

WSR 10-21-045
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed October 13, 2010, 2:40 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-228 Returns, payments, penalties, extensions, interest, stay of collection, this rule discusses the responsibility of taxpayers to pay their tax by the appropriate due date, acceptable methods of payment, and the resulting interest and penalties imposed by law when they fail to pay the correct amount of tax by the due date. It also discusses the circumstances under which the law allows for waiver of interest and/or penalties.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kristine Rompa, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail KristineR@dor.wa.gov, AND RECEIVED BY December 20, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend WAC 458-20-228 (Rule 228) to recognize provisions of Part II, 2ESSB [6143] (chapter 23, Laws of 2010). This legislation established a thirty-five percent penalty on additional tax found to be due when a taxpayer engages in a disregarded tax avoidance transaction. The department proposes to add the following language to Rule 228:

Subsection (5):

(j) **Engaging in disregarded transactions.** Chapter 23 (2ESSB 6143), Laws of 2010 1st sp. sess. imposes a thirty-five percent penalty for engaging in a disregarded transaction as defined in RCW 82.32.655(3). See RCW 82.32.090, 82.32.655, and 82.32.660.

Subsection (6):

(c) The penalty provided in subsection (5)(j) of this section may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (5)(f) of this section.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: To recognize 2010 legislation.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.32.090.

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

Name of Proponent: Department of revenue, governmental.

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October 13, 2010

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-07-134, filed 3/23/10, effective 4/23/10)

WAC 458-20-228 Returns, payments, penalties, extensions, interest, stay of collection. (1) **Introduction.** This section discusses the responsibility of taxpayers to pay their tax by the appropriate due date, and the acceptable methods of payment. It discusses the interest and penalties that are imposed by law when a taxpayer fails to pay the correct amount of tax by the due date. It also discusses the circumstances under which the law allows the department of revenue (department) to waive interest or penalties.

(a) **Where can I get my questions answered, or learn more about what I owe and how to report it?** Washington's tax system is based largely on voluntary compliance. Taxpayers have a legal responsibility to become informed about applicable tax laws, to register with the department, to seek instruction from the department, to file accurate returns, and to pay their tax liability in a timely manner (chapter 82.32A RCW, Taxpayer rights and responsibilities). The department has a taxpayer services program to provide taxpayers with accurate tax-reporting assistance and instructions. The department staffs local district offices, maintains a toll-free question and information phone line (1-800-647-7706), provides information and forms on the internet (<http://dor.wa.gov>), and conducts free public workshops on tax reporting. The department also publishes notices, interpretive statements, and sections discussing important tax issues and changes. It's all friendly, free, and easy to access.

(b) **What is electronic filing (or e-file), and how can it help me?** (~~Many common reporting errors are preventable when taxpayers take advantage of the department's electronic filing (e-file) system.~~) E-file is an internet-based application that provides a secure and encrypted way for taxpayers to file and pay many of Washington state's business related excise taxes on-line. The e-file system (~~helps taxpayers by performing all the~~) **automatically performs** math calculations and (~~checking~~) **checks** for other types of reporting errors. **Using e-file to file electronically will help taxpayers avoid penalties and delinquencies.** Persons who wish to use e-file should access the department's internet site (<http://dor.wa.gov>) and open the page for electronic filing, which has additional links to pages answering frequently asked questions, and explaining the registration process for e-file. Taxpayers may also call the department's toll-free electronic filing help desk for more information, during regular business hours.

Chapter 176, Laws of 2009 (Substitute Senate Bill No. 5571) requires all taxpayers who have been assigned a monthly reporting frequency to electronically file and pay their taxes. The requirement for electronic filing and payment also includes taxpayers who meet the criteria for being assigned to a monthly reporting frequency, but who have been authorized by the department to file and remit taxes on a less frequent basis. The requirement to file and pay electronically is effective beginning with the July 2009 excise tax return due on August 25th. For more detailed information on the requirement and exceptions for electronic filing (e-file) and electronic payment (e-pay), see WAC 458-20-22802 (Electronic filing and payment).

(c) **Index of subjects addressed in this section:**

Topic—Description	See subsection
Where can I get my questions answered, or learn more about what I owe and how to report it? - By phone or on-line, the department provides a number of free and easy resources to help you find answers. ((One of them is right for you.))	(1)(a) of this section, (see above)
What is electronic filing (or e-file), and how can it help me? - E-filing guides you through the return and helps you avoid many common mistakes.	(1)(b) of this section, (see above)
Do I need to file a return? - How do I get returns and file them? Can I file my returns electronically? Some taxpayers are required to file and pay electronically.	(2) of this section
What methods of payment can I use? - What can I use to pay my taxes?	(3) of this section
When is my tax payment due? - Different reporting frequencies can have different due dates. What if the due date is a week-end or a holiday? If my payment is in the mail on the due date, am I late or on time?	(4) of this section
Penalties - What types of penalty exist? How big are they? When do they apply?	(5) of this section
Statutory restrictions on imposing penalties - More than one penalty can apply at the same time, but there are restrictions. Which penalties can be combined?	(6) of this section
Interest - In most cases interest is required. What interest rates apply? How is interest applied?	(7) of this section
Application of payment towards liability - Interest, penalties, and taxes are paid in a particular order. If my payment doesn't pay the entire liability, how can I determine what parts have been paid?	(8) of this section

Topic—Description	See subsection
Waiver or cancellation of penalties - I think I was on time, or I had a good reason for not paying the tax when I should have. What reasons qualify me for a waiver of penalty? How can I get a penalty removed?	(9) of this section
Waiver or cancellation of interest - Interest will only be waived in two limited situations. What are they?	(10) of this section
Interest and penalty waiver for active duty military personnel - Is a majority owner of the business on active duty with the military? BOTH interest and penalty can be waived if all the statutory requirements are met. What are the requirements?	(11) of this section
Stay of collection - Revenue will sometimes temporarily delay collection action on unpaid taxes. When can this happen? Can I request that revenue delay collection?	(12) of this section
Extensions - Can I get an extension of my due date? How long does an extension last? A special extension may be available if the governor proclaims a state of emergency in your area.	(13) of this section

(2) **Do I need to file a return?** A "return" is defined as any paper or electronic document a person is required to file by the state of Washington in order to satisfy or establish a tax or fee obligation which is administered or collected by the department, and that has a statutorily defined due date. RCW 82.32.090(8). Note: Some taxpayers are required to file and pay their returns electronically. Please refer to WAC 458-20-22802 (Electronic filing and payment) to determine if you are included under this filing requirement, and to find more information on the process.

(a) Returns and payments are to be filed with the department by every person liable for any tax which the department administers and/or collects, except for the taxes imposed under chapter 82.24 RCW (Tax on cigarettes), which are collected through sales of revenue stamps. Returns must be made upon forms, through the electronic filing (e-file) system (see subsection (1)(b) of this section), or by other means, provided or accepted by the department.

(i) The department provides tax returns upon request. If a taxpayer does not create an on-line account with the department for electronic filing (e-file), the department will mail returns when that taxpayer opens an active tax reporting account, and will continue to mail returns prior to each due date of the tax. However, it remains the responsibility of that taxpayer to timely request a return if one is not received, or to otherwise insure that the return is filed in a timely manner. Blank returns for past and present reporting periods are available for download from the department's web site prior to the due date.

(ii) E-file taxpayers do not receive paper returns. However, if an e-file taxpayer specifically requests it, the department will send an electronic reminder for each upcoming return as the time to file approaches.

(b) Taxpayers whose accounts are placed on an "active nonreporting" status do not automatically receive a tax return and must request a return, or register to file by e-file, if they no longer qualify for this reporting status. (See WAC 458-20-101, Tax registration, for an explanation of the active nonreporting status.)

(c) Some consumers may not be required to register with the department and obtain a tax registration endorsement. (Refer to WAC 458-20-101 for detailed information about tax registration and when it is required.) But even if they do not have to be registered, consumers may be required to pay use tax directly to the department if they have purchased items without paying Washington's sales tax. An unregistered consumer must report and pay their use tax liability directly to the department. Use tax can be reported and paid on a "Consumer Use Tax Return" or the consumer can create an on-line account at the department's web site to conveniently report and pay use tax electronically. Consumer use tax returns are available from the department at any of the local district offices. A consumer may also call the department's toll free number 1-800-647-7706 to request a consumer use tax return by fax or mail. Finally, the consumer use tax return is available for download from the department's internet site at <http://dor.wa.gov>, along with a number of other returns and forms which are available there.

The interest and penalty provisions of this rule may apply if use tax is not paid on time. Unregistered consumers should refer to WAC 458-20-178 (Use tax) for an explanation of their tax reporting responsibilities.

(3) **What methods of payment can I use?** Payment may be made by cash, check, cashier's check, money order, and in certain cases by electronic funds transfers, or other electronic means approved by the department.

(a) Payment by cash should only be made at an office of the department to ensure that the payment is safely received and properly credited.

(b) Payment may be made by uncertified bank check, but if the check is not honored by the financial institution on which it is drawn, the taxpayer remains liable for the payment of the tax, as well as any applicable interest and penalties. RCW 82.32.080. The department may refuse to accept any check which, in its opinion, would not be honored by the financial institution on which that check is drawn. If the department refuses a check for this reason the taxpayer remains liable for the tax due, as well as any applicable interest and penalties.

(c) The law requires that certain taxpayers file and pay their taxes electronically. The department notifies taxpayers who are required to pay their taxes in this manner, and can explain how to set up a method of electronic payment. (See WAC 458-20-22802 for more information on electronic filing and payment.)

(4) **When is my tax payment due?** RCW 82.32.045 provides that payment of the taxes due with the excise tax return must be made monthly and within twenty-five days after the end of the month in which taxable activities occur,

unless the department assigns the taxpayer a longer reporting frequency. Payment of taxes due with returns covering a longer reporting frequency are due on or before the last day of the month following the period covered by the return. (For example, payment of the tax liability for a first quarter tax return is due on April 30th.) WAC 458-20-22801 (Tax reporting frequency—Forms) explains the department's procedure for assigning a quarterly or annual reporting frequency.

(a) If the date for payment of the tax due on a tax return falls upon a Saturday, Sunday, or legal holiday, the filing will be considered timely if performed on the next business day. RCW 1.12.070 and 1.16.050.

(b) When a taxpayer is not required to electronically file and pay taxes and chooses to file or pay taxes through the U.S. Postal Service, the postmark date as shown by the post office cancellation mark stamped on the envelope will be considered conclusive evidence by the department in determining if a tax return or payment was timely filed or received. RCW 1.12.070. It is the responsibility of the taxpayer to mail the tax return or payment sufficiently in advance of the due date to assure that the postmark date is timely.

(c) Some taxpayers are required to file and pay taxes electronically. Refer to WAC 458-20-22802 (Electronic filing and payment) for more information regarding electronic filing (e-file), electronic payment (e-pay) due dates, and when electronic payments are considered received.

(d) If a taxpayer suspects that it will not be able to file and pay by the coming due date, it may be able to obtain an extension of the due date to temporarily avoid additional penalties. Refer to subsection (12) of this section for details on requesting an extension.

(5) **Penalties.** Various penalties may apply as a result of the failure to correctly or accurately compute the proper tax liability, or to timely pay the tax. Separate penalties may apply and be cumulative for the same tax. Interest may also apply if any tax has not been paid when it is due, as explained in subsection (7) of this section. (The department's electronic filing system (e-file) can help taxpayers avoid additional penalties and interest. See subsection (1)(b) of this section for more information.)

The penalty types and rates addressed in this subsection are:

Penalty Type—Description	Penalty Rate	See subsection
Late payment of a return - Five percent added when payment is not received by the due date, and increases if the tax due remains unpaid.	5/15/25%	(5)(a) of this section
Unregistered taxpayer - Five percent added against unpaid tax when revenue discovers a taxpayer who has taxable activity but is not registered.	5%	(5)(b) of this section

Penalty Type—Description	Penalty Rate	See subsection
Assessment - Five percent added when a tax assessment is issued if the tax was "substantially underpaid," and increases if the tax due remains unpaid.	5/15/25% or 0/15/25%	(5)(c) of this section
Issuance of a warrant - Ten percent added when a warrant is issued to collect unpaid tax, and does not require actual filing of a lien.	10%	(5)(d) of this section
Disregard of specific written instructions - Ten percent added when the department has provided specific, written reporting instructions and tax is underpaid because the instructions are not followed.	10%	(5)(e) of this section
Evasion - Fifty percent added when tax is underpaid and there is an intentional effort to hide that fact.	50%	(5)(f) of this section
Misuse of resale certificates or a reseller permit - Fifty percent added against unpaid sales tax when a buyer uses a resale certificate or reseller permit, but should not have.	50%	(5)(g) of this section
Failure to remit sales tax to seller - Ten percent added against sales tax when the department proceeds directly against a buyer who fails to pay sales tax to the seller as part of a sales taxable retail purchase.	10%	(5)(h) of this section
Failure to obtain the contractor's unified business identifier (UBI) number - A ((#at)) two hundred fifty dollar maximum penalty (does not require any tax liability) when specified businesses hire certain contractors but do not obtain and keep the contractor's UBI number.	\$250 (max)	(5)(i) of this section
Disregarded transaction - <u>A thirty-five percent penalty of the additional tax found to be due as a result of engaging in a disregarded transaction.</u>	35%	(5)(j) of this section

(a) **Late payment of a return.** RCW 82.32.090(1) imposes a five percent penalty if the tax due on a taxpayer's return is not paid by the due date. A total penalty of fifteen percent is imposed if the tax due is not paid on or before the last day of the month following the due date, and a total penalty of twenty-five percent is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is five dollars.

Various sets of circumstances can affect how the late payment of a return penalty is applied. See (a)(i) through (iii) of this subsection for some of the most common circumstances.

(i) **Will I avoid the penalty if I file my return without the payment?** The department may refuse to accept any return which is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. RCW 82.32.080. Failure to file the return can result in the issuance of an assessment for the actual, or an estimated, amount of unpaid tax. Any assessment issued may include an assessment penalty. (See RCW 82.32.100 and (c) of this subsection for details of when and how the assessment penalty applies.) If the tax return is accepted without payment and payment is not made by the due date, the late payment of return penalty will apply.

(ii) **What if my account is given an active nonreporting status, but I later have taxes I need to report and pay?** WAC 458-20-101 provides information about the active nonreporting status available for tax reporting accounts. In general, the active nonreporting status allows persons, under certain circumstances, to engage in business activities subject to the Revenue Act without filing excise tax returns. Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions to be in active nonreporting status. One of the conditions is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if a person on active nonreporting status incurs a tax liability that is not paid by the due date for taxpayers that are on an annual reporting basis (i.e., the last day of January next succeeding the year in which the tax liability accrued).

(iii) **I didn't register my business with the department when I started it, and now I think I was supposed to be paying taxes! What should I do?** You should fill out and send in a Master Application to get your business registered. It is important for you to register before the department identifies you as an unregistered taxpayer and contacts you about your business activities. (WAC 458-20-101 provides information about registering your business.) Except as noted below, if a person engages in taxable activities while unregistered, but then registers prior to being contacted by the department, the registration is considered voluntary. When a person voluntarily registers, the late payment of return penalty does not apply to those specific tax-reporting periods representing the time during which the person was unregistered.

(A) However, even if the person has voluntarily registered as explained above, the late payment of return penalty will apply if the person:

(I) Collected retail sales tax from customers and failed to remit it to the department; or

(II) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or

(III) Engaged in taxable business activities during a period of time in which the person's previously open tax reporting account had been closed.

(B) Even though other circumstances may warrant retention of the late payment of return penalty, if a person has voluntarily registered, the unregistered taxpayer penalty (see (b) of this subsection) will not be due.

(b) **Unregistered taxpayer.** RCW 82.32.090(4) imposes a five percent penalty on the tax due for any period of time where a person engages in a taxable activity and does not voluntarily register prior to being contacted by the department. "Voluntarily register" means to properly complete and submit a master application to any agency or entity participating in the unified business identifier (UBI) program for the purpose of obtaining a UBI number, all of which is done before any contact from the department. For example, if a person properly completes and submits a master application to the department of labor and industries for the purpose of obtaining a UBI number, and this is done prior to any contact from the department of revenue, the department considers that person to have voluntarily registered. A person has not voluntarily registered if a UBI number is obtained by any means other than submitting a properly completed master application. WAC 458-20-101 (Tax registration and tax reporting) provides additional information regarding the UBI program.

(c) **Assessment.** If the department issues an assessment for substantially underpaid tax, a five percent penalty will be added to the assessment when it is issued. If any tax included in the assessment is not paid by the due date, or by any extended due date, the penalty will increase to a total of fifteen percent against the amount of tax that remains unpaid. If any tax included in the assessment is not paid within thirty days of the original or extended due date, the penalty will further increase to a total of twenty-five percent against the amount of tax that remains unpaid. The minimum for this penalty is five dollars. RCW 82.32.090(2).

(i) As used in this section, "substantially underpaid" means that:

(A) The taxpayer has paid less than eighty percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination; and

(B) The amount of underpayment is at least one thousand dollars. If both of these conditions are true when an assessment is issued, it will include the initial five percent assessment penalty. If factual adjustments are made after issuance of an assessment, and those adjustments change whether a taxpayer paid less than eighty percent of the tax due, the department will reevaluate imposition of the original five percent penalty.

(ii) If the initial five percent assessment penalty is included with an assessment when it is issued, the penalty is calculated against the total amount of tax that was not paid when originally due and payable (see RCW 82.32.045). Audit payments made prior to issuance of an assessment will be applied to the assessment after calculation of the initial five percent assessment penalty. At the discretion of the department, preexisting credits or amendments paid prior to an audit or unrelated to the scope of the assessment may be applied before the five percent assessment penalty is calculated, reducing the amount of the penalty. Additional assessment penalty is assessed against the amount of tax that remains unpaid at that particular time, after payments are applied to the assessment.

(d) **Issuance of a warrant.** If the department issues a tax warrant for the collection of any fee, tax, increase, or penalty, an additional penalty will immediately be added in the amount of ten percent of the amount of the tax due, but not less than ten dollars. RCW 82.32.090(3). Refer to WAC 458-20-217 for additional information on the application of warrants and tax liens.

(e) **Disregard of specific written instructions.** If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of ten percent of the additional tax found due will be imposed because of the failure to follow the instructions. RCW 82.32.090(5).

(i) **What is "disregard of specific written instructions"?** A taxpayer is considered to have received specific written instructions when the department has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in this penalty being imposed. The specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement. The penalty applies when a taxpayer does not follow the specific written instructions, resulting in underpayment of the tax due. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the department has not issued its final instructions or decision.

(ii) **What if I try to follow the written instructions, but I still don't get it quite right?** The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

(f) **Evasion.** If the department finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of fifty percent of the additional tax found to be due will be added. RCW 82.32.090(6). The evasion penalty is imposed when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. The department has the burden of showing the existence of an intent to evade a tax liability through clear, cogent and convincing evidence.

