumed.

(3) The net proceeds of sale on all real estate transactions closed by a real estate licensee are to be paid direct to the seller unless otherwise provided by written agreement.

(4) Where an agreement for the sale of real estate has been negotiated involving the services of more than one licensee, and funds are to be deposited by the purchaser prior to the closing of the transaction, the firm first receiving such funds shall retain custody and be accountable, until such funds are distributed or delivered in accordance with written instructions signed by all parties to the transaction.

(5) All licensees must keep the party to whom they provide brokerage services informed of the earnest money deposit status and must retain and provide copies of receipts to the principals and participating firms.

NEW SECTION

WAC 308-124D-210 Expeditious performance. A real estate licensee shall perform all acts required of the licensee by a real estate agreement as expeditiously as possible. Intentional or negligent delays in such performance shall be considered detrimental to the public interest in violation of RCW 18.85.361(23).

NEW SECTION

WAC 308-124D-215 Management agreements and disclosures. (1) All properties managed by the firm must be supported by a written management agreement signed by the owner and designated broker and retained. The management agreement must state as a minimum:

(a) The firm's compensation;

(b) The type (i.e., apartments, industrial) and number of individual units in the project or square footage (if other than residential);

(c) Whether or not the firm is authorized to collect funds and disburse funds and for what purposes;

(d) Authorization, if any, to hold security deposits and the manner in which security deposits may be disbursed; and

(e) The frequency of furnishing summary statements to the owner.

(2) All properties rented or leased by the firm must be supported by a written rental or lease agreement.

(3) Each owner of property managed by the firm must be provided a summary statement as provided in the property management agreement for each property managed showing: (The designated broker is to retain a true copy of this statement.)

(a) Balance carried forward from previous summary statement.

(b) Total rent receipts.

(c) Owner contributions.

- (d) Other itemized receipts.
- (e) Itemization of all expenses paid.
- (f) Ending balance.

(g) Number of units rented or square footage if other than residential.

(4) The firm may provide other services to owners of properties managed provided full disclosure to the owner is provided in writing of the broker's relationship with any and all persons providing such services, prior disclosure of fees charged, and permission is granted by the owner.

(5) Any amendment or modification to the property management agreement must be made in written form and signed by the owner and the designated broker and retained.

NEW SECTION

WAC 308-124D-220 Office requirement for brokers actively licensed in another jurisdiction. The term "office" in RCW 18.85.180 for a broker actively licensed in another jurisdiction in which the broker's headquarter office is located shall mean the Washington location where trust account and transaction records are maintained. Such records are required to be maintained for three years. The trust account and transaction records shall be open and accessible to representatives of the department of licensing. The parties to the transaction shall have access to the transaction records prepared or retained for the requesting party.

A broker actively licensed in another jurisdiction seeking licensure in Washington, whose headquarter office is located in that other jurisdiction, shall notify the department of the location address where the records are maintained in the state of Washington and shall include this address with the headquarter's address on the license application.

The Washington license shall be posted at the location where the records are being maintained.

Within thirty days after mailing of the notice of audit, the broker shall come to the department's office, after making an appointment, in the geographic location (Seattle or Olympia) nearest to the location of the records to sign the audit report.

If a real estate licensee actively licensed in another jurisdiction, whose headquarter office is located in that other jurisdiction, has obtained a Washington real estate license through a license recognition agreement, that licensee may maintain required Washington real estate transaction records in their out-of-state jurisdiction and with the out-of-state broker to whom they are licensed, providing it is allowed for in the license recognition agreement.

NEW SECTION

WAC 308-124D-225 Multiple business usage of office. A broker may conduct a real estate brokerage business at an office location where the broker concurrently conducts a separate, business activity. The brokerage business activities shall be carried out and business records shall be maintained separate and apart from any other business activities by the broker.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124D-010	Checks—Payee requirements.
WAC 308-124D-020	Negotiating agreements and closing.
WAC 308-124D-030	Expeditious performance.
WAC 308-124D-050	Property management agreements and disclosures.
WAC 308-124D-061	Broker supervision of affiliated licensees.
WAC 308-124D-070	Discriminatory acts—Prohibition.
WAC 308-124D-080	Payment of earned commissions.

CLIENT FUNDS

NEW SECTION

WAC 308-124E-100 Delivery of client funds, negotiable instruments and transaction documents. All brokers and managing brokers will deliver or transmit all transaction records and brokerage agreements; and physically deliver all funds, moneys, negotiable instruments or items of value to the appropriate managing broker, branch manager or their designated broker within the shorter of the following:

(1) Two business days of the client's/customer's signature (business days are not Saturday, Sunday or other legal holidays as defined in RCW 1.16.050); or

(2) Sooner if the terms of the client/customer contract necessitate quicker delivery than two business days.

NEW SECTION

WAC 308-124E-105 Administration of funds held in trust—General procedures. Any real estate broker who receives funds or moneys from any principal or any party to a real estate or business opportunity transaction, property management agreement, contract/mortgage collection agreement, or advance fees, shall hold the funds or moneys in trust for the purposes of the brokerage service contract or transaction, and shall not utilize such funds or moneys for the benefit of the broker, managing broker, real estate firm or any person not entitled to such benefit. Designated brokers are responsible for ensuring their affiliated licensees safeguard client funds by following these rules. Funds or moneys received in trust shall be deposited in a bank, savings association, or credit union insured by the Federal Deposit Insurance Corporation or the share insurance fund of the National Credit Union Administration, or any successor federal deposit insurer. The designated broker is responsible for the administration of trust funds and accounts to include, but not be limited to:

- Depositing;

- Holding;
 - Disbursing;
 - Receipting;
 - Posting;
 - Recording;
 - Accounting to principals;
 - Notifying principals and cooperating licensees of material facts; and
 - Reconciling and properly setting up a trust account.
- The designated broker is responsible for handling trust funds as provided herein.

(1) Bank accounts shall be designated as trust accounts in the firm name or assumed name as licensed.

(2) Interest credited to a client's account must be recorded as a liability on client ledger. Interest assigned or credited by written assignment agreement to the firm may not be maintained in the trust account. The designated broker is responsible for making arrangements with the financial institution to credit this interest to the general account of the firm.

(3) The designated broker shall establish and maintain a system of records and procedures approved by the real estate program that provides for an audit trail accounting of all funds received and disbursed. All funds must be identified to the account of each individual client.

(4) Alternative systems of records or procedures proposed by a designated broker shall be approved in advance in writing by the real estate program.

(5) The designated broker shall be responsible for deposits, disbursements, or transfers of clients' funds received and held in trust.

(6) All funds or moneys received for any reason pertaining to the sale, renting, leasing, optioning of real estate or business opportunities, contract or mortgage collections or advance fees shall be deposited in the firm's real estate trust bank account not later than the first banking day following receipt thereof; except:

(a) Cash must be deposited in the firm's trust account the next banking day;

(b) Checks received as earnest money deposits when the earnest money agreement states that a check is to be held for a specified length of time or until the occurrence of a specific event; and

(c) For purposes of this section, Saturday, Sunday, or other legal holidays as defined in RCW 1.16.050 shall not be considered a banking day.

(7) All checks, funds or moneys received shall be identified by the date received and by the amount, source and purpose on either a cash receipts journal or duplicate receipt retained as a permanent record.

(8) All deposits to the trust bank account shall be identified by the source of funds and transaction to which it applies.

(9) An individual client's ledger sheet shall be established and maintained for each client for whom funds are received in trust, which shows all receipts and disbursements. The firm will maintain the minimum amount required by the financial institution in the trust account to prevent the trust account from being closed. A ledger sheet identified as "opening account" will be required for funds that are used to open the account or to keep the trust account from being closed. The credit entries must show the date of deposit,

amount of deposit, and item covered including, but not limited to "earnest money deposit," "down payment," "rent," "damage deposit," "rent deposit," "interest," or "advance fee." The debit entries must show the date of the check, check number, amount of the check, name of payee and item covered. The "item covered" entry may indicate a code number per chart of accounts, or may be documented by entry in a cash receipts journal, cash disbursements journal, or check voucher.

(10) The reconciled real estate trust bank account balance must be equal at all times to the outstanding trust liability to clients and the funds in the "open account" ledger. The balance shown in the check register or bank control account must equal the total liability to clients and the "open account" ledger.

(11) The designated broker shall be responsible for preparation of a monthly trial balance of the client's ledger, reconciling the ledger with both the trust account bank statement and the trust account check register or bank control account. The checkbook balance, the reconciliation and the client ledgers (including the "open account" ledger) must be in agreement at all times. A trial balance is a listing of all client ledgers, including the "open account" ledger, showing the owner name or control number, date of last entry to the ledger and the ledger balance.

(12) All disbursements of trust funds shall be made by check, or electronic transfer, drawn on the real estate trust bank account and identified thereon to a specific real estate or business opportunity transaction, or collection/management agreement. The number of each check, amount, date, payee, items covered and the specific client's ledger sheet debited must be shown on the check stub or check register and all data must agree exactly with the check as written. No check numbers on any single trust account can be duplicated.

(a) No disbursement from the trust account shall be made based upon wire transfer receipts until the deposit has been verified.

(b) The designated broker must provide a follow-up "hard-copy" debit memo when funds are disbursed via wire transfer.

(c) The designated broker shall retain in the transaction file a copy of instructions signed by the owner of funds to be wire-transferred which identifies the receiving entity and account number.

(13) Voided checks written on the trust bank account shall be permanently defaced and shall be retained.

(14) Commissions owed to another firm may be paid from the real estate trust bank account. Those commissions shall be paid promptly upon receipt of funds. Commissions shared with another firm are a reduction of the gross commissions received.

(15) No deposits to the real estate trust bank account shall be made of funds:

(a) That belong to the designated broker or the real estate firm, except that a designated broker may deposit a minimal amount to open the trust bank account or maintain a minimal amount to keep the account from being closed; or

(b) That do not pertain to a client's real estate or business opportunity sales transaction or are not received in connec-

tion with a client's rental, contract or mortgage collection account.

(16) No disbursements from the real estate trust bank account shall be made:

(a) For items not pertaining to a specific real estate or business opportunity transaction or a rental, contract or mortgage collection account;

(b) Pertaining to a specific real estate or business opportunity transaction or a rental, contract or mortgage collection account in excess of the actual amount held in the real estate trust bank account in connection with that transaction or collection account;

(c) In payment of a commission owed to any person licensed to the firm or in payment of any business expense of the firm. Payment of commissions to persons licensed to the firm or of any business expense of the designated broker or firm shall be paid from the regular business bank account of the firm.

(d) For bank charges of any nature, including bank services, checks or other items, except as specified in WAC 308-124E-110 (1)(a) and (d). Bank charges are business overhead expenses of the real estate firm. Arrangements must be made with the bank to have any such charges applicable to the real estate trust bank account charged to the regular business bank account, or to provide a separate monthly statement of bank charges so that they may be paid from the firm's business bank account.

(17) The provisions of this chapter are applicable to manual or computerized accounting systems. For clarity, the following is addressed for computer systems:

(a) The system must provide for a capability to back up all data files.

(b) Receipt, check or disbursement registers or journals, bank reconciliations, and monthly trial balances will be maintained in printed or electronic formats and available for immediate retrieval or printing upon demand of the department.

(c) The designated broker will maintain a printed, dated source document file or index file to support any changes to existing accounting records.

NEW SECTION

WAC 308-124E-110 Administration of funds held in trust—Real estate and business opportunity transactions. The procedures in this section are applicable to funds received by the firm in connection with real estate sales, business opportunity transactions or options. These procedures are in addition to the requirements of the general trust account procedures contained in WAC 308-124E-105.

(1) Bank accounts, deposit slips, checks and signature cards shall be designated as trust accounts in the firm or assumed name as licensed. Trust bank accounts for real estate sales or business opportunity transactions shall be interest bearing demand deposit accounts. These accounts shall be established as described in RCW 18.85.285 and this section.

(a) The firm shall maintain a pooled interest-bearing trust account identified as housing trust fund account for deposit of trust funds which are ten thousand dollars or less.

Interest income from this account will be paid to the department by the depository institution in accordance with RCW 18.85.285(8) after deduction of reasonable bank service charges and fees, which shall not include check printing fees or fees for bookkeeping systems.

(b) The licensee shall disclose in writing to the party depositing more than ten thousand dollars that the party has an option between (b)(i) and (ii) of this subsection:

(i) All trust funds not required to be deposited in the account specified in (a) of this subsection shall be deposited in a separate interest-bearing trust account for the particular party or party's matter on which the interest will be paid to the party(ies); or

(ii) In the pooled interest-bearing account specified in (a) of this subsection if the parties to the transaction agree in writing.

(c)(i) For accounts established as specified in (a) of this subsection, the designated broker will maintain an additional ledger card with the heading identified as "Housing trust account interest." As the monthly bank statements are received, indicating interest credited, the designated broker will post the amount to the pooled interest ledger card. When the bank statement indicates that the interest was paid to the state or bank fees were charged, the designated broker will debit the ledger card accordingly.

(ii) For accounts established as specified in (b)(i) of this subsection, the interest earned or bank fees charged will be posted to the individual ledger card.

