WSR 12-13-010
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed June 7, 2012, 12:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-09-082.

Title of Rule and Other Identifying Information: WAC 308-391-602 Processor lien or preparer lien, uniform commercial code (UCC).

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard S.W., Building 2, 2nd Floor, Olympia, WA 98502, on July 26, 2012, at 8:30.

Date of Intended Adoption: July 31, 2012.

Submit Written Comments to: Kim Summers, P.O. Box 9660, Olympia, WA 98507-9660, e-mail UCC@dol.wa.gov, fax (360) 570-7052, by July 23, 2012.

Assistance for Persons with Disabilities: Contact Kim Summers, TTY (360) 664-0116 or (360) 664-1530.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As a result of HB 2362 which passed the 2012 legislature, the rule describing how to file certain liens in the UCC office needs to be amended to include wine producer liens.

Statutory Authority for Adoption: RCW 60.13.040.

Statute Being Implemented: Chapter 62A.9A RCW.

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

Name of Proponent: [Department of licensing], governmental.

Name of Agency Personnel Responsible for Drafting: Kim Summers, Olympia, Washington, (360) 64-1530 [664-1530]; Implementation and Enforcement: Margaret Eby, Olympia, Washington, (360) 664-1572.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact.

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

June 7, 2012
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-12-067, filed 5/29/09, effective 6/29/09)

WAC 308-391-602 Processor lien or preparer lien. (1) A producer or commercial fisherman or wine producer may satisfy the condition in chapter 60.13 RCW that a statement evidencing the processor lien or preparer lien be filed under RCW 60.13.040 in a record, authenticated by the producer or fisherman, by using the same filing forms and procedures outlined in this chapter for filing a financing statement, and by satisfying the following additional statutory requirements prescribed in RCW 60.13.040:

(a) Designate the financing statement as a statement filed under RCW 60.13.040 evidencing the processor lien or preparer lien or wine producer lien by marking "Non-UCC Filing" (not AG-lien) in box 5, and by stating which type of lien is claimed in box 8.

(b) State the true amount or a reasonable estimate of the debt demanded after deducting all credits and offsets and the date on which payment was due for the agricultural product or fish to be charged with the lien in box 10 of the Addendum.

(c) State the name and address of the producer(s), processor(s), conditioner(s) or preparer(s) who received the agricultural product or fish to be charged with the lien in boxes 1, 2 and 11, as needed.

(d) State the name and address of the lien holder in box 3.

(e) Add a description sufficient to identify the agricultural product or fish to be charged with the lien in box 4.

(f) Include the statement that the amount claimed is a true and bona fide existing debt as of the date of the filing of the notice evidencing the lien, and the statement that the act of filing this notice constitutes the present intention of the producer or commercial fisherman that the statements there are true and adopted by the producer or commercial fisherman as their own in box 10 of the Addendum. If you cannot include all of the information required to be included in box 10, use the additional space provided in box 16 of the Addendum with a cross-reference that it is a continuation of the information to be added to box 10.

(2) Authentication. The authorized filing of the financing statement on the approved forms, containing the additional information, and in the manner that complies with the requirements of this section is deemed to be an authenticated record by the producer or commercial fisherman as required by RCW 60.13.040(2).

(3) Where to file. File in the department of licensing as provided in WAC 308-391-101.

(4) Fee. The fees are the same as provided in WAC 308-391-104.

(5) Duration. As provided in RCW 60.13.060(1), the wine producer or processor lien shall terminate twelve months after, and the preparer lien shall terminate fifty days after, the later of the date of attachment of the lien or filing of the statement, unless a suit to foreclose the lien has been filed before that time as provided in RCW 60.13.070. Thus a filed statement evidencing a processor lien or a preparer lien is not effective for five years, and need not, and may not be continued as provided in WAC 308-391-201.

(6) Mechanics of search. Crop liens claimed under chapter 60.11 RCW, processor liens or preparer liens or wine producer liens claimed under chapter 60.13 RCW for which statements have been filed in accordance with this rule, and financing statements filed under RCW 62A.9A-310 are revealed in a search as provided in WAC 308-391-505.

WSR 12-13-054
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed June 15, 2012, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-10-087.

Title of Rule and Other Identifying Information: Chapter 308-107 WAC, Ignition interlock device revolving account.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507 (check in at counter on first floor), on July 25, 2012, at 3:00 p.m.

Date of Intended Adoption: July 26, 2012.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351, by July 24, 2012.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by July 24, 2012, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To incorporate statutory changes made by 2SHB 2443 which passed the 2012 legislature.

- Amends WAC 308-107-050 Ignition interlock device revolving account, to require that drivers who are subject to a mandatory restriction to operate motor vehicles equipped with an ignition interlock device under RCW 46.20.720 must pay twenty dollars a month into the ignition interlock device revolving account. Makes additional conforming amendments for this requirement.
- Amends WAC 308-107-060 Indigence—Monetary assistance—Determination of need, to permit indigent drivers subject to a mandatory restriction to operate motor vehicles equipped with an ignition interlock device under RCW 46.20.720 to apply for an [and] receive monetary assistance from the ignition interlock device revolving account. Makes additional conforming amendments for this section.

Reasons Supporting Proposal: Required due to changes in RCW 46.20.720, enacted by the 2012 legislature in chapter 183, Laws of 2012.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.385.

Statute Being Implemented: RCW 46.20.720.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Doron Maniece, Highways-Licenses Building, Olympia, Washington, (360) 902-3763.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

June 15, 2012
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-01-37 [11-01-037], filed 12/6/10, effective 1/6/11)

WAC 308-107-050 Ignition interlock device revolving account. (1)(a) As required under RCW 46.20.385 (6)(a), unless determined by the department to be indigent under WAC 308-107-060, a person who is applying for or has been issued an ignition interlock driver's license, or (b) a person who is restricted under RCW 46.20.720, must pay an additional fee of twenty dollars per month or partial month for which the ignition interlock driver's license is valid or an ignition interlock device is installed to the manufacturer of the device(s) installed in the motor vehicle(s) driven by the person. Payment may be made directly to the manufacturer, or through the authorized service provider, depending upon the manufacturer's business practices.

(2) A manufacturer providing devices to persons who are ((~~applying for or have been issued~~)) required to have an ignition interlock ((~~driver's license~~)) device, either directly or through an authorized service provider, must enter into an agreement with the department for the collection and transmittal of the twenty dollar monthly fee required under RCW 46.20.385 (6)(a) or 46.20.720(6). Any agreement made under this section must include appropriate reporting requirements and accounting practices to permit the department to audit the handling of the fees that must be remitted to the department. The department may terminate an agreement with a manufacturer upon a showing of good cause. Good cause may include, but not be limited to;

(a) Violation of the agreement;

(b) Violation of the laws and rules governing the installation of devices; or

(c) Violation of this chapter.

An agreement between the department and a manufacturer will be valid for no more than four years, provided that the department may extend an agreement for up to an additional four years at its discretion.

(3) As provided by RCW 46.20.385 (6)(b) and 46.20.720 (6), the department shall deposit the proceeds of the twenty-dollar fee into the ignition interlock device revolving account.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 08-24-59 [08-24-059], filed 11/26/08, effective 1/1/09)

WAC 308-107-060 Indigence—Monetary assistance—Determination of need. (1) ((~~An applicant for, or holder of, an ignition interlock driver's license~~)) (a) A person who is required to have an ignition interlock device may apply to the department for a determination that he or she is indigent for purposes of RCW 46.20.385 and 46.20.745. The department will determine that a person is indigent if the person is:

(((~~a~~))) (i) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or Supplemental Security Income; or

(((~~(b)~~))) (ii) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level.

(b) In making a determination of indigence under this subsection, the department may request that the applicant provide records or other evidence of public assistance, income, payment of taxes, or other relevant issues.

(c) A person who has been determined to be indigent under this subsection is:

(i) Exempt from paying the additional fee of twenty dollars required under RCW 46.20.385 (6)(a)((~~,~~)); and

(ii) May apply for monetary assistance under subsection (2) of this section.

(2) Subject to appropriation by the legislature of funds from the ignition interlock device revolving account and the availability of funds in the ignition interlock device revolving account, a person who has been determined to be indigent under this section may apply to the department for monetary assistance in covering the costs of installing, removing, and leasing an ignition interlock device, and any applicable licensing fees.

(3) Subject to funds appropriated, the department may base the amount of monetary assistance provided to an applicant under subsection (2) of this section on a determination of need. Where possible, a determination of need may be based on such factors as:

(a) Total number of persons in household, including the number of dependants;

(b) The age of the applicant and whether the applicant is a dependant of another person;

(c) Monthly expenses; and

(d) Liquid assets.

(4) A person who has been determined to be indigent under this section must re-apply for a determination of indigence on an annual basis.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 12-13-055
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed June 15, 2012, 9:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-20-095.

Title of Rule and Other Identifying Information: WAC 308-104-004 Definitions, definitions for the terms "notice" and "order."

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507 (check in at counter on first floor), on July 27, 2012, at 3:00 p.m.

Date of Intended Adoption: July 30, 2012.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway @dol.wa.gov, fax (360) 586-8351, by July 26, 2012.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by July 26, 2012, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 308-104-004 to add definitions for the terms "notice" and "order." These terms are defined as being interchangeable for purposes of sending written notices imposing driver's license suspensions, revocations, denials, cancellations, and disqualification of a person from operating a commercial motor vehicle. This clarification may help avoid potential confusion for drivers receiving notice from the department.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.245.

Statute Being Implemented: RCW 46.20.245.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Doron Maniece, Highways-Licenses Building, Olympia, Washington, (360) 902-3763.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

June 15, 2012
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-18-069, filed 9/1/00)

WAC 308-104-004 RCW definitions. As used in this chapter, unless the context requires otherwise, the term:

(1) "Examination," for purposes of RCW 46.20.305, means any one or combination of the following:

(a) A medical certificate to be completed by a competent medical authority;

(b) A vision certificate to be completed by a competent vision authority such as an optometrist or ophthalmologist;

(c) A psychiatric evaluation by a competent authority;

(d) An alcohol or drug evaluation or report of progress in alcohol or drug treatment from an alcohol or drug treatment agency approved by the department of social and health services;

(e) A reexamination of knowledge and driving ability conducted by a licensing services representative;

(f) A special examination of knowledge and driving ability conducted by a licensing services representative;

(2) "Jurisdiction" means a state, territory, or possession of the United States; the District of Columbia; or a province of Canada;

(3) "Military personnel" means active members of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned officers of the Public Health Service, and members of foreign military organizations assigned to this state on official duty. For purposes of this section, a per-

son in the reserves will not be considered an "active member" unless he or she has been called to active duty for a period exceeding the full period specified for license expiration in RCW 46.20.181;

(4) "Notice" and "order", when used in relation to driver's license suspensions, revocations, denials, and cancellations, and in relation to the disqualification of a person from operating a commercial motor vehicle, may be interchangeable and mean the written notice given by the department to a person under the provisions of RCW 46.20.245 or other law;

"State" means a state of the United States, the District of Columbia, or a United States territory or possession.

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

WSR 12-13-065
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed June 18, 2012, 10:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-117.

Title of Rule and Other Identifying Information: WAC 182-519-0050 Monthly income and countable resource standards for medically needy (MN) and 388-519-0100 Eligibility for the medically needy program.

Hearing Location(s): Health Care Authority, Cherry Street Plaza Building, Conference Room, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on July 25, 2012, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 26, 2012.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by July 25, 2012.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 17, 2012, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The web link cited in WAC 182-519-0050 which connects the reader to the medically needy income level (MNIL) standards is obsolete. The agency plans to replace the web link with a chart of the MNIL and reference to the annually-updated federal benefit rate.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Catherine Fisher, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1357.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

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

June 18, 2012
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-23-091, filed 11/17/11, effective 11/21/11)

WAC 182-519-0050 Monthly income and countable resource standards for medically needy (MN). (1) Changes to the medically needy income level (MNIL) occur on January 1st of each calendar year((~~. Current income standards can be found at http://www1.dshs.wa.gov/pdf/esa/manual/Standards_C_MedAsst_Chart.pdf~~)) when the Social Security Administration (SSA) issues a cost-of-living adjustment for that year.

(2) Medically needy (MN) standards for persons who meet institutional status requirements are in WAC 388-513-1395. The standard for a client who lives in an alternate living facility can be found in WAC 388-513-1305.

(3) Find the resource standards for institutional programs in WAC 388-513-1350. The institutional standard chart can be found at http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml.

(4) Countable resource standards for the noninstitutional MN program are:

(a) One person	$2,000
(b) A legally married couple	$3,000
(c) For each additional family member add	$50

(5) The MNIL for individuals who do not meet institutional status requirements are listed below. The agency disregards the difference between the MNIL listed below and the one person federal benefit rate (FBR) established by SSA each year to establish the effective MNIL standard based on household size. The FBR is the Supplemental Security Income (SSI) payment standard.

1	2	3	4	5	6	7	8	9	10
467	592	667	742	858	975	1125	1242	1358	1483

AMENDATORY SECTION (Amending WSR 09-08-003, filed 3/19/09, effective 4/19/09)

WAC 388-519-0100 Eligibility for the medically needy program. (1) An individual who meets the following

conditions may be eligible for medically needy (MN) coverage under the special rules in chapters 388-513 WAC and 388-515 WAC:

(a) Meets the institutional status requirements of WAC 388-513-1320;

(b) Resides in a medical institution as described in WAC 388-513-1395; or

(c) Receives waiver services under a medically needy in-home waiver (MNIW) according to WAC 388-515-1550 or a medically needy residential waiver (MNRW) according to WAC 388-515-1540.

(2) An SSI-related individual who lives in ((~~a department~~)) an agency contracted alternate living facility may be eligible for MN coverage under the rules described in WAC 388-513-1305.

(3) An individual may be eligible for MN coverage under this chapter when he or she is:

(a) Not covered under subsection (1) and (2) of this section; and

(b) Eligible for categorically needy (CN) medical coverage in all other respects except that his or her CN countable income is above the CN income standard.

(4) MN coverage may be available if the individual is:

(a) A child;

(b) A pregnant woman;

(c) A refugee;

(d) An SSI-related individual including an aged, blind or disabled individual with countable income under the CN income standard, who is an ineligible spouse of an SSI recipient; or

(e) A hospice client with countable income which is above the special income level (SIL).

(5) An individual who is not eligible for CN medical and who is applying for MN coverage has the right to income deductions in addition to, or instead of, those used to arrive at CN countable income. Deductions to income are applied to each month of the base period to determine MN countable income. The following deductions are used to calculate countable income for MN:

(a) The agency disregards the difference between the MNIL described in WAC 182-519-0050 and the federal benefit rate (FBR) established by the Social Security Administration each year. The FBR is the one person Supplemental Security Income (SSI) payment standard;

(b) All health insurance premiums, with the exception of medicare Part A, Part B, Part C and Part D premiums expected to be paid by the individual or family member during the base period(s);

(((~~b~~))) (c) Any allocations to a spouse or to dependents for an SSI-related individual who is married or who has dependent children. Rules for allocating income are described in WAC ((~~388-475-0900~~)) 182-512-0900 through 182-512-0960;

(((~~c~~))) (d) For an SSI-related individual who is married and lives in the same home as his or her spouse who receives home and community based waiver services under chapter 388-515 WAC, an income deduction equal to the medically needy income level (MNIL) minus the nonapplying spouse's income; and

(((~~d~~))) (e) A child or pregnant woman who is applying for MN coverage is eligible for income deductions allowed under TANF/SFA rules and not under the rules for CN programs based on the federal poverty level. See WAC ((~~388-450-0210(4)~~)) 182-109-0001(4) for exceptions to the TANF/SFA rules which apply to medical programs and not to the cash assistance program.

(6) The MNIL for individuals who qualify for MN coverage under subsection (1) of this section is based on rules in chapter 388-513 and 388-515 WAC.

(7) The MNIL for all other individuals is described in WAC ((~~388-478-0070~~)) 182-519-0050. If an individual has countable income which is at or below the MNIL, he or she is certified as eligible for up to twelve months of MN medical coverage.