(i) **Evasion penalty only applies to the specific taxes that a taxpayer intended to evade.** To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid. For example, if the department finds that the taxpayer intentionally understated the purchase price of equipment in reporting use tax and also inadvertently failed to collect or remit the sales tax at the correct rate on retail sales of merchandise, the evasion penalty will be added only to the use tax deficiency and not the sales tax.

(ii) **What actions may establish an intent to evade?** The following is a nonexclusive list of actions that are generally considered to establish an intent to evade a tax liability. This list should only be used as a general guide. A determination of whether an intent to evade exists may be ascertained only after a review of all the facts and circumstances.

(A) The use of an out-of-state address by a Washington resident to register property to avoid a Washington excise or use tax, when at the time of registration the taxpayer does not reside at the out-of-state address on a more than temporary basis. Examples of such an address include, but are not limited to, the residence of a relative, mail forwarding or post office box location, motel, campground, or vacation property;

(B) The willful failure of a seller to remit retail sales taxes collected from customers to the department; and

(C) The alteration of a purchase invoice or misrepresentation of the price paid for property (e.g., a used vehicle) to reduce the amount of tax owing.

(g) **Misuse of resale certificates or a reseller permit.** Any buyer who uses a resale certificate or a reseller permit to purchase items or retail services without payment of sales tax, and who is not entitled to use the certificate or permit for the purchase, will be assessed a penalty of fifty percent of the tax due. RCW 82.32.291. The penalty can apply even if there was no intent to evade the payment of the tax. For more information concerning this penalty or the proper use of resale certificates and reseller permits, refer to WAC 458-20-102 (Resale certificates).

(h) **Failure to remit sales tax to seller.** The department may assert an additional ten percent penalty against a buyer who has failed to pay the seller the retail sales tax on taxable purchases, if the department proceeds directly against the buyer for the payment of the tax. This penalty is in addition to any other penalties or interest prescribed by law. RCW 82.08.050.

(i) **Failure to obtain the contractor's unified business identifier (UBI) number.** If a person who is liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW contracts with another person or entity for work subject to chapter 18.27 RCW (Registration of contractors) or chapter 19.28 RCW (Electricians and electrical installations), that person must obtain and preserve a record of the UBI number of the person or entity performing the work. A person failing to do so is subject to the public works contracting restrictions in RCW 39.06.010 (Contracts with unregistered or unlicensed contractors prohibited), and a penalty determined by the director, but not to exceed two hundred and fifty dollars. RCW 82.32.070(2).

(j) **Engaging in disregarded transactions.** Chapter 23 (2ESSB 6143), Laws of 2010 1st sp. s. imposes a thirty-five percent penalty for engaging in a disregarded transaction as defined in RCW 82.32.655(3). See RCW 82.32.090, 82.32.655, and 82.32.660.

(6) **Statutory restrictions on imposing penalties.** Depending on the circumstances, the law may impose more than one type of penalty on the same tax liability. However, those penalties are subject to the following restrictions:

(a) The penalties imposed for the late payment of a return, unregistered taxpayer, assessment, and issuance of a warrant (see subsection (5)(a) through (d) of this section) may be applied against the same tax concurrently, each unaffected by the others, up to their combined maximum rates. Application of one or any combination of these penalties does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax. RCW 82.32.090(7).

(b) The department may impose either the evasion penalty (subsection (5)(f) of this section) or the penalty for disregarding specific written instructions (subsection (5)(e) of this section), but may not impose both penalties on the same tax. RCW 82.32.090(8). The department also will not impose the penalty for the misuse of a resale certificate (subsection (5)(g) of this section) in combination with either the evasion penalty or the penalty for disregarding specific written instructions on the same tax.

(c) **The penalty provided in subsection (5)(j) of this section may be assessed together with any other applicable penalties provided in this section on the same tax found to be due, except for the evasion penalty provided in subsection (5)(f) of this section.**

(7) **Interest.** The department is required by law to add interest to assessments for tax deficiencies and overpayments. RCW 82.32.050 and 82.32.060. Interest applies to taxes only. (Refer to WAC 458-20-229 for a discussion of interest as it relates to refunds and WAC 458-20-230 for a discussion of the statute of limitations as applied to interest.)

(a) For tax liabilities arising before January 1, 1992, interest will be added at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the date of payment, or December 31, 1998, whichever comes first. Any interest accrued on these liabilities after December 31, 1998, will be added at the annual variable interest rates described below in (e) of this subsection. RCW 82.32.050.

(b) For tax liabilities arising after December 31, 1991, and before January 1, 1998, interest will be added at the annual variable interest rates described below in (e) of this subsection, from the last day of the year in which the deficiency is incurred until the date of payment.

(c) For interest imposed after December 31, 1998, interest will be added from the last day of the month following each calendar year included in a notice, or the last day of the month following the final month included in a notice if not the end of the calendar year, until the due date of the notice. However, for 1998 taxes only, interest may not begin to accrue any earlier than February 1, 1999, even if the last period included in the notice is not at the end of calendar year 1998. If payment in full is not made by the due date of the

notice, additional interest will be due until the date of payment. The rate of interest continues at the annual variable interest rates described below in (e) of this subsection. RCW 82.32.050.

(d) How is interest applied to an assessment that includes underpaid tax from multiple years? The following is an example of how the interest provisions apply. Assume that a tax assessment is issued with a due date of June 30, 2000. The assessment includes periods from January 1, 1997, through September 30, 1999.

(i) For calendar year 1997 tax, interest begins January 1, 1998, (from the last day of the year). When the assessment is issued the interest is computed through June 30, 2000, (the due date of the assessment).

(ii) For calendar year 1998 tax, interest begins February 1, 1999, (from the last day of the month following the end of the calendar year). When the assessment is issued interest is computed through June 30, 2000, (the due date).

(iii) For the 1999 tax period ending with September 30, 1999, interest begins November 1, 1999, (from the last day of the month following the last month included in the assessment period). When the assessment is issued interest is computed through June 30, 2000, (the due date).

(iv) Interest will continue to accrue on any portion of the assessed taxes which remain unpaid after the due date, until the date those taxes are paid.

(e) How is each year's interest rate determined? The annual variable interest rate will be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate for each new year will be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. The average is calculated using the federal short-term rates from January, April, July of the calendar year immediately preceding the new year, and October of the previous preceding year, as published by the United States Secretary of the Treasury. The interest rate will be adjusted on the first day of January of each year.

(f) How is the interest applied if an assessment includes some years that are underpaid and some that are overpaid? If the assessment contains tax deficiencies in some years and overpayments in other years with the net difference being a tax deficiency, the interest rate for tax deficiencies will also be applied to the overpayments. (Refer to WAC 458-20-229 for interest on refunds.)

(8) Application of payment towards liability. The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer. RCW 82.32.080.

In applying a partial payment to a tax assessment, the payment will first be applied against the oldest tax liability. For purposes of RCW 82.32.145 (Termination, dissolution, or abandonment of corporate business—Personal liability of person in control of collected sales tax funds), it will be assumed that any payments applied to the tax liability will be first applied against any retail sales tax liability. For example, an audit assessment is issued covering a period of two years, which will be referred to as "YEAR 1" (the earlier year) and "YEAR 2" (the most recent year). The tax assessment includes total interest and penalties for YEAR 1 and YEAR 2 of five hun-

dred dollars, retail sales tax of four hundred dollars for YEAR 1, six hundred dollars retail sales tax for YEAR 2, two thousand dollars of other taxes for YEAR 1, and seven thousand dollars of other taxes for YEAR 2. The order of application of any payments will be first against the five hundred dollars of total interest and penalties, second against the four hundred dollars retail sales tax in YEAR 1, third against the two thousand dollars of other taxes in YEAR 1, fourth against the six hundred dollars retail sales tax of YEAR 2, and finally against the seven thousand dollars of other taxes in YEAR 2.

(9) Waiver or cancellation of penalties. RCW 82.32.-105 authorizes the department to waive or cancel penalties under limited circumstances.

(a) Circumstances beyond the control of the taxpayer. The department will waive or cancel the penalties imposed under chapter 82.32 RCW upon finding that the underpayment of the tax, or the failure to pay any tax by the due date, was the result of circumstances beyond the control of the taxpayer. It is possible that a taxpayer will qualify for a waiver of one type of penalty, without obtaining a waiver for all penalties associated with a particular tax liability. Circumstances determined to be beyond the control of the taxpayer when considering a waiver of one type of penalty are not necessarily pertinent when considering a waiver of a different penalty type. For example, circumstances that qualify for waiver of a late payment of return penalty do not necessarily also justify waiver of the substantial underpayment assessment penalty. Refer to WAC 458-20-102 (Resale certificates) for examples of circumstances which are beyond the control of the taxpayer specifically regarding the penalty for misuse of a resale certificate or reseller permit found in RCW 82.32.291.

(i) A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request should be made in the form of a letter; however, verbal requests may be accepted and considered at the discretion of the department. Any petition for correction of assessment submitted to the department's appeals division for waiver of penalties must be made within the period for filing under RCW 82.32.160 (within thirty days after the issuance of the original notice of the amount owed or within the period covered by any extension of the due date granted by the department), and must be in writing, as explained in WAC 458-20-100 (Appeals, small claims and settlements). Refund requests must be made within the statutory limitation period.

(ii) The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

(A) The return payment was mailed on time but inadvertently sent to another agency.

(B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency.

A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not canceling the penalty in cases of oral information is because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(C) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.

(D) The delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date. "Unavoidable absence of the taxpayer" does not include absences because of business trips, vacations, personnel turnover, or terminations.

(E) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(F) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place. See (a)(iii)(E) of this subsection.

(G) The department does not respond to the taxpayer's request for a tax return (or other forms necessary to compute the tax) within a reasonable period of time, which directly causes delinquent filing and payment on the part of the taxpayer. This assumes that, given the same situation, if the department had provided the requested form(s) within a reasonable period of time, the taxpayer would have been able to meet its obligation for timely payment of the tax. In any case, the taxpayer has responsibility to insure that its return is filed in a timely manner (e.g., by keeping track of pending due dates) and must anticipatively request a return for that purpose, if one is not received. (Note: Tax returns and other forms are immediately available to download at no cost from the department's internet site, <http://dor.wa.gov>. When good cause exists, taxpayers are advised to contact the department and request an extension of the due date for filing, before the due date of concern has passed. See subsection (12) of this section. Taxpayers who have registered to file electronically with e-file will avoid potential penalties relating to paper returns not received. See subsection (1)(b) of this section.)

(iii) The following are examples of circumstances that are generally not considered to be beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty:

(A) Financial hardship;

(B) A misunderstanding or lack of knowledge of a tax liability;

(C) The failure of the taxpayer to receive a tax return form, EXCEPT where the taxpayer timely requested the form and it was still not furnished in reasonable time to mail the return and payment by the due date, as described in (a)(ii)(G) of this subsection;

(D) Registration of an account that is not considered a voluntary registration, as described in subsection (5)(a)(iii) and (b) of this section;

(E) Mistakes or misconduct on the part of employees or other persons contracted with the taxpayer (not including conduct covered in (a)(ii)(F) of this subsection); and

(F) Reliance upon unpublished, written information from the department that was issued to and specifically addresses the circumstances of some other taxpayer.

(b) **Waiver of the late payment of return penalty.** The late payment of return penalty (see subsection (5)(a) of this section) may be waived either as a result of circumstances beyond the control of the taxpayer (RCW 82.32.105(1) and (a) of this subsection) or after a twenty-four month review of the taxpayer's reporting history, as described below.

(i) If the late payment of return penalty is assessed on a return but is not the result of circumstances beyond the control of the taxpayer, the penalty will still be waived or canceled if the following two circumstances are satisfied:

(A) The taxpayer requests the penalty waiver for a tax return which was required to be filed under RCW 82.32.045 (taxes reported on the combined excise tax return), RCW 82.23B.020 (oil spill response tax), RCW 82.27.060 (tax on enhanced food fish), RCW 82.29A.050 (leasehold excise tax), RCW 84.33.086 (timber and forest lands), RCW 82.14B.030 (tax on telephone access line use); and

(B) The taxpayer has timely filed and paid all tax returns due for that specific tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested. RCW 82.32.-105(2).

If a taxpayer has obtained a tax registration endorsement with the department prior to engaging in business within the state and has engaged in business activities for a period less than twenty-four months, the taxpayer is eligible for the waiver if the taxpayer had no delinquent tax returns for periods prior to the period covered by the return for which the waiver is being requested. As a result, the taxpayer's very first return due can qualify for a waiver under the twenty-four month review provision. (See also WAC 458-20-101 for more information regarding the tax registration and tax reporting requirements.) This is the only situation under which the department will consider a waiver when the taxpayer has not timely filed and paid tax returns covering an immediately preceding twenty-four month period.

(ii) A return will be considered timely for purpose of the waiver if there is no tax liability on it when it is filed. Also, a return will be considered timely if any late payment penalties assessed on it were waived or canceled due to circumstances beyond the control of the taxpayer (see (a) of this subsection). The number of times penalty has been waived due to circumstances beyond the control of the taxpayer does not influence whether the waiver in this subsection will be granted. A taxpayer may receive more than one of the waivers in this subsection within a twenty-four month period if returns for more

than one of the listed tax programs are filed, but no more than one waiver can be applied to any one tax program in a twenty-four month period.

For example, a taxpayer files combined excise tax returns as required under RCW 82.32.045, and timber tax returns as required under RCW 84.33.086. This taxpayer may qualify for two waivers of the late payment of return penalty during the same twenty-four month period, one for each tax program. If this taxpayer had an unwaived late payment of return penalty for the combined excise tax return during the previous twenty-four month period, the taxpayer may still qualify for a penalty waiver for the timber tax program.

(iii) The twenty-four month period reviewed for this waiver is not affected by the due date of the return for which the penalty waiver is requested, even if that due date has been extended beyond the original due date.

For example, assume a taxpayer's September 2003 return has had the original due date of October twenty-fifth extended to November twenty-fifth. The return and payment are received after the November twenty-fifth extended due date. A penalty waiver is requested. Since the delinquent return represented the month of September 2003, the twenty-four months which will be reviewed begin on September 1, 2001, and end with August 31, 2003, (the twenty-four months prior to September 2003). All of the returns representing that period of time will be included in the review. The extension of the original due date has no effect on the twenty-four month period under review.

(iv) A twenty-four month review is only valid when considering waiver of the late payment of return penalty described in subsection (5)(a) of this section. The twenty-four month review process cannot be used as justification for a waiver of interest, assessment penalty, or any penalty other than the late payment of return penalty.

(10) **Waiver or cancellation of interest.** The department will waive or cancel interest imposed under chapter 82.32 RCW only in the following situations:

(a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department. RCW 82.32.105(3).

(11) **Interest and penalty waiver for active duty military personnel.** RCW 82.32.055 provides a waiver of BOTH interest and penalty imposed under chapter 82.32 RCW when:

(a) The majority owner of the business is:

(i) On active duty in the military;

(ii) Participating in an armed conflict;

(iii) Assigned to a location outside the territorial boundaries of the United States; and

(b) The gross income of the business is one million dollars or less for the calendar year immediately prior to the year in which the majority owner is initially deployed outside the United States for the armed conflict.

Interest and penalty may not be waived or canceled for a period longer than twenty-four months. The waiver applies to interest or penalty based on the date they are imposed, which must be within the twenty-four month waiver period.

To receive a waiver or cancellation of interest and penalty under this subsection, the taxpayer must submit a copy of the majority owner's deployment orders for deployment outside the territorial boundaries of the United States.

(12) **Stay of collection.** RCW 82.32.190 allows the department to initiate a stay of collection, without the request of the taxpayer and without requiring any bond, for certain tax liabilities when they may be affected by the outcome of a question pending before the courts (see (a) of this subsection). RCW 82.32.200 provides conditions under which the department, at its discretion, may allow a taxpayer to file a bond in order to obtain a stay of collection on a tax assessment (see (b) of this subsection). The department will grant a taxpayer's stay of collection request, as described in RCW 82.32.200, only when the department determines that a stay is in the best interests of the state.

(a) Circumstances under which the department may consider initiating a stay of collection without requiring a bond (RCW 82.32.190) include, but are not necessarily limited to, the existence of the following:

(i) A constitutional issue to be litigated by the taxpayer, the resolution of which is uncertain;

(ii) A matter of first impression for which the department has little precedent in administrative practice; or

(iii) An issue affecting other similarly situated taxpayers for whom the department would be willing to stay collection of the tax.

(b) The department will give consideration to a request for a stay of collection of an assessment (RCW 82.32.200) if:

(i) A written request for the stay is made prior to the due date for payment of the assessment; and

(ii) Payment of any unprotested portion of the assessment and other taxes due is made timely; and

(iii) The request is accompanied by an offer of a cash bond, or a security bond that is guaranteed by a specified authorized surety insurer. The amount of the bond will generally be equal to the total amount of the assessment, including any penalties and interest. However, where appropriate, the department may require a bond in an increased amount not to exceed twice the amount for which the stay is requested.

(c) Claims of financial hardship or threat of litigation are not grounds that justify the granting of a stay of collection. However, the department will consider a claim of significant financial hardship as grounds for staying collection procedures, but this will be done only if a partial payment agreement is executed and kept in accordance with the department's procedures and with such security as the department deems necessary.

(d) If the department grants a stay of collection, the stay will be for a period of no longer than two calendar years from the date of acceptance of the taxpayer request, or thirty days following a decision not appealed from by a tribunal or court of competent jurisdiction upholding the validity of the tax assessed, whichever date occurs first. The department may extend the period of a stay originally granted, but only for good cause shown.

(e) Interest will continue to accrue against the unpaid tax portion of a liability under stay of collection. Effective January 1, 1997, the interest rates prescribed by RCW 82.32.190 and 82.32.200 changed from nine percent and twelve percent

per annum, respectively, to the same predetermined annual variable rates as are described in subsection (7)(e) of this section.

(13) **Extensions.** The department, for good cause, may extend the due date for filing any return.

(a) Any permanent extension more than ten days beyond the due date, and any temporary extension in excess of thirty days, must be conditional upon deposit by the taxpayer with the department of an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit is credited to the taxpayer's account and may be applied to the taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where a temporary extension of more than thirty days has been granted.

The amount of the deposit is subject to departmental approval. The amount will be reviewed from time to time, and a change may be required at any time that the department concludes that such amount does not approximate the tax liability for the reporting period or periods for which the extension was granted.

(b) Chapter 181, Laws of 2008 (Senate Bill No. 6950), allows department of revenue to grant extensions of the due date for any taxes due to department of revenue when the governor has proclaimed a state of emergency under RCW 43.06.040. In general, the bill gives department of revenue the authority to provide extensions on its own initiative, or at the specific request of any taxpayers affected by the emergency. The specific details of how, where, and to whom any extensions are granted will depend on the type and scope of each unique emergency and will be determined when an emergency is declared.

WSR 10-21-048
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed October 14, 2010, 8:24 a.m.]