(d) When the bank charges/fees exceed the interest earned, causing the balance to be less than trust account liability, the designated broker shall within one banking day after receipt of such notice, deposit funds from the firm's business account or other nontrust account to bring the trust account into balance with outstanding liability. The designated broker may be reimbursed by the party depositing the funds for these charges for accounts established as specified in (b)(i) of this subsection if the reimbursement is authorized in writing by the party depositing the funds. For accounts established under (a) of this subsection, the designated broker will absorb the excess bank charges/fees as a business expense.

(2) A separate check shall be drawn on the real estate trust bank account, payable to the firm as licensed, for each commission earned, after the final closing of the real estate or business opportunity transaction. Each commission check shall be identified to the transaction to which it applies.

(3) No disbursements from the real estate trust bank account shall be made in advance of closing of a real estate or business opportunity transaction or before the happening of a condition set forth in the purchase and sale agreement, to any person or for any reason, without a written release from both the purchaser and seller; except that:

(a) If the agreement terminates according to its own terms prior to closing, disbursement of funds shall be made as provided by the agreement without a written release; and

(b) Funds may be disbursed to the escrow agent designated in writing by the purchaser and seller to close the transaction, reasonably prior to the date of closing in order to permit checks to clear.

(4) When a transaction provides for the earnest money deposit/note or other instrument to be held by a party other than the firm, a broker shall deliver the deposit to the designated broker or responsible managing broker. The designated broker will have the ultimate responsibility to deliver the funds. A dated receipt from the party receiving the funds will be obtained and placed in the transaction file.

NEW SECTION

WAC 308-124E-115 Administration of funds held in trust—Property management. These procedures are applicable to property management and contract/mortgage collection agreements, and are in addition to the general trust account procedures in WAC 308-124E-105.

(1) Trust bank accounts for property management transactions are exempt from the interest-bearing requirement of RCW 18.85.285. However, interest-bearing accounts for property management transactions may be established as described in this section.

(a) Interest-bearing trust bank accounts or dividend-earning investment accounts containing only funds held on behalf of an individual owner of income property managed by the firm may be established when directed by written property management agreement or directive signed by the owner: Provided, That all interest or earnings shall accrue to the owner;

(b) Interest-bearing trust bank accounts containing only damage or security deposits received from tenants of residential income properties managed by the firm for an individual owner may be established by the designated broker when directed by written management agreement, and the interest on such trust bank accounts may be paid to the owner, if the firm is by written agreement designated a "representative of the landlord" under the provisions of RCW 59.18.270, Residential Landlord-Tenant Act;

(c) The designated broker is not required to establish individual interest-bearing accounts for each owner when all owners assign the interest to the firm;

(d) A common account, usually referred to as a "clearing account" may be established if desired. This account must be a trust account.

(2) Any property management accounting system is to be an accounting of cash received and disbursed. Any other method of accounting offered to owners for their rental properties, unit and/or complexes are to be supplementary to the firms accounting of all cash received and disbursed through the firms trust account(s). All owners' summary statements must include this accounting.

(3) The preauthorization of disbursements or deductions by the financial institution for recurring expenses such as mortgage payments on behalf of the owner is not permitted if the account contains tenant security deposits or funds belonging to more than one client.

(4) A single check may be drawn on the real estate trust bank account, payable to the firm as licensed, in payment of all property management fees and commissions, if such check is supported by a schedule of commissions identified to each individual client. Property management commissions shall be withdrawn at least once monthly.

(5) No disbursements from the real estate trust bank account shall be made of funds received as damage or security deposit on a lease or rental contract for property managed by the firm to the owner or any other person without the written agreement of the tenant, until the end of the tenancy when the funds are to be disbursed to the person or persons entitled to the funds as provided by the terms of the rental or lease agreement.

(6) When the management agreement between the owner(s) and the firm is terminated, the owner(s) funds shall be disbursed according to the agreement. Funds held as damage or security deposits shall be disbursed to the owner(s) or successor property manager, and the tenants so notified by the disbursing firm consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124E-012	Administration of funds held in trust—General procedures.
WAC 308-124E-013	Administration of funds held in trust—Real estate and business opportunity transactions.
WAC 308-124E-014	Administration of funds held in trust—Property management.

EDUCATION

NEW SECTION

WAC 308-124H-805 Course approval required. (1) Any education provider or course developer may submit a course to the department for approval.

(2) Course approval by the department is required prior to the date on which the course is offered for clock hour credit.

(3) Each application for approval of a course shall be submitted to the department on the appropriate application form provided by the department.

(4) The director or designee shall approve, disapprove, or conditionally approve applications based upon criteria established by the commission.

(5) Upon approval, disapproval or conditional approval, the applicant will be so advised in writing by the department. Notification of disapproval shall include the reasons therefor.

(6) Approval shall expire two years after the effective date of approval.

NEW SECTION

WAC 308-124H-810 Course titles reserved for prescribed curriculum courses. Any approved school desiring to offer fundamentals, business management, broker management, real estate law, advanced real estate law, real estate

practices, advanced real estate practices, and/or transition course shall utilize the most recent course curriculum prescribed by the department, and shall include in its title the phrase "real estate fundamentals," "real estate brokerage management," "real estate law," "advanced real estate law," "business management," "real estate practices," "advanced real estate practices," or "transition course" if submitted for approval for clock hours. No other courses shall use these phrases in their titles.

NEW SECTION

WAC 308-124H-815 Application process for previously approved courses. (1) If there are no changes for a previously approved course in the course content or in the original course approval application or WAC 308-124H-820 affecting the topic areas or criteria for approval, the course will be approved upon receipt of a course renewal application and payment of the required fee for one renewal cycle only.

(2) If there are changes in course content or in the original course approval application for a previously approved course, other than updating for changes required by WAC 308-124H-850, the application will not be processed as a renewal, and will require completion of a course approval application and payment of the required fee.

(3) If a course renewal application or a course approval application is submitted at least thirty days prior to the current course expiration date, the previous course approval shall remain in effect until action is taken by the director.

NEW SECTION

WAC 308-124H-820 General requirements for course approval. Courses shall meet the following requirements:

(1) Be offered by a private entity approved by the director to operate as a school;

(2) Be offered by a tax-supported, public technical or community college or other institution of higher learning that certifies clock hours as indicated in RCW 18.85.011(5), consistent with the approval standards prescribed by the director and this chapter;

(3) Be offered by the Washington real estate commission;

(4) Have a minimum of three hours of course work or instruction for the student. A clock hour is a period of fifty minutes of actual instruction;

(5) Provide practical information related to the practice of real estate in any of the following real estate topic areas:

(a) Department prescribed curricula:

(i) Fundamentals;

(ii) Practices;

(A) Residential;

(B) Commercial;

(iii) Advanced practices;

(A) Residential;

(B) Commercial;

(iv) Real estate law;

(v) Advanced real estate law;

(vi) Brokerage management;

(vii) Business management;

(viii) Core curriculum;

(A) Residential;

(B) Commercial;

(C) Property management;

(b) Open curricula:

(i) Legal aspects;

(ii) Taxation;

(iii) Appraisal;

(iv) Evaluating real estate and business opportunities;

(v) Property management and leasing;

(vi) Construction and land development;

(vii) Ethics and standards of practice;

(viii) Real estate closing practices;

(ix) Current trends and issues;

(x) Principles/essentials;

(xi) Finance;

(xii) Hazardous waste and other environmental issues;

(xiii) Commercial;

(xiv) Real estate sales and marketing;

(xv) Instructor development;

(xvi) Consumer protection;

(xvii) Cross cultural communication;

(xviii) Advanced management practices;

(xix) Use of computers and/or other technologies as applied to the practice of real estate;

(6) Be under the supervision of an instructor approved to teach the topic area, who shall, at a minimum, be available to respond to specific questions from students on an immediate or reasonably delayed basis;

(7) The following types of courses will not be approved for clock hours:

(a) Mechanical office and business skills, such as, keyboarding, speed-reading, memory improvement, grammar, and report writing;

(b) Standardized software programs such as word processing, e-mail, spreadsheets or data bases; an example: A course using spreadsheet program to demonstrate investment analysis would be acceptable, but a course teaching how to use a spreadsheet would not be acceptable;

(c) Orientation courses for licensees, such as those offered by trade associations;

(d) Personal and sales motivation courses or sales meetings held in conjunction with a licensee's general business;

(e) Courses that are designed or developed to serve other professions, unless each component of the curriculum and content specifically shows how a real estate licensee can utilize the information in the practice of real estate;

(f) Personal finance, etiquette, or motivational type courses;

(g) Courses that are designed to promote or offer to sell specific products or services to real estate licensees such as warranty programs, client/customer data base systems, software programs or other devices. Services or products can be offered during nonclock hour time, such as breaks or lunchtime. Letterhead, logos, company names or other similar markings by itself, on course material are not considered promotional;

(h) Clock hours will not be awarded for any course time devoted to meals or transportation;

(8) Courses of thirty clock hours or more which are submitted for approval shall include a comprehensive examination(s) and answer key(s) of no fewer than three questions per clock hour with a minimum of ninety questions, and a requirement of passing course grade of at least 70 percent; essay question examination keys shall identify the material to be tested and the points assigned for each question;

(9) Include textbook or instructional materials approved by the director, which shall be kept accurate and current;

(10) Not have a title which misleads the public as to the subject matter of the course;

(11) The provider's course application shall identify learning objectives and demonstrate how these are related to the practice of real estate;

(12) Courses offering the prescribed core curriculum shall meet the requirements of WAC 308-124A-800;

(13) Only primary providers shall be approved to teach the prescribed core curriculum; and

(14) Course providers offering core curriculum within a course exceeding three clock hours must clearly indicate in the application for approval where the core curriculum elements are met in the course.

NEW SECTION

WAC 308-124H-825 Secondary education provider course content approval application. (1) An approved school may offer courses, except for the mandated courses, that are currently approved for another education provider or course developer provided a secondary provider course content approval application is submitted to the department;

(2) The applicant must also provide written authorization by the original education provider/developer permitting use of the course content by the applicant;

(3) A certificate of course approval will be provided to the secondary education provider;

(4) The applicant must use the course approval number issued by the department on all certificates of course completion;

(5) Course approval is valid only for the dates of the original education provider/course developer's approval; and

(6) Secondary provider course content approval applications may not be used for real estate fundamentals, real estate brokerage management, real estate law, advanced real estate law, business management, real estate practices, advanced real estate practices, core course, or transition course.

NEW SECTION

WAC 308-124H-830 Distance education delivery methods—Defined. As used in this chapter, a distance education delivery method is one in which instruction takes place in other than a live classroom setting, the instructor and the student are in physically separate locations, and interactive instructional methods such as video-based instruction, computer conferencing, video conferencing, interactive audio, interactive computer software, web cast, webinar, or internet-based instruction are used.

NEW SECTION

WAC 308-124H-835 Interactive defined. (1) As used in this chapter, interactive means the course structure and technologies promote active student involvement with the course content, including the ability to:

- (a) Access or bypass optional content, if applicable;
- (b) Submit questions or answer test items, and receive direct feedback; and
- (c) Communicate with the instructor and/or other students on an immediate or reasonably delayed basis.

(2) Interactive instruction specifically excludes courses that only provide passive delivery of instructional content.

NEW SECTION

WAC 308-124H-840 Distance education delivery method approval required. Applicants are required to submit an application for each separate distance education delivery method for which they propose to offer approved courses for clock hours. When submitting a distance education delivery method application, the following minimum criteria must be provided by the applicant:

(1) Specify the course learning objectives for each learning unit and clearly demonstrate that the learning objectives cover the subject matter and how these relate to the practice of real estate. Objectives must be specific to ensure that all content is covered adequately to ensure mastery;

(2) Demonstrate how mastery of the material is provided by:

(a) Dividing the material into major learning units, each of which divides the material into modules of instruction;

(b) Specifying learning objectives for each learning unit or module of instruction. Learning objectives must be comprehensive enough to ensure that if all the objectives are met, the entire content of the course will be mastered;

(c) Specifying an objective, quantitative criterion for mastery used for each learning objective and provide a structured learning method designed to enable students to attain each objective;

(3) Demonstrate that the course includes the same or reasonably similar informational content as a course that would otherwise qualify for the requisite number of clock hours of classroom-based instruction and how the provider will know that the student completed the required number of clock hours;

(4) Describe consistent and regular interactive events appropriate to the delivery method. The interactive elements must be designed to promote student involvement in the learning process, and must directly support the student's achievement of the course learning objectives. The application must identify the interactive events included in the course and specify how the interactive events contribute to achievement of the stated learning objectives;

(5) Demonstrate how the course provides a mechanism of individual remediation to correct any deficiencies identified during the instruction and assessment process;

(6) Measure, at regular intervals, the student's progress toward completion of the mastery requirement for each learning unit or module. In the case of computer-based instruc-

tion, the course software must include automatic shutdown after a period of inactivity;

(7) Demonstrate that approved instructors are available to answer questions regarding course content at reasonable times and by reasonable means, including in-person contact, individual and conference telephone calls, e-mail and fax;

(8) Demonstrate how reasonable security will be provided to ensure that the student who receives credit for the course is the student who enrolled in and completed the course. Both the approved school and the student must certify in writing that the student has completed the course, and the required number of clock hours;

(9) Provide a complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the course material and an assessment of the availability and adequacy of the equipment, software, or other technologies to the achievement of the course's instructional claims;

(10) Provide an orientation session with the instructor or an affiliated representative of an approved school. Mechanisms must be clearly in place which allow students an early orientation to discuss course specifics;

(11) Demonstrate how the provider determined the number of clock hours requested in the distance education delivery method approval application; and

(12) Provide with each distance education delivery method approval application a copy of a course evaluation form. The provider must provide each student with the mandatory evaluation form and retain the completed form in the school records as required under WAC 308-124H-895(4).