(8) If an individual has countable income which is over the MNIL, the countable income that exceeds the ((~~department's~~)) agency's MNIL standards is called "excess income."

(9) When individuals have "excess income" they are not eligible for MN coverage until they provide evidence to the ((~~department~~)) agency of medical expenses incurred by themselves, their spouse or family members who live in the home for whom they are financially responsible. See WAC ((~~388-519-0110(8)~~)) 182-519-0110(8). An expense has been incurred when:

(a) The individual has received the medical treatment or medical supplies, is financially liable for the medical expense but has not yet paid the bill; or

(b) The individual has paid for the expense within the current or retroactive base period described in WAC ((~~388-519-0110~~)) 182-519-0110.

(10) Incurred medical expenses or obligations may be used to offset any portion of countable income that is over the MNIL. This is the process of meeting "spenddown."

(11) The ((~~department~~)) agency or the agency's designee calculates the amount of an individual's spenddown by multiplying the monthly excess income amount by the number of months in the certification period as described in WAC ((~~388-519-0110~~)) 182-519-0110. The qualifying medical expenses must be greater than or equal to the total calculated spenddown amount.

(12) An individual who is considered for MN coverage under this chapter may not spenddown excess resources to become eligible for the MN program. Under this chapter individuals are ineligible for MN coverage if their resources exceed the program standard in WAC ((~~388-478-0070~~)) 182-519-0050. An individual who is considered for MN coverage under WAC 388-513-1395, ((~~388-505-0250~~)) 182-514-0250 or ((~~388-505-0255~~)) 182-514-0255 is allowed to spenddown excess resources.

(13) There is no automatic redetermination process for MN coverage. An individual must submit an application for each eligibility period under the MN program.

(14) An individual who requests a timely administrative hearing under WAC 388-458-0040 is not eligible for continued benefits beyond the end of the original certification date under the ((~~medically needy~~)) MN program.

NEW SECTION

The following section of the Washington Administrative Code is decodified as follows:

Old WAC Number	New WAC Number
388-519-0100	182-519-0100

WSR 12-13-070

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 11-10—Filed June 18, 2012, 2:39 p.m.]

Continuance of WSR 12-11-115.

Preproposal statement of inquiry was filed as WSR 12-03-055.

Title of Rule and Other Identifying Information: Chapter 173-400 WAC, General regulations for air pollution sources, ecology is also proposing a revision to the state implementation plan (SIP) for meeting the requirements of Section 110, Parts C and D of the Federal Clean Air Act.

Date of Intended Adoption: September 15, 2012.

Submit Written Comments to: Linda Whitcher, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail Linda.Whitcher@ecy.wa.gov, fax (360) 407-7534, by July 20, 2012.

Assistance for Persons with Disabilities: Contact air quality program at (360) 407-6800, by July 6, 2012, TTY 711 Washington relay services or (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Extend public comment period for written comments from July 6, 2012, to July 20, 2012. Ecology is also extending the comment period on the SIP.

Statutory Authority for Adoption: Chapter 70.94 RCW, Washington Clean Air Act.

Statute Being Implemented: Chapter 70.94 RCW, Washington Clean Air Act.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Linda Whitcher, Department of Ecology, Lacey, Washington, (360) 407-6875; Implementation and Enforcement: Al Newman, Department of Ecology, Lacey, Washington, (360) 407-6810.

June 14, 2012

Polly Zehm

Deputy Director

WSR 12-13-072

PROPOSED RULES

DEPARTMENT OF FINANCIAL INSTITUTIONS

(Consumer Services Division)

[Filed June 19, 2012, 9:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-23-062.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-620 WAC) that implement the Consumer Loan Act (CLA) (chapter 31.04 RCW).

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700, on July 25, 2012, at 9-11 a.m.

Date of Intended Adoption: August 22, 2012.

Submit Written Comments to: Elizabeth Hampton, 150 Israel Road S.W., P.O. Box 41200, Olympia, WA 98504-1200, e-mail elizabeth.hampton@dfi.wa.gov, fax (360) 586-5068, by August 2, 2012.

Assistance for Persons with Disabilities: Contact Elizabeth Hampton by July 19, 2012, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement chapter 17, Laws of 2012, and are amendments that generally add clarity and consistency to the rules. Chapter 17, Laws of 2012, among other things, removed a licensing requirement for certain employees of residential loan servicers, and gives authority to the director to enter into informal settlements.

Reasons Supporting Proposal: Specific information provided in the rules is necessary to guide the regulated industries in complying with the laws.

The rules are being amended under the authority of OFM Guideline 3(f), October 12, 2011.

Statutory Authority for Adoption: Chapter 43.320 RCW, RCW 31.04.165.

Statute Being Implemented: Chapter 31.04 RCW.

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

Name of Proponent: Department of financial institutions, consumer services, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy Fazio, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8800; Implementation and Enforcement: Deborah Bortner, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-0511.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendments will not impose more than minor costs on the businesses impacted by the proposed rules.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to the proposed rules.

June 19, 2012

Deborah Bortner, Director

Division of Consumer Services

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter 31.04 RCW.

"Advertise, advertising, and advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages.

"Affiliate" means any person who controls, is controlled by, or is under common control with another.

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Section 226 et seq.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be submitted in writing or electronically and includes a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Section 103.

"Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

"Borrower" means any natural person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan.

"Commercial context" or "commercial purpose" means actions taken for the purpose of obtaining anything of value for oneself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes.

"Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

"Creditor" has the same meaning as in the Truth in Lending Act, 15 U.S.C. 1602(f) and Regulation Z, 12 C.F.R. 1026 (formerly 12 C.F.R. 226).

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. § 1735f-7a.

"Director" means the director of the department of financial institutions or his or her designated representative.

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. section 1691 and Regulation B, 12 C.F.R. ((~~Section~~)) Part 1002 (formerly Part 202).

"Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Section 1681 et seq.

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. section 1692.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, Director of the Office of Thrift Supervision, National Credit Union Administration, and Federal Deposit Insurance Corporation.

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. section 45(a).

"Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or other documents, or transferring certificates of title to vehicles.

"Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

"Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. sections 2801 through 2810 and 12 C.F.R. ((~~Section~~)) Part 1003 (formerly Part 203).

"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

"Individual servicing a mortgage loan" means a person who on behalf of a lender or servicer licensed by this state, or a lender or servicer exempt from licensing, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

For purposes of this definition "on behalf of a lender or servicer" means that the individual person is employed by the lender or servicer and does not receive any compensation or gain directly or indirectly from the borrower for performing the described activities.

"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.

"Lender" means any person that extends money to a borrower with the expectation of being repaid.

"License" means a license issued under the authority of this chapter with respect to a single place of business.

"License number" means your ((~~NMLSR~~)) NMLS unique identifier displayed as prescribed by the director.

"Licensee" means a person who holds one or more current licenses.

"Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

"Loan" means a sum of money lent at interest or for a fee or other charges and includes both open-end and closed-end transactions.

"Loan originator" means the same as mortgage loan originator.

"Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 31.04 RCW.

A loan processor engaged as an independent contractor for a licensee must hold a mortgage loan originator license.

"Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

"Making a loan" means advancing, offering to advance, or making a commitment to advance funds for a loan.

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

"Mortgage broker" means the same as in RCW 19.146.-010 except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same transaction.

"Mortgage loan originator" or "loan originator" means an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain (1) takes a residential mortgage loan application; or (2) offers or negotiates terms of a residential mortgage loan, including short sale transactions.

Mortgage loan originator also includes an individual who for compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

Mortgage loan originator also includes an individual who holds himself or herself out as being able to perform any of the activities described in this definition. For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

Mortgage loan originator does not include any individual who performs purely administrative or clerical tasks and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan. An individual who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

Mortgage loan originator does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law to conduct those activities, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. See the definition of real estate brokerage activity in this subsection.

This definition does not apply to an individual servicing a mortgage loan before July 1, 2011.

This definition does not apply to employees of a housing counseling agency approved by the United States department of Housing and Urban Development unless the employees of a housing counseling agency are required under federal law to be individually licensed as mortgage loan originators.

"((~~Nationwide Mortgage Licensing System and Registry (NMLSR)~~)) NMLS" means a ((~~mortgage~~)) multistate licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators and other license types.

((~~"Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage. This definition is limited to implementation of the S.A.F.E. Act.~~))

"Out-of-state licensee" means a licensee that does not maintain a physical presence within the state, or a licensee that maintains headquarters or books and records outside Washington.

"Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

"Principal" means either (1) any person who controls, directly or indirectly through one or more intermediaries, a ten percent or greater interest in a partnership, company, association or corporation; or (2) the owner of a sole proprietorship.

"Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

"Principal balance" means the principal amount plus any allowable origination fee.

"RCW" means the *Revised Code of Washington.*

"Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (2) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing

with respect to such a transaction; (4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and (5) offering to engage in any activity, or act in any capacity, described in (1) through (4) of this definition.

"Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sections 2601 et seq., and Regulation X, 12 C.F.R. Part 1024 (formerly 24 C.F.R. ((~~Sections~~)) Part 3500 ((~~et seq~~))).

"Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

"Referring a delinquent loan to foreclosure" means taking any step in furtherance of foreclosure. Examples include, but are not limited to: Sending a referral to a foreclosure trustee or attorney inside or outside of the servicing entity requesting they begin the foreclosure process; making a record in written or electronic form that flags, comments, blocks, suspends or in any way indicates in the electronic record of a mortgage loan that foreclosure has begun; any such marking of an electronic record that impairs the record in a way that payments will not be applied or will be routed into a suspense account.

"Registered mortgage loan originator" means any individual who (1) meets the definition of mortgage loan originator and is an employee of: A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and (2) is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

"Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling.

"Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms (length), or loan types; capitalizations of arrearages; or principal reductions.

"Residential mortgage loan modification services" ((~~includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform residential mortgage loan modification services. Residential mortgage loan modification services also includes the collection of data for submission to an entity performing mortgage loan modification services. Residential mortgage loan modification services do not include actions by individuals servicing a mortgage loan before July 1, 2011~~)). See WAC 208-620-045.

((~~"Registered mortgage loan originator" means any individual who (1) meets the definition of mortgage loan originator and is an employee of: A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and (2) is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.~~))

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law No. 110-289, effective July 30, 2008; and Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

"Senior officer" means an officer of a consumer loan company at the vice-president level or above.

"Service or servicing a loan." ((~~means on behalf of the lender or investor of a residential mortgage loan:~~

~~(a) Collecting or receiving payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due;~~

~~(b) Collecting fees due to the servicer;~~

~~(c) Working with the borrower and the licensed lender or servicer to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently;~~

~~(d) Otherwise finalizing collection through the foreclosure process; or~~

~~(e) Servicing a reverse mortgage loan. See RCW 31.04.015(26).~~

~~"Service or servicing a reverse mortgage loan" means, pursuant to an agreement with the owner of a reverse mortgage loan: Calculating, collecting, or receiving payments of interest or other amounts due; administering advances to the borrower; and providing account statements to the borrower or lender. See RCW 31.04.015(27)~~)) See WAC 208-260-050.

"Simple interest method" means the method of computing interest payable on a loan by applying the rate of interest specified in the note, or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. For nonresidential mortgage loans, each payment must first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. In using such method, interest must not be payable in advance or compounded. For residential mortgage loans, each payment must be applied as directed in the deed of trust.

"State" means the state of Washington.

"Subsidiary" means a person that is controlled by another.

"Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

"Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. § 6101 to 6108.

"Telephone Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

"Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

"Third-party service provider" means any person other than the licensee who provides goods or services to the

licensee in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

"Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sections 1601 et seq., and Regulation Z, 12 C.F.R. Part 1026 (formerly 12 C.F.R. ((~~Sections~~)) Part 226 ((~~et seq~~))).

"Unique identifier" means a number or other identifier assigned by protocols established by the ((~~nationwide mortgage licensing system and registry~~)) NMLS.

NEW SECTION

WAC 208-620-045 How does the department interpret the definition of residential mortgage loan modification services in RCW 31.04.015(23)? Residential mortgage loan modification services means activities conducted by individuals or entities not engaged in servicing the borrower's existing residential mortgage loan. The activities may include negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform residential mortgage loan modification services. The activities may also include the collection of data for submission to another entity performing mortgage loan modification services or to a residential mortgage loan servicer.

NEW SECTION

WAC 208-620-055 How does the department interpret the definition of service or servicing a loan in RCW 31.04.015(26)? Service or servicing a residential loan means:

(1) Collecting or attempting to collect payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due;

(2) Collecting fees due to the servicer for the servicing activities;

(3) Working with the borrower to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently;

(4) Otherwise finalizing collection through the foreclosure process; or

(5) Servicing a reverse mortgage loan. See RCW 31.04.-015(26).

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-104 Who is exempt from licensing as a consumer loan company? (1) See RCW 31.04.025 (1), (2)(a) through (d) and (f) through (h) and (j).

(2) Under RCW 31.04.025 (2)(e), any person making a loan primarily for business, commercial, or agricultural purposes unless the loan is secured by a lien on the borrower's primary residence.

(3) Under RCW 31.04.025 (2)(i), a nonprofit housing organization seeking exemption must meet the following standards:

(a) Has the status of a tax-exempt organization under Section 501 (c)(3) of the Internal Revenue Code of 1986;

(b) Promotes affordable housing or provides home ownership education, or similar services;

(c) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(d) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(e) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(f) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and

(g) Meets other standards as prescribed by the director.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-105 Who is exempt from licensing as a mortgage loan originator under this act? The following are exempt from licensing as a mortgage loan originator:

(1) Registered mortgage loan originators ((~~employed by an entity that is exempt from the act~~));

(2) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;

(4) A Washington licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; ((~~and~~))

(5) Individuals who do not take residential mortgage loan applications or negotiate the terms of residential mortgage loans for compensation or gain; and

(6)(a) An employee of a bona fide nonprofit organization who acts as a loan originator only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower.

(b) Terms favorable to the borrower are terms consistent with loan origination in a public or charitable context, rather than a commercial context.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-260 If I am licensed under the Consumer Loan Act, can I broker residential mortgage loans in the state of Washington? Yes. You may broker residential mortgage loans under the Consumer Loan Act ((~~or Mortgage Broker Practices Act.~~

~~(1) If you broker~~)). Brokered loans ((~~under the Consumer Loan Act license, you are subject to the act and the loans~~)) are subject to the annual assessment under WAC 208-620-240.

(((~~(2) If you are licensed under the Mortgage Broker Practices Act, chapter 19.146 RCW, you must comply with that act. If you do hold that additional license, the loans you broker are subject to that act and are not subject to the annual assessment under this act.~~))

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-271 Do I need a license to assist a borrower with a residential mortgage loan modification? Yes. Persons providing third-party loan modification services for compensation or gain must be licensed under this chapter, or under chapter 19.146 RCW. See also WAC 208-620-550 and 208-620-551.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-320 What is the amount of the bond required for my consumer loan license? (1) Nonresidential loan origination. If you originate nonresidential loans the bond amount is based on the annual dollar amount of loans you originate. See the following chart:

1.	Zero to twenty million in loans originated:	$30,000
2.	Twenty million to forty million:	$50,000
3.	Forty million to fifty million:	$100,000
4.	Fifty million and above:	$150,000

(2) Residential mortgage loan origination.

(a) If you originate residential mortgage loans, the bond amount is based on the annual dollar amount of residential mortgage loans you originate. Use the chart in subsection (1) of this section for the bond amount.

(b) If you only service residential mortgage loans, your bond amount at application is thirty thousand dollars. Thereafter and subject to annual adjustment, your bond amount is based on the annual dollar amount of the residential mortgage loans serviced pursuant to the following schedule (see RCW 31.04.045(6)):

1.	Zero to fifty million in loan principal:	$30,000
2.	Fifty million and above:	$50,000

(c) If you originate and service residential mortgage loans, your bond amount will be based on your origination activity volumes.

(3) Third-party loan modification services. If you only offer third-party residential mortgage loan modification services, your bond amount is thirty thousand dollars.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-325 What will my bond amount be in the first year of licensing? (1) Your initial bond amount will be based on either your prior year's loan origination volume in Washington or one hundred thousand dollars. See the bonding chart in WAC 208-620-320.