Title of Rule and Other Identifying Information: WAC 458-12-010 Definition—Property—Real, this rule provides guidance as to what is considered "real property," as that term is defined in RCW 84.04.090.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jay Jetter, Department of Revenue, P.O. Box 47471, Olympia, WA 98504-7471, e-mail JayJ@dor.wa.gov, AND RECEIVED BY December 20, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule cur-

rently provides an incorrect citation to WAC 458-12-080 (3)(c). The department is proposing to correct this citation to WAC 458-12-060.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: To correct an erroneous citation.

Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.

Statute Being Implemented: RCW 84.04.090.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Jay Jetter, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5535; Implementation and Enforcement: Brad Flaherty, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 570-5860.

October 14, 2010

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 93-08-049, filed 4/2/93, effective 5/3/93)

WAC 458-12-010 Definition—Property—Real. The term "real property" is defined in RCW 84.04.090; this definition should be consulted as a matter of course in all cases where the meaning of "real property" is in doubt. As there defined, "real property" includes but is not limited to the following:

- (1) All land, whether platted or unplatted.
- (2) All buildings, structures or permanent improvements built upon or attached to privately owned land.
- (3) Any fixture permanently affixed to and intended to be annexed to land or permanently affixed to and intended to be a component of a building, structure, or improvement on land, including machinery and equipment which become fixtures. Intent is to be gathered from all the surrounding circumstances at the time of annexation or installation of the item, including consideration of the nature of the item affixed, the manner of annexation and the purpose for which the annexation is made and is not to be gathered exclusively from the statements of the annex or, installer, or owner as to his or her actual state of mind.

(a) Such items shall be considered as permanently affixed when they are owned by the owner of the real property and:

- (i) They are securely attached to the real property; or
- (ii) Although not so attached, the item appears to be permanently situated in one location on real property and is adapted to use in the place it is located. For example a heavy piece of machinery or equipment set upon a foundation without being bolted thereto could be considered as affixed.

(b) Such items shall not be considered as affixed when they are owned separately from the real property unless an agreement specifically provides that such items are to be con-

sidered as part of the real property and are to be left with the real property when the occupant vacates the premises.

(c) Whenever the property taxable status of engines, machinery, equipment or fixtures is questioned by the assessor, the taxpayer may be required to list such items in the manner provided by chapter 84.40 RCW and WAC ((458-12-080)) 458-12-060. The assessor shall make the determination of whether such property is real, and shall amend the taxpayer's statement as provided by WAC ((458-12-080(2))) 458-12-060(4).

(d) The explanations relating to fixtures under subsection (3) of this section are for purposes of clarification and may not answer the question as to whether an item is a fixture in all cases. In the event these explanations do not clearly indicate whether the item is a fixture, the numerous decisions of the Washington appellate courts regarding fixtures should be consulted.

(4) Privately owned easements and easement-like privileges, irrespective of whether the servient estate is public or privately owned land. However, easements of public service corporations other than railroads are personal property by reason of RCW 84.20.010.

(5) Leases of real property and leasehold interests therein having a term coextensive with the life of the tenant.

(6) Title to minerals in place which belongs to someone other than the surface owner. Such a title to minerals in place is a "mineral right" but must be distinguished from mineral leases and permits, which do not give title to minerals in place and which are intangible *personal* property. Mineral rights, as defined herein, are realty regardless of whether they were created by grant or reservation.

(7) Standing timber growing on land which belongs to the same person as the timber.

(8) Water rights, whether riparian, appropriative, or in the nature of an easement.

(9) Buildings and similar permanent improvements erected or made by a tenant on land which he does not own, and title to which is not reserved in the tenant by the lease or some other landlord-tenant agreement. Such buildings and improvements become the landlord's real property.

(10) All life estates in real property, whether created by grant or a reservation. A person has such a life estate when he has a right to the possession, occupation and use of a piece of realty, and to the crops, rents and profits produced by it, during his or her natural life.

(11) All possessory rights in realty which are coextensive with the natural life of their holder. Such possessory rights are analogous to leases, and since leases for life are realty, possessory rights for life are also realty.

WSR 10-21-071
WITHDRAWAL OF
EXPEDITED RULE MAKING
OFFICE OF
INSURANCE COMMISSIONER

[Filed October 18, 2010, 9:09 a.m.]

The insurance commissioner is withdrawing the CR-105 Expedited rule making for R 2010-09 Changing the terms

agent, broker, and solicitor to insurance producer, published by the code reviser in WSR 10-19-124.

The CR-105 Expedited rule making R 2010-09 Changing the terms, agent, broker, and solicitor to insurance producer is being refiled to include several additional terms changed to insurance producer.

Mike Kreidler

WSR 10-21-072
EXPEDITED RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R-2010-09—Filed October 18, 2010,
9:21 a.m.]

Title of Rule and Other Identifying Information: Changing the terms agent, broker, and solicitor to insurance producer.

All references in Title 284 WAC referring to agent, broker, and solicitor in the context of selling, soliciting or negotiating insurance are changed to insurance producer unless specifically exempted by RCW 48.17.010(5), and minor editing changes are made to grammar and syntax.

This CR-105 is a refile of the same documents in the previous CR-105, with the exception of seven additional terms requiring a change to the term insurance producer.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Donna Dorris, donnad@oic.wa.gov, Office of Insurance Commissioner, P.O. Box 40258, Olympia, WA 98504-0258, AND RECEIVED BY December 21, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5715 enacted as chapter 117, Laws of 2007, eliminated the terms, agent, broker, and solicitor and replaced it with the term insurance producer. This legislation, codified in chapter 48.17 RCW, made Washington law more consistent with producer licensing on a national level by adopting a majority of the National Association of Insurance Commissioners (NAIC) producer-licensing model.

In 2008, ESB 6591 enacted as chapter 217, Laws of 2008, changed the terms, agent, broker, and solicitor to the term insurance producer in RCWs throughout Title 48 RCW. Please see <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Bills/Session%20Law%202008/6591.SL.pdf>.

Reasons Supporting Proposal: Amending the WAC to change the terms, agent, broker, and solicitor to the term

insurance producer makes the rules consistent with statutory references passed in 2008 legislation.

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

Statute Being Implemented: RCW 48.17.010(5).

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

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

Name of Agency Personnel Responsible for Drafting: Donna Dorris, P.O. Box 40258, Olympia, WA, (360) 725-7040; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98505-0255 [98504-0255], (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98505-0255 [98504-0255], (360) 725-7050.

October 18, 2010

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2003-09, filed 12/14/06, effective 1/14/07)

WAC 284-02-010 What are the responsibilities of the insurance commissioner and the office of the insurance commissioner (OIC) staff? The insurance commissioner is responsible for regulating the insurance industry and all persons or entities transacting insurance business in this state in the public interest. The position of insurance commissioner was established by the legislature as an independent, elective office in 1907. The insurance laws and the authority of the insurance commissioner are found in Title 48 RCW. The insurance commissioner's powers are set forth in chapter 48.02 RCW.

(1) General powers and tasks.

(a) To carry out the task of enforcing the insurance code the commissioner:

(i) May make rules and regulations governing activities under the insurance code (Title 48 RCW);

(ii) May conduct investigations to determine whether any person has violated any provision of the insurance code, including both informal and formal hearings;

(iii) May take action (including levying of fines and revocation of authority to transact business in this state) against an insurance company, fraternal benefit society, charitable gift annuity providers, health maintenance organization, health care service contractor, motor vehicle service contract provider, service contract provider, protection product guarantee providers, self-funded multiple employer welfare arrangement, and (~~vital~~) life settlement provider; and

(iv) May issue, refuse to issue or renew, place on probation, revoke, or suspend the licenses of insurance (~~(agents, brokers, solicitors,))~~ producers, title insurance agents, surplus line brokers, adjusters, (and) insurance education providers, reinsurance intermediaries, (~~vital~~) and life settlement brokers, or may fine any of them for violations of the insurance code.

(b) All insurers and other companies regulated under the insurance code must meet financial, legal, and other require-

ments and must be licensed, registered, or certified by the OIC prior to the transaction of insurance in this state.

(c) The OIC is responsible for collecting a premium-based tax levied against insurers and other companies transacting insurance business in this state. The funds collected from health care companies are deposited into the state's health services account. All other taxes are deposited into the state's general fund.

(d) Any person engaged in the marketing or sale of insurance in Washington must hold a license issued by the OIC. The OIC oversees the prelicensing education, testing, licensing, continuing education, and renewal of (~~(agent, broker, and solicitor))~~ insurance producer, surplus line broker and title insurance agent licenses.

(e) Public and independent adjusters must be licensed by the OIC. The OIC is responsible for the processing of licenses, background checks, affiliations, testing, renewals, terminations, and certificates for individuals and business entities, both resident and nonresident, who act as independent or public adjusters in Washington.

(f) The OIC assists persons who have complaints about companies, (~~(agents))~~ insurance producers, surplus line brokers and title insurance agents, or other licensees of the OIC. OIC investigators follow up on consumer complaints, look into circumstances of disputes between consumers and licensees, and respond to questions.

(g) The OIC publishes and distributes consumer guides and fact sheets to help inform consumers about their choices and rights when buying and using insurance.

(2) **Orders.** The commissioner may issue a cease and desist order based on the general enforcement powers granted by RCW 48.02.080, or may bring an action in court to enjoin violations of the insurance code.

(3) **SHIBA.** The OIC offers assistance statewide to consumers regarding health care insurance and health care access through its statewide health insurance benefits advisors (SHIBA) "HelpLine" program. Volunteers are trained by OIC employees to provide counseling, education, and other assistance to residents of Washington. Information about SHIBA, including how to become a SHIBA volunteer, can be found on the OIC web site (www.insurance.wa.gov).

(4) **Publication of tables for courts and appraisers.** The insurance commissioner publishes tables showing the average expectancy of life and values of annuities and life and term estates for the use of the state courts and appraisers (RCW 48.02.160).

(5) **Copies of public documents.** Files of completed investigations, complaints against insurers or other persons or entities authorized to transact the business of insurance by the OIC, and copies of completed rate or form filings are generally available for public inspection and copying during business hours (see chapter 284-03 WAC) at the OIC's office in Tumwater, subject to other applicable law. Access by the public to information and records of the insurance commissioner is governed by chapter 284-03 WAC and the Public Records Act (chapter 42.56 RCW). Information on how to request copies of public documents is available on the OIC web site (www.insurance.wa.gov).

(6) **Web site.** The insurance commissioner maintains a web site at: www.insurance.wa.gov. Current detailed infor-

mation regarding insurance, persons and entities authorized to transact insurance business in this state, consumer tips, links to Washington's insurance laws and rules, a list of publications available to the public, and other valuable information can be found on the web site.

(7) **Toll-free consumer hotline.** Members of the OIC staff respond to inquiries of consumers who telephone the agency's toll-free consumer hotline at 1-800-562-6900.

(8) **Location of offices.** The OIC's headquarters office is located in the insurance building on the state Capitol campus in Olympia. Branch offices are located in Tumwater, Seattle and Spokane. Addresses for the office locations can be found on the OIC web site (www.insurance.wa.gov) or by calling the commissioner's consumer hotline (1-800-562-6900).

(9) **Antifraud program.** Beginning in 2007, the OIC (in partnership with the Washington state patrol, county prosecutors, and the state attorney general's office) will investigate and assist in prosecuting fraudulent activities against insurance companies. Information about this program can be found on the OIC web site (www.insurance.wa.gov).

AMENDATORY SECTION (Amending Matter No. R 2003-09, filed 12/14/06, effective 1/14/07)

WAC 284-02-030 How can service of process over foreign and alien insurers be made? (1) Although domestic insurers are served with legal process personally, the insurance commissioner is the party on whom service of process must be made on all foreign and alien insurers, whether authorized to transact business in this state or not. The exact procedures are set forth in the applicable statutes.

(a) Service of process against authorized foreign and alien insurers, other than surplus line insurers, must be made according to the requirements of RCW 48.05.200 and 48.05.210. RCW 48.05.220 specifies the proper venue for such actions.

(b) Service of process against surplus line insurers can be made on the commissioner by following the procedures set forth in RCW 48.05.215 and 48.15.150. (A surplus lines insurer markets coverage which cannot be procured in the ordinary market from authorized insurers.)

(c) Service of process against other unauthorized insurers may be made on the commissioner based on the procedures set forth in RCW 48.05.215.

(d) The commissioner is not authorized to accept service of process on domestic or foreign health care service contractors or health maintenance organizations.

(2) Where service of process against a foreign or alien insurer is made through service upon the commissioner (according to the requirements of RCW 48.05.210 or 48.05.215), against a nonresident (~~(agent or broker)~~) insurance producer, surplus line broker, title insurance agent (RCW ((48.17.340))) 48.17.173, or 48.15.073) or against a (~~(viatical)~~) life settlement provider or broker (chapter 48.102 RCW or chapter 284-97 WAC), this service must be made by personal service at, or by registered mail sent to, the Tumwater office of the insurance commissioner only, and must otherwise comply with the requirements of the applicable statute.

(3) Service upon any location other than the Tumwater office of the OIC is not permissible and will not be accepted.

(4) As authorized by RCW 1.12.060, whenever the use of "registered" mail is called for, "certified" mail with return receipt requested may be used.

AMENDATORY SECTION (Amending Matter No. R 2003-09, filed 12/14/06, effective 1/14/07)

WAC 284-02-040 Where can information about applying for a license as (~~(agent,)~~) an adjuster(~~(-broker,)~~) or (~~(solicitor)~~) insurance producer, surplus line broker or title insurance agent be found? The requirements for licensing are generally found in chapter 48.17 RCW. The requirements for surplus line brokers are found in chapter 48.15 RCW.

(1) Licensing requirements and instructions for obtaining a license as an insurance (~~(agent,)~~) adjuster(~~(-broker,)~~) or (~~(solicitor)~~) producer, a surplus line broker, a title insurance agent, as a (~~(viatical)~~) life settlement broker, or for any other license required for the transaction of the business of insurance under Title 48 RCW may be obtained from the OIC's licensing (~~(section)~~) and education program.

(2) The OIC web site includes forms and instructions for applicants at: www.insurance.wa.gov.

AMENDATORY SECTION (Amending Matter No. R 2003-09, filed 12/14/06, effective 1/14/07)

WAC 284-02-060 Where can information regarding filing a complaint against a company, (~~(agent, broker, solicitor)~~) insurance producer, surplus line broker, title insurance agent, adjuster, or other person or entity authorized by the OIC be found? (1) A complaint or grievance against a person or entity authorized to transact the business of insurance under Title 48 RCW may be filed with the OIC. The complainant should supply as many facts as possible to assist the OIC in the investigation of the complaint. Complaints should include: The correct name of the insurance company or other entity issuing the policy or contract; the policy number; the claim number; the name of the (~~(agent, broker, solicitor)~~) insurance producer, surplus line broker, title insurance agent, adjuster, (~~(viatical)~~) life settlement broker, or any other person or entity offering to sell you insurance or to settle your claim; the date of loss or the date of the company's or other licensee's action; and a complete explanation of the loss or other problem.

(2) A form that can be used to make a complaint may be requested from the OIC by telephone or can be found on the OIC web site (www.insurance.wa.gov). Use of this form may be helpful in organizing the information, but its use is not required.

(3) If personal medical information is provided to the OIC, the OIC's medical release form must be signed and submitted by the appropriate person.

AMENDATORY SECTION (Amending Matter No. R 2008-24, filed 9/2/09, effective 10/3/09)

WAC 284-02-070 How does the OIC conduct hearings? (1) **Generally.**

(a) Hearings of the OIC are conducted according to chapter 48.04 RCW and the Administrative Procedure Act

(chapter 34.05 RCW). In addition to general hearings conducted pursuant to RCW 48.04.010, two specific types of hearings are conducted pursuant to the Administrative Procedure Act: Rule-making hearings and adjudicative proceedings or contested case hearings. Contested case hearings include appeals from disciplinary actions taken by the commissioner.

(b) **How to demand or request a hearing.** Under RCW 48.04.010 the commissioner is required to hold a hearing upon demand by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if the failure is deemed an act under the insurance code or the Administrative Procedure Act.

(i) Hearings can be demanded by an aggrieved person based on any report, promulgation, or order of the commissioner.

(ii) Requests for hearings must be in writing and delivered to the Tumwater office of the OIC. The request must specify how the person making the demand has been aggrieved by the commissioner, and must specify the grounds to be relied upon as the basis for the relief sought.

(c) Accommodation will be made for persons needing assistance, for example, where English is not their primary language, or for hearing impaired persons.

(2) Proceedings for contested cases or adjudicative hearings.

(a) Provisions specifically relating to disciplinary action taken against persons or entities authorized by the OIC to transact the business of insurance are contained in RCW 48.17.530, 48.17.540, 48.17.550, 48.17.560, chapter 48.102 RCW, and other chapters related to specific licenses. Provisions applicable to other adjudicative proceedings are contained in chapter 48.04 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The uniform rules of practice and procedure appear in Title 10 of the Washington Administrative Code. The grounds for disciplinary action against insurance (~~agents, brokers, solicitors,~~) producers, title insurance agents and adjusters are contained in RCW 48.17.530; grounds for disciplinary action against surplus line brokers are contained in RCW 48.15.140; grounds for similar action against insurance companies are contained in RCW 48.05.140; grounds for actions against fraternal benefit societies are found at RCW 48.36A.300 (domestic) and RCW 48.36A.310 (foreign); grounds for actions against (~~vital~~) life settlement providers are found in chapter 48.102 RCW; grounds for actions against health care service contractors are contained in RCW 48.44.160; and grounds for action against health maintenance organizations are contained in RCW 48.46.130. Grounds for actions against other persons or entities authorized by the OIC under Title 48 RCW are found in the chapters of Title 48 RCW applicable to those licenses.

(b) The insurance commissioner may suspend or revoke any license, certificate of authority, or registration issued by the OIC. In addition, the commissioner may generally levy fines against any persons or organizations having been authorized by the OIC.

(c) Adjudicative proceedings or contested case hearings of the insurance commissioner are informal in nature, and compliance with the formal rules of pleading and evidence is not required.

(i) The insurance commissioner may delegate the authority to hear and determine the matter and enter the final order under RCW 48.02.100 and 34.05.461 to a presiding officer; or may use the services of an administrative law judge in accordance with chapter 34.12 RCW and the Administrative Procedure Act (chapter 34.05 RCW). The initial order of an administrative law judge will not become a final order without the commissioner's review (RCW 34.05.464).

(ii) The hearing will be recorded by any method chosen by the presiding officer. Except as required by law, the OIC is not required, at its expense, to prepare a transcript. Any party, at the party's expense, may cause a reporter approved by the presiding officer to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if, in the opinion of the presiding officer, the making of the additional recording does not cause distraction or disruption. If appeal from the insurance commissioner's order is made to the superior court, the recording of the hearing will be transcribed and certified to the court.

(iii) The insurance commissioner or the presiding officer may allow any person affected by the hearing to be present during the giving of all testimony and will allow the aggrieved person a reasonable opportunity to inspect all documentary evidence, to examine witnesses, and to present evidence. Any person heard must make full disclosure of the facts pertinent to the inquiry.