NEW SECTION

WAC 308-124H-845 Distance education delivery methods certified by the Association of Real Estate License Law Officials (ARELLO). An applicant who provides evidence of certification of the distance education delivery method for his or her course by the Association of Real Estate License Law Officials (ARELLO) need not submit an application for approval of the same distance education delivery method when delivering the same course within the state of Washington.

NEW SECTION

WAC 308-124H-850 Changes and updates in approved courses. (1) Course materials shall be updated no later than thirty days after the effective date of a change in federal, state, or local statutes or rules. Course materials shall also be updated no later than thirty days after changes in procedures or other revisions to the practice of real estate which affect the validity or accuracy of the course material or instruction.

(2) Changes in course instructors may be made only if the substitute instructors are currently approved to teach the topic area pursuant to chapter 308-124H WAC.

NEW SECTION

WAC 308-124H-855 Certificate of course completion. Each approved school shall issue a certificate of course completion to students who have satisfactorily completed the course requirements. The certificate shall include the following information:

- (1) Student's name;
- (2) School's name and identification number issued by the department;
- (3) The course commencement date and completion date;
- (4) Course title;
- (5) Clock hours for the course;
- (6) School administrator's signature;
- (7) Course identification number issued by the department;
- (8) Instructor name and number; and
- (9) Completion of a required examination, if applicable.

NEW SECTION

WAC 308-124H-860 Courses offered in a symposium or conference format. (1) Approved schools offering courses in a symposium or conference format with two or more modules of independent instruction may issue certificates of course completion for fewer clock hours than approved by the department on their original course approval application; and

(2) Students must complete a minimum of three clock hours of instruction to receive clock hour credit.

NEW SECTION

WAC 308-124H-865 Disciplinary action—Procedures—Investigation. (1) The department shall have the authority on its own motion or upon complaint made to it to investigate or audit any course to determine compliance with chapter 18.85 RCW and with the rules and regulations of this chapter.

(2) Complaints concerning approved courses should be made in writing to the department and contain the following information when appropriate:

- (a) The complainant's name, address, and telephone number;
- (b) School name, address, and telephone number;
- (c) Instructor(s) name;
- (d) Nature of complaint and facts detailing dates of attendance, termination date, date of occurrence, names, addresses and positions of school officials contacted, and any other pertinent information;
- (e) An explanation of what efforts if any, have been taken to resolve the problem with the school; and
- (f) Copies of pertinent documents, publications, and advertisements.

NEW SECTION

WAC 308-124H-870 Grounds for denial or withdrawal of course approval. Course approval may be denied or withdrawn if the instructor or any owner, administrator or

affiliated representative of a school, or a course provider or developer:

(1) Submits a false or incomplete course application or any other information required to be submitted to the department;

(2) Includes in its title the phrase "real estate fundamentals," "real estate brokerage management," "real estate law," "advanced real estate law," "business management," "real estate practice," "advanced real estate practice," and "transition course" if the course was not submitted for approval of clock hours pursuant to WAC 308-124H-810;

(3) If the title of the course misleads the public and/or licensees as to the subject matter of the course;

(4) If course materials are not updated within thirty days of the effective date of a change in the statute or rules;

(5) If course content or material changes are not submitted to the department for approval prior to the date of using the changed course content;

(6) Failed to meet the requirements under WAC 308-124H-820, 308-124H-825, and 308-124H-840;

(7) If a course or prescribed core curriculum was approved through the mistake or inadvertence of the director.

NEW SECTION

WAC 308-124H-875 Hearing procedure. Upon notice of course denial or disapproval or withdrawal of course approval, a person is entitled to a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, and the provisions of WAC 308-124-305, 308-124-310 and 308-124-315. To exercise the right to a hearing under this section, a person must request a hearing within twenty days after receipt of the notice of denial, disapproval, or withdrawal of course approval. Any person aggrieved by a final decision of the director or authorized representative of the director is entitled to judicial review under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 308-124H-880 School and school administrator approval required. (1) School and school administrator approval by the department is required prior to the date on which courses are offered for clock hour credit.

(2) Each application for approval of a school or school administrator shall be submitted to the department on the appropriate application form provided by the department. The most recent application form shall be obtained from the department prior to submission.

(3) The director or designee shall approve or disapprove applications based upon criteria established by the commission. The director or designee shall approve only complete applications which meet the requirements of this chapter.

(4) Upon approval or disapproval the applicant will be so advised in writing by the department. Notification of disapproval shall include the reasons therefor.

(5) No school for which approval is required shall promote a course for clock hour credit prior to approval of the school.

(6) No school shall allow an instructor for whom approval is required to supervise a course for clock hour credit prior to approval of the instructor.

(7) No school shall issue to a student certification for completion of an approved course unless the course had been approved prior to the first day of instruction.

(8) Approval shall expire two years after the effective date of approval.

(9) School names submitted that are similar to those currently approved shall not be granted approval.

NEW SECTION

WAC 308-124H-885 Application process for previously approved schools. (1) If there are no changes in the original school or school administrator approval application for a previously approved school or school administrator, the school or school administrator will be approved upon receipt of a school or school administrator renewal application and payment of the required fee.

(2) If there are changes in the original school or school administrator approval application for previously approved schools or school administrators, the application will not be processed as a renewal, and will require completion of a school or school administrator approval application and payment of required fees.

(3) If a school or school administrator renewal application or a school or school administrator approval application is submitted at least thirty days prior to the current school expiration date, the previous school or school administrator approval shall remain in effect until action to approve or disapprove the application is taken by the director.

NEW SECTION

WAC 308-124H-890 Application for school approval. An application for school approval shall include the following information attested to by the school's administrator, who shall be responsible for administration of the school:

(1) The complete legal name of the school, current telephone number, current mailing address, the school's administrative office address, and date of establishment;

(2) The form of ownership of the school, whether sole proprietorship, partnership, limited partnership, or corporation, limited liability company or limited liability partnership;

(3) If the school is a corporation or a subsidiary of another corporation, current evidence of registration with the Washington secretary of state's office and the name, address, and telephone number of the corporation's registered agent;

(4) The administrator's name, and evidence of previous experience in administration of educational institutions, courses or programs, previous experience in the administration of business activities related to real estate, or administrative experience in the field of real estate;

(5) The publication required under WAC 308-124H-907 and the course description required under WAC 308-124H-910.

NEW SECTION**WAC 308-124H-895 Administrator responsibilities.**

Each school administrator shall be responsible for performing the following:

- (1) Ensure that the school, course(s), and instructor(s) are all currently approved before offering clock hour courses;
- (2) Ensure that all instructors are approved to teach in the appropriate topic area(s);
- (3) Sign and verify all course completion certificates;
- (4) Maintain all required records for five years, including attendance records, required publications, and course evaluations;
- (5) Safeguard comprehensive examinations;
- (6) Ensure the supervision and demonstrate responsibility for the conduct of employees and individuals affiliated with the school;
- (7) Periodically review courses and advise department of content currency as required;
- (8) Ensure each student is provided a course curriculum; and
- (9) Ensure each student is provided a course evaluation form.

NEW SECTION**WAC 308-124H-900 Affiliated representative of an approved school—Defined—Tasks and duties described.**

(1) An affiliated representative of an approved school is the natural person employed by or associated with an approved real estate school, and who is authorized by the school administrator to perform the following tasks and duties:

- (a) Conduct student orientation sessions;
- (b) Provide technical and/or procedural advice regarding course requirements and program operations;
- (c) Perform routine or periodic audits of student progress; and
- (d) Perform other tasks delegated by the approved school administrator, not requiring the interpretation of course content or subject matter expertise.

(2) Responsibility for an affiliated representative in the performance of the tasks and duties described above shall rest with the approved school administrator.

NEW SECTION

WAC 308-124H-905 Notice of actions by governmental entities or accrediting commissions. School applicants and approved schools shall present the department with written details of any consent orders with the Federal Trade Commission or other jurisdictions and any final actions which have been taken against the school, its administrator, its owners, officers, or directors by any federal or state agencies, including courts or accrediting commissions, of which the school has knowledge and inform the department in writing of actions being taken to correct deficiencies cited. Directors, officers, and owners shall advise the administrator of any such actions taken against the directors, officers, or owners. School applicants and approved schools shall not purposely avoid gaining knowledge of such actions. Final actions shall not include traffic violations or traffic convictions.

NEW SECTION

WAC 308-124H-907 Required publication. Each school shall have available to prospective and enrolled students a publication containing the following information:

- (1) Date of publication;
- (2) Name and address of school. The name of the administrator and telephone number(s) of the school's administrative offices;
- (3) A list of courses, as outlined in WAC 308-124H-910;
- (4) Description of all course prerequisites;
- (5) The school's policy regarding:
 - (a) Admission procedure;
 - (b) Causes for dismissal and conditions for readmission;
 - (c) Attendance requirements, leave, absences, makeup work, and tardiness;
 - (d) Standards of progress required of the student, including a definition of the grading system of the school, the minimum grades considered satisfactory, and the conditions for reentrance for those students whose course of study is interrupted;
 - (e) Refund policy of registration or tuition fees, record retrieval fee, or any other charges, including procedures a student shall follow to cancel enrollment before or after instruction has begun.

(6) The statement that: "This school is approved under chapter 18.85 RCW; inquiries regarding this or any other real estate school may be made to the: Washington State Department of Licensing, Real Estate Program, P.O. Box 9015, Olympia, Washington 98507-9015";

(7) Dated supplements or errata sheets so as to maintain accuracy of the information in the publication, which shall clearly indicate that such information supersedes that which it contradicts and/or replaces elsewhere in the publication.

NEW SECTION

WAC 308-124H-910 Course description. Each approved school shall have available for distribution to prospective and enrolled students a course description containing the following information:

- (1) Name of approved school;
- (2) Date(s) and location of the course;
- (3) The course title;
- (4) The educational objectives of the course;
- (5) The type of instruction (e.g., live classroom or distance education) in the course and the length of time required for completion;
- (6) The number of clock hours approved for the course, or, a statement that an application for approval is pending;
- (7) Name(s) of instructors when available;
- (8) Equipment and supplies which the student must provide;
- (9) Fees for the course;
- (10) The specific education requirements under chapter 18.85 RCW or chapter 308-124H WAC which will be met upon completion of the course students shall be informed, that for courses of thirty clock hours or more, a comprehensive examination is available and is mandatory to satisfy the requirements of RCW 18.85.101 and 18.85.111;
- (11) Cancellation policy; and

- (12) Tuition refund policy.

NEW SECTION

WAC 308-124H-915 Certificate of school approval.

Upon approval a school shall be issued a certificate of approval containing the school's name, address, identification number, date of approval, and name of administrator. No school shall adopt or make a change in its name of its administrative office prior to receipt of a new certificate from the department.

NEW SECTION

WAC 308-124H-920 Disciplinary action—Procedures—Investigation. (1) The department shall have the authority, on its own motion or upon complaint made to it, to investigate or audit any school to determine compliance with chapter 18.85 RCW and with the rules and regulations of this chapter.

(2) Complaints concerning approved schools should be made in writing to the department.

(3) All approved schools shall be subject to periodic visits by an official representative for the department who may observe classroom and distance education activities, evaluate course content, exams and instructor proficiency to ensure that courses are being taught in accordance with the provisions of this chapter.

NEW SECTION

WAC 308-124H-925 Grounds for denial or withdrawal of school or school administrator approval. Approval may be denied or withdrawn if the instructor or any owner, administrator, or affiliated representative of a school:

(1) Has had any disciplinary action taken against his/her professional license in this or any other jurisdiction;

(2) Falsified any student records or clock hour certificates;

(3) Falsified any application or any other information required to be submitted to the department;

(4) Attempted in any manner to discover, or to impart to any license candidate, the content of and/or answer to any real estate license examination question(s);

(5) Violated any provision in chapter 18.85 RCW or the rules promulgated thereunder;

(6) Failed to cooperate with the department in any investigation or hearing;

(7) Has been convicted of a crime within the preceding ten years;

(8) Violated any of the provisions of any local, state, or federal antidiscrimination law;

(9) Continued to teach or offer any real estate subject matter whereby the interests of the public are endangered, after the director, by order in writing, stated objections thereto;

(10) Offered, sold, or awarded any clock hours without requiring the student to successfully complete the clock hours for which the course was approved;

(11) Accepted registration fees and not supplied the service and/or failed to refund the fees within thirty days of not supplying the service;

(12) Represented in any manner that the school is associated with a "college" or "university" unless it meets the standards and qualifications of and has been approved by the state agency having jurisdiction;

(13) Represented that a school is recommended or endorsed by the state of Washington or by the department, provided that a school authorized to offer clock hours under this chapter may state: "This school is approved under chapter 18.85 RCW";

(14) Advertised, published, printed, or distributed false or misleading information;

(15) Advertised the availability of clock hour credit for a course in any manner without affixing the name of the school as approved by the department;

(16) Solicited, directly or indirectly, information from applicants for a real estate license following the administration of any real estate examination to discover the content of and/or answer to any examination question or questions;

(17) Has failed to meet the requirements of this chapter;

(18) Failed to teach a course consistent with the approved course content or curriculum;

(19) Used a substitute instructor who has not been approved to teach the topic area(s) pursuant to chapter 308-124H WAC.