(2) If you only service residential mortgage loans your initial bond amount is thirty thousand dollars. For subsequent years see the bonding chart in WAC 208-620-320.

(3) If you only provide third-party residential mortgage loan modification services, your bond amount is thirty thousand dollars initially and thereafter.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-328 How often must I report my loan origination and residential mortgage loan servicing volume? You must report your loan origination and residential mortgage loan servicing volume as directed on the form prescribed each year during the annual assessment period.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-341 If I originate residential mortgage loans and my company relies on the bond ((~~alternative~~)) substitute, must my licensed mortgage loan originators obtain an individual bond? Yes. They must each obtain individual bonds based on their mortgage loan origination volume. See WAC 208-620-710 (3)(h).

NEW SECTION

WAC 208-620-378 Knowledge of the law and rules. You are responsible for ensuring that your employees and mortgage loan originators have a sufficient understanding of the act and the rules.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-400 Can I share an office with another business? (1) ((~~A licensee~~)) You may conduct ((~~its~~)) your business in a licensed location in which other persons are engaged in business.

(2) ((~~The licensee~~)) If you originate residential mortgage loans, you must comply with RESPA ((~~Sec. 3500.15~~)) (12 C.F.R. 1024.14, including the required disclosures and prohibitions on referral fees if:

(a) The licensee has effective control over the person sharing space; or

(b) The person sharing space has effective control over the licensee; or

(c) The licensee and the person sharing space are under common control by a third person; or

(d) The licensee is a corporation related to another corporation as parent to subsidiary and one refers business incident to or a part of a real estate settlement service to the other.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-430 What are my annual filing requirements as a consumer loan licensee? Each year you are required to file two annual reports on forms provided by the department. You must also pay a fee (assessment) based

on your activities during the reporting year. The reports and the assessment fee must be provided to the department on March 1st of each year or within thirty days of ceasing Washington operations (the due date).

(1) **Annual reports and assessment fee on activity ((due March 1st)).** You must provide the annual reports (annual assessment report and consolidated annual report) and the assessment fee by ((~~March 1st of each year~~)) the due date. ((~~The worksheet and annual assessment must also be provided to the department by March 1st of each year.~~))

(2) **Late penalties.** ((~~A licensee that~~)) If you fail((~~s~~)) to submit the required annual reports((~~, worksheet,~~)) and assessment fee by ((~~March 1st is~~)) the due date you are subject to a penalty of fifty dollars ((~~per report~~)) for each item for each day of delay. For example, if the department receives the ((~~consolidated~~)) two annual reports and ((~~worksheet~~)) assessment fee on March 4th, ((~~the licensee~~)) you would have to pay an additional ((~~three~~)) four hundred fifty dollars as a late penalty. If the items are filed with the department more than thirty days after ceasing Washington operations, the late penalty will accrue at the same rate. The maximum late penalty that will be assessed is five thousand dollars per reporting year. More penalties may be assessed if the department must make a bond claim to collect the amounts due. See subsection (3) of this section.

(3) **Failure to file.** If a licensee fails to pay its annual assessment fee or file the annual reports by ((~~April 1st~~)) the due date the director may file a claim against the licensee's surety bond for failing to ((~~faithfully conform to and abide by~~)) comply with the Consumer Loan Act. The department may make a claim ((~~on the licensee's surety bond~~)) for the late penalties under subsection (2) of this section and the greater of:

(a) The assessment fee paid the previous year;

(b) The average annual assessment fee paid in the previous two years; or

(c) Fifteen hundred dollars.

(4) **Annual reporting of residential mortgage loan data.** On an annual basis the company licensee must provide information on the characteristics of residential mortgage loan originations in an electronic format prescribed by the ((~~direction~~)) director.

((~~(5) **Residential mortgage loan annual reports content.**~~

~~(a) The director will provide the report format or forms and worksheet for the reporting requirement described in subsection (4) of this section.~~

~~(b) For the annual reporting of loan data, the company licensee must provide:~~

~~(i) Information sufficient to identify the mortgage loan and the unique identifier of the mortgage loan originator, mortgage broker (if applicable), and mortgage lender for the loan;~~

~~(ii) Information sufficient to enable a computation of key items in the federal truth in lending disclosures, including the annual percentage rate, finance charge, amount financed, a schedule of payments, and any deviations between the final disclosures and the most recent disclosures issued prior to the final disclosures;~~

~~(iii) Information included in the initial and any subsequent good faith estimate (GFE) disclosures required under the federal Real Estate Settlement Procedures Act including the rate, the date of any interest rate lock, itemization of settlement charges and all compensation;~~

~~(iv) Information included in the final HUD-1 Settlement Statement;~~

~~(v) Information related to the terms of the loans, including adjustable rate loan features (including timing of adjustments, indices used in setting rates, maximum and minimum adjustments, floors and ceilings of adjustments), the undiscounted interest rate (if maintained by the mortgage lender in an electronic format), penalties for late payments, and penalties for prepayment (including computation of the penalty amount, duration of prepayment penalty, the maximum amount of penalty);~~

~~(vi) Information typically used in underwriting, including the appraised value of the property, sales price of the property (if a purchase loan), loan-to-value, borrowers' income, monthly payment amount, housing debt-to-income ratio including taxes and insurance, total debt-to-income ratio including taxes and insurance, and credit score(s) of borrowers; and~~

~~(vii) Information included in a loan application register for mortgage lenders required to submit information pursuant to the federal Home Mortgage Disclosure Act.~~))

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-440 How do I calculate my annual assessment for activity in Washington? (1)(a) **Calculation of the annual assessment for loans made, brokered or purchased.** The annual assessment is based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.

(b) **Calculation of the annual assessment for residential mortgage loans serviced.** The industry will be assessed the cost to DFI of regulating the industry. Costs include, but are not limited to, the cost of employee compensation, travel expenses, and goods and services expended in regulating the industry. Each licensee will pay a percentage of the cost based on the total annual volume of Washington residential mortgage loans serviced. The maximum amount assessed to any individual licensee will not exceed twenty-five thousand dollars.

(2) **All loans counted in assessment calculation.** The "adjusted total loan value" is the sum of:

(a) The principal loan balance on Washington loans in your loan portfolio on December 31 of the prior year; plus

(b) The total principal loan amount of all first and junior lien Washington loans both under and over twelve percent interest, you made, brokered, or purchased during the assessment year.

(3) **Reverse mortgages.** Each reporting year, you will report and be assessed on:

(a) The total loan amount available to the borrow;

(b) The dollar amount of advances made; and

(((~~(b)~~))) (c) The dollar amount of accrued interest.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-505 In addition to the Consumer Loan Act, what other laws do I have to comply with? You must ensure you are in compliance with all federal and state laws and regulations that apply to lending or brokering loans when applicable to the transaction including, but not limited to, the Truth in Lending Act, the Equal Credit Opportunity Act, the Home Mortgage Disclosure Act, the Bank Secrecy Act, the Real Estate Settlement Procedures Act, the Gramm-Leach-Bliley Act, the Fair Debt Collection Practices Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, the Washington State Fair Housing Act, the S.A.F.E. Act, and the Federal Trade Commission ((~~Telephone~~)) Telemarketing Sales Rule((~~, 16 C.F.R. Part 310~~)).

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-510 What are my disclosure obligations to consumers? (1) **Content requirements.** In addition to complying with the applicable disclosure requirements in the federal and state statutes referred to in WAC 208-620-505 if the loan will be secured by a lien on real property, you must also provide the borrower or potential borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three business days of receipt of a loan application.

(2) **Proof of delivery.** The licensee must be able to prove that the disclosures under subsection (1) of this section were provided within the required time frames. For purposes of determining the timeliness of the required early disclosures, the department may use the date of the credit report or may use the date of an application received from a broker. In most cases, proof of mailing is sufficient evidence of delivery. If the licensee has an established system of disclosure tracking that includes a disclosure and correspondence log, checklists, and a reasonable system for determining if a borrower did receive the documents, the licensee will be presumed to be in compliance.

(3) **Residential mortgage loans—Rate locks.** Within three business days, including Saturdays, of receipt of a residential mortgage loan application you must provide the borrower with the following disclosure about the interest rate:

(a) If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the RESPA good faith estimate is in compliance with (a) of this subsection.

(b) If a rate lock agreement has been entered into you must disclose to the borrower whether the rate lock agreement is guaranteed ((~~and~~)), whether and under what conditions any rate lock fees are refundable to the borrower, and:

(i) The number of days in the rate lock period;

(ii) The expiration date of the rate lock;

(iii) The rate of interest locked;

(iv) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and

(v) Any other terms of the rate lock agreement.

(c) If the borrower wants to lock the rate after the initial disclosure, you must provide a new rate lock ((~~disclosure and a rate lock~~)) agreement within three business days of the rate lock date that includes the ((~~following:~~

~~(i) The length of the rate lock period;~~

~~(ii) The expiration date of the rate lock;~~

~~(iii) The rate of interest locked;~~

~~(iv) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and~~

~~(v) Any other terms of the rate lock agreement~~)) items from (b) of this subsection.

(d) You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209 with "P.O.C. (borrower)" recorded to the left of the borrower column.

(4) **Residential mortgage loans—Loans brokered ((~~loans~~)) to other creditors.** Within three business days following receipt of a residential mortgage loan application you must provide to each borrower:

(a) If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the RESPA good faith estimate is in compliance with subsection (3)(a) of this section.

(b) An estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty;

(((~~(b)~~))) (c) A good faith estimate that conforms with RESPA ((~~24~~)), Regulation X, 12 C.F.R. ((~~3500~~)) 1024;

(((~~(c)~~))) (d) A truth in lending disclosure that conforms with TILA, Regulation Z, 12 C.F.R. ((~~Section 226~~)) 1026.

(((~~(d)~~))) (e) A rate lock disclosure containing the following:

(i) If a rate lock agreement has been entered into you must disclose to the borrower whether the rate lock agreement is guaranteed ((~~and~~)), whether and under what conditions any rate lock fees are refundable to the borrower, and:

(A) The number of days in the rate lock period;

(B) The expiration date of the rate lock;

(C) The rate of interest locked;

(D) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and

(E) Any other terms of the rate lock agreement.

(ii) If the borrower wants to lock the rate after the initial disclosure, you must provide a new rate lock ((~~disclosure and a rate lock~~)) agreement within three business days of the rate lock date. The rate lock agreement must include the ((~~following:~~

~~(A) The length of the rate lock period;~~

~~(B) The expiration date of the rate lock;~~

~~(C) The rate of interest locked;~~

~~(D) If applicable, the index and a brief explanation of the type of index used, the margin, the maximum interest rate, and the date of the first interest rate adjustment; and~~

~~(E) Any other terms of the rate lock agreement~~)) items from this subsection (4)(e).

(((~~e~~))) (f) You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209 with "P.O.C. (borrower)" recorded to the left of the borrower column.

(5) **Residential mortgage loans—Shared appreciation mortgages (SAM) or mortgages with shared appreciation provisions.** Within three business days following receipt of a loan application for a shared appreciation mortgage, or a mortgage with a shared appreciation provision, in addition to the disclosures required by federal law or by this chapter, you must provide each borrower with a written disclosure containing at a minimum the following:

(a) The percentage of shared equity or shared appreciation you will receive (or a formula for determining it);

(b) The value the borrower will receive for sharing his or her equity or appreciation;

(c) The conditions that will trigger the borrower's duty to pay;

(d) The conditions that may cause the lender to terminate the mortgage or shared appreciation provision early;

(e) The procedure for including qualifying major home improvements in the home's basis (if any);

(f) Whether a prepayment penalty applies or other conditions applicable, if a borrower wishes to repay the loan early, including but not limited to, any date certain after which the borrower can repay the loan by paying back the lender's funds plus accrued equity; and

(g) The date on which the SAM terminates and the equity or appreciation becomes payable if no triggering event occurs.

(6) **Loan modifications.** You must immediately inform the borrower in writing if the owner of the loan requires additional information from the borrower, or if it becomes apparent that a residential mortgage loan modification is not possible.

(7) Each licensee must maintain in its files sufficient information to show compliance with state and federal law.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-511 What is the disclosure required under RCW 19.144.020 for residential mortgage loans? (1) You must provide the borrower with a clear, brief one page summary to help borrowers understand their loan terms. The disclosure summary must be provided on one page separate from any other documents and must use clear, simple, plain language terms that are reasonably understandable to the average person.

(2) You must provide the initial disclosure summary to the borrower within three business days following your receipt of a complete loan application.

(3) You must redisclose material loan terms within three days of a significant change, or at least three days before closing, whichever is earlier.

(4) You may provide the disclosure summary in electronic form, in a manner consistent with the procedure for delivery of electronic disclosure under Regulation Z of the Truth in Lending Act, 12 C.F.R. Part 226, currently in effect, which implements the E-Sign Act of 2000, 15 U.S.C. Sec. 7001 et seq.

(5) The department has developed model forms that comply with this provision. See the department's web site. See also RCW 19.144.020 and WAC 208-600-200.

(6) Disclosure in compliance with the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601, and Regulation X, 12 C.F.R. 1024.7 (formerly 24 C.F.R. Sec. 3500.7) is considered compliance with the disclosure requirements of this section.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-515 What authority do I have as a licensee? As a licensee you may:

(1) Lend money with a note rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed. This applies only to nonmortgage loans, junior lien mortgage loans, and to lenders that are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act when making first lien mortgage loans. The requirement for the simple interest method of calculating interest does not apply to reverse mortgages.

(2) Make open-end loans as authorized in RCW 31.04.115 provided that:

(a) The annual fee allowed in RCW 31.04.115(3) may not exceed fifty dollars; and

(b) The annual fee must be charged in advance as a lump sum. It must not be charged monthly and must not be financed.

(3) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, covering the involuntary unemployment of the borrower, or other insurance products approved by the Washington state office of the insurance commissioner.

(4) Service residential mortgage loans. See also WAC 208-620-320, 208-620-325, 208-620-550, 208-620-551, and 208-620-900.

(5) Provide third-party loan modification services for residential mortgage loans. See also WAC 208-620-320, 208-620-325, 208-620-545, 208-620-550, and 208-620-552.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-520 How long must I maintain my records under the Consumer Loan Act? What are the records I must maintain?

(1) **General records.** Each licensee must maintain the books, accounts, records, papers, documents, files, and other information relevant to a loan for a minimum of twenty-five

months, or the period of time required by federal law, whichever is longer, after making the final entry on that loan at a licensed location ((~~approved by the director. Mortgage transaction documents have a different retention period; see subsection (3)(a) of this section~~)).

(2) **Advertising records.** These records include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile or computer network.

(3) **Other specific records.** The records required under subsection (1) of this section include, but are not limited to:

(a) All loan agreements or notes and all addendums, riders, or other documents that supplement the final loan agreements;

(b) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(c) The initial rate sheet or other supporting rate information;

(d) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(e) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(f) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures include, but are not limited to: The good faith estimate, truth in lending disclosures, Equal Credit Opportunity Act disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

(g) Documents and records of compensation paid to employees and independent contractors;

(h) An accounting of all funds received in connection with loans with supporting data;

(i) Settlement statements (the final HUD-1 or HUD-1A);

(j) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(k) Records of any fees refunded to applicants for loans that did not close;

(l) All file correspondence and logs;

(m) All mortgage broker contracts with lenders and all other correspondence with the lenders; and

(n) All documents used to support the underwriting approval.

(4) Loan servicing documents. See subsection (1) of this section.