(iv) Unless a person aggrieved by an order of the insurance commissioner demands a hearing within ninety days after receiving notice of that order, or in the case of persons or entities authorized by the OIC to transact the business of insurance under Title 48 RCW, within ninety days after the order was mailed to the most recent address shown in the OIC's licensing records, the right to a hearing is conclusively deemed to have been waived (RCW 48.04.010(3)).

(v) Prehearing or other conferences for settlement or simplification of issues may be held at the discretion and direction of the presiding officer.

(d) Discovery is available in adjudicative proceedings and contested cases pursuant to Civil Rules 26 through 37 as now or hereafter amended without first obtaining the permission of the presiding officer or the administrative law judge in accordance with RCW 34.05.446(2).

(i) Civil Rules 26 through 37 are adopted and incorporated by reference in this section, with the exception of CR 26 (j) and (3) and CR 35, which are not adopted for purposes of this section.

(ii) The presiding officer or administrative law judge is authorized to make any order that a court could make under CR 37 (a) through (e), including an order awarding expenses of the motion to compel discovery or dismissal of the action.

(iii) This rule does not limit the presiding officer's or administrative law judge's discretion and authority to condition or limit discovery as set forth in RCW 34.05.446(3).

(3) Rule-making hearings. Rule-making hearings are conducted based on requirements found in the Administrative Procedure Act (chapter 34.05 RCW) and chapter 34.08 RCW (the State Register Act).

(a) Under applicable law all interested parties must be provided an opportunity to express their views concerning a proposed rule, either orally or in writing. The OIC will accept

comments on proposed rules by mail, electronic telefacsimile transmission, or electronic mail but will not accept comments by recorded telephonic communication or voice mail (RCW 34.05.325(3)).

(b) Notice of intention of the insurance commissioner to adopt a proposed rule or amend an existing rule is published in the state register and is sent to anyone who has requested notice in advance and to persons who the OIC determines would be particularly interested in the proceeding. Persons requesting paper copies of all proposed rule-making notices of inquiry and hearing notices may be required to pay the cost of mailing these notices (RCW 34.05.320(3)).

(c) Copies of proposed new rules and amendments to existing rules as well as information related to how the public may file comments are available on the OIC web site (www.insurance.wa.gov).

AMENDATORY SECTION (Amending Matter No. R 2000-08, filed 1/9/01, effective 2/9/01)

WAC 284-04-405 Exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions. (1) Exceptions for processing transactions at consumer's request. The requirements for initial notice in WAC 284-04-200 (1)(b), the opt out in WAC 284-04-215 and 284-04-300 and service providers and joint marketing in WAC 284-04-400 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

(a) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(b) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(c) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or

(d) Reinsurance or stop loss or excess loss insurance.

(2) Necessary to effect, administer or enforce a transaction means that the disclosure is:

(a) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(b) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the con-

sumer's (~~(agent or broker)~~) insurance producer, surplus line broker, or title insurance agent;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(v) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

AMENDATORY SECTION (Amending Matter No. R 2000-08, filed 1/9/01, effective 2/9/01)

WAC 284-04-900 Sample clauses. Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the Federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to non-affiliated third parties.)

A-1—Categories of information a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of WAC 284-04-210 (1)(a) to describe the categories of nonpublic personal information the licensee collects.

Sample Clause A-1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates or others; and
- Information we receive from a consumer reporting agency.

A-2—Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these clauses, as applicable, to meet the requirement of WAC 284-04-210 (1)(b) to describe the categories of nonpublic personal information the licensee

discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in WAC 284-04-400, 284-04-405, and 284-04-410.

Sample Clause A-2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as (provide illustrative examples, such as "your name, address, Social Security number, assets, income, and beneficiaries");
- Information about your transactions with us, our affiliates or others, such as (provide illustrative examples, such as "your policy coverage, premiums, and payment history"); and
- Information we receive from a consumer reporting agency, such as (provide illustrative examples, such as "your creditworthiness and credit history").

Sample Clause A-2, Alternative 2:

We may disclose all of the information that we collect, as described (describe location in the notice, such as "above" or "below").

A-3—Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of WAC 284-04-210 (1)(b), (c), and (d) to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in WAC 284-04-405 and 284-04-410.

Sample Clause A-3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A-4—Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of WAC 284-04-210 (1)(c) to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in WAC 284-04-400, 284-04-405, and 284-04-410, as well as when permitted by the exceptions in WAC 284-04-405 and 284-04-410.

Sample Clause A-4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as (provide illustrative examples, such as "life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance ((agents) producers)");
- Nonfinancial companies, such as (provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"); and

- Others, such as (provide illustrative examples, such as "nonprofit organizations").

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A-5—Service provider/joint marketing exception

A licensee may use one of these clauses, as applicable, to meet the requirements of WAC 284-04-210 (1)(e) related to the exception for service providers and joint marketers in WAC 284-04-400. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with whom the licensee has contracted.

Sample Clause A-5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as (provide illustrative examples, such as "your name, address, Social Security number, assets, income, and beneficiaries");
- Information about your transactions with us, our affiliates or others, such as (provide illustrative examples, such as "your policy coverage, premium, and payment history"); and
- Information we receive from a consumer reporting agency, such as (provide illustrative examples, such as "your creditworthiness and credit history").

Sample Clause A-5, Alternative 2:

We may disclose all of the information we collect, as described (describe location in the notice, such as "above" or "below") to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6—Explanation of opt out right (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of WAC 284-04-210 (1)(f) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in WAC 284-04-400, 284-04-405, and 284-04-410.

Sample Clause A-6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may (describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)").

A-7—Confidentiality and security (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of WAC 284-04-210 (1)(h) to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A-7:

We restrict access to nonpublic personal information about you to (provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"). We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Chapter 284-12 WAC

~~((AGENTS, BROKERS))~~ INSURANCE PRODUCERS, TITLE INSURANCE AGENTS, SURPLUS LINE BRO- KERS, AND ADJUSTERS

AMENDATORY SECTION (Amending Order R 90-2, filed 1/31/90, effective 3/3/90)

WAC 284-12-080 Requirements for separate accounts. (1) The purpose of this section is to effectuate RCW 48.15.180, 48.17.600 and 48.17.480 with respect to the separation and accounting of premium funds by ~~((agents, brokers, solicitors, general agents))~~ insurance producers, title insurance agents and surplus line brokers, ~~((hereinafter called))~~ collectively referred to in this section as "producers." Pursuant to RCW 48.30.010, the commissioner has found and hereby defines it to be an unfair practice for any producer, except as allowed by statute, to conduct insurance business without complying with the requirements of RCW 48.15.180, 48.17.600 and this section. ~~((As provided in RCW 48.17.600, agents for title insurance companies or insurance brokers whose average daily balance for premiums received on behalf of insureds in the state of Washington equals or exceeds one million dollars, are exempt from subsections (1) through (6) of this section, except with respect to premiums and return premiums received in another licensing capacity.))~~

(2) All funds representing premiums and return premiums received on Washington business by a producer in his or her fiduciary capacity on or after January 1, 1987, shall be deposited in one or more identifiable separate accounts which may be interest bearing.

(a) A producer may deposit no funds other than premiums and return premiums to the separate account except as follows:

- (i) Funds reasonably sufficient to pay bank charges;
- (ii) Funds a producer may deem prudent for advancing premiums, or establishing reserves for the paying of return premiums; and
- (iii) Funds for contingencies as may arise in the business of receiving and transmitting premiums or return premiums.

(b) A producer may commingle Washington premiums and return premiums with those produced in other states, but there shall be no commingling of any funds which would not be permitted by this section.

(3)(a) The separate account funds may be:

(i) Deposited in a checking account, demand account, or a savings account in a bank, national banking association, savings and loan association, mutual savings bank, stock savings bank, credit union, or trust company located in the state

of Washington. Such an account must be insured by an entity of the federal government; or

(ii) Invested in United States government bonds and treasury certificates or other obligations for which the full faith and credit of the United States government is pledged for payment of principal and interest, repurchase agreements collateralized by securities issued by the United States government, and bankers acceptances. Insurers may, of course, restrict investments of separate account funds by their agent.

(b) A nonresident licensee, or a resident producer with affiliated operations under common ownership in two or more states, may utilize comparable accounts in another state provided such accounts otherwise meet the requirements of RCW 48.15.180, 48.17.600, 48.17.480 and this rule, and are accessible to the commissioner for purposes of examination or audit at the expense of the producer.

(4) Disbursements or withdrawals from a separate account shall be made for the following purposes only, and in the manner stated:

(a) For charges imposed by a bank or other financial institution for operation of the separate account;

(b) For payments of premiums, directly to insurers or other producers entitled thereto;

(c) For payments of return premiums, directly to the insureds or other persons entitled thereto;

(d) For payments of commissions and other funds belonging to the separate account's producer, directly to another account maintained by such producer as an operating or business account; and

(e) For transfer of fiduciary funds, directly to another separate premium account which meets the requirements of this section.

(5)(a) The entire premium received (including a surplus lines premium tax if paid by the insured) must be deposited into the separate account. Such funds shall be paid promptly to the insurer or to another producer entitled thereto, in accordance with the terms of any applicable agreement between the parties.

(b) Return premiums received by a producer and the producer's share of any premiums required to be refunded, must be deposited promptly to the separate account. Such funds shall be paid promptly to the insured or person entitled thereto.

(6)(a) Where a producer receives a premium payment in the form of an instrument, such as a check, which is made payable to an insurer, general agent or surplus line broker, the producer may forward such instrument directly to the payee if that can be done without endorsement or alteration. In such a case, the producer's separate account is not involved because the producer has not "received" any funds.

(b) If the producer receives a premium payment in the form of cash or an instrument requiring endorsement by the producer, such premium must be deposited into the producer's separate account, unless the insurer entitled to such funds has established other procedures by written direction to a producer who is its appointed agent, which procedures:

(i) Recognize that such agent is receiving premiums directly on behalf of the insurer; and

(ii) Direct the producer to give adequate receipts on behalf of the insurer; and

(iii) Require deposit of the proceeds into the insurer's own account or elsewhere as permitted by the insurer's direction.

Thus, for example, an insurer may utilize the services of a licensed ~~((agent, known in the industry))~~ insurance producer, acting as a "captive agent," in the sale of its insurance and in the operation of its places of business, and directly receive payments intended for it without such payments being deposited into and accounted for through the licensed ~~((agent's))~~ insurance producer's separate account. In such cases, for purposes of this rule, the insurer, as distinguished from the ~~((agent))~~ insurance producer, is actually "receiving" the funds and is immediately responsible therefor.

(c) When a producer receives premiums in the capacity of a surplus line broker, licensed pursuant to chapter 48.15 RCW, after a binder or other written evidence of insurance has been issued to the insured, subject to the express written direction of the insurer involved, such premiums may be removed from the separate account.

(7) The commissioner recognizes the practical problems of accounting for the small amounts of interest involved spread over a large number of insurers and insureds. Therefore, absent any agreement between the producer and the insured or insurer to the contrary, interest earned on the deposits held in the separate account may be retained by the producer and used to offset bank charges, establish reserves, pay return premiums, or for any of the purposes listed in subsection (2) of this section, or the interest may be removed to the operating account.

(8) A producer shall establish and maintain records and an appropriate accounting system for all premiums and return premiums received by the producer, and shall make such records available for inspection by the commissioner during regular business hours upon demand during the five years immediately after the date of the transaction.

(9) The accounting system used must effectively isolate the separate account from any operating accounts. All record-keeping systems, whether manual or electronic must provide an audit trail so that details underlying the summary data, such as invoices, checks, and statements, may be identified and made available on request. Such a system must provide the means to trace any transaction back to its original source or forward to final entry, such as is accomplished by a conventional double-entry bookkeeping system. When automatic data processing systems are used, a description of the system must be available for review by the commissioner. A balance forward system (as in an ordinary checking account) is not acceptable.

(10)(a) A producer that is a ~~((firm or corporation))~~ business entity may utilize one separate account for the funds received by its affiliated persons operating under its license, and such affiliated persons may deposit the funds they receive in such capacity directly into the separate account of their firm or corporation.

~~((Funds received by a solicitor may be deposited into and accounted for through the separate account of the agent or broker represented by the solicitor.~~

~~((e))~~ Funds received by an ~~((agent))~~ insurance producer who is employed by and offices with another ~~((agent))~~ insurance producer may be deposited into and accounted for

through the separate account of the employing ~~((agent))~~ insurance producer. This provision does not, however, authorize the ~~((agent-employee))~~ insurance producer employee to represent an insurer as to which he or she has no appointment.

AMENDATORY SECTION (Amending Order R 91-7, filed 11/13/91, effective 1/1/92)

WAC 284-12-095 Unfair practice with respect to use of ~~((general agent))~~ insurance producer defined. It is an unfair or deceptive practice and an unfair method of competition pursuant to RCW 48.30.010 for an authorized insurer to cancel or refuse to renew any insurance policy because its contract or arrangement with ~~((a general agent))~~ an appointed or a nonappointed ~~((agent))~~ insurance producer through whom such policy was written has been terminated.

AMENDATORY SECTION (Amending Order R 88-12, filed 12/7/88)

WAC 284-12-110 Identification of ~~((agent or solicitor))~~ an insurance producer to a prospective insured. It shall be an unfair practice for an ~~((agent or solicitor))~~ insurance producer initiating a sales presentation away from his or her office to fail to inform the prospective purchaser, prior to commencing the sales presentation, that the ~~((agent or solicitor))~~ insurance producer is acting as an insurance ~~((agent or solicitor))~~ producer, and to fail thereafter to inform the prospective purchaser of the full name of the insurance company whose product the ~~((agent or solicitor))~~ insurance producer offers to the buyer. This rule shall apply to all lines of insurance and to all coverage solicited in this state including coverage under a group policy delivered in another state, whether or not membership in the group is also being solicited.

AMENDATORY SECTION (Amending Order R 93-13, filed 9/1/93, effective 10/2/93)

WAC 284-12-220 Licensed in this state. A person is licensed in this state for purposes of ~~((section 36))~~ RCW 48.98.010 (1) and (2), ~~((chapter 462, Laws of 1993,))~~ if ~~((he or she))~~ the person holds a resident or nonresident ~~((agent's))~~ insurance producer's license issued by the commissioner.

AMENDATORY SECTION (Amending Order R 94-14, filed 7/6/94, effective 8/6/94)

WAC 284-12-270 Expiration and renewal of appointments. Appointments of managing general agents shall be for two years. They expire unless timely renewed. They expire on the same date that ~~((agent))~~ insurance producer appointments for the same insurer expire under WAC 284-17-410.

Chapter 284-17B WAC

RENTAL CAR ((AGENT)) INSURANCE PRODUCER

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-005 What definitions are important throughout the chapter? Definitions:

(1) "Endorsee" means an unlicensed employee or agent of a rental car ((agent)) insurance producer who meets the requirements of this chapter.

(2) "Person" means an individual or a business entity.

(3) "Rental agreement" means any written master, corporate, group, or individual agreement setting forth the terms and conditions governing the use of a rental car rented or leased by a rental car company.

(4) "Rental car" means any motor vehicle that is intended to be rented or leased for a period of thirty consecutive days or less by a driver who is not required to possess a commercial driver's license to operate the motor vehicle and the motor vehicle is either of the following:

(a) A private passenger motor vehicle, including a passenger van, recreational vehicle, minivan, or sports utility vehicle; or

(b) A cargo vehicle, including a cargo van, pickup truck, or truck with a gross vehicle weight of less than twenty-six thousand pounds.

(5) "Rental car ((agent)) insurance producer" means any rental car company that is licensed to offer, sell, or solicit rental car insurance under this chapter.

(6) "Rental car company" means any person in the business of renting rental cars to the public, including a franchisee.

(7) "Rental car insurance" means insurance offered, sold, or solicited in connection with and incidental to the rental of rental cars, whether at the rental office or by preselection of coverage in master, corporate, group, or individual agreements that is:

(a) Nontransferable;

(b) Applicable only to the rental car that is the subject of the rental agreement;

(c) Limited to the following kinds of insurance:

(i) Personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

(ii) Liability insurance, including uninsured or underinsured motorist coverage, whether offered separately or in combination with other liability insurance, that provides protection to the renters and to other authorized drivers of a rental car for liability arising from the operation of the rental car during the rental period;

(iii) Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period; and

(iv) Roadside assistance and emergency sickness protection insurance.

(8) "Renter" means any person who obtains the use of a vehicle from a rental car company under the terms of a rental agreement.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-010 Who needs to be licensed as a rental car ((rental agent)) insurance producer? Any person in the business of renting cars to the public and offering rental car insurance must either:

(1) Be licensed under chapter 284-17 WAC; or

(2) Comply with chapter 48.115 RCW and this chapter.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-015 How can I apply for a rental car ((agent)) insurance producer license? Forms and instructions may be obtained by either calling the office of insurance commissioner or downloading them from the web site: www.insurance.wa.gov/. To apply for a rental car ((agent)) insurance producer license, the following must be submitted:

(1) A rental car ((agent)) insurance producer application signed by the applicant, an officer of the applicant, or owner of the rental car-company;

(2) A copy of articles of incorporation;

(3) A certificate of good standing from the secretary of state;

(4) Underwriting insurer appointment form, INS 18;

(5) The insurer's certification form as described in RCW 48.115.015 (2)(a) signed by the appointing authority;

(6) A list of all locations in Washington identifying the manager or direct supervisor at each;

(7) A list of the names of all endorsees to its rental car ((agent)) insurance producer license;

(8) Certification by the rental car company that the listed endorsees have met the training requirements in RCW 48.115.020(4) and are authorized to offer, sell, and solicit insurance in connection with the rental of vehicles as described in RCW 48.115.005(7).

(9) The training and education program and materials as described in RCW 48.115.020(4) and all brochures and other written materials provided to renters as described in RCW 48.115.025; and

(10) Initial fees:

a. License fee for two years:	\$130 for business with under 50 employees
	\$375 for business with 50 or more employees
b. Appointment fee:	\$20 for each underwriting insurer

c. Location fee:	\$35 for each additional location. Location fees are not required for locations where there are no endorsees due to waiver or approved alternate arrangement under WAC 284-17B-080
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AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-020 Do I have continuing reporting and recordkeeping requirements? (1) Yes. The list of names of all endorsees to the rental car ((agent)) insurance producer license must be updated quarterly on a calendar year basis and submitted at the time of license renewal. The rental car company must retain each list for a period of three years from submission. At any time, endorsee lists must be provided to the commissioner upon request.