NEW SECTION

WAC 308-124H-930 Hearing procedure. Upon notice of disapproval or issuance of charges, a person is entitled to a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, and the provisions of WAC 308-124-305, 308-124-310 and 308-124-315. To exercise the right to a hearing under this section, a person must request a hearing within twenty days after receipt of the notice of disapproval or charges. Any person aggrieved by a final decision of the director is entitled to judicial review under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 308-124H-935 Record retention. (1) Each school shall maintain for a minimum of five years each student's record and each edition of a required publication;

(2) A "student record" shall include:

(a) The name, address, and telephone number of the school;

(b) Full name, address, and telephone number of the student;

(c) Beginning and ending dates of attendance and date of registration agreement if the refund policy relates to the registration date;

(d) Clock hour courses completed and examination results;

(e) Course evaluation form.

(3) Each school shall provide a copy of a student's record to the student upon request.

NEW SECTION**WAC 308-124H-940 School closing/change of status.**

(1) A school shall make plans and take measures to protect the rights of present and former students if it goes out of business.

(2) Upon cessation of instruction or termination of approved status, a school shall immediately furnish to the department by certified mail or hand delivery:

(a) Its certificate of approval;

(b) Name, address, and telephone number of the person who will be responsible for closing arrangements;

(c) The student's name, address and telephone number, the name of the course, the amount of class time remaining to complete the course, and the total amount of tuition and fees paid by the student for the course;

(d) A copy of a written notice which shall be mailed to all enrolled students in clock hour courses who have not completed a current course because of cessation of instruction; the notice shall explain the procedures students must follow to secure refunds or to continue their education;

(e) Procedures for disbursement of refunds to enrolled students, in the full amount to which they are entitled, no later than thirty days from the last day of instruction.

(3) Upon closing, a school shall arrange for a person approved by the department to retain the records required under WAC 308-124H-935. If a school closes without arranging for record retention, the department may obtain the records to protect the former students.

NEW SECTION**WAC 308-124H-945 Instructor approval required.**

(1) Instructor approval by the department is required prior to the date on which the course is offered for clock hour credit.

(2) Each application for approval of an instructor shall be submitted to the department on the appropriate application form provided by the department.

(3) The director or designee shall approve or disapprove instructor applications based upon criteria established by the commission.

(4) The director or designee shall approve only complete applications which meet the requirements of this chapter.

(5) Upon approval or disapproval the applicant will be so advised in writing by the department. Notification of disapproval shall include the reasons therefor.

(6) Approval shall expire two years after effective date of approval.

(7) Applicants shall identify on the application form the specific subject matter topic area or areas he or she proposes to teach.

NEW SECTION

WAC 308-124H-950 Application process for previously approved instructors. (1) If there are no changes in the original instructor approval application for a previously approved instructor, the instructor will be approved upon receipt of an instructor renewal form and payment of the required fee.

(2) If there are changes in an original instructor approval application for a previously approved instructor, the application will not be processed as a renewal, and will require completion of an instructor approval application and payment of required fees.

(3) If an instructor renewal application or an instructor approval application is submitted at least thirty days prior to the current instructor expiration date, the previous instructor approval shall remain in effect until action to approve or disapprove the application is taken by the director.

NEW SECTION

WAC 308-124H-955 Certificate of instructor approval. Upon approval an instructor shall be issued a certificate of approval containing the instructor's name, date of approval, department identification number, and the subject matter topic areas that the instructor is approved to teach.

NEW SECTION

WAC 308-124H-960 Qualifications of instructors. Each instructor shall demonstrate competency based on guidelines established by the commission in the subject matter/topic that they propose to teach and shall be qualified in techniques of instruction. Instructor qualifications in techniques of instruction shall be evidenced by one of the following:

(1) One hundred fifty classroom hours as an instructor within two years preceding application in courses acceptable to the director;

(2) Possession of the professional designation, DREI, from the Real Estate Educators Association (REEA);

(3) Successful completion of an instructor training course approved by the director upon recommendation of the commission and two years full-time experience in real estate or a related field within the five years immediately preceding the date of application;

(4) A bachelors or advanced degree in education and either two years teaching experience, or two years experience in real estate or a related field within the last five years;

(5) A current teaching certificate issued by an authorized governmental agency. The instruction must have been in a field allied to that which the instructor has applied to teach;

(6) At least ninety clock hours as an instructor in real estate within two years preceding the application;

(7) Ninety hours as an instructor at an institution of higher learning within two years preceding the application. The instruction must have been in a field allied to that which the instructor has applied to teach;

(8) Selection by a national or state association whose selection criteria have been approved by the director.

NEW SECTION

WAC 308-124H-965 Changes in instructors. Changes in course instructors may be made only if the substitute instructors are currently approved to teach the course pursuant to WAC 308-124H-525.

NEW SECTION

WAC 308-124H-970 Guest lecturer(s)—Defined. A topic area expert(s) may be utilized as a guest lecturer to assist an approved instructor teach an approved course. The approved instructor is responsible for supervision of the approved course. Guest lecturer(s) shall not be utilized to circumvent the instructor approval requirements of this chapter.

NEW SECTION

WAC 308-124H-975 Disciplinary action—Procedures—Investigation. (1) The department shall have the authority, on its own motion or upon complaint made to it, to investigate or audit any instructor to determine compliance with chapter 18.85 RCW and with the rules and regulations of this chapter.

(2) Complaints concerning approved instructors should be made in writing to the department.

(3) All approved instructors shall be subject to periodic visits by an official representative of the department who shall observe classroom activities, evaluate course content and instructor proficiency to ensure that courses are being taught in accordance with the provisions set forth.

NEW SECTION

WAC 308-124H-980 Grounds for denial or withdrawal of instructor approval. Approval may be denied or withdrawn if the instructor:

(1) Has had any disciplinary action taken against his/her professional license in this or any other jurisdiction;

(2) Falsified any student records or clock hour certificates;

(3) Falsified any application or any other information required to be submitted to the department;

(4) Attempted in any manner to discover, or to impart to any license candidate, the content of and/or answer to any real estate license examination question(s);

(5) Violated any provision in chapter 18.85 RCW or the rules promulgated thereunder;

(6) Failed to cooperate with the department in any investigation or hearing;

(7) Has been convicted of a crime;

(8) Violated any of the provisions of any local, state, or federal antidiscrimination law;

(9) Continued to teach or offer any real estate subject matter whereby the interests of the public are endangered, after the director, by order in writing, stated objections thereto;

(10) Offered, sold, or awarded any clock hours without requiring the student to successfully complete the clock hours which the course was approved;

(11) Accepted registration fees and not supplied the service or failed to refund the fees within thirty days of not supplying the service;

(12) Represented in any manner that the school is associated with a "college" or "university" unless it meets the standards and qualifications of and has been approved by the state agency having jurisdiction;

(13) Represented that a school is recommended or endorsed by the state of Washington or by the department, provided that a school authorized to offer clock hours under this chapter may state: "This school is approved under chapter 18.85 RCW";

(14) Advertised, published, printed, or distributed false or misleading information;

(15) Solicited, directly or indirectly, information from applicants for a real estate license following the administration of any real estate examination to discover the content of and/or answer to any examination question or questions;

(16) Has failed to meet the requirements of this chapter;
(17) Failed to teach a course consistent with the approved course content or curriculum.

NEW SECTION

WAC 308-124H-985 Hearing procedure. Upon notice of disapproval or issuance of charges, a person is entitled to a hearing conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, and the provisions of WAC 308-124-305, 308-124-310, and 308-124-315. To exercise the right to a hearing under this section, a person must request a hearing within twenty days after receipt of the notice of disapproval or charges. Any person aggrieved by a final decision of the director is entitled to judicial review under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 308-124H-990 Real estate course, school, and instructor approval fees. (1) The following fees shall be charged for applications for approval of real estate courses, schools, and instructors. An application fee shall accompany each application. Approval, if granted, shall be two years from the date of approval. Applications submitted and disapproved may be resubmitted at no additional fee.

(2) Application for course content approval - a fee of five dollars per clock hour credit being offered, with a minimum fee of fifty dollars per course. Except, the application fee for approval of the sixty clock hour course in real estate fundamentals shall be one hundred fifty dollars.

(3) Application for school approval - a fee of two hundred fifty dollars.

(4) Application for instructor approvals:

(a) Approval to teach a specific course on one occasion - a fee of fifty dollars;

(b) Approval to teach as many subject areas as requested at time of initial application - a fee of seventy five dollars. Approval shall be for two years from the approval date;

(c) Approval to teach additional subject area(s) not requested at time of initial application or renewal - a fee of twenty-five dollars for each application to teach additional subject area(s). Approval, if granted, shall be for remainder of two year approval period. Applications submitted under (a), (b) and (c) of this section and disapproved may be resubmitted at no additional fee.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-124H-011	Course approval required.
WAC 308-124H-012	Course titles reserved for prescribed curriculum courses.
WAC 308-124H-013	Application process for previously approved courses.
WAC 308-124H-014	Establishing time frame for approval of core curriculum.
WAC 308-124H-025	General requirements for course approval.
WAC 308-124H-026	Secondary education provider course content approval application.
WAC 308-124H-027	Distance education delivery methods—Defined.
WAC 308-124H-028	Interactive—Defined.
WAC 308-124H-029	Distance education delivery method approval required.
WAC 308-124H-031	Distance education delivery methods certified by the Association of Real Estate License Law Officials (ARELLO).
WAC 308-124H-034	Courses completed in other jurisdictions.
WAC 308-124H-039	Changes and updates in approved courses.
WAC 308-124H-041	Certificate of course completion.
WAC 308-124H-042	Courses offered in a symposium or conference format.
WAC 308-124H-051	Disciplinary action—Procedures—Investigation.
WAC 308-124H-061	Grounds for denial or withdrawal of course approval.
WAC 308-124H-062	Hearing procedure.
WAC 308-124H-210	School and school administrator approval required.
WAC 308-124H-221	Application process for previously approved schools.
WAC 308-124H-230	Application for school approval.
WAC 308-124H-245	Administrator responsibilities.
WAC 308-124H-246	Affiliated representative of an approved school—

WAC 308-124H-250

Defined—Tasks and duties described.

WAC 308-124H-260

Notice of actions by governmental entities or accrediting commissions.

WAC 308-124H-270

Required publication.

WAC 308-124H-280

Course description.

WAC 308-124H-290

Certificate of school approval.

WAC 308-124H-300

Change of ownership or circumstances.

WAC 308-124H-310

Disciplinary action—Procedures—Investigation.

WAC 308-124H-320

Grounds for denial or withdrawal of school or school administrator approval.

WAC 308-124H-330

Hearing procedure.

WAC 308-124H-340

Record retention.

WAC 308-124H-510

School closing/ change of status.

WAC 308-124H-525

Instructor approval required.

WAC 308-124H-530

Application process for previously approved instructors.

WAC 308-124H-540

Certificate of instructor approval.

WAC 308-124H-550

Qualifications of instructors.

WAC 308-124H-551

Changes in instructors.

WAC 308-124H-560

Guest lecture(s) [lecturer(s)]—Defined.

WAC 308-124H-570

Disciplinary action—Procedures—Investigation.

WAC 308-124H-580

Grounds for denial or withdrawal of instructor approval.

WAC 308-124H-800

Hearing procedure.

Real estate course, school, and instructor approval fees.

WSR 10-02-070**PROPOSED RULES****HORSE RACING COMMISSION**

[Filed January 4, 2010, 2:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-088.

Title of Rule and Other Identifying Information: To add a section in chapter 260-16 WAC regarding the definition of a race meet for calculations for Washington bred bonuses.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on February 11, 2010, at 9:30 a.m.

Date of Intended Adoption: February 11, 2010.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by February 8, 2010.

Assistance for Persons with Disabilities: Contact Patty Sorby by February 8, 1010 [2010], TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This clarifies the length of the race meet in respect to when the moneys should be withheld from the mutual handle for calculating the Washington bred breeders bonus award.

Reasons Supporting Proposal: This complies with the recommended model rule for public records.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

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

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

January 4, 2010
Douglas L. Moore
Deputy Secretary

NEW SECTION

WAC 260-16-063 Washington-bred owners' bonus and breeder awards. Consistent with the applicable laws in chapter 67.16 RCW and the applicable rules in Title 260 WAC, the Washington-bred owners' bonus and breeder awards will be retained, collected, and distributed as follows:

(1) Washington-bred owner's bonus. A Class 1 racing association will withhold and pay daily to the commission one percent of the gross receipts of all in-state parimutuel machines, including approved satellite locations during the period of its authorized live race meet.

(2) Washington-bred breeder's award. A Class 1 racing association may withhold, in addition to the amounts authorized to be retained in RCW 67.16.170, for each authorized day of racing an additional six percent of the daily gross receipts of all in-state parimutuel machines from exotic wagers at its race meet and approved satellite locations. If a Class 1 racing association does retain an additional six percent of the daily gross receipts of all in-state parimutuel machines from exotic wagers at its race meet, the Class 1 racing association must provide one-sixth of the additional six percent for Washington-bred breeder awards. At the end of its authorized live race meet, a Class 1 racing association must pay to the commission the one-sixth of the additional

six percent retained from exotic wagers for Washington-bred breeder's awards.