(5) Abandoned records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, or proper destruction of the records.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-545 Must I provide a written fee agreement when I provide third-party residential mortgage loan modification services? Yes. You must provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. You must provide a copy of the signed fee agreement to the consumer and you must keep a copy as part of your books and records.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-550 What business practices are prohibited? In addition to RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:

(1) Failure to provide the exact pay-off amount as of a certain date within five business days after being requested in writing to do so by a borrower of record or their authorized representative;

(2) Failure to record a borrower's payment as received on the day it is delivered to any of the licensee's locations during its regular working hours;

(3) Soliciting or entering into a contract with a borrower that provides in substance that the licensee may earn a fee or commission through its "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(4) **Engaging in unfair or deceptive advertising practices.** Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace. See also WAC 208-620-630;

(5) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department;

(6) Making any payment, directly or indirectly, or withholding or threatening to withhold any payment, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(7) Leaving blanks on a document that is signed by the borrower or providing the borrower with documents with blanks;

(8) Failing to clearly disclose to a borrower whether the payment advertised or offered for a real estate loan includes amounts for taxes, insurance or other products sold to the borrower;

(9) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower, unless mail has been previously returned as undeliverable from the address, in order to verify that the asset is not otherwise insured;

(10) Willfully filing a lien on property without a legal basis to do so;

(11) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;

(12) Failing to reconvey title to collateral, if any, within thirty business days when the loan is paid in full unless conditions exist that make compliance unreasonable;

(13) Intentionally delaying the closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower;

(14) Steering a borrower to a residential mortgage loan with less favorable terms than they qualify for in order to increase the compensation paid to the company or mortgage loan originator. An example is counseling, or directing a borrower to accept a residential mortgage loan product with a risk grade less favorable than the risk grade the borrower would qualify for based on the licensee or other regulated person's then current underwriting guidelines, prudently applied, considering the information available to the licensee or other regulated person, including the information provided by the borrower;

(15) Failing to indicate on all residential mortgage loan applications the company's unique identifier, the loan originator's unique identifier, and the date the application was taken;

(16) Receiving compensation or anything of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter;

(17) Receiving compensation for making the loan and for brokering the loan in the same transaction.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-551 Residential mortgage loan servicers—What business practices are prohibited? (1) In addition to being subject to RCW 31.04.027, you are prohibited from requiring or encouraging a borrower to:

(((~~(1)~~))) (a) Waive his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(((~~(2)~~))) (b) Waive his or her right to contest a future foreclosure;

(((~~(3)~~))) (c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(((~~(4)~~))) (d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(((~~(5)~~))) (e) Cease communication with the lender or investor.

(((~~(6)~~))) (2) As to force placed insurance you are ((~~further~~)) prohibited from:

(a) Purchasing insurance on a property secured by a loan you service without providing ((~~one or more~~)) two prior written notices to the ((~~borrower's~~)) homeowner's last known address ((~~in order to verify that the property is not otherwise insured.~~

~~(b)~~)) seeking verification of existing insurance coverage. The notices must state:

(i) How the homeowner provides proof there is insurance coverage in place;

(ii) That without proof of insurance the servicer may obtain coverage at the homeowner's expense, that such coverage may only protect the mortgage holder, and that the cost of the coverage may be higher than that the homeowner may be able to obtain privately;

(iii) That the homeowner may request the servicer to set up an escrow account to advance insurance payments;

(iv) The second written notice must be sent thirty days after the first written notice.

(b) Failing to advance payments to a property insurer regardless of the homeowner making a payment to the servicer when the homeowner has an escrow account for the payment of insurance.

(c) Purchasing force placed insurance at a price that is not commercially reasonable.

(d) Collecting private mortgage insurance beyond the date for which private mortgage insurance is no longer required. You must terminate force placed insurance within fifteen days of receiving evidence from the homeowner of the existence of coverage. You must refund to the homeowner all premiums for force placed insurance collected during any period of time for which the homeowner's private insurance was in place.

(3) You are additionally prohibited from:

(a) Knowingly misapplying or recklessly applying loan payments to the outstanding balance of a loan.

(((~~(c)~~))) (b) Knowingly misapplying or recklessly applying payments to escrow accounts.

(((~~(d)~~))) (c) Charging excessive or unreasonable fees to provide loan payoff information.

(((~~(e)~~))) (d) Knowingly or recklessly providing inaccurate information to a credit bureau, thereby harming a borrower's creditworthiness.

(((~~(f) Collecting private mortgage insurance beyond the date for which private mortgage insurance in no longer required.~~

~~(g)~~))) (e) Knowingly or recklessly facilitating the illegal foreclosure of real property collateral.

(4) You are prohibited from referring a delinquent mortgage to foreclosure if you have received the homeowner's loan modification application and you have not evaluated the homeowner for all available loan modifications.

(5) You are prohibited from using any funds in a suspense account to pay your own fees for servicing.

(6) You are prohibited from pursuing any collection activities while a complete loan modification application is being reviewed or while the borrower is making payments pursuant to a trial modification. This prohibition includes activities conducted by others on your behalf.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-552 Third-party residential loan modification service providers—What business practices are prohibited? In addition to RCW 31.04.027, you are prohibited from:

(1) Collecting an advance fee of more than seven hundred fifty dollars.

(2) Collecting an advance fee without a written fee agreement. See also WAC 208-620-545.

(3) As a condition to providing loan modification services requiring or encouraging a borrower to:

(a) Waive his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(b) Waive his or her right to contest a future foreclosure;

(c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(e) Cease communication with the lender, investor, or loan servicer or stop or delay making regularly scheduled payments on an existing mortgage unless a mortgage loan modification is completely negotiated and executed with the lender or investor and the modification agreement itself provides for a cessation or delay in making regularly scheduled payments; or

(f) Enter into any contract or agreement to purchase a borrower's property.

(4) You are further prohibited from failing in a timely manner to:

(a) Communicate with or on behalf of the borrower;

(b) Act on any reasonable request from or take any reasonable action on behalf of a borrower.

(5) Engaging in false or misleading advertising. In addition to WAC 208-620-630, examples of false or misleading advertising include:

(a) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower.

(b) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists.

(6) Leading a borrower to believe that the borrower's credit record will not be negatively affected by a mortgage loan modification when the licensee has reason to believe that the borrower's credit record may be negatively affected by the mortgage loan modification.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-568 What fees am I not allowed to charge when providing third-party residential mortgage loan modification services under the act? You must not charge total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-570 What are the grounds for suspending or revoking a consumer loan company license? The director may suspend or revoke a license if the licensee, or any principal, officer, or board director of the licensee:

(1) **Failing to pay.** Fails to pay a fee due the department;

(2) **Injunction or administrative action.** Is or has been subject to an injunction or a civil or administrative action issued pursuant to the Consumer Loan Act, the Consumer Protection Act, the Mortgage Broker Practices Act or similar laws of this state or another state;

(3) **Substantial unpaid debt.** Has accumulated substantial unpaid debt;

(4) **Violation of lending laws.** Has been found in violation of another state's lending laws, securities laws, real estate laws or insurance laws resulting in substantial license limitations or significant fines, restitution, or both;

(5) **Criminal charges.** The person is the subject of a criminal felony charge, or a criminal misdemeanor charge involving dishonesty or financial misconduct;

(6) **Bond canceled.** Has had its surety bond canceled or revoked for cause;

(7) **Deterioration of business.** Has allowed the licensed consumer loan business to deteriorate into a condition which would result in denial of a new application for a license;

(8) **Aiding unlicensed practice.** Has aided or abetted an unlicensed person to practice in violation of the Consumer Loan Act or the Mortgage Broker Practices Act;

(9) **Incompetence resulting in injury.** Has demonstrated incompetence or negligence that results in financial harm to a person or that creates an unreasonable risk that a person may be harmed;

(10) **Insolvency.** Is insolvent in the sense that the value of the licensee's liabilities exceeds its assets or in the sense that the applicant or licensee cannot meet its obligations as they mature;

(11) **Failure to comply.** Has failed to comply with an order, directive, subpoena, or requirement of the director, or his or her designee, or with an assurance of discontinuance entered into with the director, or his or her designee;

(12) **Misrepresentation or fraud.** Has performed an act of misrepresentation or fraud in any aspect of the conduct of the lending or brokering business or profession;

(13) **Failure to cooperate.** Has failed to cooperate with the director, or his or her designee, including without limitation by:

(a) Not furnishing records requested by the director for purposes of conducting a lawful investigation for disciplinary actions or denial, suspension, or revocation of a license; or

(b) Not furnishing records requested by the director for purposes of conducting a lawful investigation into a complaint against the licensee filed with the department, or providing a full and complete written explanation of the circumstances of the complaint upon request by the director;

(14) **Interference with investigation.** Has interfered with a lawful investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-610 What authority does the department have to investigate violations of the Consumer Loan Act? (1) The director may enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter.

(2) The director may impose fines of up to one hundred dollars per day upon the licensee, its employees or loan originators, or other persons subject to this chapter for any violation of this chapter or for failure to comply with any order or subpoena issued by the director under this chapter.

(3) Each day's continuance of the violation is a separate and distinct offense.

(4) **Testimony.** The director or designees may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing.

(((~~(2)~~))) (5) **Production of records or copies.** The director or designee may require the production of books, accounts, papers, records, files, and any other information deemed relevant to the inquiry. The director may require the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, records, files, or other information.

(((~~(3)~~))) (6) **Subpoena authority.** If a licensee or person does not attend and testify, or does not produce the requested books, accounts, papers, records, files, or other information, then the director or designated persons may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, records, files, or other information.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-613 When I develop policies and procedures to implement the federal guidelines on applicable conventional residential mortgage loans, what topics must be included? The policies and procedures must include, at a minimum, underwriting standards, risk management, consumer protection, and control systems. If you only broker residential mortgage loans under your CLA license, your policies and procedures must comply with WAC 208-660-500. For purposes of this section, the definition of "subprime" and "subprime loans" is taken from the *2001 Interagency Expanded Guidance for Subprime Lending Programs* (an attachment to SR 01-4 (GEN), January 31, 2001, by the Board of Governors of the Federal Reserve System, Division of Banking, Supervision and Regulation).

(1) Underwriting standards. To ensure that underwriting standards are consistent with prudent lending practices, the underwriting standards should include, at a minimum, an analysis of borrower characteristics, loan product attributes, and the borrower's ability to repay the obligation.

(a) Analysis of borrower characteristics. The analysis must include tolerances for combining borrowers with certain characteristics with certain nontraditional loan products.

The criteria or range of reasonable tolerances should consider the characteristics listed in the *2001 Interagency Expanded Guidance for Subprime Lending Programs*.

(b) Loan product attributes. Products with the following attributes, when combined with the borrower characteristics above result in higher risk. The risks are increased if borrowers are not adequately informed of the product features and risks.

• Low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments. Loans made to subprime borrowers must not contain any provisions that may lead to negative amortization.

• Very high or no limits on how much the payment amount or the interest rate may increase.

• Limited or no documentation of the borrower's income. Stated income is only acceptable if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. Licensees generally must be able to readily document income using recent W-2 statements, pay stubs, or tax returns. An exception to this is when the loan product underwriting itself contemplates reduced documentation (for example, FHA loans).

• Substantial prepayment penalties or prepayment penalties that extend beyond sixty days prior to the date the interest rate will reset.

• Simultaneous second lien loans. When features are layered, mitigating factors should be present to support the underwriting decision and the borrower's repayment capacity.

(c) Ability to repay. For all nontraditional mortgage loan products, the analysis of a borrower's repayment capacity must include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule. In addition, for prime borrowers qualifying for loan products that permit negative amortization, the repayment analysis must be based on the initial loan amount plus any balance increase that may accrue from the negative amortization provision. The analysis should avoid over reliance on credit scores as a substitute for income verification. The higher a loan's credit risk, either from borrower characteristics or loan features, the more important it is to verify the borrower's income, assets, and outstanding liabilities.

(2) Risk management. The scope of the risk management activities should be determined by the volume of nontraditional mortgages originated or used as investment. Licensees that target subprime borrowers through tailored marketing, underwriting standards, and risk selection must ensure that such programs do not feature terms that could become predatory or abusive. Policy topics should include, at a minimum:

(a) Acceptable product attributes;

(b) Production, sales and securitization practices;

(c) Limits on risk layering. When features are layered, licensees should demonstrate that mitigating factors support the underwriting decision and the borrower's repayment capacity. Mitigating factors could include higher credit scores, lower LTV and DTI ratios, significant liquid assets, mortgage insurance, or other credit enhancements;

(d) Growth and volume limits by loan type;

(e) Performance measures. Incentive programs should not produce high concentrations of nontraditional products. Design performance measures and reporting systems that provide early warning for increased risk;

(f) Management reporting and quality control. Focus on the high risk lending activities. Monitor and document compliance with underwriting standards. Quality control should include regular audits of nontraditional loan products. Perform due diligence in establishing and maintaining relationships with third party originators. Third party originations must meet the underwriting standards. Document and respond in writing to all complaints. Take immediate remedial action which could include more thorough application reviews, more frequent reunderwriting, or terminating the third party originator;

(g) Secondary market activity. The risk management practices should be commensurate with the nature and volume of activity and should include contingency planning for response to reduced demand in the secondary market. Establish a policy on repurchase practices.

(3) Consumer protection.

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Specifically:

• Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions.

• Licensees must apprise borrowers of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated.

• If negative amortization is possible under the terms of a nontraditional mortgage product, borrowers must be advised of the potential for increasing principal balances and decreasing home equity as a consequence of the borrower making minimum payments.

• Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.

• Borrowers must be made aware of any pricing premium based on reduced documentation.

• Monthly statements must provide information that enables borrowers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances. For example, the monthly payment statement must contain an explanation, if applicable, next to the minimum payment amount that making this payment would result in an increase to the borrower's principal loan balance.

(4) Control standards. ((~~(a)~~)) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

((~~(b) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the consolidated annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products as prescribed by rule.~~))

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-620 How do I have to identify my business when I advertise? You must ((~~either~~)) identify the business using your Washington consumer loan license name((~~, or using~~)). You may also use an approved DBA name ((~~with~~)) if you include the main office license name ((~~or~~)) and license number (CLA-123456). For use of URL addresses and web pages, see WAC 208-620-621 and 208-620-622.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-622 When I advertise using the internet or any electronic form (including, but not limited to, text messages), is there specific content my web pages must contain? Yes. You must provide the following language, in addition to any other, on your web pages or in any medium where you hold yourself out as being able to provide the services:

(1) Main or home page.

(a) The company's license name and NMLS unique identifier must be displayed on the licensee's main or home web page.

(b) If mortgage loan originators are named, their NMLS numbers must follow the names.

(c) The main or home page must also contain a link to the NMLS consumer access web site page for the company.

(2) Branch office web page - no DBA. Comply with subsection (1) of this section.

(3) Main or branch office web page - DBA. If the company uses a DBA on a web page the web page must also contain the main office license name, ((~~comply~~)) license number, be in compliance with subsection (1)(b) of this section, and the web page must contain a link to the NMLS consumer access web site page for the company.

(4) Mortgage loan originator web page. If a loan originator maintains a separate home or main page, ((~~the URL address to the site must be a DBA of the licensee and~~)) the licensee's name and license number must also appear on the web page. The web page must also contain the loan originator's NMLS number and a link to the NMLS consumer access web page for the company.

(5) Compliance with other laws. Web site content used to solicit Washington consumers must comply with all relevant state and federal statutes for specific services and products advertised on the web site.

(6) Oversight. The company is responsible for web site content displayed on all company web pages used to solicit Washington consumers including main, branch, and mortgage loan originator web pages.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-630 What are the advertising restrictions? (1) **Licensees are prohibited from advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist. Some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws include, but are not limited to:**

(a) Characterizing products as "government loan programs," "government-supported loans," or other words that may mislead a consumer into believing that the government is guaranteeing, endorsing, or supporting the advertised loan product. Using the words "FHA loan," "VA loan," or words for other products that are in fact endorsed or sponsored by a federal, state, or local government entity is allowed.

(b) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(c) Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.

(d) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(e) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(f) Any suggestion or representation that the licensee is, or is affiliated with, a state or federal agency, municipality, bank, savings bank, trust company, savings and loan association, building and loan association, credit union, or other entity that it does not actually represent.

(2) **When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** The required disclosures in your advertisement must be reasonably understandable. Consumers must be able to see, read, or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. This requirement applies to all mandatory disclosures. The disclosure of the APR must be at least equivalent to any other rates disclosed in the advertisement.