(2) The ((agent)) rental car insurance producer must maintain records of each transaction which allows it to identify the endorsee for one year.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-025 How is a rental car ((agent)) insurance producer license renewed? Rental ((agent)) car insurance producer licenses are issued for a period of two years. A renewal notice will be mailed to each licensed rental car ((agent)) insurance producer every other year from the date of issuance. The renewal notice must be submitted with the rental car company certification form and applicable fee:

<i>Date Fees are Received</i>	<i>Fee Every Other Year</i>
	50 OR MORE EMPLOYEES
Prior to or on renewal date:	\$375 with \$35 per each additional location
1-30 days late	\$562.50 with \$35 per each additional location
31-60 days late	\$749.75 with \$35 per each additional location
61 or more days late	New license is required
	UNDER 50 EMPLOYEES
Prior to or on renewal date:	\$130 with \$35 per additional location
1-30 days late	\$195 with \$35 per each additional location
31-60 days late	\$260 with \$35 per each additional location
61 or more days late	New license is required

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-030 Can the rental car ((agent)) insurance producer endorse someone to act on behalf of

the agent? Yes. An endorsee may act on behalf of the rental car ((agent)) insurance producer. The endorsee may act only in the offer, sale, or solicitation of rental car insurance. A rental car ((agent)) insurance producer is responsible for, and must supervise, all actions of its endorsees related to the offering, sale, or solicitation of rental car insurance.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-035 Who can be a rental car ((agent)) insurance producer endorsee? An employee or agent of a rental car ((agent)) insurance producer may be an endorsee under the authority of the rental car agent license, if all of the following conditions are met:

- (1) The employee or agent is eighteen years of age or older;
- (2) The employee or agent is a trustworthy person and has not committed any act set forth in RCW 48.17.530;
- (3) The employee or agent has completed a training and education program; and
- (4) The employee or agent has a current agreement or business relationship with the rental car company.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-040 Is the rental car ((agent)) insurance producer required to provide training and education to its endorsees? Yes. The rental car ((agent)) insurance producer must provide training and education to its endorsees as described in RCW 48.115.020(4).

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-045 What activities are prohibited for rental car ((agents)) insurance producers? A rental car ((agent)) insurance producer must comply with RCW 48.115.030.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-050 How should a rental car ((agent)) insurance producer account for premiums? A rental car ((agent)) insurance producer is required to treat money collected from renters purchasing rental car insurance as funds received in a fiduciary capacity, unless:

- (1) The charges for rental car insurance coverage are itemized and related to a rental transaction; and
- (2) The insurer has consented in writing that premiums do not need to be segregated from funds received by the rental car ((agent)) insurance producer. This written statement must be signed by an officer of the insurer.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-060 What information must be included in the written material or brochure? The bro-

chure and written material must clearly, conspicuously, and in plain language:

(1) Summarize, clearly and correctly, the material terms, exclusions, limitations, and conditions of coverage offered to renters, including the identity of the insurer;

(2) Describe the process for filing a claim including a toll-free telephone number to report a claim;

(3) Provide the rental car (~~(agent's)~~) insurance producer's name, address, telephone number, and license number, and the commissioner's consumer hotline number;

(4) Inform the renter that the rental car insurance may duplicate coverage provided by the renter's personal automobile insurance policy, homeowners' insurance policy, or by another source of coverage;

(5) Inform the renter that when the rental car insurance is not the primary source of coverage, the renter's personal insurance will serve as the primary source of coverage;

(6) Inform the renter that the purchase of the rental car insurance is not required to rent a car from the rental car (~~(agent)~~) insurance producer; and

(7) Inform the renter that the rental car (~~(agent)~~) insurance producer and the endorsee are not qualified to evaluate the adequacy of the renter's existing insurance coverages.

(8) The policy or certificate of coverage and rates must be filed and approved by OIC as outlined in RCW 48.18.100 and 48.19.040.

(9) If the written material includes a certificate of coverage or policy, the form number and edition, if applicable, of the approved certificate of coverage or policy must be identified on the printed material. The insurer must certify that the policy or certificate of coverage and the rates have been approved and that the wording on the written material is exactly as approved.

(10)(a) The renter must acknowledge the receipt of the brochures and written materials. The acknowledgment may be in the brochure or written materials, rental agreement, or a separate document.

(b) For transactions conducted by electronic means, the rental car agent must comply with the requirements of (a) of this subsection. Acknowledgment of the receipt of the documents may be made by either written or digital signature.

AMENDATORY SECTION (Amending Matter No. R 2002-05, filed 10/27/04, effective 11/27/04)

WAC 284-17B-075 Does the commissioner have authority to suspend, fine, or revoke my license or refuse to license me? Yes, the commissioner may fine, suspend, revoke, or refuse to issue a license to a rental car (~~(agent)~~) insurance producer or applicant. See RCW 48.115.035.

AMENDATORY SECTION (Amending Matter No. R 98-10, filed 6/16/98, effective 7/17/98)

WAC 284-19-070 FAIR plan business—Distribution and placement. (1) The facility shall not require that the applicant demonstrates that he or she is unable to obtain insurance in the normal market, as a precondition to the placement of business under the FAIR plan. The facility, however, may require an (~~(agent or broker)~~) insurance producer to furnish copies of documents or information showing

what effort was made by the (~~(agent or broker)~~) insurance producer to obtain insurance in the normal market. The facility shall forward to the commissioner the names of (~~(agents or brokers)~~) insurance producers who fail to cooperate or who appear to fail to make reasonable efforts on behalf of applicants for insurance to obtain insurance in the normal market.

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

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

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

AMENDATORY SECTION (Amending Order R-69-1, filed 1/28/69)

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

AMENDATORY SECTION (Amending Order R-75-3, filed 8/22/75, effective 11/1/75)

WAC 284-23-020 Definitions. (1) For the purpose of this regulation:

(a) "Policy" shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides for life insurance or annuity benefits.

(b) "Insurer" shall include any organization or person which issues life insurance or annuities in this State and is engaged in the advertisement of a policy.

(c) "Advertisement" shall be material designed to create public interest in life insurance or annuities or in an insurer, or to induce the public to purchase, increase, modify, reinstate, or retain a policy including:

(i) Printed and published material, audiovisual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio and television scripts, billboards and similar displays;

(ii) Descriptive literature and sales aids of all kinds issued by an insurer or (~~(agent)~~) insurance producer, including but not limited to circulars, leaflets, booklets, depictions, illustrations and form letters;

(iii) Material used for the recruitment, training and education of an insurer's sales personnel (~~(agents, solicitors and brokers)~~) and insurance producers, which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate or retain a policy;

(iv) Prepared sales talks, presentations and material for use by sales personnel (~~(agents, solicitors and brokers)~~) and insurance producers.

(2) "Advertisement" for the purpose of this regulation shall not include:

(a) Communications or materials used within an insurer's own organization and not intended for dissemination to the public;

(b) Communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate or retain a policy;

(c) A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged, provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-400 Purpose. The purpose of this regulation is:

(1) To regulate the activities of insurers and (~~(agents and brokers)~~) insurance producers with respect to the replacement of existing life insurance and annuities;

(2) To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by:

(a) Assuring that the purchaser receives information with which a decision can be made in his or her own best interest;

(b) Reducing the opportunity for misrepresentation and incomplete disclosures; and

(c) Establishing penalties for failure to comply with the requirements of this regulation.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-410 Definition of replacement. "Replacement" means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing (~~(agent or broker)~~) insurance producer, or to the proposing insurer if there is no (~~(agent)~~) insurance producer, that by reason of such transaction, existing life insurance or annuity has been or is to be:

(1) Lapsed, forfeited, surrendered, or otherwise terminated;

(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(4) Reissued with any reduction in cash value; or

(5) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent of the loan value set forth in the policy.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-420 Other definitions. (1) "Conservation" means any attempt by the existing insurer or (~~(its agent, or by a broker)~~) an insurance producer to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include such routine administrative procedures as late payment reminders, late payment offers or reinstatement offers.

(2) "Direct-response sales" means any sale of life insurance or annuity where the insurer does not utilize an (~~(agent)~~) insurance producer in the sale or delivery of the policy.

(3) "Existing insurer" means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement."

(4) "Existing life insurance or annuity" means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.

(5) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

(6) "Registered contract" means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-430 Exemptions. Unless otherwise specifically included, this regulation shall not apply to transactions involving:

(1) Credit life insurance;

(2) Group life insurance or group annuities, unless the new coverage under the insurance or annuity is solicited on an individual basis and the cost of such coverage is borne substantially by the individual;

(3) An application to the existing insurer that issued the existing life insurance when a contractual change or conversion privilege is being exercised;

(4) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(5) Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control; provided, however, (~~(agents or brokers)~~) insurance producers proposing replacement shall comply with the requirements of WAC 284-23-440 (1) and (2)(a) and (c); and

(6) Registered contracts shall be exempt only from the requirements of WAC 284-23-455 (2)(b) and (c), requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-440 Duties of ~~((agents and brokers))~~ insurance producers. (1) Each ~~((agent or broker))~~ insurance producer who initiates the application shall submit to the insurer to which an application for life insurance or annuity is presented, with or as part of each application:

(a) A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and

(b) A signed statement as to whether the ~~((agent or broker))~~ insurance producer knows replacement is or may be involved in the transaction.

(2) Where a replacement is involved, the ~~((agent or broker))~~ insurance producer shall:

(a) Present to the applicant, not later than at the time of taking the application, a completed notice regarding replacement in the form as described in WAC 284-23-485, or other substantially similar form approved by the commissioner. Answers must be succinct and in simple nontechnical language. They should fairly and adequately highlight the points raised by the questions, without overwhelming the applicant with verbiage and data. An answer may include a reference to the contract or another source, but it must be essentially complete without the reference. The notice (and a copy) shall be signed by the applicant after it has been completed and signed by the ~~((agent or broker))~~ insurance producer and the signed original shall be left with the applicant.

(b) Obtain with each application a list of all existing life insurance and/or annuity contracts to be replaced and properly identified by name of insurer, the insured and contract number. Such list shall be set forth on the notice regarding replacement required by WAC 284-23-485, immediately below the ~~((agent's or broker's))~~ insurance producer's name and address. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(c) Leave with the applicant the original or a copy of written or printed communications used for presentation to the applicant.

(d) Submit to the replacing insurer with the application, a copy of the replacement notice provided pursuant to WAC 284-23-440 (2)(a).

(3) Each ~~((agent or broker))~~ insurance producer who uses written or printed communications in a conservation shall leave with the applicant the original or a copy of such materials used.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-455 Duties of insurers that use ~~((agents or brokers))~~ insurance producers. Each insurer that uses an ~~((agent or broker))~~ insurance producer in a life insurance or annuity sale shall:

(1) Require with or as part of each completed application for life insurance or annuity, a statement signed by the ~~((agent or broker))~~ insurance producer as to whether he or she knows replacement is or may be involved in the transaction.

(2) Where a replacement is involved:

(a) Require from the ~~((agent or broker))~~ insurance producer with the application for life insurance or annuity (i) a list of all of the applicant's existing life insurance or annuities to be replaced and (ii) a copy of the replacement notice provided the applicant pursuant to WAC 284-23-440 (2)(a). Such existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(b) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to (a) of this subsection and a policy summary, contract summary, or ledger statement containing policy data on the proposed life insurance or annuity as required by the life insurance solicitation regulation, WAC 284-23-200 through 284-23-270, and/or the annuity and deposit fund disclosure regulation, WAC 284-23-300 through 284-23-380. Cost indices and equivalent level annual dividend figures need not be included in the policy summary or ledger statement. This written communication shall be made within three working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

(c) Each existing insurer or such insurer's ~~((agent or a broker))~~ insurance producer that undertakes a conservation shall, within twenty days from the date the written communication plus the materials required in (a) and (b) of this subsection is received by the existing insurer, furnish the policy owner with a policy summary for the existing life insurance or a ledger statement containing policy data on the existing policy and/or annuity. Such policy summary or ledger statement shall be completed in accordance with the provisions of the life insurance solicitation regulation, WAC 284-23-200 through 284-23-270, except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The policy summary or ledger statement shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Cost indices and equivalent level annual dividend figures need not be included. When annuities are involved, the disclosure information shall be that required in a contract summary under the annuity and deposit fund disclosure regulation, WAC 284-23-300 through 284-23-380. The replacing insurer may request the existing insurer to furnish it with a copy of the summaries or ledger statement, which shall be furnished within five working days of the receipt of the request.

(3) The replacing insurer shall maintain evidence of the "Notice Regarding Replacement," the policy summary, the contract summary and any ledger statements used, and a replacement register, cross indexed, by replacing ~~((agent))~~ insurance producer and existing insurer to be replaced. The existing insurer shall maintain evidence of policy summaries, contract summaries or ledger statements used in any conservation. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of

the next succeeding regular examination by the insurance department of its state of domicile, whichever is later.

(4) The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within twenty days commencing from the date of delivery of the policy.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-460 Duties of insurers with respect to direct-response sales. (1) If in the solicitation of a direct response sale, the insurer did not propose the replacement, and a replacement is involved, the insurer shall send to the applicant, with the policy, a replacement notice as described in WAC 284-23-485 or other substantially similar form approved by the commissioner. In such instances the insurer may omit the portion of the form which is included under the heading "Statement to Applicant by ((Agent or Broker)) Insurance Producer," but including the portion beginning with "CAUTION" and continuing through the first three points down to and not including the fourth point which begins "Study the comments" without having to obtain approval of the form from the commissioner. The applicant's signature is not required on the notice.

(2) If the insurer proposes the replacement in connection with direct response sales, it shall:

(a) Provide to applicants or prospective applicants, with or as a part of the application, a replacement notice as described in WAC 284-23-485 or other substantially similar form approved by the commissioner.

(b) Request from the applicant with or as part of the application, a list of all existing life insurance or annuities to be replaced and properly identified by name of insurer, insured, and contract number.

(c) Comply with the requirements of WAC 284-23-455 (2)(b), if the applicant furnishes the names of the existing insurers, and the requirements of WAC 284-23-455(3), except that it need not maintain a replacement register.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-480 Penalties. (1) Any ((broker)) insurance producer, and any insurer, ((agent)) representative, officer or employee of such insurer failing to comply with the requirements of this regulation shall be subject to such penalties as may be appropriate under the insurance laws of Washington.

(2) This regulation does not prohibit the use of additional material other than that which is required that is not in violation of this regulation or any other Washington statute or regulation.

(3) Policyowners have the right to replace existing life insurance after indicating in or as part of the applications for life insurance that such is not their intention; however, patterns of such action by policyowners who purchase the replacing policies from the same ((agent or broker)) insurance producer shall be deemed prima facie evidence of the licensee's knowledge that replacement was intended in con-

nection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the licensee's intent to violate this regulation.

AMENDATORY SECTION (Amending Order R 87-6, filed 6/23/87, effective 9/1/87)

WAC 284-23-485 Form to be used for notice regarding replacement.

(Insurance company's name and address)

IMPORTANT NOTICE REGARDING REPLACEMENT OF
INSURANCE

(Save this notice! It may be important to you in the future.)

The decision to buy a new life insurance policy or annuity and discontinue or change an existing one is very important. Your decision could be a good one—or a mistake. It should be carefully considered. The Washington state insurance commissioner requires us to give you this notice to help you make a wise decision.

STATEMENT TO APPLICANT BY ((AGENT OR BROKER)) INSURANCE PRODUCER:

(Use additional sheets, as necessary.)

I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following factors, which I call to your attention.

1. Can there be reduced benefits or increased premiums in later years? . . . No . . . Yes, explain:
2. Are there penalties, set up or surrender charges for the new policy? . . . No . . . Yes, explain, emphasizing any extra cost for early withdrawal:
3. Will there be penalties or surrender charges under the existing insurance as a result of the proposed transaction? . . . No . . . Yes, explain:
4. Are there adverse tax consequences from the replacement under current tax law? . . . No . . . Yes, explain:
5.
 - a) Are interest earnings a consideration in this replacement? No . . . Yes. . .
 - b) If "yes," explain what portions of premiums or contributions will produce limited or no earnings. As pertinent, include in your explanation the need for minimum deposits to enhance earnings, and the reduction of earnings that may result from set-up charges, policy fees, and other factors.
6. Are minimum amounts required to be on deposit before excess interest will be paid? . . . No . . . Yes, explain:
7. If the new program is based on a variable or universal life insurance policy or a single-premium policy or annuity:
 - a) Are the interest rates quoted before . . . or after . . . fees and mortality charges have been deducted?

- b) Interest rates are guaranteed for how long? . . .
- c) The minimum interest rate to be paid is how much?
. . .
- d) If applicable, the rate you pay to borrow is ,
and the limit on the amount that can be borrowed is
.
- e) The surrender charges are
- f) The death benefit is

8. Are there other short or long term effects from the replacement that might be materially adverse?

. . . No . . . Yes, explain:

.....
 Signature of ((Agent or Broker)) Date
Insurance Producer

.....
 Name of ((Agent or Broker))
Insurance Producer Address
 (Print or Type)

List of Policies or Contracts to be Replaced:

<u>Company</u>	<u>Insured</u>	<u>Contract No.</u>
_____	_____	_____

CAUTION: The insurance commissioner suggests you consider these points:

> Usually, contestable and suicide periods start again under a new policy. Benefits might be excluded under a new policy that would be paid under existing insurance.

> Terminating or altering existing coverage, before new insurance has been issued, might leave you unable to purchase other life insurance or let you buy it only at substantially higher rates.

> You are entitled to advice from the existing ((agent)) insurance producer or company. Such advice might be helpful.

> Study the comments made above by the ((agent or broker)) insurance producer. They apply to you and this proposal. They are important to you and your future.

Completed Copy
 Received:
 (Applicant's Signature) (Date)

THIS COMPLETED FORM SHOULD BE FILED PERMANENTLY WITH YOUR NEW INSURANCE POLICY.

AMENDATORY SECTION (Amending Order R 87-5, filed 4/21/87)

WAC 284-30-350 Misrepresentation of policy provisions. (1) No insurer shall fail to fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an insurance policy or insurance contract under which a claim is presented.

(2) No insurance producer or title insurance agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

(3) No insurer shall deny a claim for failure to exhibit the property without proof of demand and unfounded refusal by a claimant to do so.

(4) No insurer shall, except where there is a time limit specified in the policy, make statements, written or otherwise, requiring a claimant to give written notice of loss or proof of loss within a specified time limit and which seek to relieve the company of its obligations if such a time limit is not complied with unless the failure to comply with such time limit prejudices the insurer's rights.

(5) No insurer shall request a first party claimant to sign a release that extends beyond the subject matter that gave rise to the claim payment.

(6) No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage which contain language which release the insurer or its insured from its total liability.

(7) No insurer shall make a payment of benefits without clearly advising the payee, in writing, that it may require reimbursement, when such is the case.

AMENDATORY SECTION (Amending Order R 84-8, filed 12/27/84)

WAC 284-30-550 Receipts to be given. (1) ((Beginning June 1, 1985-)) To effectuate RCW 48.17.470 and 48.17.480 and to eliminate unfair practices in accord with RCW 48.30.010, any ((agent, solicitor)) insurance producer or other representative of an insurer who receives a contract payment or premium from or on behalf of an insured or applicant for homeowners', dwelling fire, private passenger automobile, motorcycle, individual life, or individual disability insurance shall deliver or mail a signed receipt therefor as promptly as possible, which should generally be no later than the next business day. Such receipt must be dated, identify the ((agent)) insurance producer and the ((agent's)) insurance producer's address, identify the person by or for whom payment is made, state the amount received, identify the applicable insurer by its full legal name (or the premium finance company or Washington automobile insurance plan if payment is intended therefor), and identify the contract or policy including a brief description of the coverage for which payment is received.