(3) The race meet will mean the period beginning the first day of live racing and concluding on the last day of live racing, and will include wagering on live races conducted on the grounds of the Class 1 racing association and simulcast wagering conducted during the period of the race meet. It will include wagering on simulcast races conducted during the live race meet, whether or not live racing is being conducted.

(4) The race meet will not include any wagering conducted at a Class 1 racing association or its approved satellite locations beginning the day after the last day of live racing and continuing until the day before the first day of live racing the following race season.

(5) Moneys received by the commission for Washington-bred owner's bonus and breeder's awards shall be deposited in the Washington-bred owner's bonus fund and breeder's award fund account in the custody of the state treasurer. The commission shall distribute the Washington-bred owner's bonus and breeder's awards as provided in WAC 260-16-065.

WSR 10-02-072

PROPOSED RULES

HEALTH CARE AUTHORITY

(Community Health Services)

[Order 09-04—Filed January 5, 2010, 8:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-23-113.

Title of Rule and Other Identifying Information: Community health service, administration, WAC 182-20-100 and eligibility, WAC 182-20-160. Amendments to include tribal governments.

Hearing Location(s): Health Care Authority, 676 Woodland Square Loop S.E., The Sue Crystal Center, Olympia, WA, on February 9, 2010, at 8:30 a.m.

Date of Intended Adoption: February 10, 2010.

Submit Written Comments to: Jan Ward Olmstead, Tribal Liaison, 676 Woodland Square Loop S.E., P.O. Box 42721, Olympia, WA 98504-2721, e-mail jan.olmstead@hca.wa.gov, fax (360) 923-2803, by February 9, 2010.

Assistance for Persons with Disabilities: Contact Nikki Johnson by February 1, 2010, TTY (888) 923-5622 or (360) 923-2805.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendment of the rules are needed to clarify the administration of the CHS grant program and to add tribal governments to the eligibility requirements.

Statutory Authority for Adoption: RCW 41.05.160, 41.05.220, and 41.05.230.

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

Name of Proponent: Washington state health care authority, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jan Ward Olmstead, 676 Woodland Square Loop, Lacey, WA, (360) 923-2803.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the health care authority rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

January 5, 2010

Jason Siems

Rules Coordinator

AMENDATORY SECTION (Amending Order 00-06, filed 2/7/01, effective 3/10/01)

WAC 182-20-100 Administration. The authority shall contract with community health clinics to provide primary health care in the state of Washington by:

- (1) Developing criteria for the selection of community health clinics to receive funding;
- (2) Establishing statewide standards governing the granting of awards and assistance to community health clinics;
- (3) Disbursing funds appropriated for community health clinics only to those clinics meeting the criteria in WAC 182-20-160;
- (4) Distributing available state funds to community health clinics (~~(according to the following priority in the order listed)~~), including:
 - (a) (~~(First, to)~~) Community health clinics that are private, nonprofit corporations classified exempt under Internal Revenue Service Rule 501 (c)(3) and governed by a board of directors including representatives from the populations served;
 - (b) (~~(Second, to)~~) Local health jurisdictions with an organized primary health clinic or division;
 - (c) (~~(Third, to)~~) Private nonprofit or public hospitals with an organized primary health clinic or department; and
 - (d) Tribal governments.
- (5) Reviewing records and conducting on-site visits of contractors or applicants as necessary to assure compliance with these rules; and
- (6) Withholding funding from a contractor or applicant until such time as satisfactory evidence of corrective action is received and approved by the authority, if the authority determines:
 - (a) Noncompliance with applicable state law or rule; or
 - (b) Noncompliance with the contract; or
 - (c) Failure to provide such records and data required by the authority to establish compliance with section 214(3), chapter 19, Laws of 1989 1st ex. sess., this chapter, and the contract; or
 - (d) The contractor or applicant provided inaccurate information in the application.

AMENDATORY SECTION (Amending Order 00-06, filed 2/7/01, effective 3/10/01)

WAC 182-20-160 Eligibility. Applicants shall:

- (1) Demonstrate private, nonprofit, tax exempt status incorporated in Washington state or public agency status under the jurisdiction of a local or county government;
- (2) Receive other funds from at least one of the following sources:
 - (a) Section 329 of the Public Health Services Act;
 - (b) Section 330 of the Public Health Services Act;
 - (c) Community development block grant funds;
 - (d) Title V Urban Indian Health Service funds; (~~(or)~~)
 - (e) Tribal governments; or
 - (f) Other public or private funds providing the clinic demonstrates:
 - (i) Fifty-one percent of total clinic population are low income;
 - (ii) Fifty-one percent or greater of funds come from sources other than programs under WAC 182-20-160;
- (3) Operate as a community health clinic providing primary health care for at least eighteen months prior to applying for funding;
- (4) Provide primary health care services with:
 - (a) Twenty-four-hour coverage of the clinic including provision or arrangement for medical and/or dental services after clinic hours;
 - (b) Direct clinical services provided by one or more of the following:
 - (i) Physician licensed under chapters 18.57 and 18.71 RCW;
 - (ii) Physician's assistant licensed under chapters 18.71A and 18.57A RCW;
 - (iii) Advanced registered nurse practitioner under chapter 18.79 RCW;
 - (iv) Dentist under chapter 18.32 RCW;
 - (v) Dental hygienist under chapter 18.29 RCW;
 - (c) Provision or arrangement for services as follows:
 - (i) Preventive health services on-site or elsewhere including:
 - (A) Eye and ear examinations for children;
 - (B) Perinatal services;
 - (C) Well-child services; and
 - (D) Family planning services;
 - (ii) Diagnostic and treatment services of physicians and where feasible a physician's assistant and/or advanced registered nurse practitioner, on-site;
 - (iii) Services of a dental professional licensed under Title 18 RCW on-site or elsewhere;
 - (iv) Diagnostic laboratory and radiological services on-site or elsewhere;
 - (v) Emergency medical services on-site or elsewhere;
 - (vi) Arrangements for transportation services;
 - (vii) Preventive dental services on-site or elsewhere; and
 - (viii) Pharmaceutical services, as appropriate, on-site or elsewhere;
- (5) Demonstrate eligibility to receive and receipt of reimbursement from:
 - (a) Public insurance programs; and
 - (b) Public assistant programs, where feasible and possible;

(6) Have established for at least eighteen months an operating sliding scale fee schedule for adjustment of charges, based upon the individual's ability to pay for low-income individuals;

(7) Provide health care regardless of the individual's ability to pay; and

(8) Establish policies and procedures reflecting sensitivity to cultural and linguistic differences of individuals served and provide sufficient staff with the ability to communicate with the individuals.

WSR 10-02-079

PROPOSED RULES

DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed January 5, 2010, 2:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-20-038.

Title of Rule and Other Identifying Information: WAC 246-808-560 Documentation of care, chiropractic quality assurance commission (commission). The proposal amends the documentation requirements to ensure chiropractors are providing thorough and timely documentation that reflects a patient's presenting condition, treatment plan, progress, etc. The proposal clarifies the existing documentation requirement for chiropractors.

Hearing Location(s): Department of Health, Health Professions and Facilities, Point Plaza East Building, Rooms 152 and 153, 310 Israel Road S.W., Tumwater, WA 98501, on February 11, 2010, at 11:00 a.m.

Date of Intended Adoption: February 11, 2010.

Submit Written Comments to: Leann Yount, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by February 4, 2010.

Assistance for Persons with Disabilities: Contact Leann Yount by February 4, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing rule making on the standards for documentation of care. There have been chiropractic disciplinary cases related to the frequency and legibility of documentation. The commission is amending the rules to clarify the standards for documentation.

Reasons Supporting Proposal: The rules will assist chiropractors, ancillary staff, patients, and other stakeholders to understand the expectations of adequate care documentation which will further enhance public protection.

Statutory Authority for Adoption: RCW 18.25.0171 and 18.130.050.

Statute Being Implemented: Chapter 18.25 RCW.

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

Name of Proponent: Department of health, chiropractic quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Leann Yount, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4856.

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 Leann Yount, Department of Health, Chiropractic Program, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4856, fax (360) 236-2901, e-mail leann.yount@doh.wa.gov.

January 5, 2010

Leann Yount

Program Manager

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-560 Documentation of care. ~~((1) The recordkeeping procedures of a chiropractor shall be adequate to provide documentation of the necessity and rationale for examination, diagnostic/analytical procedures, and chiropractic services. The required documentation shall include, but not necessarily be limited to, the patient's history and/or subjective complaints; examination findings and/or objective findings; and a record of all chiropractic services performed.~~

~~(2) Chiropractic examinations shall be documented by specifying subjective complaints, objective findings, an assessment or appraisal of the patient's condition and the plan for care. Daily chart notes may be brief notations recorded in the patient's chart file between examinations. These notations shall indicate any changes in the care or progress of the patient and the chiropractic, diagnostic, or analytical services performed or ordered. Detailed entries need not be documented on every visit as long as examinations are performed at reasonable intervals and those examinations are documented as specified in this section.~~

~~(3) If a code is utilized by the doctor in connection with recordkeeping, a code legend shall be included in the records.)~~ A doctor of chiropractic must keep complete and accurate documentation on all patients and patient encounters. This documentation is necessary to protect the health, well-being and safety of the patient.

(1) The patient record must detail the patient's clinical history, the rationale for the examination, diagnostic or analytical procedures, and treatment services provided. The diagnosis or clinical impression must be contained in the patient record, not merely recorded on billing forms or statements. Subjective health status updates must be documented for every patient encounter.

(2) Documentation for the initial record must include at a minimum:

(a) The patient's history;

(b) Subjective presentation;

(c) Examination findings or objective findings relating to the patient's presenting condition;

(d) Any diagnostic testing performed;

(e) A diagnosis or impression;

(f) Any treatment or care provided; and

(g) Plan of care.

(3) Reexaminations, being necessary to monitor the progress or update the current status of a patient, must be documented at reasonable intervals sufficient to reflect the effectiveness of the treatment. Reexaminations must also be documented whenever there is an unexpected change in the subjective or objective status of the patient. Reexamination documentation must include the subjective presentation and objective findings. This documentation shall also reflect changes in the patient's care and progress and in the treatment plan.

(4) Documentation between examinations must be recorded for every patient encounter. Documentation must sufficiently record all the services provided, as well as any changes in the patient's presentation or condition. The region(s) of all treatment and the specific level(s), if applicable, of chiropractic adjustments must be recorded in the patient encounter documentation.

(5) Patient records must be legible, permanent, and recorded in a timely manner. Documentation that is not recorded on the date of service must designate both the date of service and the date of the chart note entry. Corrections or additions to the patient's records must be corrected by a single line drawn through the text and initialed so the original entry remains legible. In the case of computer-organized documentation, unintended entries may be identified and corrected, but must not be deleted from the record. Errors in spelling and grammar may be corrected and deleted.

(6) Correspondence relating to any referrals concerning the diagnosis or treatment of the patient must be retained in the patient record.

(7) Patient records should clearly identify the provider of services by name, initials, or signature. If the chiropractor uses a code in the documentation, a code legend must be made available upon request.

WSR 10-02-096

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 6, 2010, 10:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-092.

Title of Rule and Other Identifying Information: The department is amending and creating new sections in chapter 388-106 WAC, Long-term care services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on February 23, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 24, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on February 23, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by February 9, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending and adopting new rules in chapter 388-106 WAC as follows:

- Updating how the individual budget amount is calculated after the New Freedom participant is assigned a classification as a result of an assessment performed in CARE.
- Updating how unused funds from New Freedom individual budgets will be maintained and/or returned to the department.
- Clarifying what services are available under the New Freedom waiver.
- Updating the role of a designated New Freedom representative to not allow payment as a personal care provider.
- New WAC to address institutionalized participants and their budgets.
- New WAC to address what services are not allowed under New Freedom.
- Adding two applicable definitions for clarity.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09-520.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Karen Fitzharris, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2446.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Karen Fitzharris, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2446, fax (360) 407-7582, e-mail Karen.digre-fitzharris@dshs.wa.gov.

December 30, 2009

Don Goldsby, Manager

Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-03 issue of the Register.

WSR 10-02-097
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed January 6, 2010, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-18-090.

Title of Rule and Other Identifying Information: The department is amending chapter 388-71 WAC, Home and community services and programs and chapter 388-106 WAC, Long-term care services.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on February 9, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 10, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on February 9, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by January 26, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending rules in chapters 388-71 and 388-106 WAC in accordance with chapter 571, Laws of 2009 (SHB 2361). The law prohibits the department from paying a home care agency licensed under chapter 70.127 RCW for medicaid funded in-home personal care or respite services if the care is provided to a client by a family member. The department may authorize exceptions based on the client's health and safety. These rules will not affect the amount, duration, or scope of the personal care or respite services benefit to which the client may be entitled.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, chapter 571, Laws of 2009 (SHB 2361).

Statute Being Implemented: Chapter 571, Laws of 2009 (SHB 2361); Washington state 2009-11 budget section 206(17) (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, Implementation and Enforcement: Bea Rector, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2527.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules are exempt, per RCW 19.85.025(3), rules the content of which is explicitly and specifically dictated by statute.