(3) **The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?** Whenever a specific interest rate is advertised, the licensee must retain a copy of supporting rate information, and the APR calculation for the advertised interest rate.

(4) **Must I quote the annual percentage rate when discussing rates with a borrower?** Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 C.F.R., part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(5) **May a licensee advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 31.04.027.

(6) **May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

(7) **If I advertise using a borrower's current loan information, what must I disclose about that information?** When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with the name of the source of the information.

(8) **Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. This is a violation of RCW 31.04.027 (2), (7), and ((~~(10)~~)) (12). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations*, available at http://www.ftc.gov/bcp/guides/free.htm, 16 C.F.R. § 251.1(g) (2003).

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-710 Mortgage loan originator—Licensing. (1) **Must I have a license to act as a mortgage loan originator for a consumer loan company?** Yes. You must not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this act. You must register with and maintain a valid unique identifier issued by the ((~~nationwide mortgage licensing system and registry (NMLSR)~~)) NMLS.

(2) **How do I apply for a loan originator license?** Your application consists of filing an on-line application through the ((~~NMLSR~~)) NMLS and providing Washington specific requirements directly to DFI. You must pay an application fee and filing fee through the ((~~NMLSR system~~)) NMLS.

(3) **What are the eligibility requirements to become a licensed loan originator?**

(a) Be eighteen years or older.

(b) Have a high school diploma, an equivalent to a high school diploma, or three years work experience in the industry.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company.

(iii) In addition to supplying the application information, both you and the company intending to sponsor you must be in good standing with the department.

(c) **Demonstrate financial responsibility.** For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Your credit report, current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or judgments or other government liens or filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years. Specifically, you are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(d) Complete twenty hours of prelicensing education from an ((~~NMLSR~~)) NMLS approved provider. See WAC 208-620-720.

(e) **Pass a licensing test.** You must take and pass the ((~~NMLSR~~)) NMLS tests that assess your knowledge of the mortgage business and related regulations at the federal and state level. See WAC 208-620-725.

(f) **Complete prelicensing education.** You must complete prelicensing education. See WAC 208-620-720.

(g) **Submit an application.** You must complete an application through the ((~~NMLSR~~)) NMLS and provide information directly to DFI. You must pay application and filing fees to the ((~~NMLSR~~)) NMLS.

(h) **Prove your identity.** You must provide information to prove your identity.

(i) **Provide a bond.**

(i) If you are employed by a company that is exempt from licensing, or uses a bond substitute, you must obtain and maintain an individual bond based on the volume of your mortgage loan origination activity. By March 1st of each year, you must determine your required bond amount and provide DFI with proof of having an adequate bond. The bond must be in the following amount:

1. Zero to twenty million in loans originated:	$20,000
2. Twenty million to thirty million:	$30,000
3. Thirty million to forty million:	$40,000
4. Forty million and above:	$50,000

(ii) If you are employed by a company that is exempt and is a nonprofit housing organization making loans under housing programs that are funded in whole or in part by federal or state programs with the primary purpose of assisting low-income borrowers with purchasing or repairing housing or for the development of housing for low-income Washington state residents, the bond must be in the following amounts:

1. Zero to fifty million in loans originated:	$10,000
2. Fifty +:	$20,000

(j) File a quarterly call report. Reserved.

(4) **In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction.

(b) **License suspensions or revocations.** You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules, or have had a license issued under the act or any similar state statute suspended or revoked.

(c) **Criminal history.** You are not eligible for a loan originator license if you have been convicted of, or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(i) During the seven-year period preceding the date of the application for licensing and registration; or

(ii) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering.

(5) **What will happen if my loan originator license application is incomplete?** After submitting your on-line application through the ((~~NMLSR~~)) NMLS and filing the required information and documentation with the depart-

ment, the department will notify you of any application deficiencies.

(6) **How do I withdraw my application for a loan originator license?**

(a) Once you have submitted the on-line application through ((~~NMLSR~~)) NMLS you may withdraw the application through ((~~NMLSR~~)) NMLS. You will not receive a refund of the ((~~NMLSR~~)) NMLS filing fee or the amount the department uses to investigate your license application.

(b) The withdrawal of your license application will not affect any license suspension or revocation proceedings in progress at the time you withdraw your application through the ((~~NMLSR~~)) NMLS.

(7) **When will the department consider my loan originator license application to be abandoned?** If you do not respond within fifteen days and as directed by the department, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

(8) **What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** See WAC 208-620-615.

(9) **May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

(10) **How do I change information on my loan originator license?** You must submit an amendment to your license through the ((~~NMLSR~~)) NMLS. You may be charged a fee.

(11) **What is an inactive loan originator license?** When a licensed loan originator is not sponsored by a licensed or exempt entity, the license is inactive. When a person holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator.

(12) **When my loan originator license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

(13) **When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

(14) **May I originate loans from a web site when my license is inactive?** No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive.

(15) **How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the ((~~NMLSR~~)) NMLS. The department will notify you and the sponsoring company if approved.

(16) **When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must meet the minimum requirements to obtain a license under the S.A.F.E. Act to receive an interim license.

(17) **When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

(18) **How do I renew my loan originator license?**

(a) Before the license expiration date you must renew your license through the ((~~NMLSR~~)) NMLS. Renewal consists of:

(i) Paying the annual assessment fee; and

(ii) Meeting the continuing education requirement. You will not have a continuing education requirement in the year in which you complete prelicensing education. See WAC 208-620-730.

(b) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

(19) **If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal before March 1st, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (17) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp by March 1st. If you fail to comply with the renewal request requirements you must apply for a new license.

(20) **If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

(21) **May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

(22) **May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires through the ((~~NMLSR~~)) NMLS.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omissions occurring before the license surrender.

(23) **Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the company is required to display your loan originator license. How-

ever, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

(24) **If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the company you represent, on the web site.

(25) **Must I include my loan originator license number on any documents?** You must include your license number immediately following your name on solicitations, correspondence, business cards, advertisements, and residential mortgage loan applications.

(26) **When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the company you are associated with:

(a) When asked by any party to a loan transaction, including third-party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

(27) **May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-725 Mortgage loan originator—Testing. Must I pass a test prior to becoming a loan originator? Yes.

(1) You must take and pass the ((~~NMLSR~~)) NMLS sponsored loan originator test. The test has two parts; one on federal law and regulation, and one on Washington specific law and regulation. You must receive a score of seventy-five percent or higher to pass the test.

(2) **Where may I find information about the loan originator test?** The ((~~NMLSR~~)) NMLS web site will publish the names and contact information of approved testing providers.

(3) **How much does the loan originator test cost?** Testing costs are set by the test provider and the ((~~NMLSR~~)) NMLS and may be modified from time to time. The ((~~NMLSR~~)) NMLS web site will publish the current testing fee with the testing provider contact information.

(4) **How do I register to take the loan originator test?** Register through the ((~~NMLSR~~)) NMLS web site.

(5) **What topics may be covered in the loan originator test?** At a minimum, the test topics will include ethics, federal and state law and regulation pertaining to mortgage origination, federal and state law and regulation on fraud, consumer protection, nontraditional mortgage products, and fair lending.

(6) **After passing the ((~~NMLSR~~)) loan originator test, will I have to take it again?** If you fail to maintain a valid license for a period of five years or longer you must retake the test, not taking into account any time during which you were a registered mortgage loan originator.

(7) **How soon after failing the loan originator test may I take it again?** After taking and failing the test you must wait thirty days before taking it again. After failing ((~~four~~)) three consecutive times, you must then wait at least six months before taking the test again.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-730 Loan originator—Continuing education. (1) **How many clock hours of loan originator continuing education must I have each year?** You must complete a minimum of eight hours of continuing education approved by the ((~~nationwide mortgage licensing system and registry~~)) NMLS which must include at least three hours of federal law and regulations; two hours of ethics (which must include instruction on fraud, consumer protection, and fair lending issues); and two hours of training related to lending standards for the nontraditional mortgage product marketplace. Additionally, the director may require at least one hour of continuing education on Washington law provided by and administered through an approved provider.

(2) **As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(3) **If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement?** Yes. As an instructor of an approved continuing education course, you may receive credit for your annually required loan originator continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

(4) **If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

(5) **If I fail to complete the required continuing education, what happens to my loan originator license?** When your license expires, the department will not renew it, and you cannot continue conducting any business under the act. See WAC ((~~208-620-XXX~~)) 208-620-710 to renew your license if you miss the December 31st renewal deadline.

(6) **How will I know which courses and providers satisfy the continuing education requirement?** ((~~NMLSR~~)) NMLS will publish information about approved continuing education providers on their web site.

(7) **How do I provide the department with proof of the continuing education courses I have completed?**

(a) For SAFE required courses, the course provider will report your continuing education to the ((~~NMLSR~~)) NMLS and DFI will have access to that information.

(b) For Washington specific courses, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-805 Does this ((~~section~~)) part (WAC 208-602-800 through 208-602-850) apply to the FHA approved home equity conversion mortgage (HECM) product? No. ((~~This section does~~)) WAC 208-620-800 through 208-620-850 do not apply to the HECM product or to any federally administered reverse mortgage product.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-820 What specific loan terms and conditions are allowed or required in the proprietary reverse mortgages I make to Washington residents? (1) Loan prepayment.

(a) Prepayment, in whole or in part, or the refinancing of a reverse mortgage loan, must be permitted without penalty at any time during the term of the reverse mortgage loan. For the purposes of this subsection, penalty ((~~does not include~~)) means an amount of money charged to the borrower in addition to any fees, payments, or other charges, not including interest, that would have otherwise been due upon the reverse mortgage being due and payable. However, when a reverse mortgage lender has paid or waived all of the usual fees or costs associated with a reverse mortgage loan, a prepayment penalty may be imposed, provided the penalty does not exceed the total amount of the usual fees or costs that were initially absorbed or waived by the reverse mortgage lender.

(b) You may not impose a prepayment penalty under this subsection if the prepayment is caused by the occurrence of the death of the borrower.

(c) If a prepayment penalty is imposed under the circumstances described in (a) of this subsection you must disclose the prepayment penalty to the borrower.

(2) Interest rate. A reverse mortgage loan may provide for a fixed or adjustable interest rate or combination thereof, including compound interest, and may also provide for interest that is contingent on the value of the property upon execution of the loan or at maturity, or on changes in value between closing and maturity.

(3) Late advances. A late advance is a scheduled monthly advance that you do not mail or electronically transfer to the borrower on or before the first business day of the month, or within five business days of the date you receive the borrower's request, or such other regularly scheduled contractual date.

(a) If you make a late advance you must pay a late charge of ten percent of the entire amount that should have been advanced to the borrower.

(b) For each additional day you fail to make the advance, you must pay interest on the late advance at the interest rate stated in the loan documents. If the loan documents provide for an adjustable interest rate, the rate in effect when the late charge first accrues is used. You must pay late charges from your funds and they may not be added to the unpaid principal balance of the borrower's loan or in any other way collected from the borrower.

(c) You forfeit the right to interest and monthly servicing fees for any months you fail to make a timely advance.

(4) Loan acceleration. The reverse mortgage loan may become due and payable upon the occurrence of any one of the following events:

(a) The home securing the loan is sold or title to the home is otherwise transferred;

(b) All borrowers cease occupying the home as a principal residence, except as provided in subsection (5) of this section; or

(c) A defaulting event occurs which is specified in the loan documents.

(5) Repayment. Repayment of the reverse mortgage loan is subject to the following additional conditions:

(a) Temporary absences from the home not exceeding one hundred eighty consecutive days do not cause the mortgage to become due and payable;

(b) Extended absences from the home exceeding one hundred eighty consecutive days, but less than one year, do not cause the mortgage to become due and payable if the borrower has taken prior action that secures and protects the home in a satisfactory manner, as specified in the loan documents;

(c) Your right to collect reverse mortgage loan proceeds is subject to the applicable statute of limitations for written loan contracts. Notwithstanding any other provision of law, the statute of limitations commences on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement;

(d) If the borrower mortgaged one hundred percent of the full value of the house, the amount owed will be the lesser amount of:

(i) The fair market value of the house, minus the sale costs; or

(ii) The outstanding balance of the loan.

(e) If the borrower mortgaged less than one hundred percent of the full value of the house, the amount owed by the borrower must not be greater than the outstanding balance of the loan or the percentage of the fair market value (minus sale costs, as provided in the contract), whichever amount is less;

(f) The lender must enforce the debt only through the sale of the property and must not obtain a deficiency judgment against the borrower.

(6) Fee disclosure. Using conspicuous, bold sixteen-point or larger type, you must disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable, and that ends when repayment in full is made.

(7) Deed of trust disclosure. The first page of any deed of trust securing a reverse mortgage loan must contain the following statement in sixteen-point boldface type: "This deed of trust secures a reverse mortgage loan."

(8) Ancillary products. You or any other party that participates in the origination of a reverse mortgage loan must not require an applicant for a reverse mortgage to purchase an annuity, insurance, or other financial product as a condition

of obtaining a reverse mortgage loan. You or the broker of a reverse mortgage loan must not:

(a) Offer an annuity, insurance, or other financial product to the borrower prior to the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement;

(b) Refer the borrower to anyone for the purchase of an annuity, insurance, or other financial product prior to the closing of the reverse mortgage or before the expiration of the borrower's right to rescind the reverse mortgage agreement;

(c) Provide marketing information or sales leads to anyone regarding the prospective borrower or receive any compensation for such an annuity, insurance, or other financial product sale or referral; or

(d) You or any other party that participates in the origination of a reverse mortgage loan must maintain safeguards, acceptable to the department of financial institutions, to ensure that you do not provide reverse mortgage borrowers with any other financial or insurance products and that individuals participating in the origination of a reverse mortgage loan have no ability or incentive to provide the borrower with any other financial or insurance product.

(9) Borrower counseling. Prior to accepting a final and complete application for a reverse mortgage loan or assessing any fees, you must refer the prospective borrower to an independent housing counseling agency approved by the federal department of Housing and Urban Development for counseling. The counseling must meet the standards and requirements established by the federal department of Housing and Urban Development for reverse mortgage counseling. You must provide the borrower with a list of at least five independent housing counseling agencies approved by the federal department of Housing and Urban Development, including at least two agencies that can provide counseling by telephone. Telephone counseling will only be used for counseling at the borrower's request. You must create and maintain a form that includes the borrower's signature for telephone counseling requests.

(10) Counseling certification. You must not accept a final and complete application for a reverse mortgage loan from a prospective applicant or assess any fees upon a prospective applicant without first receiving a certification from the applicant or the applicant's authorized representative that the applicant has received counseling from an agency as described in subsection (9) of this section. The certification must be signed by the borrower and the agency counselor, and must include the date of the counseling and the names, addresses, and telephone numbers of both the counselor and the borrower. Electronic facsimile copy of the housing counseling certification satisfies the requirements of this subsection. You must maintain the certification in an accurate, reproducible, and accessible format for the term of the reverse mortgage plus three years.

(11) Minimum age. You may not make a reverse mortgage loan to any Washington state resident unless that resident is a minimum of sixty years of age as of the date of execution of the loan.

(12) Advances. Except for the initial disbursement of moneys to the closing agent, you must issue advances directly to the borrower, or his or her legal representative, and not to an intermediary or third party.

(13) Rescission rights. The borrower in a proprietary reverse mortgage transaction has the same right to rescind the transaction as provided in the Truth in Lending Act, Regulation Z, 12 C.F.R. Sec. 226.

(14) Property appraisals. Prior to execution of the loan and at the end of the loan term, you must obtain an independent appraisal of the property value, or use the current year's tax assessment valuation of the property. You must provide copies of these appraisals to the borrower within five days of the borrower's written request, provided the borrower has paid for the appraisal.

AMENDATORY SECTION (Amending WSR 09-24-090, filed 12/1/09, effective 1/1/10)

WAC 208-620-825 What reverse mortgage program information must I submit to the director for approval before offering or making proprietary reverse mortgages? (1) A description of all proprietary reverse mortgage products available to borrowers.

(2) A copy of each proprietary loan product contract.

(3) A copy of all disclosures provided to borrowers for all proprietary reverse mortgage products.