(2) The receipt need not be an independent document but may be incorporated in an application or binder, if appropriate.

(3) For purposes of this section "life insurance" includes annuities.

(4) For purposes of this section "insurer" includes a health care service contractor and a health maintenance organization, and "disability insurance" includes their contracts and agreements.

(5) This section shall not apply to the receipt of checks or other instruments payable on their face to the insurer, premium finance company or the Washington Automobile

Insurance Plan. It also shall not apply to payments (other than by cash) received by an ((agent)) insurance producer after delivery of the policy for which payment is made, when the payment is pursuant to a premium financing arrangement with the ((agent)) insurance producer or in response to a billing by the ((agent)) insurance producer.

(6) A failure to comply with this section shall be an unfair practice pursuant to RCW 48.30.010, and a violation of a regulation pursuant to RCW 48.17.530.

(7) Each insurer shall inform its ((agents)) insurance producers and appropriate representatives of the requirements of this section.

AMENDATORY SECTION (Amending Order R 84-8, filed 12/27/84)

WAC 284-30-560 Applications and binders. (1) ((Beginning June 1, 1985,)) Every application form used in connection with homeowners', dwelling fire and vehicle insurance, shall contain a clear and conspicuous statement setting forth whether or not coverage has commenced.

(a) If coverage has commenced, the effective date shall be stated.

(b) If coverage has not commenced, there shall be an explanation as to the circumstances which will cause coverage to commence and the time when coverage will become effective.

(c) The statement concerning commencement of coverage shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the other contents of the application so as to be confusing, misleading or not readily evident.

(d) A copy of such application shall be delivered or mailed to the applicant promptly following its execution.

(2) ((Beginning June 1, 1985,)) Every binder used pending the issuance of a policy of property, marine and transportation, vehicle and general casualty insurance, as those kinds of insurance are defined in chapter 48.11 RCW, shall be reduced to writing or printed form and delivered or mailed to the insured as promptly as possible, which should generally be no later than the next business day.

(a) Such binder must be dated, identify the insurer in which coverage is bound, briefly describe the coverage bound, state the date and time coverage is effective, and acknowledge receipt of the amount of any premium money received.

(b) Such binder may be incorporated in or be attached to the application for the insurance but must be clear and conspicuous.

(3) Binders should be replaced promptly with insurance policies. With few exceptions and then only in compliance with RCW 48.18.230(2), insurers must replace binders within ninety days of their effective date.

(4) It shall be an unfair practice and unfair competition for an insurer or ((agent)) insurance producer to engage in acts or practices which are contrary to or not in conformity with the requirements of this section, and a violation of this section is prohibited and shall subject an insurer and ((agent)) insurance producer to the penalties or procedures set forth in RCW 48.05.140, 48.17.530, or 48.30.010.

(5) Each insurer shall inform its ((agents)) insurance producers and appropriate representatives of the requirements of this section.

AMENDATORY SECTION (Amending Order R 84-8, filed 12/27/84)

WAC 284-30-580 Policies to be delivered, not held by insurance producers or title insurance agents. (1) RCW 48.18.260 requires that policies be delivered within a reasonable period of time after issuance. If an insurer relies upon its appointed insurance producers or title insurance agents to make deliveries of its policies, the insurer, as well as the appointed insurance producer or title insurance agent, is responsible for any delay resulting from the failure of the appointed insurance producer or title insurance agent to act diligently.

(2) Insurance producers and title insurance agents delivering insurance policies to insureds must make an actual physical delivery. It is not acceptable for an insurance producer or title insurance agent to merely obtain a receipt indicating a delivery and then to retain the policy, for safekeeping or otherwise, in the insurance producer's or title insurance agent's possession.

(3) Insurance producers and title insurance agents may obtain policies from owners or insureds and hold such policies briefly for analysis or servicing, giving a receipt therefor in every instance, but shall promptly return any such policies to their owners or insureds. Insurance producers and title insurance agents shall not otherwise take custody of, or hold, insurance policies, whether for fee or at no charge, unless a family or legal relationship clearly justifies such conduct, as, for example, where a policy belonging to a minor child of the insurance producer and title insurance agent is held, or where the insurance producer or title insurance agent is acting as a legal guardian or a court appointed representative and holds a policy of a ward or of an estate.

(4) It shall be an unfair practice and unfair competition for an insurer or insurance producer or title insurance agent to engage in acts or practices which are contrary to or not in conformity with the requirements of this section, and a violation of this section is prohibited and shall subject an insurer, insurance producer and title insurance agent to the penalties or procedures set forth in RCW 48.05.140, 48.17.530, or 48.30.010.

(5) Each insurer shall inform its appointed insurance producers or title insurance agents and appropriate representatives of the requirements of this section.

AMENDATORY SECTION (Amending Matter R 98-18, filed 9/14/00, effective 10/15/00)

WAC 284-30-600 Unfair practices with respect to out-of-state group life and disability insurance. (1) Under RCW 48.30.010, it is an unfair method of competition and an unfair practice for any insurer to engage in any insurance transaction, as defined in RCW 48.01.060, regarding life insurance, annuities, or disability insurance coverage on individuals in this state under a group policy delivered to a policyholder outside this state when:

(a) The policy or certificate providing coverage in the state of Washington, including, but not limited to, applications, riders, or endorsements, contains any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy or certificate.

(b) The policy or certificate providing coverage in the state of Washington, including, but not limited to, applications, riders, or endorsements, has any title, heading, or other indication of its provisions which is misleading.

(c) The policy or certificate delivered to residents of the state of Washington does not include all terms and conditions of the coverage.

(d) The type of group being covered under the contract providing coverage in the state of Washington does not qualify for group life insurance or group disability insurance under the provisions of Title 48 RCW.

(e) The coverage is being solicited by deceptive advertising.

(f) With respect to disability insurance, the policy or certificate providing coverage in the state of Washington does not:

(i) Provide that claims will be processed in compliance with RCW 48.21.130 through 48.21.148;

(ii) Meet the requirements as to benefits and coverage mandated by chapter 48.21 RCW and rules effectuating that chapter, specifically including those set forth in chapter 284-51 WAC, and WAC 284-30-610, 284-30-620 and 284-30-630;

(iii) With respect to long-term care insurance, also meet the requirements of chapter 48.84 RCW and chapter 284-54 WAC;

(iv) With respect to medicare supplemental insurance, also meet the requirements of chapter 48.66 RCW and chapter 284-66 WAC; and

(v) Meet the loss ratio standards applicable to group insurance under RCW 48.66.100 and 48.70.030 and chapter 284-60 WAC.

(g) With respect to life insurance, the out-of-state group policy or certificate providing coverage in the state of Washington fails to comply with the provisions of:

(i) Chapter 48.24 RCW;

(ii) WAC 284-23-550 and 284-23-600 through 284-23-730;

(iii) WAC 284-30-620; and

(iv) WAC 284-30-630.

(2) Except as provided in subsection (3)(c) of this section, for purposes of this section it is immaterial whether the coverage is offered by means of a solicitation through: A sponsoring organization; the mail broadcast or print media; electronic communication, including electronic mail and web sites; licensed ~~((agents or brokers))~~ insurance producers; or any other method of communication.

(3) It is further defined to be an unfair practice for any insurer marketing group insurance coverage in this state to do the following with respect to the coverage:

(a) To fail to comply with the requirements of this state relating to advertising and claims settlement practices, and to

fail to furnish the commissioner, upon request, copies of all advertising materials intended for use in this state;

(b) To fail to file copies of all certificate forms and any other related forms providing coverage in Washington, including trust documents or articles of incorporation with the commissioner at least thirty days prior to use; and

(c) To fail to file with the commissioner a copy of the disclosure statement required by WAC 284-30-610, where the sale of coverage to individuals in this state will be through solicitation by ~~((agents, solicitors or brokers))~~ insurance producers. The disclosure statement must be appropriately completed, as it appears when delivered to the Washington individuals who are solicited by the Washington licensees.

The disclosure form must also be filed at least thirty days prior to any solicitation of coverage.

(4) This section does not apply to self-funded plans that are defined by and subject to the federal Employee Retirement Income Security Act of 1974 (ERISA) or to insurers when acting as third-party administrators for self-funded ERISA plans.

AMENDATORY SECTION (Amending Matter R 98-18, filed 9/14/00, effective 10/15/00)

WAC 284-30-610 Unfair practices with respect to the solicitation of coverage under out-of-state group policies.

(1) It is an unfair method of competition and an unfair practice for ~~(=) an insurer to permit ((its appointed)) a licensed (agent;~~

~~An insurance agent;~~

~~Solicitor; or~~

~~A broker;)) insurance producer, whether appointed by the insurer or not, to solicit an individual in the state of Washington to buy or apply for life insurance, annuities, or disability insurance coverage when the coverage is provided under the terms of a group policy delivered to an association or organization (or to a trustee designated by the association or organization), as policyholder, outside this state, unless the following steps are taken:~~

(a) An accurately completed disclosure statement, substantially in the form set forth in subsection (2) of this section, must be brought to the attention of the individual being solicited before the application for coverage is completed and signed. The disclosure form must be signed by both the soliciting licensee and the individual being solicited and it must be given to the individual.

(b) A copy of the completed disclosure statement must be submitted by the soliciting licensee, with the application for coverage, to the insurer providing the coverage.

(c) The insurer must confirm the accuracy of the form's contents, and retain the copy for not less than three years from the date the coverage commences or from the date received, whichever is later.

(2) Disclosure statement form: (Type size to be no less than ten-point)

(Insurer's name and address)

IMPORTANT INFORMATION ABOUT THE COVERAGE YOU ARE
BEING OFFERED

Save this statement! It may be important to you in the future. The Washington State Insurance Commissioner requires that we give you the following information about the coverage offered to you under a group policy issued by (insurer), (to/on behalf of) (association or organization).

The policy is subject to and governed by the laws of the state of

The certificate of coverage issued to you is governed by the state of Washington.

The Washington State Insurance Commissioner has authority to assist you concerning your coverage.

To keep this coverage, you (must/need not) continue membership in the group. If you are not now a member, the initial cost of membership is \$ Additional dues or membership fees are currently \$ per Membership costs (may/will not) increase in future years. You will also have the premiums to pay.

The coverage (can/can not) be discontinued by the group. It (can/can not) be terminated by the insurer. If the group organization ceases to exist, your coverage (would/would not) terminate. You (are/are not) entitled by the contract to convert your coverage to your own policy.

(Group organization's name) (will/will not) be paid for its participation in this insurance program. (An explanation of payments must be inserted here.)

If you apply for this coverage, you (will/will not) have a "free look" (of days*) during which you may cancel your contract and recover your premium without obligation. Your membership fee to join the group (is/is not) refundable. *(Omit phrase, "of days", if there is no "free look.")

DELIVERED to the applicant this day of (month), (year), by

(Signed) (agent, solicitor or broker) insurance producer.

Printed Name:

I ACKNOWLEDGE THAT I HAVE RECEIVED AND UNDERSTAND THIS DISCLOSURE STATEMENT: Applicant.

(3) This section does not apply with respect to coverage provided to individuals under a group contract which is provided for a group of a type described in RCW 48.24.035, 48.24.040, 48.24.060, 48.24.080, 48.24.090, or 48.24.095.

AMENDATORY SECTION (Amending Order R 88-12, filed 12/7/88)

WAC 284-30-660 Deceptive use of quotations or evaluations prohibited. (1) It is an unfair or deceptive practice and an unfair method of competition pursuant to RCW 48.30.010 for any insurance company, ~~((broker, agent, or solicitor))~~ insurance producer, surplus line broker, or title insurance agent in connection with the business of insurance,

to utilize quotations or evaluations from rating or advisory services or other independent sources, in a manner likely to deceive the persons to whom the information is directed.

(2) Acts which are prohibited by this section include the following examples:

(a) If an insurer represents in its advertising that it has received an "A+" rating from an advisory service, such representation is deceptive unless it includes a clear explanation that such advisory service's practice is to rate insurance companies on the basis of "AAA," "AA," and declining to "A," if such is the case. The absence of such explanation would reasonably cause the ordinary person to believe falsely that the insurer had received the highest rating available from the service.

(b) Similarly, quoting figures or comments from a report, such as those representing claims paid or the capital or reserves or the quality of an insurer, in a manner to suggest that such figures or comments are impressive or that the report demonstrates the company to be particularly strong financially or of high quality relative to other companies, when such is not the case, creates a false impression and is deceptive.

AMENDATORY SECTION (Amending Order R 87-5, filed 4/21/87)

WAC 284-30-750 (~~Brokers'~~) Insurance producers' and surplus line brokers' fees to be disclosed. It shall be an unfair practice for any ~~((broker))~~ insurance producer or surplus line broker providing services in connection with the procurement of insurance to charge a fee in excess of the usual commission which would be paid to an ~~((agent))~~ insurance producer or surplus line broker without having advised the insured or prospective insured, in writing, in advance of the rendering of services, that there will be a charge and its amount or the basis on which such charge will be determined.

AMENDATORY SECTION (Amending Matter No. R 2007-01, filed 8/20/07, effective 9/20/07)

WAC 284-30-850 Authority, purpose, and effective date. In order to prevent unfair methods of insurance sales to active duty service members of the United States armed forces, unfair competition, and unfair or deceptive acts or practices by insurers, fraternal benefit societies, ~~((agents, brokers or solicitors))~~ or insurance producers, WAC 284-30-850 through 284-30-872 are adopted. These rules may be called the "military sales practices" rules.

(1) The Military Personnel Financial Services Protection Act (P.L. 109-290) was enacted by the 109th Congress to protect members of the United States armed forces from unscrupulous practices regarding the sale of insurance, financial, and investment products on and off military installations. The act requires this state to adopt rules that meet sales practice standards adopted by the National Association of Insurance Commissioners to protect members of the United States armed forces from dishonest and predatory insurance sales practices both on and off of a military installation.

(2) Based on the commissioner's authority under RCW 48.30.010 to define by rule methods of competition and other acts and practices in the conduct of the business of insurance

found by the commissioner to be unfair or deceptive, after evaluation of the acts and practices of insurers, fraternal benefit societies, (~~(agents, brokers,)~~) or (~~(solicitors)~~) insurance producers that informed the need for P.L. 109-290, and because the commissioner is required by that act to adopt rules that meet the sales practice standards adopted by the National Association of Insurance Commissioners and federal law, the commissioner finds the acts or practices set forth in WAC 284-30-850 through 284-30-872 to be unfair or deceptive methods of competition or unfair or deceptive acts or practices in the business of insurance.

(3) These military sales practices rules are effective for all benefit contracts, insurance policies and certificates solicited, issued, or delivered in this state on and after (the effective date of these rules).

AMENDATORY SECTION (Amending Matter No. R 2007-01, filed 8/20/07, effective 9/20/07)

WAC 284-30-860 Exemptions. (1) The following life insurance solicitations or sales are exempt from the requirements of WAC 284-30-850 through 284-30-872:

(a) Credit life insurance.

(b) Group life insurance where there is no in-person face-to-face solicitation of individuals by a licensed (~~(agent, broker, or solicitor)~~) insurance producer or where the policy or certificate does not include a side fund.

(c) An application to the insurer that issued the existing policy or certificate when a contractual change or a conversion privilege is being exercised; or when the existing insurance policy or certificate is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term life conversion privilege is exercised among corporate affiliates.

(d) Individual, stand-alone policies of health or disability income insurance.

(e) Contracts offered by Servicemembers Group Life Insurance (SGLI) or Veterans Group Life Insurance (VGLI), as authorized by 38 U.S.C. section 1965 et seq., and contracts offered by State Sponsored Life Insurance (SSLI) as authorized by 37 U.S.C. Section 707 et seq.

(f) Life insurance policies or certificates offered through or by a nonprofit military association, qualifying under section 501 (c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer.

(g) Contracts used to fund any of the following:

(i) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) A plan described by sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the IRC, as amended, if established or maintained by an employer;

(iii) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) Prearranged funeral contracts.

(2) Nothing in WAC 284-30-850 through 284-30-872 shall be construed to restrict the ability of nonprofit organizations or other organizations to educate members of the United States armed forces in accordance with federal Department of Defense Instruction 1344.07 "Personal Commercial Solicitation on DOD Installations," or any successor directive.

(3)(a) For purposes of the military sales practices rules, general advertisements, direct mail and internet marketing do not constitute "solicitation." Telephone marketing does not constitute "solicitation" only if the caller explicitly and conspicuously discloses that the product being solicited is life insurance and the caller makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation.

(b) Nothing in this section shall be construed to exempt an insurer, (~~(agent, broker,)~~) or (~~(solicitor)~~) insurance producer from the military sales practices rules in any in-person face-to-face meeting established as a result of the solicitation exemptions listed in this section.

AMENDATORY SECTION (Amending Matter No. R 2007-01, filed 8/20/07, effective 9/20/07)

WAC 284-30-865 Definitions. The following definitions apply to the military sales practices rules, unless the context clearly requires otherwise:

(1) "Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component, such as national guard or reserve, while serving under published orders for active duty or full-time training. This term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of fewer than thirty-one calendar days.

(2) "Department of Defense (DOD) personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

(3) "Door-to-door" means a solicitation or sales method whereby an (~~(agent, broker, or solicitor)~~) insurance producer proceeds randomly or selectively from household to household without a prior specific appointment.

(4) "General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance or the promotion of an insurer(~~(, agent, broker,)~~) or (~~(solicitor)~~) insurance producer.

(5) "Insurer" means an insurance company, as defined in RCW 48.01.050, that provides life insurance products for sale in this state. The term "insurer" also includes fraternal benefit societies, as defined at RCW 48.36A.010. Whenever the term "insurer," "policy," or "certificate" is used in these military sales practices rules, it includes insurers and fraternal benefit societies and applies to all insurance policies, benefit contracts, and certificates of life insurance issued by them.

(6) "Known" or "knowingly" means, depending on its use in WAC 284-30-870 and 284-30-872, that the insurer or (~~agent, broker, or solicitor~~) insurance producer had actual awareness, or in the exercise of ordinary care should have known at the time of the act or practice complained of that the person being solicited is either:

- (a) A service member; or
- (b) A service member with a pay grade of E-4 or below.

(7) "Life insurance" has the meaning set forth in RCW 48.11.020.

(8) "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(9) "MyPay" means the Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(10) "Service member" means any active duty officer (commissioned and warrant) or any enlisted member of the United States armed forces.

(11) "Side fund" means a fund or reserve that is part of or is attached to a life insurance policy or certificate (except for individually issued annuities) by rider, endorsement, or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

- (a) Accumulated or cash value or secondary guarantees provided by a universal life policy;
- (b) Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
- (c) A premium deposit fund which:
 - (i) Contains only premiums paid in advance which accumulate at interest;
 - (ii) Imposes no penalty for withdrawal;
 - (iii) Does not permit funding beyond future required premiums;
 - (iv) Is not marketed or intended as an investment; and
 - (v) Does not carry a commission, either paid or calculated.