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

December 29, 2009

Don Goldsby, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-71-0515 What are the responsibilities of an individual provider or home care agency provider when employed to provide care to a client? An individual provider or home care agency provider must:

(1) Understand the client's plan of care that is signed by the client or legal representative and social worker/case manager, and translated or interpreted, as necessary, for the client and the provider;

(2) Provide the services as outlined on the client's plan of care, as defined in WAC 388-106-0010;

(3) Accommodate client's individual preferences and differences in providing care;

(4) Contact the client's representative and case manager when there are changes which affect the personal care and other tasks listed on the plan of care;

(5) Observe the client for change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately if the client dies;

(8) Notify the department or AAA immediately when unable to staff/serve the client; and

(9) Notify the department/AAA when the individual provider or home care agency will no longer provide services. Notification to the client/legal guardian must:

(a) Give at least two weeks' notice, and

(b) Be in writing.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws and regulations.

(12) A home care agency must not bill the department for in-home medicaid funded personal care or DDD respite services when the agency employee providing care is a family member of the client served, unless approved to do so through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership.

AMENDATORY SECTION (Amending WSR 07-24-026, filed 11/28/07, effective 1/1/08)

WAC 388-71-0540 When will the department, AAA, or ((~~managed care entity~~)) department designee deny payment for services of an individual provider or home care agency provider? The department, AAA, or department designee will deny payment for the services of a home care agency provider if the services are provided by an

employee of the home care agency who is related by blood, marriage, adoption, or registered domestic partnership to the client.

The department, AAA, or (~~managed care entity~~) department designee will deny payment for the services of an individual provider or home care agency provider who:

(1) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(2) Is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under medicaid personal care;

(3) Is a foster parent providing personal care to a child residing in their licensed foster home;

(4) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(5) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(6) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(7) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05865;

(8) Is already meeting the client's needs on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

(9) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

In addition, the department, AAA, or (~~managed care entity~~) department designee may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0546, 388-71-0551, and 388-71-0556.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-1303 What responsibilities do I have as a client of the department? As a client of the department, you have a responsibility to:

- (1) Give us enough information to assess your needs;
- (2) Let the social services worker into your home so that your needs can be assessed;
- (3) Follow your care plan;
- (4) Not act in a way that puts anyone in danger;
- (5) Provide a safe work place;
- (6) Tell your social services worker if there is a change in:
 - (a) Your medical condition;
 - (b) The help you get from family or other agencies;
 - (c) Where you live; or
 - (d) Your financial situation.
- (7) Tell your social services worker if someone else makes medical or financial decision for you;

(8) Choose a qualified provider;

(9) Inform the department and your home care agency if an employee assigned by the home care agency is related to you by blood, marriage, adoption, or registered domestic partnership.

(10) Keep provider background checks private;

~~((+0))~~ (11) Tell your social services worker if you are having problems with your provider; and

~~((+1))~~ (12) Choose your own health care. Tell your social services worker when you do not do what your doctor says.

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.

WSR 10-02-098

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed January 6, 2010, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-05-060.

Title of Rule and Other Identifying Information: The department is amending WAC 388-865-0420 Intake evaluation, 388-865-0425 Individual service plan, and 388-865-0430 Clinical record.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on February 9, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than February 10, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on February 9, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by January 26, 2010, 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 health and recovery services administration (HRSA) is proposing to amend the intake evaluation, individual treatment plan, and clinical record rules to allow mental health (MH) providers more flexibility in meeting the needs of individuals while still meeting the statutory requirements for collecting client history data.

Reasons Supporting Proposal: This proposal will allow MH intake workers the discretion to respond more immediately to an individual's issue without having to collect all the patient history information beforehand.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035 (5)(c), and 71.34.380.

Statute Being Implemented: RCW 71.05.560, 71.24.035 (5)(c), and 71.34.380.

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: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1344; Implementation and Enforcement: David Weston, P.O. Box 45320, Olympia, WA 98504-5320, (360) 725-1133.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not impose any new costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, phone (360) 725-1344, fax (360) 586-9727, e-mail sullikm@dshs.wa.gov.

December 29, 2009

Don Goldsby, Manager

Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 07-06-050, filed 3/2/07, effective 4/2/07)

WAC 388-865-0420 Intake evaluation. (1) ~~((The intake evaluation or brief intake evaluation must be provided by a mental health professional and:~~

~~(a) Be initiated prior to the provision of any noncrisis mental health services;~~

~~(b) Be initiated within ten working days of the request for services;~~

~~(c) Be developed in collaboration with the consumer;~~

~~(d) Be inclusive of input of people who provide active support to the consumer, if the consumer requests or if the consumer is under age thirteen;~~

~~(e) Be completed within thirty working days of the initiation of the intake evaluation; and~~

~~(f) Include a consent for treatment or a copy of detention or involuntary treatment order.~~

~~(2) Except as when a brief intake evaluation as described in WAC 388-865-0420(4) is provided, a full intake evaluation must include:~~

~~(a) A description of the presenting problem, presented needs;~~

~~(b) A description of the consumer's and family's strengths;~~

~~(c) Consumer's needs and desired outcomes in the consumer's own words;~~

~~(d) Consumer's culture/cultural history (including, but not limited to, ethnicity or race, and religion);~~

~~(e) History of other disorders, substance/alcohol abuse, developmental disability, any other relevant disability, and treatment, if any;~~

~~(f) Medical history, hospitalizations, treatment, past and current medications;~~

~~(g) Mental health services history, past and current medication;~~

~~(h) Assessment of suicide/homicide and self-harm risk. A referral for provision of emergency/ crisis services, consistent with WAC 388-865-0452, must be made if indicated in the risk assessment;~~

~~(i) Sufficient information to justify the provisional diagnosis;~~

~~(j) Documentation showing the consumer has been asked if they are under the supervision of the department of corrections or juvenile court;~~

~~(k) If the consumer is a child:~~

~~(i) Developmental history;~~

~~(ii) Parental goals and desired outcomes (if consent is obtained or not required due to age or state custody); and~~

~~(iii) Family and/or placement issues, including, if appropriate, family dynamics, placement disruptions, and current placement needs.~~

~~(3) If seeking any of the information required in subsection (2) of this section presents a barrier to the provision of services for the consumer, any portion of the intake may be left incomplete providing the reason for the omission is clearly documented in the clinical record.~~

~~(4) A brief intake evaluation may be used when it is reasonably believed services to the consumer will be completed within a six-month period. A brief intake evaluation may also be substituted for a full intake evaluation if a consumer is resuming services after being out of services for a period of less than twelve months and had received a full intake evaluation as part of the previous service provision. A brief intake evaluation must include:~~

~~(a) A description of presenting problem, presented needs, desired outcomes, and consumer strengths identified by both the consumer and the clinician;~~

~~(b) Sufficient information to justify the provisional diagnosis;~~

~~(c) The consumer's current physician and prescribed medications;~~

~~(d) Current and historical substance use/abuse or other co-occurring disorders including developmental disabilities;~~

~~(e) Mental health services history including past and current medications;~~

~~(f) Assessment of suicide/homicide and self-harm risk. A referral for provision of emergency/ crisis services, consistent with WAC 388-865-0452, must be made if indicated in the risk assessment;~~

~~(g) Documentation that the consumer has been asked if they are under the supervision by the department of corrections or juvenile court; and~~

~~(h) Identification of mutually agreed upon outcomes that are expected to be accomplished within the six-month period that will be the treatment plan. This treatment plan will be used in place of the treatment plan required in WAC 388-865-0425.~~

~~(5) In cases where a consumer initially receives services based on a brief intake evaluation, the community support service provider must complete the additional elements required in a full intake evaluation if the consumer is expected to continue to receive services after six months. In~~

these cases a treatment plan must be developed that meets all the requirements of WAC 388-865-0425.

(6) If seeking any of the information required in subsection (4) of this section presents a barrier to the provision of services for the consumer, any portion of the intake may be left incomplete providing the reason for the omission is clearly documented in the clinical record)) All individuals receiving community mental health outpatient services, with the exception of crisis, stabilization, and rehabilitation case management services, must have an intake evaluation. The purpose of an intake evaluation is to gather information to determine if a mental illness exists which is a covered diagnosis under Washington state's section 1915(b) capitated waiver program, and if there are medically necessary state plan services to address the individual's needs. (For a listing of the covered diagnoses and state plan services go to: http://www.dshs.wa.gov/pdf/hrsa/mh/Waiver_2008_2010_PiHP_NEW_%200408_with_final_revisions.pdf)

(2) The intake evaluation must:

(a) Be provided by a mental health professional.

(b) Be initiated within ten working days from the date on which the individual or their parent or other legal representative requests services and completed within thirty working days of the initiation of the intake.

(c) Be culturally and age relevant.

(d) Document sufficient information to demonstrate medical necessity as defined in the state plan, and must include:

(i) Presenting problem(s) as described by the individual. It must be inclusive of people who provide active support to the individual, if the individual so requests, or if the individual is under thirteen years of age;

(ii) Current physical health status, including any medications the individual is taking;

(iii) Current substance use and abuse and treatment status (GAIN-SS);

(iv) Sufficient clinical information to justify the provisional diagnosis using diagnostic and statistical manual (DSM) criteria, or its successor;

(v) An identification of risk of harm to self and others, including suicide/homicide;

(vi) Whether they are under the supervision of the department of corrections; and

(vii) A recommendation of a course of treatment.

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

WAC 388-865-0425 Individual service plan. ((Community support service providers must provide consumers with an individual service plan that meets his or her unique needs. Individualized and tailored care is a planning process that may be used to develop a consumer-driven, strength-based, individual service plan. The individual service plan must:

(1) Be developed collaboratively with the consumer and other people identified by the consumer within thirty days of starting community support services. The service plan should be in language and terminology that is understandable to con-

sumers and their family, and include goals that are measurable;

(2) Address age, cultural, or disability issues of the consumer;

(3) Include measurable goals for progress toward rehabilitation, recovery and reintegration into the mainstream of social, employment and educational choices, involving other systems when appropriate;

(4) Demonstrate that the provider has worked with the consumer and others at the consumer's request to determine his/her needs in the following life domains:

(a) Housing;

(b) Food;

(c) Income;

(d) Health and dental care;

(e) Transportation;

(f) Work, school or other daily activities;

(g) Social life; and

(h) Referral services and assistance in obtaining supportive services appropriate to treatment, such as substance abuse treatment.

(5) Document review by the person developing the plan and the consumer. If the person developing the plan is not a mental health professional, the plan must also document review by a mental health professional. If the person developing the plan is not a mental health specialist required per WAC 388-865-405(5) there must also be documented consultation with the appropriate mental health specialist(s);

(6) Document review and update at least every one hundred eighty days or more often at the request of the consumer;

(7) In the case of children:

(a) Be integrated with the individual education plan from the education system whenever possible;

(b) If the child is under three, the plan must be integrated with the individualized family service plan (IFSP) if this exists, consistent with Title 20, Section 1436)) In collaboration with the individual, or their parent or other legal representative if applicable, the clinician must develop a consumer-driven, strength-based individual service plan that meets the individual's unique mental health needs. The service plan must:

(1) Be initiated with at least one goal identified by the individual, or their parent or other legal representative if applicable, at the first session following the intake evaluation.

(2) Be developed within thirty days from the first session following the intake evaluation.

(3) Address age, cultural, or disability issues identified by the individual, or their parent or other legal representative if applicable, as relevant to treatment.

(4) Include treatment goals or objectives that are measurable and that allow the provider and individual to evaluate progress toward their identified recovery goals.

(5) Be in language and terminology that is understandable to individuals and their family.

(6) Identify medically necessary service modalities, mutually agreed upon by the individual and provider, for this treatment episode.

(7) Demonstrate the individual's participation in the development of the individual service plan. Participation

may be demonstrated by the individual's signature, individual's quotes, and/or individual's comments documented in the plan. If the provider developing the plan is not a mental health professional, the plan must also document review by a mental health professional.

(8) Include documentation that the individual service plan was reviewed at least every one hundred eighty days. It should also be updated to reflect any changes in the individual's treatment needs or as requested by the individual, or their parent or other legal representative if applicable.

(9) With the individual's consent, coordinate with any systems or organizations the individual identifies as being relevant to the individual's treatment. This includes coordination with any individualized family service plan (IFSP) when serving children under three years of age.

(10) If an individual disagrees with specific treatment recommendations or is denied a requested treatment service, they may pursue their rights under WAC 388-865-0255.

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

WAC 388-865-0430 Clinical record. The licensed community support service provider must maintain a clinical record for each ~~((consumer and safeguard the record against loss, defacement, tampering, or use by unauthorized persons))~~ individual served in a manner consistent with WAC 388-865-0435, 388-865-0436, or any successors. The clinical record must contain:

- (1) An intake evaluation;
- (2) Evidence that the consumer rights statement was provided to the ~~((consumer))~~ individual, or their parent or other legal representative if applicable;
- (3) ~~((A copy of any advance directives, powers of attorney or letters of guardianship provided by the consumer;))~~ Documentation that the provider requested a copy of and inserted into the clinical record if provided, any of the following:
 - (a) Mental health advance directives;
 - (b) Medical advance directives;
 - (c) Powers of attorney;
 - (d) Letters of guardianship, parenting plans and/or court order for custody;
 - (e) Least restrictive alternative order(s);
 - (f) Discharge summaries and/or evaluations stemming from outpatient or inpatient psychiatric services received within the last five years, when available.
- (4) ~~((The))~~ Any crisis ((treatment)) plan ((when appropriate)) that has been developed;
- (5) The ~~((individualized))~~ individual service plan and all ((changes in)) revisions to the plan;
- (6) Documentation that services are provided by or under the clinical supervision of a mental health professional;
- (7) Documentation ~~((that services are provided by, or under the clinical supervision, or the clinical))~~ of any clinical consultation ((of)) or oversight provided by a mental health specialist((-Consultation must occur within thirty days of admission and periodically thereafter as specified by the mental health specialist));

~~((Periodic))~~ Documentation of ((the course of treatment and));

(a) All service encounters;

(b) Objective progress toward established goals ((for rehabilitation, recovery and reintegration into the mainstream of social, employment and educational choices)) as outlined in the treatment plan; and

(c) How any major changes in the individual's circumstances were addressed.