(4) A copy of the projected total cost of credit disclosure provided to borrowers. The projected total cost of credit disclosure must reflect at a minimum the following factors, as applicable:

(a) All costs and charges to the consumer;

(b) All advances to and for the benefit of the consumer;

(c) Any shared appreciation or equity in the dwelling that you are entitled to receive under the contract to receive;

(d) Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements);

(e) Each of the assumed annual appreciation rates for the dwelling:

(i) Zero percent;

(ii) Four percent;

(iii) Eight percent;

(f) Each of the following assumed loan periods:

(i) Two years;

(ii) The actuarial life expectancy of the consumer to become obligated on the reverse mortgage transaction (as of the consumer's most recent birthday). If there is more than one consumer, the period must be the actuarial life expectancy of the youngest consumer as of that consumer's most recent birthday;

(g) Reserved.

(5) Your complaint processing policies and procedures.

(6) A copy of all notes and mortgages used in proprietary reverse mortgage loan transactions.

(7) If third party originators are used, copies of all due diligence policies and procedures for their use and copies of all compensation and incentive policies and procedures.

(8) A copy of your underwriting policies.

(9) A description of your title search methods.

(10) A copy of your policy for paying subsequent liens.

(11) A copy of your appraisal practices.

(12) A copy of audited financial statements and unaudited balance sheet and income statement for the end quarter of the last two years. If you are relying on your parent company's capital to satisfy WAC 208-620-810(2), you must also include the parent company's last two years of audited financial statements and unaudited balance sheet and income statement for each end quarter of each year.

AMENDATORY SECTION (Amending WSR 10-20-122, filed 10/5/10, effective 11/5/10)

WAC 208-620-900 What requirements must I comply with when servicing residential mortgage loans? In addition to complying with all other provisions of ((~~the~~)) this act you must:

(1) Other applicable laws, regulations, and programs. Comply with the following:

(a) Chapters 61.24 and 19.148 RCW and any other applicable state or federal law, regulation, and program. Any conflict that arises between this chapter and chapter 19.148 RCW will be resolved in favor of this chapter.

(b) Comply with ((~~applicable federal laws or regulations when servicing a residential mortgage loan~~)) the federal Servicemembers Civil Relief Act.

(((~~(b) Comply with applicable federal laws or regulations when servicing a residential mortgage loan guaranteed or insured by a government program.~~

~~(c) Comply with applicable federal laws or regulations when servicing a residential mortgage loan guaranteed or insured by Fannie Mae or Freddie Mac.~~

~~(d)~~)) (c) A violation of an applicable state or federal law ((~~or~~)), regulation, or program is a violation of this act.

(2) ((~~Comply with chapter 19.148 RCW.~~

~~(3) You must assess fees to a borrower's account within forty-five days of the date on which the fee was incurred. You must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee.~~

~~(4)(a) You must accept and credit all amounts received within one business day of receipt when the borrower has made the payment to the address where instructed, provided that the borrower has provided sufficient information to credit the account. If you use the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date.~~

~~(b) You may enter into a written contract with the borrower whereby you hold funds of a certain type or sent by a certain method for a period of time until the funds are available.~~

~~(5) You must notify the borrower if a payment is received but not credited. You must mail the notification to the borrower within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the residential mortgage loan current.~~

~~(6)~~)) Servicing and ownership transfers. As to acquiring servicing rights from another servicer you must:

(a) Continue processing loan modification requests and honoring trial and permanent modifications;

(b) Designate the homeowner as a third-party beneficiary in any contract for transfer, unless doing so would violate state law or HAMP or GSE modification programs requirements; and

(c) As to transferring the servicing of loans pending with modification requests trial or permanent modification you must:

(i) Inform the successor servicer if a loan modification is pending;

(ii) Obligate the successor to accept and continue processing loan modification requests and honor trial and permanent loan modification agreements; and

(iii) Designate the homeowner as a third-party beneficiary in any contract for transfer, unless doing so would violate state law or HAMP or GSE modification programs requirements.

(3) Payment processing and fees.

(a) You must accept and credit all amounts received within one business day of receipt when the borrower has made the payment to the address where instructed, provided, that the borrower has provided sufficient information to credit the account. If you use the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date. You must apply the payment in the order specified in the loan documents.

(b) You may enter into a written contract with the borrower whereby you hold funds of a certain type or sent by a certain method for a period of time until the funds are available before crediting them to the borrower's account.

(c) You must notify the borrower if a payment is received but not credited and instead placed in a suspense account. You must mail the notification to the borrower within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the residential mortgage loan current.

(d) When the suspense account contains enough money to make a payment, you must apply that payment to the mortgage as of the date the full amount became available in the suspense account.

(e) You must assess fees to a borrower's account within forty-five days of the date on which the fee was incurred. You must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee.

(4) Maintenance of the escrow account.

(a) If you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with respect to the property, you must collect and make all payments from the escrow account and, to the extent you have control, ensure that no late penalties are assessed or other negative consequences result for the borrower. You must inform the borrower in writing of the amount of reserve required in an escrow account. The notice must also advise the borrower of any fees the borrower will incur for not maintaining the reserve amount or fees the borrower will incur if you advance

escrow amounts on the borrower's behalf and then collect the amounts from the borrower.

(b) You may enter into a written agreement with the borrower whereby you are not required to make escrow payments unless funds are available in the escrow account. The agreement must include language that puts the borrower on notice that the borrower is responsible for the payment of the escrow amounts if a sufficient amount is not maintained in the escrow account. ((~~See also subsection (1)(c) of this section.~~))

(c) You must notify the borrower within ten business days of any change to the escrow account other than the changes brought about by the borrower's regularly scheduled payment. Examples of changes requiring notification include, but are not limited to, a reduction in the required ((~~cushion~~)) reserve amount for the account, or a change in the property's tax assessment.

(((~~7~~))) (5) Borrower requests for information.

(a) You must make a reasonable attempt to comply with a borrower's request for information about the residential mortgage loan account, including a request for information about loss mitigation, and to respond to any dispute initiated by the borrower about the loan account. A reasonable attempt includes, but is not limited to:

(((~~a~~))) (i) Maintaining written or electronic records of each written request for information ((~~regarding a dispute or error~~)) involving the borrower's account until the residential mortgage loan is paid in full, sold, or otherwise satisfied;

(((~~b~~))) (ii) Providing a written statement to the borrower within fifteen business days of receipt of a written request from the borrower, or by following the response timelines for any loss mitigation program. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply.

(((~~8~~))) (b) You must provide at a minimum the following information to a borrower's request described in subsection (((~~7~~))) (5) of this section:

(((~~a~~))) (i) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(((~~b~~))) (ii) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer;

(((~~c~~))) (iii) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and

(((~~d~~))) (iv) The telephone number and mailing address of ((~~a~~)) an individual servicer representative with the information and authority to answer questions and resolve disputes and to act as a single point of contact for the homeowner. This individual servicer representative must have the authority and ability to perform the following duties:

(A) Explain loss mitigation options and requirements;

(B) Track documents submitted by the homeowner and documents provided to the homeowner;

(C) Inform the homeowner of the status of their loss mitigation process;

(D) Ensure the homeowner is considered for all loss mitigation options; and

(E) Access individuals with the authority to delay or stop foreclosure proceedings.

(((~~e~~))) (c) You may charge a fee for preparing and furnishing the statement described in ((~~this~~)) subsection XXX of this section not exceeding thirty dollars per statement.

(((~~f~~))) (d) You must promptly correct any errors and refund any fees assessed to the borrower resulting from an error you made.

(((~~g~~))) (e) If the content of your response meets the requirements under RESPA for a response to a qualified written request, you will be deemed in compliance with the content requirements of this subsection. You must still comply with (d) of this subsection.

(((~~9~~))) (f) In addition to the statement described in ((~~subsection (6)~~)) (a) of this ((~~section~~)) subsection, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower, this statement must also include:

(((~~a~~))) (i) A copy of the original note, or if unavailable, an affidavit of lost note, with all endorsements; and

(((~~b~~))) (ii) A statement that identifies and itemizes all fees and charges assessed under the loan servicing transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any.

(((~~c~~))) (iii) The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year time period, the servicer must provide the information going back to the date on which the servicer began servicing the home loan and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the residential mortgage loan up to the date of the request for the information.

(((~~d~~))) (iv) If the borrower requests this statement, you must provide it free of charge; but the borrower is only entitled to one free statement annually. If the borrower requests more than one statement annually, you may charge thirty dollars for the second and subsequent statements.

(((~~10~~))) (6) If a borrower's property goes into foreclosure and the foreclosure sale occurs, you must notify the borrower within three business days of sale of the completion of the sale. You must mail the notification to the borrower's last

known address provided to you. If the notification is returned to you because the address is deficient in some manner, you must post the notification of the foreclosure sale on the property itself within three days of the notification being returned to you.

(7) Loss mitigation.

(a) You must comply with all timelines and requirements for the HAMP or GSE modification program, including denials and dual tracking prohibitions. If not using a HAMP or GSE loan modification program, you must:

(i) Develop an electronic system, or add to an existing system, the ability for borrowers to check the status of their loan modification, at no cost. The system must also allow communication from housing counselors. The system must be updated every ten business days.

(ii) Review and make a determination on a borrower's completed loan modification application within thirty days of receipt.

(iii) Provide in the loan modification denial notice the reasons for denial and an opportunity for the homeowner to rebut the denial within thirty days. If the denial is due to the terms of an agreement between you and an investor, you must provide the name of the investor and a summary of the reason for the denial. If the denial is based on a net present value (NPV) model, you must provide the data inputs used to determine the NPV. Any loan modification denials must be reviewed internally by an independent evaluation process. See (b) of this subsection for information on borrower appeals.

(iv) Review and consider any complete loan modification application before referring a delinquent loan to foreclosure.

(v) Give a homeowner ten business days from your notice to them to correct any deficiencies in their loan modification application.

(vi) Stop the foreclosure from proceeding further if you receive a complete loan modification application. See (a)(viii) and (ix) of this subsection.

(vii) If the borrower accepts a loan modification verbally, in writing, or by making the first trial payment, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(viii) Review and consider a complete loan modification application received prior to thirty-seven days before a scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(ix) Perform an expedited review of any complete loan modification application submitted between thirty-seven and fifteen days before the scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(b) As to borrower appeals of loan modification denials you must:

(i) Give the borrower thirty days from your written notice to request an appeal unless the denial is due to:

(A) An ineligible mortgage;

(B) An ineligible property;

(C) The borrower did not accept the offer; or

(D) The loan was previously modified.

(ii) Give the borrower the opportunity to obtain a full appraisal for purposes of contesting appraisal data used in a denial based on NPV.

(iii) Response to the borrower's appeal within thirty days of receipt.

(iv) Provide the borrower with a description of any other loss mitigation option available if you uphold the denial.

(c) You must maintain adequate staffing levels and systems to comply with this section, including staffing and systems to track and maintain loan modification documents submitted by homeowners.

(d) You must make public all necessary information to inform homeowners about and allow homeowners to apply for your proprietary first and second lien modifications.

(e) You must make public all necessary information to inform homeowners about your short sale requirements.

(f) You must allow a homeowner to apply for and receive a short sale determination before the homeowner puts a house on the market.

(8) Foreclosure.

(a) Before you refer a loan to foreclosure, you must document in the loan file evidence to substantiate the borrower's default and your right to foreclose. The file must also contain loan ownership information.

(b) If a borrower's property goes into foreclosure and the foreclosure sale occurs, you must notify the borrower within three business days of sale of the completion of the sale. You must mail the notification to the borrower's last known address provided to you. If the notification is returned to you because the address is deficient in some manner, you must post the notification of the foreclosure sale on the property itself within three days of the notification being returned to you.

(9) Contracting with other parties. You must adopt written policies and procedures for the oversight of third-party providers including, but not limited to, foreclosure trustees, foreclosure firms, subservicers, agents, subsidiaries, and affiliates. You must maintain the policies and procedures as part of your books and records and must provide them to the department when directed to do so.

(10) See also WAC 208-620-551.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-620-395	Do I need to display my license in my place of business?

WAC 208-620-432	Will the filing of the fourth quarter call report satisfy the consolidated annual report (CAR) requirement of WAC 208-620-430?

will not impose more than minor costs on the businesses impacted by the proposed rules.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to the proposed rules.

June 19, 2012
Deborah Bortner, Director
Division of Consumer Services

WSR 12-13-074
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Consumer Services Division)
[Filed June 19, 2012, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-23-064.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-660 WAC) that implement the Mortgage Broker Practices Act (MBPA) (chapter 19.146 RCW).

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700, on July 25, 2012, at 11-12 noon.

Date of Intended Adoption: August 22, 2012.

Submit Written Comments to: Elizabeth Hampton, 150 Israel Road S.W., P.O. Box 41200, Olympia, WA 98504-1200, e-mail elizabeth.hampton@dfi.wa.gov, fax (360) 586-5068, by August 2, 2012.

Assistance for Persons with Disabilities: Contact Elizabeth Hampton by July 19, 2012, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement chapter 17, Laws of 2012, and are amendments that generally add clarity and consistency to the rules. Chapter 17, Laws of 2012, removes the requirement for the mortgage broker company to conspicuously display the business license, and gives authority to the director to enter into informal settlements.

Reasons Supporting Proposal: Specific information provided in the rules is necessary to guide the regulated industries in complying with the laws.

The rules are being amended under the authority of OFM Guideline 3(f), October 12, 2011.

Statutory Authority for Adoption: Chapter 43.320 RCW.

Statute Being Implemented: Chapter 19.146 RCW.

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

Name of Proponent: Department of financial institutions, consumer services, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy Fazio, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8800; Implementation and Enforcement: Deborah Bortner, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-0511.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendments

AMENDATORY SECTION (Amending WSR 10-20-125, filed 10/5/10, effective 11/5/10)

WAC 208-660-006 Definitions. What definitions are applicable to these rules? Unless the context clearly requires otherwise, the definitions in this section apply throughout these rules.

"Act" means the Mortgage Broker Practices Act, chapter 19.146 RCW.

"Advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages.

"Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

"Annual loan origination volume" means the aggregate of the principal loan amounts brokered by the licensee.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. An application may be in writing or electronically submitted, including a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Appraisal" means the act or process of developing an opinion of value, the act pertaining to an appraisal-related function, or any verbal or written opinion of value offered by an appraiser. The opinion of value by the appraiser includes any communication that is offered as a single point, a value range, a possible value range, exclusion of a value, or a minimum value.

"Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

"Branch office" means a fixed physical location such as an office, separate from the principal place of business of the

licensee, where the licensee holds itself out as a mortgage broker.

"Branch office license" means a branch office license issued by the director allowing the licensee to conduct a mortgage broker business at the location indicated on the license.

"Business day" means Monday through Friday excluding federally recognized bank holidays.

"Certificate of passing an approved examination" means a certificate signed by the testing administrator verifying that the individual performed with a satisfactory score or higher.

"Certificate of satisfactory completion of an approved continuing education course" means a certificate signed by the course provider verifying that the individual has attended an approved continuing education course.

"Compensation or gain" means remuneration, benefits, or an increase in something having monetary value, including, but not limited to, moneys, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing moneys that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special or unusual bank or financing terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation. "Compensation or gain" is not evaluated solely on a loan by loan basis.

For example, a realtor advertising that buyers using their services will receive free loan origination assistance is doing so in the anticipation of "compensation or gain" through increased real estate business.

"Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

For purposes of this definition, the CLI system includes computer hardware or software, an internet-based system, or any combination of these, which provides information to consumers about residential mortgage interest rates and other loan terms which are available from another person.

"Computer loan information system provider" or "CLI provider" is any person who provides a computer loan information service, either directly, or as an owner-operator of a CLI system, or both.

"Consumer Protection Act" means chapter 19.86 RCW.

"Control" including the terms "controls," "is controlled by," or "is under common control" means the power, directly or indirectly, to direct or cause the direction of the management or policies of a person, whether through ownership of the business, by contract, or otherwise. A person is presumed to control another person if such person is:

• A general partner, officer, director, or employer of another person;

• Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of another person; or

• Has similar status or function in the business as a person in this definition.