(12) "Specific appointment" means a prearranged appointment that has been agreed upon by both parties and is definite as to place and time.

(13) "United States armed forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

AMENDATORY SECTION (Amending Matter No. R 2007-01, filed 8/20/07, effective 9/20/07)

WAC 284-30-870 Practices declared to be unfair or deceptive when committed on a military installation. (1) The following acts or practices by an insurer(~~(, agent, broker,)~~) or (~~solicitor~~) insurance producer are found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance when committed on a military installation and solicited in-person face-to-face:

(a) Knowingly soliciting the purchase of any life insurance policy or certificate door to door or without first establishing a specific appointment for each meeting with the prospective purchaser.

(b) Soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary.

(c) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

(d) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing, or other areas where the installation commander has prohibited solicitation.

(e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

(f) Posting unauthorized bulletins, notices, or advertisements.

(g) Failing to present DD Form 2885 Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.

(h) Knowingly accepting an application for life insurance or issuing a policy or certificate of life insurance on the life of an enlisted member of the United States armed forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement related to the sale of life insurance established by regulations, directives, or rules of the DOD or any branch of the United States armed forces.

(2) The following acts or practices by an insurer(~~(, agent, broker,)~~) or (~~solicitor~~) insurance producer are found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance or improper influences or inducements when committed on a military installation:

(a) Using DOD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

(b) Using an (~~agent, broker, or solicitor~~) insurance producer to participate in any education or orientation program sponsored by United States armed forces.

AMENDATORY SECTION (Amending Matter No. R 2007-01, filed 8/20/07, effective 9/20/07)

WAC 284-30-872 Practices declared to be unfair or deceptive regardless of where they occur. (1) The following acts or practices by an insurer(~~(, agent, broker,)~~) or (~~solicitor~~) insurance producer are found by the commissioner and declared to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance or improper influences or inducements regardless of the location where they occur:

(a) Submitting, processing, or assisting in the submission or processing of any allotment form or similar device used by

the United States armed forces to direct a service member's pay to a third party for the purchase of life insurance. For example, the using or assisting in the use of a service member's "MyPay" account or other similar internet or electronic medium to pay for life insurance is prohibited. For purposes of these military sales practices rules, assisting a service member by providing insurer or premium information necessary to complete any allotment form is not an unfair, deceptive, or prohibited practice.

(b) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

(i) Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. § 4301 et seq. and regulations promulgated thereunder; and

(ii) Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

(c) Employing any device or method, or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's leave and earnings statement (or equivalent or successor form) as "savings" or "checking" and where the service member has no formal banking relationship.

(d) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

(e) Using DOD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to their family members.

(f) Offering or giving anything of value, directly or indirectly, to DOD personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation or sale of life insurance to another service member.

(g) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited.

(h) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income in order to purchase life insurance.

(2) The following acts or practices by an insurer(~~(agent, broker,)~~) or (~~solicitor~~) insurance producer may lead to confusion regarding the source, sponsorship, approval, or affiliation of the insurer or any (~~agent, broker or solicitor~~) insurance producer. They are each found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer(~~(agent, broker,)~~) or (~~solicitor~~) insurance producer, or the policy or certificate offered is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. government, the United States armed forces, or any state or federal agency or governmental entity.

(i) For example, the use of the following titles, including but not limited to the following is prohibited: Battalion insurance counselor, unit insurance advisor, Servicemen's Group Life Insurance conversion consultant, or veteran's benefits counselor.

(ii) A person is not prohibited from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Examples include, but are not limited to the following: Chartered life underwriter (CLU), chartered financial consultant (ChFC), certified financial planner (CFP), master of science in financial services (MSFS), or masters of science financial planning (MS).

(b) Soliciting the purchase of any life insurance policy or certificate through the use of or in conjunction with any third-party organization that promotes the welfare of or assists members of the United States armed forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that the insurer(~~(agent, broker, solicitor)~~) or insurance producer, or the insurance policy or certificate is affiliated, connected, or associated with endorsed, sponsored, sanctioned, or recommended by the U.S. government, or the United States armed forces.

(3) The following acts or practices by an insurer(~~(agent, broker,)~~) or (~~solicitor~~) insurance producer lead to confusion regarding premiums, costs, or investment returns. They are each found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

(b) Misrepresenting the mortality costs of a life insurance policy or certificate (except for individually issued annuities), including stating or implying that the policy or certificate costs nothing or is free.

(4) The following acts or practices by an insurer(~~(agent, broker,)~~) or (~~solicitor~~) insurance producer regarding Servicemembers Group Life Insurance (SGLI) or Veterans Group Life Insurance (VGLI) are each found by the commissioner to be false, misleading, unfair, or deceptive methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Making any representation regarding the availability, suitability, amount, cost, exclusions, or limitations to coverage provided to service members or dependents by SGLI or VGLI, which is false, misleading, or deceptive.

(b) Making any representation regarding conversion requirements, including the costs of coverage, exclusions, or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading, or deceptive.

(c) Suggesting, recommending, or encouraging a service member to cancel or terminate his or her SGLI policy, or issuing a life insurance policy or certificate which replaces an existing SGLI policy unless the replacement takes effect upon or after separation of the service member from the United States armed forces.

(5) The following acts or practices regarding disclosure by an insurer(~~(agent, broker,)~~ or (~~solicitor~~) insurance producer are declared to be false, misleading, unfair, or deceptive methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance regardless of the location where the act occurs:

(a) Deploying, using, or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an (~~agent, broker, or solicitor~~) insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.

(b) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person face-to-face meeting with a prospective purchaser.

(c) Except for individually issued annuities, failing to clearly and conspicuously disclose the fact that the policy or certificate being solicited is life insurance.

(d) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the Military Personnel Financial Services Protection Act (P.L. 109-290), p. 16.

(e) Except for individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time of application is taken:

(i) An explanation of any free look period with instructions on how to cancel any policy or certificate issued by the insurer; and

(ii) Either a copy of the application or a written disclosure. The copy of the application or the written disclosure must clearly and concisely set out the type of life insurance, the death benefit applied for, and its expected first year cost. A basic illustration that meets the requirements of this state will be considered a written disclosure.

(6) The following acts or practices by an insurer(~~(agent, broker,)~~ or (~~solicitor~~) insurance producer are each found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Except for individually issued annuities, recommending the purchase of any life insurance policy or certificate which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

(b) Offering for sale or selling a life insurance policy or certificate which includes a side fund to a service member in

pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

(i) "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate, survivors, or dependents.

(ii) Other military survivor's benefits include, but are not limited to: The death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE healthcare benefits, survivor housing benefits and allowances, federal income tax forgiveness, and Social Security survivor benefits.

(c) Except for individually issued annuities, offering for sale or selling any life insurance policy or certificate which includes a side fund:

(i) Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(ii) Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined policy or certificate. For this disclosure, the effective rate of return must consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule must be provided for at least each policy year from year one to year ten and for every fifth policy year thereafter, ending at age one hundred, policy maturity, or final expiration; and

(iii) Which by default diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due.

(d) Except for individually issued annuities, offering for sale or selling any life insurance policy or certificate which after considering all policy benefits, including but not limited to endowment, return of premium, or persistency, does not comply with standard nonforfeiture law for life insurance.

(e) Selling any life insurance policy or certificate to a person known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service, except for accidental death coverage (for example, double indemnity) which may be excluded.

AMENDATORY SECTION (Amending Matter No. R 96-5, filed 11/4/96, effective 12/5/96)

WAC 284-36A-035 Confidentiality of RBS reports—Use of information for comparative purposes—Use of information to monitor solvency. (1) All RBS reports, to the extent the information is not required to be set forth in a publicly available annual statement schedule, including the results or report of any examination or analysis of a fraternal benefit society that are filed with the commissioner constitute information that might be damaging to the fraternal benefit

society if made available to its competitors, and therefore shall be kept confidential by the commissioner. This information shall not be made public or be subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner.

(2) The comparison of a fraternal benefit society's total adjusted surplus to its RBS level is a regulatory tool that may indicate the need for possible corrective action with respect to the fraternal benefit society, and is not a means to rank fraternal benefit societies generally. Therefore, except as otherwise required under the provisions of this chapter, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the RBS level of any fraternal benefit society, or of any component derived in the calculation, by any fraternal benefit society, (~~agent, broker~~) insurance producer, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. However, if any materially false statement with respect to the comparison regarding a fraternal benefit society's total adjusted surplus to its RBS level or an inappropriate comparison of any other amount to the fraternal benefit society's RBS level is published in any written publication and the fraternal benefit society is able to demonstrate to the commissioner with substantial proof the falsity of such statement, or the inappropriateness, as the case may be, then the fraternal benefit society may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) The RBS instructions and RBS reports are solely for use by the commissioner in monitoring the solvency of fraternal benefit societies and the need for possible corrective action with respect to fraternal benefit societies and shall not be used by the commissioner for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that a fraternal benefit society or any affiliate is authorized to write.

AMENDATORY SECTION (Amending Order R-76-2, filed 3/4/76)

WAC 284-50-020 Applicability. (1) These rules shall apply to every "advertisement," as that term is hereinafter defined, in WAC 284-50-030, subsections (1), (7), (8) and (9), unless otherwise specified in these rules, intended for presentation distribution, or dissemination in this state when such presentation, distribution, or dissemination is made either directly or indirectly by or on behalf of an insurer, (~~agent, broker,~~) or (~~soleitor~~) insurance producer as those terms are defined in the insurance code of this state and these rules.

(2) Every insurer shall establish and at all times maintain a system of control over the content, form, and method of dis-

semination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the insurer for whom such advertisements are prepared.

AMENDATORY SECTION (Amending Order R-76-2, filed 3/4/76)

WAC 284-50-030 Definitions. (1) An advertisement for the purpose of these rules shall include:

(a) Printed and published material, audio visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, television scripts, billboards, and similar displays; and

(b) Descriptive literature and sales aids of all kinds issued by an insurer, (~~agent,~~) or (~~broker~~) insurance producer for presentation to members of the insurance buying public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters; and

(c) Prepared sales talks, presentations, and material for use by (~~agents, brokers, and solicitors~~) insurance producers.

(2) "Policy" for the purpose of these rules shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement which provides disability benefits, or medical, surgical, or hospital expense benefits, whether on an indemnity, reimbursement, service, or prepaid basis, except when issued in connection with another kind of insurance other than life and except disability, waiver of premium, and double indemnity benefits included in life insurance and annuity contracts.

(3) "Insurer" for the purposes of these rules shall include any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, health care service contractor, health maintenance organization, and any other legal entity which is defined as an "insurer" in the insurance code of this state and is engaged in the advertisement of a policy as "policy" is defined in this regulation.

(4) "Exception" for the purpose of these rules shall mean any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the policy.

(5) "Reduction" for the purpose of these rules shall mean any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.

(6) "Limitation" for the purpose of these rules shall mean any provision which restricts coverage under the policy other than an exception or a reduction.

(7) "Institutional advertisement" for the purpose of these rules shall mean an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of accident and sickness insurance, or the promotion of the insurer.

(8) "Invitation to inquire" for the purpose of these rules shall mean an advertisement having as its objective the creation of a desire to inquire further about the product and which is limited to a brief description of the loss for which the benefit is payable, and which may contain:

(a) The dollar amount of benefit payable, and/or

(b) The period of time during which the benefit is payable; provided the advertisement does not refer to cost. An advertisement which specifies either the dollar amount of benefit payable or the period of time during which the benefit is payable shall contain a provision in effect as follows:

"For costs and further details of the coverage, including exclusions, any reductions or limitations and the terms under which the policy may be continued in force, see your ((agent)) insurance producer or write to the company."

(9) "Invitation to contract" for the purpose of these rules shall mean an advertisement which is neither an invitation to inquire nor an institutional advertisement.

AMENDATORY SECTION (Amending Order R 95-5, filed 9/11/95, effective 10/12/95)

WAC 284-54-300 Information to be furnished, style.

(1) Each ((broker, agent)) insurance producer, or other representative of an insurer selling or offering benefits that are designed, or represented as being designed, to provide long-term care insurance benefits, shall deliver the disclosure form as set forth in WAC 284-54-350 not later than the time of application for the contract. If an ((agent)) insurance producer has solicited the coverage, the disclosure form shall be signed by that ((agent)) insurance producer and a copy left with the applicant. The insurer shall maintain a copy in its files.

(2) The disclosure form required by this section shall identify the insurer issuing the contract and may contain additional appropriate information in the heading. The informational portion of the form shall be substantially as set forth in WAC 284-54-350 and words emphasized therein shall be underlined or otherwise emphasized in each form issued. The form shall be printed in a style and with a type character that is easily read by an average person eligible for long-term care insurance.

(3) Where inappropriate terms are used in the disclosure form, such as "insurance," "policy," or "insurance company," a fraternal benefit society, health care service contractor, or health maintenance organization shall substitute appropriate terminology.

(4) In completing the form, each subsection shall contain information which succinctly and fairly informs the purchaser as to the contents or coverage in the contract. If the contract provides no coverage with respect to the item, that shall be so stated. Address the form to the reasonable person likely to purchase long-term care insurance.

(5) A policy which provides for the payment of benefits based on standards described as "usual," "customary," or "reasonable" (or any combination thereof), or words of similar import, shall include an explanation of such terms in its disclosure form and in the definitions section of the contract.

(6) If the contract contains any gatekeeper provision which limits benefits or precludes the insured from receiving benefits, such gatekeeper provision shall be fully described.

(7) All insurers shall use the same disclosure form. It is intended that the information provided in the disclosure form will appear in substantially the same format provided to enable a purchaser to compare competing contracts easily.

(8) The information provided shall include the statement: "This is NOT a medicare supplement policy," and shall otherwise comply with WAC 284-66-120.

(9) The required disclosure form shall be filed by the insurer with the commissioner prior to use in this state.

(10) In any case where the prescribed disclosure form is inappropriate for the coverage provided by the contract, an alternate disclosure form shall be submitted to the commissioner for approval or acceptance prior to use in this state.

(11) Upon request of an applicant or insured, insurers shall make available a disclosure form in a format which meets the requirements of the Americans With Disabilities Act and which has been approved in advance by the commissioner.

AMENDATORY SECTION (Amending Matter No. R 2009-08, filed 11/24/09, effective 1/19/10)

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

(1) "Applicant" means:

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

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

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

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

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

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

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

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

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

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

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

means the "premium" applicable to an accounting period whether received before, during or after that period.

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

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

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

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

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

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

WAC 284-66-130 Requirements for application forms and replacement of medicare supplement insurance coverage.

(1) Application forms must include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has another medicare supplement, medicare advantage, medicaid coverage, or another health insurance or other disability policy or certificate in force or whether a medicare supplement insurance policy or certificate is intended to replace any other policy or certificate of a health care service contractor, health maintenance organization, disability insurer, or fraternal benefit society presently in force. A supplementary application or other form to be signed by the applicant and ((agent)) insurance producer containing the questions and statements, may be used: If the coverage is sold without an ((agent)) insurance producer, the supplementary application must be signed by the applicant.

[Statements]

(1) You do not need more than one medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) If you are sixty-five or older, you may be eligible for benefits under medicaid and may not need a medicare supplement policy.

(4) If, after purchasing this policy, you become eligible for medicaid, the benefits and premiums under your medicare supplement policy can be suspended if requested during your entitlement to benefits under medicaid for twenty-four months. You must request this suspension within ninety days of becoming eligible for medicaid. If you are no longer entitled to medicaid, your suspended medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within ninety days of losing medicaid eligibility. If the medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(5) If you are eligible for, and have enrolled in a medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health benefit plan. If you suspend your medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing your employer or union-based group health plan. If the medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(6) Counseling services may be available in your state to provide advice concerning your purchase of medicare supplement insurance and concerning medical assistance through the state medicaid program, including benefits as a "Qualified Medicare Beneficiary" (QMB) and a "Specified Low-Income Medicare Beneficiary" (SLMB).

[Questions]

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. **PLEASE ANSWER ALL QUESTIONS.**

[Please mark Yes or No below with an "X"]

To the best of your knowledge.

(1)(a) Did you turn age 65 in the last 6 months?

Yes No

(b) Did you enroll in medicare Part B in the last 6 months?

Yes No

(c) If yes, what is the effective date?

(2) Are you covered for medical assistance through the state medicaid program?

[NOTE TO APPLICANT; If you are participating in a "Spend - Down Program" and have not met your "Share of Cost," please answer NO to this question.]

Yes No

If yes,

(a) Will medicaid pay your premiums for this medicare supplement policy?

Yes No

(b) Do you receive any benefits from medicaid OTHER THAN payments toward your medicare Part B premium?

Yes No

(3)(a) If you had coverage from any medicare plan other than original medicare within the past 63 days (for example, a medicare advantage plan, or a medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START // END //

(b) If you are still covered under the medicare plan, do you intend to replace your current coverage with this new medicare supplement policy?

Yes No

(c) Was this your first time in this type of medicare plan?

Yes No

(d) Did you drop a medicare supplement policy to enroll in the medicare plan?

Yes No

(4)(a) Do you have another medicare supplement policy in force?

Yes No

(b) If so, with what company and what plan do you have [optional for Direct Mailers]?

(c) If so, do you intend to replace your current medicare supplement policy with this policy?

Yes No

(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union or individual plan.)

Yes No

(a) If so, with what company and what kind of policy?

(b) What are your dates of coverage under the other policy?

START // END //

(If you are still covered under the other policy, leave "END" blank.)

(2) (~~Agents~~) Insurance producers must list any other medical or health insurance policies sold to the applicant.

(a) List policies sold that are still in force.

(b) List policies sold in the past five years that are no longer in force.

(3) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, must be returned to the applicant by the insurer upon delivery of the policy.

(4) Upon determining that a sale will involve replacement of medicare supplement coverage, an issuer, other than a direct response issuer, or its (~~agent~~) appointed insurance producer, must furnish the applicant, before issuing or delivering the medicare supplement insurance policy or certificate, a notice regarding replacement of medicare supplement insurance coverage. One copy of the notice, signed by the applicant and the (~~agent~~) insurance producer (except where the coverage is sold without an (~~agent~~) insurance producer), must be provided to the applicant and an additional signed copy must be kept by the issuer. A direct response issuer must deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of medicare supplement insurance coverage.

(5) The notice required by subsection (4) of this section for an issuer, must be provided in substantially the form set forth in WAC 284-66-142 in no smaller than twelve point type, and must be filed with the commissioner before being used in this state.

(6) The notice required by subsection (4) of this section for a direct response insurer must be in substantially the form set forth in WAC 284-66-142 and must be filed with the commissioner before being used in this state.

(7) A true copy of the application for a medicare supplement insurance policy issued by a health maintenance organization or health care service contractor for delivery to a resident of this state must be attached to or otherwise physically made a part of the policy when issued and delivered.