~~((A notation of extraordinary events affecting the consumer;~~

~~((10))~~ Documentation ((of)) that any mandatory reporting of abuse, neglect, or exploitation ((of consumers)) consistent with chapters 26.44 and 74.34 RCW has occurred;

~~((11))~~ (10) Documentation that the department of corrections was notified by the provider when ((a consumer)) an individual on ((an)) a less restrictive alternative or department of corrections order for mental health treatment informs ((them)) the provider that ((they are)) individual is under supervision by department of corrections. Notification can be either written or oral. If oral notification, it must be confirmed by a written notice, including e-mail and fax. The disclosure to department of corrections does not require the person's consent((-);).

(a) If the individual has been given relief from disclosure by the committing court, the individual must provide a copy of the court order to the treating CMHA.

(b) There must be documentation that an evaluation by a designated mental health professional (DMHP) was requested in the following circumstance:

(i) The mental health provider becomes aware of a violation of the court-ordered treatment of an individual when the violation concerns public safety; and

(ii) The individual's treatment is a less restrictive alternative and the individual is being supervised by the department of corrections.

~~((12))~~ (11) ((If the consumer has been given relief by the committing court it must be confirmed in writing;

(13) When the mental health provider becomes aware of a violation that relates to public safety of court ordered treatment of a consumer who is both in a less restrictive alternative and is being supervised by the department of corrections, documentation that an evaluation by a designated mental health professional was requested;

~~((14))~~ Either documentation of informed consent to treatment ((and medications)) by the ((consumer)) individual or ((legally responsible other)) parent or other legal representative or if treatment is court ordered, a copy of the detention or involuntary treatment order;

(12) Documentation that the individual, or their parent or other legal representative if applicable, are informed about the benefits and possible side effects of any medications prescribed for the individual in language that is understandable;

~~((15))~~ (13) Documentation of confidential information that has been released without the consent of the ((consumer)) individual including, but not limited to provisions in RCW 70.02.050, 71.05.390 and 71.05.630;

(14) For individuals receiving community support services, the following information must be requested from the individual and the responses documented:

(a) The name of any current primary medical care provider;

(b) Any current physical health concerns;

(c) Current medications and any related concerns;

(d) History of any substance use/abuse and treatment;

(e) Any disabilities or special needs;

(f) Any previously accessed inpatient or outpatient services and/or medications to treat a mental health condition; and

(g) Information about past or current trauma and abuse.

(15) Demonstration of collaboration with the individual must include family or significant others as requested by the individual;

(16) A description of the individual's strengths and resources; and

(17) A description of the individual's self-identified culture.

WSR 10-02-103
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed January 6, 2010, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-18-101.

Title of Rule and Other Identifying Information: Chapter 296-400A WAC, Plumber certification rules.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA, on February 9, 2010, at 9:00 a.m.

Date of Intended Adoption: February 24, 2010.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by February 9, 2010.

Assistance for Persons with Disabilities: Contact Sally Elliott by January 20, 2010, at yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to review the plumber certification rules for house-keeping changes in order to further clarify the rules. The plumber certification rules are reviewed on a regular basis to: Ensure the rules are consistent with the national consensus standards, industry practice, and to clarify the rules.

The proposed amendments will:

- Require certified plumbers to carry their certification and photo identification with them on the jobsite, as a result of SHB 1055, which passed the 2009 legislature.
- Increase the plumber certification fees by 5.20%, which is the office of financial management's (OFM) maximum allowable fiscal growth rate factor for fiscal year 2010.
- Expand an exemption for plumbing trainees that are not in an apprenticeship as defined by chapter 49.04 RCW to a plumber trainee.

- Make additional housekeeping changes to further clarify the rules. For example, add a definition for "course of study" so applicants know what training classes are needed before they can take the written examination.

Statutory Authority for Adoption: Chapter 18.106 RCW, chapter 36, Laws of 2009 (SHB 1055), and chapter 464, Laws of 2009 (ESHB 1244).

Statute Being Implemented: Chapter 18.106 RCW, chapter 36, Laws of 2009 (SHB 1055), and chapter 464, Laws of 2009 (ESHB 1244).

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: Pete Schmidt, Tumwater, Washington, (360) 902-5571; Implementation and Enforcement: Steve McInain, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is specifically exempt from the small business economic impact statement (SBEIS) requirement because since the proposed changes will clarify rule language without changing its effect (see RCW 19.85.025 referencing RCW 34.05.310 (4)(d)). The fee increase is exempt from an SBEIS under RCW 19.85.025 referencing RCW 34.05.310 (4)(f), since the fee increase is based upon the OFM's maximum allowable fiscal growth rate factor for fiscal year 2009.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is specifically exempt from the cost-benefit analysis (CBA) requirement because the proposed changes will clarify rule language without changing its effect (see RCW 34.05.328 (5)(b)(iv)). The fee increase is exempt from a CBA under RCW 34.05.328 (5)(b)(vi), since the fee increase is based upon the OFM's maximum allowable fiscal growth rate factor for fiscal year 2009.

January 6, 2010

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-005 What definitions do I need to know to understand these rules? Unless a different meaning is clearly required by the context, the following terms and definitions are important:

"Advisory board" is the state advisory board of plumbers.

"Audit" means an assessment, evaluation, examination or investigation of, contractor's accounts, books and records for the purpose of verifying the contractor's compliance with RCW 18.106.320.

"Backflow assembly" or **"backflow prevention assembly"** or **"backflow preventer"** is a device as described in the *Uniform Plumbing Code* used to prevent the undesired reversal of flow of water or other substances through a cross-connection into the public water system or consumer's potable water system.

"Backflow assembly tester" is an individual certified by the department of health to perform tests to backflow assemblies.

"Continuing education" is approved plumbing and electrical courses for journeymen, domestic pump specialty plumbers, and residential specialty plumbers, to meet the requirements to maintain their plumbing certification and for trainees or individuals to become certified plumbers in Washington.

"Continuing education course provider" is an entity approved by the department, in consultation with the state advisory board of plumbers, to provide continuing education training for journeymen, domestic pump specialty plumbers, residential specialty plumbers, and trainees. All training course providers must comply with the requirements in WAC 296-400A-028.

"Continuity affidavit" is a form developed by the department that is used to verify whether medical gas pipe installation work (brazing process) has been performed biannually. This form is provided to the department annually by the person holding the medical gas piping installer endorsement and requires the signature of the employer of the medical gas piping installer or another qualified verifier as determined by the department. Continuity is a visual examination by the employer of the brazing that was performed.

"Contractor" means any person, corporate or otherwise, who engages in, or offers or advertises to engage in, any work covered by the provisions of chapter 18.106 RCW by way of trade or business, or any person, corporate or otherwise, who employs anyone, or offers or advertises to employ anyone, to engage in any work covered by the provisions of chapter 18.106 RCW and is registered as a contractor under chapter 18.27 RCW.

"Course of study" means classroom training and practical work experience in the plumbing industry as defined in WAC 296-400A-100.

"Department" is the department of labor and industries.

"Director" is the director of the department of labor and industries.

"Dispatcher" means the contractor's employee who authorized the work assignment of the person employed in violation of chapter 18.106 RCW.

~~("Department" is the department of labor and industries.~~

~~"Director" is the director of the department of labor and industries.))~~

"Journeyman plumber" is anyone who has learned the commercial plumbing trade and has been issued a journeyman certificate of competency by the department. A journeyman plumber may work on plumbing projects including residential, commercial and industrial worksite locations.

"Medical gas piping installer" is anyone who has been issued a medical gas piping installer endorsement of competency by the department.

"Medical gas piping systems" are piping systems that convey or involve oxygen, nitrous oxide, high pressure nitrogen, medical compressed air, or medical vacuum systems.

"Plumbing" is that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems and medical gas piping systems in the footprint of a

building. Potable water systems, liquid waste systems, and medical gas piping systems are defined by the current *Uniform Plumbing Code* (UPC) and amendments adopted by the state building code council. All piping, fixtures, pumps and plumbing appurtenances that are used for a reclaimed water system are included in the definition of liquid waste systems. The installation of water softening or water treatment equipment into a water system is not considered plumbing.

"Records" include, but are not limited to, all bids, invoices, billing receipts, time cards and payroll records that show the work was performed, advertised, or bid.

"Specialty plumber" is anyone who has been issued a specialty plumbers certificate of competency by the department limited to:

(a) Installation, maintenance and repair of plumbing for single-family dwellings, duplexes and apartment buildings which do not exceed three stories;

(b) Maintenance and repair of backflow assemblies located within a residential or commercial building or structure. For the purposes of this subsection, "maintenance and repair" includes cleaning and replacing internal parts of an assembly, but does not include installing or replacing backflow assemblies.

(c) "Domestic pump specialty" means the installation, maintenance, and repair of a domestic water pumping system consisting of the pressurization, treatment, and filtration components of a domestic water system consisting of: One or more pumps; pressure, storage, and other tanks; filtration and treatment equipment; if appropriate, a pitless adapter; along with valves, transducers, and other plumbing components that:

(i) Are used to acquire, treat, store, or move water suitable for either drinking or other domestic purposes, including irrigation, to:

(A) A single-family dwelling, duplex, or other similar place of residence;

(B) A public water system, as defined in RCW 70.119-.020 and as limited under RCW 70.119.040; or

(C) A farm owned and operated by a person whose primary residence is located within thirty miles of any part of the farm;

(ii) Are located within the interior space, including but not limited to an attic, basement, crawl space, or garage, of a residential structure, which space is separated from the living area of the residence by a lockable entrance and fixed walls, ceiling, or floor;

(iii) If located within the interior space of a residential structure, are connected to a plumbing distribution system supplied and installed into the interior space by either:

(A) A person who, pursuant to RCW 18.106.070 or 18.106.090, possesses a valid temporary permit or certificate of competency as a journeyman plumber, specialty plumber, or trainee, as defined in this chapter; or

(B) A person exempt from the requirement to obtain a certified plumber to do such plumbing work under RCW 18.106.150.

For the purposes of the domestic pump specialty, residential structure includes any improvement to real property where that property is primarily used as a residence.

"Story" is defined by the current building codes and amendments adopted by the state building code council which includes basements or garages.

"Supervision" for the purpose of these rules means within sight or sound. Supervision requirements are met when the supervising plumber is on the premises and within sight or sound of the individual who is being trained.

"Trainee plumber" is anyone who has been issued a trainee certificate and is learning or being trained in the plumbing trade with direct supervision of either a journeyman plumber or specialty plumber working in their specialty.

"Training course provider" is an entity approved by the department, in consultation with the state advisory board of plumbers, to provide medical gas piping installer training. All training course providers must comply with the requirements in WAC 296-400A-026.

~~("Trainee plumber" is anyone who has been issued a trainee certificate and is learning or being trained in the plumbing trade with direct supervision of either a journeyman plumber or specialty plumber working in their specialty.)~~

AMENDATORY SECTION (Amending WSR 05-11-061, filed 5/17/05, effective 6/30/05)

WAC 296-400A-022 What procedure is required for renewal of a journeyman medical gas endorsement? (1)

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-045 What fees will I have to pay? The following are the department's plumbers nonrefundable fees:
 ((+)) Fees related to journeyman and specialty plumber certification:

Maintain an active Washington state journeyman certification((;)).

(2) Submit affidavit of continuity((;)).

(3) Submit affidavit of review of current medical gas code adopted by the Washington state building code council((;)).

(4) Pay the appropriate fee: If renewal occurs before expiration of current endorsement, the renewal fee shown in WAC 296-400A-045; if renewal occurs within ninety days of expiration of current endorsement, you must pay a double renewal fee; if the current endorsement has been expired for ninety-one days or more, you must take an examination relating to medical gas installation administered by the department and pay the examination application fee shown in WAC 296-400A-045((; and)). Medical gas endorsement is renewed every two years.

(5) Contractors shall accurately verify and attest to brazing performed by the journeyman by sending an affidavit to the department or in lieu of the biannual braze requirement from the contractor, a performed brazed coupon test documenting that the coupon was certified as passing from a department approved medical gas training course provider would be accepted.