"Convicted of a crime," irrespective of the pronouncement or suspension of sentence, means a person:

• Has been convicted of the crime in any jurisdiction;

• Has been convicted of a crime which, if committed within this state would constitute a crime under the laws of this state;

• Has plead guilty or no contest or nolo contendere or stipulated to facts that are sufficient to justify a finding of guilt to such a charge before a court or federal magistrate; or

• Has been found guilty of a crime by the decision or judgment of a state or federal judge or magistrate, or by the verdict of a jury.

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210 (1)(e).

"Director" means the director of financial institutions.

"Discount points" or "points" mean a fee paid by a borrower to a lender to reduce the interest rate of a residential mortgage loan. Pursuant to Regulation X, discount points are to be reflected on the good faith estimate and settlement statement as a dollar amount.

"Division of consumer services" means the division of consumer services within the department of financial institutions, or such other division within the department delegated by the director to oversee implementation of the act and these rules.

"Employee" means an individual who has an employment relationship with a mortgage broker, and the individual is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

"Examination" or "compliance examination" means the examination performed by the division of consumer services, or such other division within the department delegated by the director to oversee implementation of the act and these rules to determine whether the licensee is in compliance with applicable laws and regulations.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, Director of the Office of Thrift Supervision, National Credit Union Administration, and Federal Deposit Insurance Corporation.

Federal statutes and regulations used in these rules are:

• "Alternative Mortgage Transaction Parity Act" means the Alternative Mortgage Transaction Parity Act (AMTPA), 12 U.S.C. Sec. 3801 et seq.

• "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 202.

• "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

• "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 41-58.

• "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

• "Home Equity Loan Consumer Protection Act" means the Home Equity Loan Consumer Protection Act, 15 U.S.C. Sec. 1637 and 1647.

• "Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Sec. 2801-2810, Regulation C, 12 C.F.R. Part 203.

• "Home Ownership and Equity Protection Act" means the Home Ownership and Equity Protection Act (HOEPA), 15 U.S.C. Sec. 1639.

• "Homeowners Protection Act" means the Homeowners Protection Act of 1998 (HPA), 12 U.S.C. Sec. 4901 et seq.

• "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 24 C.F.R. Part 3500 et seq.

"S.A.F.E." means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008.

• "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 C.F.R. Part 310.

• "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part 226 et seq.

"Federally insured financial institution" means a savings bank, savings and loan association, or credit union, whether state or federally chartered, or a federally insured bank, authorized to conduct business in this state.

"Financial misconduct," for the purposes of the act, means a criminal conviction for any of the following:

• Any conduct prohibited by the act;

• Any conduct prohibited by statutes governing mortgage brokers in other states, or the United States, if such conduct would constitute a violation of the act;

• Any conduct prohibited by statutes governing other segments of the financial services industry, including but not limited to the Consumer Protection Act, statutes governing the conduct of securities broker dealers, financial advisers, escrow officers, title insurance companies, limited practice officers, trust companies, and other licensed or chartered financial service providers; or

• Any conduct commonly known as white collar crime, including, but not limited to, embezzlement, identity theft, mail or wire fraud, insider trading, money laundering, check fraud, or similar crimes.

"Independent contractor" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

The following factors may be considered to determine if a person is an independent contractor:

Is the person instructed about when, where and how to work?

Is the person guaranteed a regular wage?

Is the person reimbursed for business expenses?

Does the person maintain a separate business?

Is the person exposed to potential profits and losses?

Is the person provided employee benefits such as insurance, a pension plan, or vacation or sick pay?

"License number" means the ((~~NMLSR~~)) NMLS unique identifier displayed as prescribed by the director.

"Licensee" means:

• A mortgage broker licensed by the director; or

• The principal(s) or designated broker of a mortgage broker; or

• A loan originator licensed by the director; or

• Any person subject to licensing under RCW 19.146.-200; or

• Any person acting as a mortgage broker or loan originator subject to any provisions of the act.

((~~"Loan modification" means a change in one or more residential mortgage loan terms or conditions and includes forbearances, repayment plans, a change in interest rates, loan term (length), loan type (fixed or adjustable), the capitalization of arrearages, and principal reductions. "Loan modification" does not include services that result in refinancing a residential mortgage loan.~~))

"Loan originator or mortgage loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain:

• Takes a residential mortgage loan application for a mortgage broker; or

• Offers or negotiates terms of a mortgage loan, including short sale transactions.

"Loan originator" also includes a person who holds themselves out to the public as able to perform any of the activities described in this definition. For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate lists, or other promotional items.

For purposes of further defining "loan originator," "taking a residential mortgage loan application" includes soliciting, accepting, or offering to accept an application for a residential mortgage loan or assisting a borrower or offering to assist a borrower in the preparation of a residential mortgage loan application.

"Loan originator" also includes a natural person who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain performs residential mortgage loan modification services.

"Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of

information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. An individual who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

"Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(a) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(b) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(c) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;

(d) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(e) Offering to engage in any activity, or act in any capacity, described in (a) through (d) of this subsection.

"Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

The definition of loan originator does not apply to employees of a housing counseling agency approved by the United States department of Housing and Urban Development unless the employees of a housing counseling agency are required under federal law to be licensed individually as loan originators.

"Loan originator licensee" means a natural person who is licensed as a loan originator or is subject to licensing under RCW 19.146.200 or who is acting as a loan originator subject to any provisions of the act.

"Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 19.146 RCW. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms.

"Material litigation" means any litigation that would be relevant to the director's ruling on an application for a license including, but not limited to, criminal or civil action involving dishonesty or financial misconduct.

"Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan. A mortgage broker either prepares a residential mortgage loan for funding by another entity or table-funds the residential mortgage loan. See the definition of "table funding." (These are the two activities allowed under the MBPA.)

For purposes of this definition, a person "assists a person in obtaining or applying to obtain a residential mortgage loan" by, among other things, counseling on loan terms (rates, fees, other costs), preparing loan packages, or collecting enough information on behalf of the consumer to anticipate a credit decision under Regulation X, 24 C.F.R. Part 3500, Section 3500 (2)(b).

For purposes of this definition, a person "holds himself or herself out" by advertising or otherwise informing the public that they engage in any of the activities of a mortgage broker or loan originator, including the use of business cards, stationery, brochures, rate sheets, or other promotional items.

"Mortgage broker licensee" means a person that is licensed as a mortgage broker or is subject to licensing under RCW 19.146.200 or is acting as a mortgage broker subject to any provisions of the act.

"Mortgage Broker Practices Act" means chapter 19.146 RCW.

"Mortgage loan originator" means the same as "loan originator."

((~~"Nationwide Mortgage Licensing System and Registry (NMLSR)"~~)) "NMLS" means a ((~~mortgage~~)) multistate licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators and other license types.

"Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage. This definition is limited to implementation of the S.A.F.E. Act.

"Out-of-state applicant or licensee" means a person subject to licensing that maintains an office outside of this state.

"Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

"Prepaid escrowed costs of ownership," as used in RCW 19.146.030(4), means any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan.

"Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

"Rate lock agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

"Registered agent" means a person located in Washington appointed to accept service of process for a licensee.

"Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of:

(a) A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and

(b) Is registered with, and maintains a unique identifier through, the ((~~nationwide mortgage licensing system and registry~~)) NMLS.

"Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

For purposes of this definition, a loan "primarily for personal, family, or household use" includes loan applications for a finance or refinance of a primary residence for any purpose, loan applications on second homes, and loan applications on nonowner occupied residential real estate provided the licensee has knowledge that proceeds of the loan are intended to be used primarily for personal, family or household use.

"Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms (length), or loan types; capitalizations of arrearages; or principal reductions. ((~~Loan modification does not include services that result in refinancing a residential mortgage loan.~~))

"Residential mortgage loan modification services." ((~~includes negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a residential mortgage loan modification. "Residential mortgage loan modification services" also includes the collection of data for submission to any entity performing mortgage loan modification services~~)) See WAC 208-660-100.

"Residential real estate" is real property upon which is constructed or intended to be constructed, a single family dwelling or multiple family dwelling of four or less units.

• Residential real estate includes, but is not limited to:

– A single family home;

– A duplex;

– A triplex;

– A fourplex;

– A single condominium in a condominium complex;

– A single unit within a cooperative;

– A manufactured home; or

– A fractile, fee simple interest in any of the above.

• Residential real estate does not include:

– An apartment building or dwelling of five or more units; or

– A single piece of real estate with five or more single family dwellings unless each dwelling is capable of being financed independently of the other dwellings.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, or Title V of the Housing and Economic Recovery Act of 2008 (HERA), P.L. 110-289, effective July 30, 2008; and Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

"Table-funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. The mortgage broker originates the loan and closes the loan in its own name with funds provided contemporaneously by a lender to whom the closed loan is assigned.

"Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

"Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

"Underwriting" means a lender's detailed credit analysis preceding the offering or making of a loan. The analysis may be based on information furnished by the borrower (employment history, salary, financial statements), the borrower's credit history from a credit report, the lender's evaluation of the borrower's credit needs and ability to pay, and an assessment of the collateral for the loan. While mortgage brokers may have access to various automated underwriting systems to facilitate an evaluation of the borrower's qualifications, the mortgage broker who qualifies or approves a borrower in this manner is not the underwriter of the loan and cannot charge a fee for underwriting the loan. Third-party charges the mortgage broker incurs in using or accessing an automated system to qualify or approve a borrower may, like other third-party expenses, be passed on to the borrower.

"Unique identifier" means a number or other identifier assigned by protocols established by the ((~~nationwide mortgage licensing system and registry~~)) NMLS.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-007 Good standing. (1) **What does good standing mean?** For the purposes of the act and these rules, good standing means that the applicant, licensee, or other person subject to the act demonstrates financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of the act and these rules. In determining good standing the director will consider the following factors, and any other evidence relevant to good standing as defined in this rule:

(a) Whether the applicant or licensee has paid all fees due to the director or the ((~~NMLSR~~)) NMLS.

(b) Whether the mortgage broker licensee has filed ((~~their mortgage broker~~)) quarterly or annual reports as prescribed by the director.

(c) Whether the mortgage broker licensee has filed and maintained the required surety bond or had its surety bond canceled or revoked for cause.

(d) Whether the mortgage broker licensee has maintained a designated broker in compliance with the act and these rules.

(e) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization or ability to do business under any similar statute of this or any other state, suspended, revoked, or restricted within the prior five years.

(f) Whether the applicant, licensee, or other person subject to the act has been convicted of, or pled guilty or nolo contendere to, in a domestic, foreign, or military court to:

(i) A gross misdemeanor involving dishonesty or financial misconduct within the prior seven years;

(ii) A felony within the prior seven years; or

(iii) A felony that involved an act of fraud, dishonesty, breach of trust, or money laundering at any time preceding the date of application.

(g) Whether the licensee or other person subject to the act, is, or has been subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(h) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(i) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

(j) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(k) Whether the licensee, or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(l) Whether the licensee or other person subject to the act has interfered with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(2) **Under what circumstances may the department conduct a good standing review of an applicant, mortgage broker licensee, designated broker, or exempt mortgage broker?** The department may conduct a good standing review when:

(a) Processing an application for a new mortgage broker branch office license.

(b) Processing an application for appointment of a different designated broker (both the licensed mortgage broker, including those individuals to whom the license was granted, and the proposed designated broker must meet good standing).

(c) Processing a request for recognition as an exempt mortgage broker under RCW 19.146.020.

(3) **When will an applicant, licensee, or other person subject to the act receive notice from the department of their failure to meet a determination of good standing?** If the department conducts a good standing review, the department will notify the applicant, licensee, or other person subject to the act that they have failed to meet the department's good standing requirement within ten business days of the department's receipt of any application or request that requires a determination of good standing. See subsection (2) of this section. For purposes of the notice required by this section, a statement of charges filed and served on the licensee is sufficient notice of a lack of good standing.

(4) **What recourse does an applicant, licensee, or other person subject to the act have when the department has determined that they are not in good standing?** The applicant, licensee, or other person subject to the act may request a brief adjudicative proceeding under the Administrative Procedure Act, chapter 34.05 RCW, to challenge the department's determination. See WAC 208-660-009.

NEW SECTION

WAC 208-660-105 How does the department interpret the definition of residential mortgage loan modification services in RCW 19.146.010(21)? Residential mortgage loan modification services means activities conducted by individuals or entities not engaged in servicing the borrower's existing residential mortgage loan. The activities may include negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform residential mortgage loan modification services. The activities may also include the collection of data for submission to another entity performing mortgage loan modification services or to a residential mortgage loan servicer.

AMENDATORY SECTION (Amending WSR 10-20-125, filed 10/5/10, effective 11/5/10)

WAC 208-660-155 Mortgage brokers—General. (1) **May I originate residential mortgage loans in Washington without a license?** No. Mortgage brokers and loan originators must have a valid Washington license, or be exempt from licensing pursuant to RCW 19.146.020, in order to originate residential mortgage loans. There is no "one-time, one loan" exception.

(2) **May I originate a Washington residential mortgage loan using the license of an already licensed or exempt Washington mortgage broker and then split the proceeds with that mortgage broker?** No. Mortgage broker licenses may only be used by the person named on the license. Mortgage broker licenses may not be transferred, sold, traded, assigned, loaned, shared, or given to any other person. Two individually licensed mortgage brokers may originate a loan. Each licensee is itemized in the disclosures and is paid their proportionate share of fees in relation to the

work provided at the loan closing. Federal laws may prohibit this cobrokering.

(3) **Do I need a license to assist a borrower with a residential mortgage loan modification?** Yes. Persons providing loan modification services for compensation or gain must be licensed under this chapter, or under chapter 31.04 RCW. See also WAC 208-660-430(23), 208-660-500(4), 208-660-550 (3)(c) and (4).

(4) **As a licensed mortgage broker, am I responsible for the actions of my employees and independent contractors?** Yes. You are responsible for any conduct violating the act or these rules by any person you employ, or engage as an independent contractor, to work in the business covered by your license.

(5) **Who at the licensed mortgage broker company is responsible for the licensee's compliance with the act and these rules?** The designated broker, principals, and owners with supervisory authority are responsible for the licensee's compliance with the act and these rules.

(6) **What is the nature of my relationship with the borrower?** You have a fiduciary relationship with the borrower. See RCW 19.146.095.

(7) **May I charge upfront broker fees when assisting the borrower in applying for a loan?** No. You may only charge the borrower a fee, commission, or other compensation for the preparation, negotiation, and brokering of a residential mortgage loan when the loan is closed on the terms and conditions agreed upon by you and the borrower.

(8) **May I charge fees when the loan does not close, or does not close on the terms and conditions agreed upon by me and the borrower?** You may charge a fee, and may bring a suit for collection of the fee, not to exceed three hundred dollars, for services rendered, for the preparation of documents, or for the transfer of documents in the borrower's file which were prepared for, or paid for by, the borrower if:

(a) You have obtained a written commitment from a lender on the same terms and conditions agreed upon by you and the borrower; and

(b) The borrower fails to close on a loan through no fault of yours; and

(c) The fee is not otherwise prohibited by the Truth in Lending Act.

(9) **As a mortgage broker, may I solicit or accept fees from a borrower in advance to pay third-party providers?** Yes. However, prior to accepting the funds, you must provide the borrower in writing a notice identifying the specific third-party provider goods and services the funds are to be used for. Additionally, you must not charge the borrower more for the third-party provider goods and services than the actual costs of the goods and services charged by the provider. Once you have the funds you must then:

(a) Deposit the funds in a trust account pursuant to the act and these rules (see WAC 208-660-410 on Trust accounting);

(b) Refund any fees collected for goods or services not provided.

(10) **What is a "written commitment from a lender on the same terms and conditions agreed upon by the borrower and mortgage broker"?** The written commitment is a written agreement or contract between the mortgage broker and lender containing mutually acceptable loan provisions and terms. The lender must be one with whom the mortgage broker maintains a written correspondent or loan brokerage agreement as required by RCW 19.146.040(3). The mutually acceptable loan provisions and terms must be the same terms and conditions set forth in the most recent good faith estimate signed by both the borrower and the mortgage broker.