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

(9) Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

WAC 284-66-142 Form of replacement notice.

NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE OR MEDICARE ADVANTAGE

[Insurance company's name and address]

SAVE THIS NOTICE!

IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing medicare supplement or medicare advantage insurance and replace it with a policy to be issued by [Company name] Insurance Company. Your new policy will provide thirty days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this medicare supplement coverage is a wise decision, you should terminate your present medicare supplement or medicare advantage coverage. You should evaluate the need for other disability coverage you have that may duplicate this policy.

STATEMENT TO APPLICANT BY ISSUER, ((AGENT [BROKER])) [INSURANCE PRODUCER OR OTHER REPRESENTATIVE]:

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this medicare supplement policy will not duplicate your existing medicare supplement or, if applicable, medicare advantage coverage because you intend to terminate your existing medicare supplement coverage or leave your medicare advantage plan. The replacement policy is being purchased for the following reason(s) (check one):

- Additional benefits.
No change in benefits, but lower premiums.
Fewer benefits and lower premiums.
My plan has outpatient prescription drug coverage and I am enrolling in Part D.
Disenrollment from a medicare advantage plan. Please explain reason for disenrollment. [optional only for direct mailers]
Other. (please specify)

- NOTE: If the issuer of the medicare supplement policy being applied for does not, or is otherwise prohibited from imposing preexisting condition limitations, please skip to statement 2 below. If you have had your current medicare supplement policy less than three months, health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) to the extent such time was spent (depleted) under original policy.
If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

(Signature of ((Agent, Broker)) Insurance producer, or Other Representative)*

[Typed Name and Address of Issuer, ((Agent or Broker)) or Insurance producer]

(Applicant's Signature)

(Date)

*Signature not required for direct response sales.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

WAC 284-66-240 Filing requirements and premium adjustments. (1) All policy forms issued or delivered on or after January 1, 1990, and before July 1, 1992, as well as any future rate adjustments to such forms, must demonstrate compliance with the loss ratio requirements of WAC 284-66-200 and policy reserve requirements of WAC 284-66-210, unless the forms meet the standards of WAC 284-66-063 and 284-66-203. All filings of rate adjustments must be accompanied by the proposed rate schedule and an actuarial memorandum completed and signed by a qualified actuary as defined in WAC 284-05-060. In addition to the actuarial memorandum, the following supporting documentation must be submitted to demonstrate to the satisfaction of the commissioner that rates are not excessive, inadequate, or unfairly discriminatory and otherwise comply with the requirements of this chapter. If any of the items listed below are inappropriate due to the pricing methodology used by the pricing actuary, the commissioner may waive the requirements upon request of the issuer.

(a) Filings of issue age level premium rates must be accompanied by the following:

(i) Anticipated loss ratios stated on a policy year basis for the period for which the policy is rated. Filings of future rate adjustments must contain the actual policy year loss ratios experienced since inception;

(ii) Anticipated total termination rates on a policy year basis for the period for which the policy is rated. The termination rates should be stated as a percentage and the source of the mortality assumption must be specified. Filings of future rate adjustments must include the actual total termination rates stated on a policy year basis since inception;

(iii) Expense assumptions including fixed and percentage expenses for acquisition and maintenance costs;

(iv) Schedule of total compensation payable to (~~agents~~) insurance producers and other producers as a percentage of premium, if any;

(v) Specimen copy of the compensation agreements or contracts between the issuer and (~~its agents, brokers, general agents~~) any insurance producers, or others whose compensation is based in whole or in part on the sale of medicare supplement insurance policies, the agreements demonstrating compliance with WAC 284-66-350 (where appropriate);

(vi) Other data necessary in the reasonable opinion of the commissioner to substantiate the filing.

(b) Filings of community rated forms must be accompanied by the following:

(i) Anticipated loss ratio for the accounting period for which the policy is rated. The duration of the accounting period must be stated in the filing, established based on the judgment of the pricing actuary, and must be reasonable in the opinion of the commissioner. Filings for rate adjustment must demonstrate that the actual loss ratios experienced during the three most recent accounting periods, on an aggregated basis, have been equal to or greater than the loss ratios required by WAC 284-66-200.

(ii) Expense assumptions including fixed and percentage expenses for acquisition and maintenance costs;

(ii) Schedule of total compensation payable to (~~agents~~) insurance producers and other producers as a percentage of premium, if any;

(iv) Specimen copy of the compensation agreements or contracts between the insurer and (~~its agents, brokers, general agents~~) any insurance producers or others whose compensation is based in whole or in part on the sale of medicare supplement insurance policies, the agreements demonstrating compliance with WAC 284-66-350 (where appropriate);

(v) Other data necessary in the reasonable opinion of the commissioner to substantiate the filing.

(2) Every issuer must make premium adjustments that are necessary to produce an expected loss ratio under the policy that will conform with the minimum loss ratio standards of WAC 284-66-200.

(3) No premium adjustment that would modify the loss ratio experience under the policy, other than the adjustments described in this section, may be made with respect to a policy at any time other than upon its renewal or anniversary date.

(4) Premium refunds or premium credits must be made to the premium payer no later than upon renewal if a credit is given, or within sixty days of the renewal or anniversary date if a refund is provided.

(5) For purposes of rate making and requests for rate increases, all individual medicare supplement policy forms of an issuer are considered "similar policy forms" including forms no longer being marketed.

AMENDATORY SECTION (Amending Matter No. R 2009-08, filed 11/24/09, effective 1/19/10)

WAC 284-66-243 Filing and approval of policies and certificates and premium rates. (1) An issuer may not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner according to the filing requirements and procedures prescribed by the commissioner.

(2) An issuer may not use or change premium rates for a medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner according to the filing requirements and procedures prescribed by the commissioner.

(3)(a) Except as provided in (b) of this subsection, an issuer may not file for approval more than one form of a policy or certificate of each type for each standard medicare supplement benefit plan.

(b) An issuer may offer, with the approval of the commissioner, up to four additional policy forms or certificate forms of the same type for the same standard medicare supplement benefit plan, one for each of the following cases:

(i) The inclusion of new or innovative benefits;

(ii) The addition of either direct response or (~~agent~~) insurance producer marketing methods;

(iii) The addition of either guaranteed issue or underwritten coverage;

(iv) The offering of coverage to individuals eligible for medicare by reason of disability. The form number for prod-

ucts offered to enrollees who are eligible by reason of disability must be distinct from the form number used for a corresponding standardized plan offered to an enrollee eligible for medicare by reason of age.

(c) For the purposes of this section, a "type" means an individual policy, a group policy, an individual medicare SELECT policy, or a group medicare SELECT policy.

(4)(a) Except as provided in (a)(i) of this subsection, an issuer must continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the commissioner. A policy form or certificate form is not considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve months.

(i) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty days before discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer may no longer offer for sale the policy form or certificate form in this state.

(ii) An issuer that discontinues the availability of a policy form or certificate form under (a)(i) of this subsection, may not file for approval a new policy form or certificate form of the same type for the same standard medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of medicare supplement business to another issuer is considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology is considered a discontinuance under (a) of this subsection, unless the issuer complies with the following requirements:

(i) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in that the revised rating methodology and resultant rates differ from the existing rating methodology and resultant rates.

(ii) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential that is in the public interest.

(5)(a) Except as provided in (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard medicare supplement benefit plan must be combined for purposes of the refund or credit calculation prescribed in WAC 284-66-203.

(b) Forms assumed under an assumption reinsurance agreement may not be combined with the experience of other forms for purposes of the refund or credit calculation.

(6) An issuer may set rates only on a community rated basis or on an issue-age level premium basis for policies issued prior to January 1, 1996, and may set rates only on a community rated basis for policies issued after December 31, 1995.

(a) For policies issued prior to January 1, 1996, community rated premiums must be equal for all individual policyholders or certificateholders under a standardized medicare supplement benefit form. Such premiums may not vary by age or sex. For policies issued after December 31, 1995, community rated premiums must be set according to RCW 48.66.045(3).

(b) Issue-age level premiums must be calculated for the lifetime of the insured. This will result in a level premium if the effects of inflation are ignored.

(7) All filings of policy or certificate forms must be accompanied by the proposed application form, outline of coverage form, proposed rate schedule, and an actuarial memorandum completed, signed and dated by a qualified actuary as defined in WAC 284-05-060. In addition to the actuarial memorandum, the following supporting documentation must be submitted to demonstrate to the satisfaction of the commissioner that rates are not excessive, inadequate, or unfairly discriminatory and otherwise comply with the requirements of this chapter:

(a) Anticipated loss ratios stated on a calendar year basis by duration for the period for which the policy is rated. Filings of future rate adjustments must contain the actual calendar year loss ratios experienced since inception, both before and after the refund required, if any and the actual loss ratios in comparison to the expected loss ratios stated in the initial rate filing on a calendar year basis by duration if applicable;

(b) Anticipated total termination rates on a calendar year basis by duration for the period for which the policy is rated. The termination rates should be stated as a percentage and the source of the mortality assumption must be specified. Filings of future rate adjustments must include the actual total termination rates stated on a calendar year basis since inception;

(c) Expense assumptions including fixed and percentage expenses for acquisition and maintenance costs;

(d) Schedule of total compensation payable to (~~agents~~) insurance producers and other producers as a percentage of premium, if any;

(e) A complete specimen copy of the compensation agreements or contracts between the issuer and its (~~agents, brokers, general agents~~) insurance producers, as well as the contracts between (~~general agents and agents~~) any insurance producers or others whose compensation is based in whole or in part on the sale of medicare supplement insurance policies. The agreements must demonstrate compliance with WAC 284-66-350 (where appropriate);

(f) Other data necessary in the reasonable opinion of the commissioner to substantiate the filing.

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

WAC 284-66-330 Standards for marketing. (1) Every issuer marketing medicare supplement insurance coverage in this state, directly or through its producers, must:

(a) Establish marketing procedures to assure that any comparison of policies or certificates by its (~~agents or other~~) insurance producers will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp or other appropriate means, on the first page of the policy or certificate the following:

"NOTICE TO BUYER: THIS (POLICY, CONTRACT OR CERTIFICATE) MAY NOT COVER ALL OF YOUR MEDICAL EXPENSES."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for medicare supplement insurance already has disability insurance and the types and amounts of any such insurance.

(e) Establish auditable procedures for verifying compliance with this section.

(2) In addition to the acts and practices prohibited in chapter 48.30 RCW, chapters 284-30 and 284-50 WAC, and this chapter, the commissioner has found and hereby defines the following to be unfair acts or practices and unfair methods of competition, and prohibited practices for any issuer, or their respective ~~((agents))~~ appointed insurance producers either directly or indirectly:

(a) Twisting. Making misrepresentations or misleading comparisons of any insurance policies or issuers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, keep, or convert any insurance policy.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or otherwise applying undue pressure to coerce the purchase of, or recommend the purchase of, insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance ~~((agent))~~ producer or insurance company.

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

WAC 284-66-340 Appropriateness of recommended purchase and excessive insurance. (1) In recommending the purchase or replacement of any medicare supplement policy or certificate an ~~((agent))~~ insurance producer must make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(2) Any sale of a medicare supplement policy or certificate that will provide an individual more than one medicare supplement policy or certificate is prohibited.

(3) An issuer may not issue a medicare supplement policy or certificate to an individual enrolled in medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

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

WAC 284-66-350 Permitted compensation arrangements. (1)(a) The commissioner has found and hereby defines it to be an unfair act or practice and an unfair method of competition, and a prohibited practice, for any issuer, directly or indirectly, to provide commission to an ~~((agent))~~ insurance producer or other representative for the solici-

tion, sale, servicing, or renewal of a medicare supplement policy or certificate that is delivered or issued for delivery to a resident within this state unless the commission is identical as to percentage of premium for every policy year as long as the coverage under the policy or certificate remains in force with premiums being paid, or waived by the issuer, for the coverage.

(b) Each commission payment must be made by the issuer no later than sixty days following the date on which the applicable premiums, that are the basis of the commission calculation, were paid. Each payment must be paid to either the producing ~~((agent))~~ insurance producer who originally sold the policy or to a successor ~~((agent))~~ insurance producer designated by the issuer to replace the producing ~~((agent))~~ insurance producer, or shared between them on some basis. The distribution of the commission payments must be designated by the issuer in its various ~~((agents'))~~ insurance producers' commission agreements and it may not terminate, reduce or keep the commission payment as long as the policy or certificate remains in force with premiums being paid, or waived by the issuer, for the coverage thereunder.

(c) Where an issuer provides a portion of the total commission for the solicitation, sale, servicing, or renewal of a medicare supplement policy or certificate to ~~((a general agent))~~ an insurance producer, sales manager, district representative or other supervisor who has marketing responsibilities (other than a producing or successor ~~((agent))~~ insurance producer), while such portion of total commissions continues to be paid it must be identical as to percentage of premium for every policy year as long as coverage under the policy or certificate remains in force with premiums being paid, or waived by the issuer, for the coverage.

(2) For purposes of this section, "commission" includes pecuniary or nonpecuniary remuneration of any kind relating to the solicitation, sale, servicing, or renewal of the policy or certificate, including but not limited to bonuses, gifts, prizes, advances on commissions, awards and finders fees.

(3) This section does not apply to salaried employees of an issuer who have marketing responsibilities if the salaried employee is not compensated, directly or indirectly, on any basis dependent upon the sale of insurance being made, including but not limited to considerations of the number of applications submitted, the amount or types of insurance, or premium volume.

AMENDATORY SECTION (Amending Matter No. R 2008-09, filed 11/24/08, effective 12/25/08)

WAC 284-83-063 Notice to applicant regarding replacement of individual accident and sickness or long-term care insurance marketed by an insurance producer. The following notice is required in WAC 284-83-060(3):

NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL [ACCIDENT AND SICKNESS] [HEALTH] OR LONG-TERM CARE INSURANCE

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing [accident and sickness] [health] or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] insurance company. Your new policy provides thirty days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all [accident and sickness] [health] or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

STATEMENT TO APPLICANT BY ~~((AGENT, BROKER))~~ INSURANCE PRODUCER OR OTHER REPRESENTATIVE]:

(Use additional sheets, as necessary.)

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

- (1) Health conditions that you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
- (2) State law provides that your replacement policy or certificate may not contain new preexisting conditions or probationary periods. The insurer will waive any time periods applicable to preexisting conditions or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.
- (3) If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its ~~((agent))~~ appointed [insurance producer] regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
- (4) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before your sign it, reread it carefully to be certain that all information has been properly recorded.

(Signature of ~~((Agent, Broker))~~ [Insurance Producer] or Other Representative)

[Typed Name and Address of ~~((Agent or Broker))~~ [Insurance Producer]]

The above "Notice to Applicant" was delivered to me on:

(Applicant's Signature)

(Date)

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order R 93-10, filed 9/1/93, effective 10/2/93)

WAC 284-92-240 Suspension and revocation of registration. The grounds for suspension or revocation mentioned in this section are in addition to those mentioned elsewhere in this regulation or in other applicable law or regulation. The registration of a purchasing group may be suspended or revoked:

(1) If any basis exists on which, if the purchasing group were an insurer, ~~((agent,))~~ or ~~((broker))~~ insurance producer,

its certificate of authority or its license could be suspended or revoked.

(2) If any insurer issuing policies for the purchasing group is subject, or would be subject if it were an authorized insurer, to suspension or revocation of its certificate of authority under RCW 48.05.140.

(3) If any insurer issuing policies for or to the purchasing group has any order of supervision, receivership, conservatorship, or liquidation, or any order similar to such an order, entered against it in any state or country by a court or insurance commissioner (or equivalent supervisory official).

(4) If the purchasing group solicits or accepts, or permits the solicitation or acceptance, of insurance applications by a person not licensed in Washington as an insurance ((agent or)) producer or surplus line broker; or does or permits any other act, by a person not licensed as an ((agent or)) insurance producer or surplus line broker, if that act may be performed only by one so licensed.

(5) If the purchasing group fails to reply fully, accurately, and in writing to an inquiry of the commissioner.

AMENDATORY SECTION (Amending Order R 93-10, filed 9/1/93, effective 10/2/93)

WAC 284-92-440 Suspension and revocation of registration. The grounds for suspension or revocation mentioned in this section are in addition to those mentioned elsewhere in this regulation or in other applicable law or regulation. In addition, a domestic risk retention group is subject to the same sanctions, on the same grounds, as a domestic insurer, including revocation of its certificate of authority. The registration of a risk retention group may be suspended or revoked if:

(1) Any basis exists on which, if the risk retention group were an authorized insurer, its certificate of authority could be suspended or revoked, under chapter 48.05 RCW or otherwise.

(2) If the risk retention group has any order of supervision, receivership, conservation, or liquidation, or any order similar to such an order, entered against it in any state or country by a court or insurance commissioner (or equivalent supervisory official); or any such court or official finds that the risk retention group is in a hazardous financial or financially impaired condition.

(3) If the risk retention group solicits or accepts, or permits the solicitation or acceptance, of insurance applications by anyone not appropriately licensed as an ((agent or)) insurance producer or surplus line broker; or does or permits any other act by a person not appropriately licensed as an ((agent or)) insurance producer or surplus line broker, if that act may be performed only by one so licensed.

(4) An order is entered by a court enjoining the risk retention group from soliciting or selling insurance, or operating.

(5) If the risk retention group fails to respond fully, accurately, and in writing to an inquiry of the commissioner.

AMENDATORY SECTION (Amending Order R 93-10, filed 9/1/93, effective 10/2/93)

WAC 284-92-450 ((Agents)) Insurance producers. Only appropriately licensed ((agents or)) insurance producers or surplus line brokers may solicit or accept applications for insurance to be issued by a risk retention group.

WSR 10-21-121

EXPEDITED RULES

DEPARTMENT OF HEALTH

(Board of Pharmacy)

[Filed October 20, 2010, 11:52 a.m.]

Title of Rule and Other Identifying Information: Repealing WAC 246-856-030 Delegation of authority to initiate investigations.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Doreen E. Beebe, Department of Health, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, AND RECEIVED BY December 20, 2010.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of pharmacy (board) intends to repeal WAC 246-856-030 as these rules are not necessary because the board has statutory authority to delegate the decision to initiate investigations to a panel.

Reasons Supporting Proposal: RCW 18.130.050(18) authorizes the disciplining authority to establish panels with three or more members to perform any duty or authority within its jurisdiction. The board delegates authority to initiate investigations to a panel based upon this statute. For this reason, these rules are not required. The board believes the expedited rule-making process is appropriate because the rules only pertain to internal governmental actions.

Statutory Authority for Adoption: RCW 18.130.050 and 18.64.005.

Statute Being Implemented: RCW 18.130.080 and 18.130.050.

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

Name of Proponent: Department of health, board of pharmacy, governmental.

Name of Agency Personnel Responsible for Drafting: Doreen E. Beebe, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4834; Implementation and Enforcement: Susan Teil Boyer, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4853.

October 19, 2010
Gary G. Harris, Chair
Board of Pharmacy

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-856-030	Delegation of authority to initiate investigations.
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