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Examination application	Per examination	\$(133.00) <u>139.90</u>
Domestic pump specialty application fee*****	Per application	\$(133.00) <u>139.90</u>
Reciprocity application*	Per application	\$(133.00) <u>139.90</u>
Trainee certificate**	One year or when hours are updated	\$(39.70) <u>41.70</u>
Temporary permit (not applicable for backflow assembly maintenance and repair specialty)	((90)) <u>120</u> days	\$(66.10) <u>69.50</u>
Journeyman or residential specialty certificate <u>renewal or 1st card</u> ***	Two years ((fee may be prorated based on months))	\$(106.50) <u>112.00</u>
Domestic pump specialty plumber certificate <u>renewal or 1st card</u> ***	Three years ((fee may be prorated based on months))	\$(159.80) <u>168.10</u>
Backflow assembly maintenance and repair specialty certificate <u>renewal or 1st card</u> ***	Two years ((fee may be prorated based on months))	\$(73.50) <u>77.30</u>
Medical gas endorsement application	Per application	\$(49.00) <u>51.50</u>
Medical gas endorsement <u>renewal or 1st card</u> ***	((One)) <u>Two</u> years	\$(36.60) <u>77.00</u>
Medical gas endorsement examination fee****		See note below.
Medical gas endorsement training course fee*****		See note below.
Domestic pump specialty examination fee****		See note below.
Reinstatement fee for residential and journeyman certificates		\$(213.50) <u>224.60</u>

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Reinstatement fee for backflow assembly maintenance and repair specialty certificates		\$((122.90)) <u>129.20</u>
Reinstatement fee for domestic pump		\$((319.70)) <u>336.30</u>
Replacement fee for all certificates		\$((18.00)) <u>18.90</u>
Refund processing fee		\$((28.70)) <u>30.10</u>
Unsupervised trainee endorsement		\$((28.70)) <u>30.10</u>
Inactive status fee		\$((28.70)) <u>30.10</u>
Honorary plumbing certification		\$((406.50)) <u>120.00</u>
Certified letter fee/ <u>verification of licensure</u>		\$((28.70)) <u>30.10</u>
<u>Documents copied from a plumber's file</u>		<u>\$2.00 per page maximum copy charge \$30.00</u>
Continuing education new course fee*****		\$((173.00)) <u>181.90</u>
Continuing education renewal course fee*****		\$((86.40)) <u>90.80</u>
Continuing education classes provided by the department		\$12 per continuing education training hour \$8 per continuing education training hour for correspondence and internet courses

* Reciprocity application is only allowed for applicants that are applying work experience toward certification that was obtained in state(s) with which the department has a reciprocity agreement. The reciprocity application is valid for one year.

** The trainee certificate shall expire one year from the date of issuance and must be renewed on or before the date of expiration. ~~((Updating a training certificate is optional and not required.))~~ Trainee update fee required when hours are submitted outside of renewal period.

*** This fee applies to either the original issuance or a renewal of a certificate. If you have passed the plumbers certificate of competency examination or the medical gas piping installer endorsement examination and paid the certificate fee, you will be issued a plumber certificate of competency or a medical gas endorsement that will expire on your birth date.
The ~~((annual))~~ two-year renewal of a Medical Gas Piping Installer Endorsement shall include a continuity affidavit verifying that brazing work has been performed ~~((biannually))~~ every six months during the renewal cycle.

**** This fee is paid directly to a nationally recognized testing agency under contract with the department. It covers the cost of preparing and administering the written competency examination and the materials necessary to conduct the practical competency examination required for the medical gas piping system installers endorsement or the domestic pump or pump and irrigation examination. This fee is not paid to the department.

***** This fee is paid directly to a training course provider approved by the department, in consultation with the state advisory board of plumbers. It covers the cost of providing training courses required for the medical gas piping system installer endorsement. **This fee is not paid to the department.**

***** This fee is for a three-year period or code cycle.

***** The domestic pump specialty application is valid for one year.

~~((2)) If your birth year is:~~

~~((a) In an even-numbered year, your certificate will expire on your birth date in the next even-numbered year.~~

~~((b) In an odd-numbered year, your certificate will expire on your birth date in the next odd-numbered year.))~~

AMENDATORY SECTION (Amending WSR 02-14-074, filed 6/28/02, effective 7/1/02)

WAC 296-400A-100 For certification purposes, how are "years of employment" computed and documented?

(1) For certification purposes, 2,000 hours of employment is considered one year. See RCW 18.106.070(2).

(2) When you renew your certificate, you must document your previous years' plumbing work by accurately completing the department's approved form and submitting it to the department.

(3) If you have completed a one, two, three, four or more years plumbing construction trainee program, you must have the necessary training hours for the year in which you are registered. No more than fifty percent of the minimum work experience needed to qualify for plumbing certification is allowed for any training school program. See RCW 18.106.-040.

(4) Subsections (1) through (3) of this section do not apply to the backflow assembly maintenance and repair specialty certification as years of employment are not required for this specialty. Applicants for this specialty designation are required to have fulfilled the requirements in WAC 296-400A-122 and pay the applicable fees in WAC 296-400A-045(2).

(5) Experience obtained as a backflow assembly maintenance and repair specialty may not be applied toward journeyman or specialty plumber certification.

(6) For experience in another country, if an individual has a journeyman plumbing certificate from a country outside the United States that requires that at least four years of plumbing construction training and certification is obtained by examination, the individual may be eligible for four thousand hours of the specialty credit allowed towards the qualification to take the Washington journeyman plumbers examination. No more than two years of the required training to become a Washington journeyman plumber may be for work

described for specialty plumbers or technicians in WAC 296-400A-010. In addition to the maximum of four thousand hours credit that may be allowed by this subsection, an additional four thousand hours of new commercial/industrial experience must be obtained using a training certificate in the state while under the supervision of a journeyman plumber. Documentation substantiating the individual's out-of-country experience must be submitted in English.

(7) Out of country experience credit is not allowed toward a specialty plumbing certificate.

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-120 What do I need to know about plumber trainee certificates (excluding backflow assembly maintenance and repair specialty certification)? (1) Journeyman and specialty plumber trainee certification:

(a) Original trainee certificates. The department will issue an original trainee certificate when the trainee applicant submits a complete trainee certificate application including:

- (i) Date of birth, mailing address, Social Security number; and
- (ii) All appropriate fees as listed in WAC 296-400A-045.
- (iii) If an individual has previously held a plumbing trainee certificate, then that individual is not eligible for a subsequent original trainee certificate.

All applicants for a plumbing trainee certificate must be at least sixteen years of age and must follow requirements as defined in WAC 296-125-030.

(b) Renewal. The department issues separate trainee certificates once a year.

(c) The plumbing trainee may not apply for renewal more than ninety days prior to the expiration date. Plumber trainee certificates are valid for one year.

(d) All applicants for trainee certificate of renewal must:

- (i) Submit a complete renewal application;
- (ii) Pay all appropriate fees; and
- (iii) Provide accurate evidence on the renewal form that the individual has completed the continuing education requirements described in chapter 296-400A WAC.

(e) If an individual files inaccurate or false evidence of continuing education information when renewing a plumbing trainee certificate, the individual's certificate may be suspended or revoked.

(f) An individual who has not completed the required hours of continuing education cannot renew a trainee certificate.

(g) Individuals will not be able to apply to test for journeyman plumber, domestic pump specialty plumber, or residential specialty plumber certificates until the continuing education requirements have been met.

(h) If continuing education hours have not been met, trainee certificates will become expired and any experience obtained by the trainee in expired status will not be credited toward plumbing certificate application.

(i) An individual may renew an expired certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education

required for renewal. However, the certificate will remain in an expired status for the duration of the expired period.

(j) An individual may not renew a revoked trainee certificate.

(k) Apprentices registered in an approved program according to chapter 49.04 RCW who are obtaining classroom training consistent with the continuing education requirements under chapter 18.106 RCW and this chapter, as approved by the department, are deemed to have met the continuing education requirements necessary to renew a trainee certificate. Included under this exemption are active trainees that are not in the formal approved program according to chapter 49.04 RCW but are taking all required classroom training along with the apprentices and meeting the work experience as required under chapter 18.106 RCW and this chapter. The plumber craft training school shall be required to supply the department the necessary documentation to prove attendance of these trainees while they attend the classroom training.

(l) If you are a trainee applying for a journeyman certificate, you must complete a minimum of two of the required four years in commercial plumbing experience.

(m) A certified residential specialty plumber or domestic pump specialty plumber working on a commercial job site may work as a journeyman trainee only if they have a current trainee certificate on their person while performing commercial plumbing work.

(n) On a job site, the ratio of certified plumbers to non-certified plumbers must be:

(i) One residential specialty plumber or journeyman working on a residential plumbing job site may supervise no more than two trainees.

(ii) One journeyman plumber working on a commercial job site may supervise no more than one trainee or one residential specialty plumber who holds a current trainee certificate.

(iii) One appropriate domestic pump specialty plumber or one journeyman plumber working on a domestic pump system may supervise no more than two trainees.

(o) A plumber trainee who has a current trainee certificate with the state of Washington and has successfully completed or is enrolled in an approved medical gas piping installer training course may work on medical gas piping systems. Work may only occur when there is direct supervision by an active Washington state certified journeyman plumber with an active medical gas piping installer endorsement issued by the department. Supervision must be one hundred percent of the working day on a one-to-one ratio.

(p) Plumber trainee shall renew the certificate annually but not more than ninety days before the expiration date.

(q) The trainee will not be issued a renewed or reinstated training certificate if the individual owes the department money as a result of an outstanding final judgment.

(r) Trainee hours will not be credited if the trainee owes outstanding penalties for violations of this chapter.

(2) At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the plumbing construction industry for the previous annual period. The individual must submit a completed, signed, and

notarized affidavit(s) of experience. The affidavit of experience must accurately attest to:

(a) The plumbing installation work performed for each employer the individual worked for in the plumbing trade during the previous period;

(b) The correct plumbing category the individual worked in; and

(c) The actual number of hours worked in each category, worked under the proper supervision of a Washington certified journeyman plumber, certified domestic pump specialty plumber, or residential specialty plumber.

(3) The trainee should ask each employer and/or apprenticeship-training director for an accurately completed, signed, and notarized affidavit of experience for the previous certification period. The employer(s) or apprenticeship training director(s) must provide the previous period's affidavit of experience to the individual within twenty days of the request.

(4) If hours for previous period are not submitted within the thirty days after renewing a plumbing training certificate, the individual may not receive credit for these previous period hours.

AMENDATORY SECTION (Amending WSR 04-12-046, filed 5/28/04, effective 6/30/04)

WAC 296-400A-140 How does the department enforce plumbers certification requirements? The department enforces plumber certification requirements by means of job-site inspections conducted by an authorized representative of the department. The representative must determine whether:

(1) Each person doing plumbing (~~(work)~~) has (~~(a proper certificate on their person)~~) their department issued certification card and governmental issued photo identification in their possession on the job site; and

(2) The ratio of certified specialty and/or journeyman plumbers to certified trainees is correct; and

(3) Each certified trainee is directly supervised by either a certified specialty plumber or a certified journeyman; and

(4) Persons who are installing medical gas piping systems have active medical gas piping installer endorsements in addition to their active plumber certification(~~(-)~~); and

(5) Persons who are certified as backflow assembly maintenance and repair specialties (~~(must)~~) have an active backflow assembly tester certification from the department of health.

AMENDATORY SECTION (Amending WSR 09-10-080, filed 5/5/09, effective 6/5/09)

WAC 296-400A-300 What procedures does the department follow when issuing a notice of infraction? (1) If an authorized representative of the department determines that an individual has violated plumber certification requirements, including medical gas piping installer endorsement requirements, the department must issue a notice of infraction describing the reasons for the infraction.

(2) For plumber certification violations, the department may issue a notice of infraction to:

(a) An individual who is plumbing without a current plumber certificate; and

(b) The employer of the individual who is plumbing without a current plumber certificate; and

(c) The employer's authorizing agent or foreman that made the work assignment to the individual who is plumbing without a current plumber certificate; and

(d) An individual for not having their department issued certification card and governmental issued photo identification in their possession on the job site.

(3) For medical gas piping installer endorsement violations, the department may issue a notice of infraction to:

(a) An individual who is installing medical gas piping systems without a current plumber certificate and a current medical gas piping installer endorsement; and

(b) The employer of the individual who is installing medical gas piping systems without a current plumber certificate and a current medical gas piping installer endorsement; and

(c) The employer's authorizing agent or foreman that made the work assignment to the individual who is installing medical gas piping systems without a current plumber certificate and a current medical gas piping installer endorsement; and

(d) An individual for not having their department issued certification card and governmental issued photo identification in their possession on the job site.

(4) The department may issue an infraction to a contractor advertising or performing work under this chapter or chapter 18.27 RCW who is not properly registered under chapter 18.27 RCW.

(5) An individual may appeal a notice of infraction by complying with the appropriate provisions of RCW 18.106.-220.

(6) If good cause is shown, an administrative law judge may waive, reduce or suspend any monetary penalties resulting from the infraction.

(7) Any monetary penalties collected under this chapter, must be deposited in the plumbing certificate fund.

AMENDATORY SECTION (Amending WSR 04-12-046, filed 5/28/04, effective 6/30/04)

WAC 296-400A-400 What are the monetary penalties for violating certification requirements? (1) A person cited for an infraction under (~~(RCW 18.106.020 or 18.106.-320)~~) chapter 18.106 RCW or this chapter shall be assessed a monetary penalty based upon the following schedule:

(a) Individual

First Infraction	\$250.00
Second Infraction	\$500.00
Third Infraction	\$750.00
Fourth and each additional infraction	Not more than \$1,000.00

(b) Contractor or dispatcher

First Infraction	\$250.00
Second Infraction	\$500.00
Third and each additional infraction	Not more than \$1,000.00

(2) Each day a person is in violation is considered a separate infraction.

(3) Each job site at which a person is in violation is considered a separate infraction.