(11) **How do I sponsor a loan originator?** You must file a sponsorship request through the ((~~NMLSR~~)) NMLS.

(12) **What action must a mortgage broker take to terminate a working relationship with a loan originator?** The licensed mortgage broker must process the termination through the ((~~NMLSR~~)) NMLS.

(13) **When must I update my record in the ((~~NMLSR~~)) NMLS after I terminate employment with a loan originator?** You must process the termination through the ((~~NMLSR~~)) NMLS within five business days of the termination.

(14) **Are there any loan originator compensation models I am prohibited from using?** Yes. You are prohibited from using a compensation model for loan originators based on a loan's interest rate or other terms. You are not prohibited from basing compensation on the principal balance of a loan.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-163 Mortgage brokers—Licensing. (1) **How do I apply for a mortgage broker license?** Your application consists of an on-line filing through the ((~~NMLSR~~)) NMLS and Washington specific requirements provided directly to DFI. You must pay an application fee through the ((~~NMLSR~~)) NMLS.

(a) **Appoint a designated broker.** You must appoint a designated broker who meets the requirements of WAC 208-660-250.

(b) **Submit an application.** You must complete an on-line application through the ((~~NMLSR~~)) NMLS.

(c) **Pay the application and license fees.** You will have to pay application fees to cover the costs of processing the application. You must also pay a separate annual license fee. See WAC 208-660-550, Department fees and costs.

(d) **Prove your identity.** You must provide information about the identity of owners, principals, officers, and the designated broker, including fingerprints.

(e) **Provide a surety bond.** Mortgage brokers must have a surety bond based upon the annual loan origination volume of the mortgage broker. See WAC 208-660-175 (1)(e).

(2) **What information will the department consider when deciding whether to approve a mortgage broker license application?** The department considers the financial responsibility, character, and general fitness of the applicant, principals, and the designated broker.

(3) **Why does the department consider financial responsibility, character, and general fitness before issuing a mortgage broker license?** One of the purposes of the act is to ensure that mortgage brokers and loan originators deal honestly and fairly with the public. Applicants, principals, and designated brokers who have demonstrated their

financial responsibility, character, and general fitness to operate their businesses honestly, fairly, and efficiently are more likely to deal honestly and fairly with the public.

(4) **What specific information will the department consider to determine if the mortgage broker business will be operated honestly, fairly, and in compliance with applicable law?**

(a) Whether the applicant, licensee, or other person subject to the act has had any license, or any authorization to do business under any similar statute of this or any other state, suspended, or restricted within the prior five years.

(b) Whether the applicant has ever had a license revoked under this chapter or any similar state statute, including a license for insurance, securities, consumer lending, or escrow.

(c) Whether the applicant, licensee, or other person subject to the act has been convicted of, or pled guilty or nolo contendere to, in a domestic, foreign, or military court to:

(i) A gross misdemeanor involving dishonesty or financial misconduct within the prior seven years;

(ii) A felony within the prior seven years; or

(iii) A felony that involved an act of fraud, dishonesty, breach of trust, or money laundering at any time preceding the date of application.

(d) Whether the licensee or other person subject to the act is, or has been, subject to a cease and desist order or an injunction issued pursuant to the act, or the Consumer Protection Act, or has been found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or the Consumer Protection Act, chapter 19.86 RCW.

(e) Whether the director has filed a statement of charges, or there is an outstanding order by the director to cease and desist against the licensee or other person subject to the act.

(f) Whether there is documented evidence of serious or significant complaints filed against the licensee, or other person subject to the act, and the licensee or other person subject to the act has been notified of the complaints and been given the opportunity to respond.

(g) Whether the licensee has allowed the licensed mortgage broker business to deteriorate into a condition that would result in denial of a new application for a license.

(h) Whether the licensee or other person subject to the act has failed to comply with an order, directive, subpoena, or requirement of the director or director's designee, or with an assurance of discontinuance entered into with the director or director's designee.

(i) Whether the licensee or other person subject to the act has interfered with an investigation, or disciplinary proceeding by willful misrepresentation of facts before the director or director's designee, or by the use of threats or harassment against a client, witness, employee of the licensee, or representative of the director for the purpose of preventing them from discovering evidence for, or providing evidence in, any disciplinary proceeding or other legal action.

(5) **What will happen if my mortgage broker license application is incomplete?** If your application is incomplete your file will be marked "pending-deficient" in the ((~~NMLSR~~)) NMLS. The department will either identify each deficiency or respond that there are multiple deficiencies and ask you to contact the department. You are responsible for reviewing your record and responding to each issue.

(6) **How do I withdraw my application for a mortgage broker license?** You may request to withdraw the application through the ((~~NMLSR~~)) NMLS.

(7) **When will the department consider my mortgage broker license application abandoned?** If you do not respond as directed by the department's request for information and within fifteen business days, your license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

(8) **What are my rights if the director denies my application for a mortgage broker license?** You have the right to request an administrative hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW. To request a hearing, you must notify the department within twenty days from the date of the director's notice to you that your license application has been denied, that you wish to have a hearing. See also WAC 208-660-009.

Upon denial of your mortgage broker license application, and provided the department finds no unlicensed activity, the department will return your surety bond, and refund any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(9) **What Washington law protects my rights when my application for a mortgage broker license is denied, or my mortgage broker license is suspended or revoked?** The Administrative Procedure Act, chapter 34.05 RCW, governs the proceedings for license application denials, cease and desist orders, license suspension or revocation, the imposition of civil penalties or other remedies ordered by the department, and any appeals or reviews of those actions. See also WAC 208-660-009.

(10) **May I advertise my business while I am waiting for my mortgage broker license application to be processed?** No. It is a violation of the act for nonlicensed, nonexempt mortgage brokers or loan originators to hold themselves out as mortgage brokers or loan originators in Washington.

(11) **May I originate Washington residential mortgage loans while waiting for my mortgage broker license application to be processed?** No. You may not originate loans prior to receiving your mortgage broker license.

(12) **How do I change information on my mortgage broker license?** You must file a license amendment application through the ((~~NMLSR~~)) NMLS. See also WAC 208-660-400.

(13) **When does a mortgage broker license expire?** The mortgage broker license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(14) **When may the department issue interim mortgage broker licenses?** To prevent an undue delay, the director may issue interim mortgage broker licenses, including branch office licenses, with a fixed expiration date. The license applicant must have substantially met the initial

licensing requirements, as determined by the director, to receive an interim license.

One example of having substantially met the initial licensing requirements is: Submitting a complete application, paying all application fees, and the department having received and reviewed the result of the applicant's background check.

(15) **How do I renew my mortgage broker license?**

(a) Before the license expiration date you must:

(i) ((~~File the mortgage broker annual report and any other required notices, with the director. See WAC 208-660-400.~~

~~(ii)~~)) Complete a renewal request through the ((~~NMLSR~~)) NMLS.

((~~(iii)~~)) (ii) Show evidence that your designated broker completed the required annual continuing education.

((~~(iv)~~)) (iii) Pay the annual license assessment fee.

(b) The renewed license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(16) **If I let my mortgage broker license expire must I apply to get a new license?** If you complete all the requirements for renewal on or before February 28th each year, you may renew an expired license. However, if you renew your license after the expiration, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (15) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

If you fail to comply with the renewal request requirements by March 1st of each year, you must apply for a new license.

(17) **May I still conduct my mortgage broker business if my mortgage broker license has expired?** No. If your mortgage broker license expires, you must not conduct any business under the act that requires a license until you renew your license.

(18) **What should I do if I wish to close my mortgage broker business?** You may surrender the mortgage broker license by submitting a surrender request through the ((~~NMLSR~~)) NMLS and submitting a completed departmental closure form. Surrendering your license does not change your civil or criminal liability, or your liability for any administrative actions arising from any acts or omissions occurring before you surrender your license. Contact the Washington department of revenue to find out how to handle any unclaimed funds in your trust account.

(19) **May I transfer, sell, trade, assign, loan, share, or give my mortgage broker license to another person or company?** No. A mortgage broker license authorizes only the person named on the license to conduct the business at the location listed on the license. See also WAC 208-660-155(2).

((~~(20) **Must I display my mortgage broker license?** Yes. Your mortgage broker license must be prominently displayed at the licensed location.~~))

AMENDATORY SECTION (Amending WSR 10-20-125, filed 10/5/10, effective 11/5/10)

WAC 208-660-175 Mortgage brokers—Surety bond. (1) **What are the surety bond requirements for licensed mortgage brokers?**

(a) Mortgage brokers must at all times have a valid surety bond on file with the director. The surety bond must be provided on a form prescribed by the department.

(b) The surety bond amount must be based upon the annual loan origination volume of the licensee in the state of Washington.

(c) When the mortgage broker initially applies for a license, the dollar amount of the surety bond must be a minimum of twenty thousand dollars. Thereafter, by March 31st of each year, you must determine your required bond amount based on loan origination volume and provide DFI with proof of having an adequate bond.

(d) The surety bond must list the mortgage broker's full name, unified business identifier (UBI), and ((~~NMLSR~~)) NMLS unique identifier.

(e) The surety bond must be signed by a principal of the mortgage broker as well as an authorized representative of the insurance company listed as surety. The power-of-attorney must identify the signing representative as authorized by the insurance company. The insurance company must include their surety bond number and seal on the surety bond form.

The following chart shows the surety bond amount required for the annual loan origination volume of the licensee in the state of Washington:

Loan Volume in Millions	Bond Amount
$40+	$60,000
$20 to $40	$40,000
$0 to $20	$20,000

(f) If you only offer residential mortgage loan modification services, your bond amount is twenty thousand dollars, initially and thereafter.

(2) **Who provides mortgage broker surety bonds?** To purchase a surety bond, contact your insurance broker. A list of insurance companies that underwrite Washington surety bonds in Washington is available from the Washington state office of the insurance commissioner's web site.

(3) **What do I do with the surety bond once I receive it from my insurance company?** You must sign the original surety bond and include the surety bond and the attached power-of-attorney with your license application package.

(4) **What happens to my mortgage broker license if my surety bond is canceled?** Failure to maintain a surety bond is a violation of the act and may result in an enforcement action against you.

(5) **May I change surety bond companies?** Yes. You may change your insurance provider at any time. Your current insurance company will issue a cancellation notice for your existing surety bond. The cancellation notice may be effective no less than thirty days following the director's receipt of the cancellation notice.

Prior to the cancellation date of the existing surety bond, you must have on file with the department a replacement

surety bond. The replacement surety bond must be in effect on or before the cancellation date of the prior surety bond.

(6) **Why must I carry a surety bond to have a mortgage broker license?** The surety bond protects the state and any persons who suffer loss by reason of violations of any provision of the act or these rules by you or your employees or independent contractors.

(7) **Who may make a claim against a licensed mortgage broker's surety bond?** The director, or any person, including a third-party provider, who has been injured by a violation of the act, may make a claim against a bond.

(8) **How may I make a claim against a licensed mortgage broker's surety bond?** The department can provide you with the name of a licensed mortgage broker's surety bond provider. Contact the surety bond company and follow its required procedures to make your claim.

(9) **How long does the bond claim procedure take?** The time to complete a bond claim may vary among bonding companies. If the claimant is not a borrower, final judgment will not be entered prior to one hundred eighty days after the claim is filed.

((~~(10) **When must I file a bond claim?** A bond claim must be filed within one year of the date of the act that causes the claim.~~))

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-176 Mortgage brokers—Recovery fund in lieu of surety bond. (1) **What if the surety bond required in WAC 208-660-175 is not reasonably available in the insurance market?** If the director determines that the bond required is not reasonably available due to the insurance market or other product availability issue, the director must waive the requirements for the bond.

(2) **If a recovery fund is created, how will it be funded?** All licensees will pay a fee at application and renewal, in addition to all license application fees, through the ((~~NMLSR~~)) NMLS, to fund the recovery fund.

(3) **How much will the recovery fund fees be?**

(a) Two hundred fifty dollars for the main office location;

(b) One hundred fifty dollars for each branch office; and

(c) One hundred dollars for each mortgage loan originator.

(4) **Will the fund have a cap or maximum?** After the fund has been in existence for three years, and periodically thereafter, the director may determine the maximum fund amount needed based upon claims made.

(5) **What happens to any interest that accrues on the mortgage recovery fund balance?** All interest that accrues in the fund will be added to the balance of the fund.

(6) **Can the department use any of the recovery fund money?** Yes. On an annual basis the department may apply up to fifty thousand dollars to fund the department's expenses in administering the mortgage recovery fund.

(7) **What is the procedure for recovery from the fund?**

(a) A claimant must obtain a money judgment from a superior court that includes findings of violations of this act against a mortgage broker or mortgage loan originator.

(b) The final money judgment must be obtained after January 1, 2010, after execution has been returned unsatisfied and the judgment has been recorded.

(c) The person in (a) of this subsection must file a verified claim with the court in which the judgment was entered, and on twenty days' written notice to the director and to the judgment debtor, may apply to the court for an order directing payment from the mortgage recovery fund of any unpaid amount on such judgment.

(d) After giving notice and the opportunity for a hearing to the person seeking recovery, to the judgment debtor and to the department, the court may enter an order requiring the director to pay from the mortgage recovery fund the amount the court finds payable on the claim, pursuant to and in accordance with the limitations contained in this section, if the court is satisfied as to the proof of all matters required to be shown under subsection (a) of this section, and that the person seeking recovery from the mortgage recovery fund has satisfied all requirements of this section.

(e) If the court finds that the aggregate amount of claims against a mortgage broker or mortgage loan originator exceeds the limits set forth in WAC 208-660-175, the court must reduce proportionately the amount the court finds payable on the claim.

(f) When the director receives notice that a hearing is scheduled under this section, the director may enter an appearance, file a response, appear at the hearing or take any other appropriate action as he or she deems necessary to protect the mortgage recovery fund from spurious or unjust claims and to ensure compliance with the requirements for recovery under this section.

(g) The department must provide the court with information concerning the mortgage recovery fund necessary to enable the court to carry out its duties under this section.

(8) **What must a person show at the hearing on the recovery fund claim?** The person seeking recovery from the mortgage recovery fund must show:

(a) That the judgment has not been discharged in bankruptcy and is based on facts allowing recovery under the act;

(b) That the person is not a spouse of the judgment debtor, or the personal representative of the spouse;

(c) That the person is not a mortgage broker or mortgage loan originator as defined by this chapter who is seeking to recover any compensation regarding the mortgage loan transaction which is the subject of the money judgment upon which a claim against the mortgage recovery fund is based; and

(d) That, based on the best available information, the judgment debtor lacks sufficient nonexempt assets in this or any state to satisfy the judgment.

(9) **What may recovery funds obtained be used for?**

(a) Any recovery on the money judgment received by the judgment creditor before payment from the mortgage recovery fund must be applied by the judgment creditor to reduce

the judgment creditor's actual damages which were awarded in the judgment.

(b) A recovery from the fund will not include punitive damages awarded by a court.

(10) **What is the statute of limitations for a claim from the recovery fund?** A verified claim against the recovery fund must be filed within one year of the date of termination of all court proceedings concerning the judgment, including appeals.

(11) **What types of claims will the fund award money on?**

(a) The fund will be used to reimburse persons awarded actual damages resulting from acts constituting violations of the act by a mortgage broker or mortgage loan originator who was licensed, or required to be licensed, under this chapter at the time that the act was committed.

(b) Payments from the mortgage recovery fund may not be made to:

(i) Any licensee whose acts were found by a court to be violations of this chapter and a basis of the court's award of a money judgment to a person injured by such violations;

(ii) Any person who acquires a mortgage loan where acts associated with the origination of such loan are found by a court to be violations of this chapter and a basis for a judgment obtained by a person injured by such violations; or

(iii) The spouse, the personal representative of the spouse of the judgment debtor or the personal representative of the judgment debtor.

(12) **Will the department revoke my license if a claim is made against the recovery fund based on my actions?**

(a) The director may revoke a license issued under this chapter if the director is required by court order under this section to make a payment from the mortgage recovery fund based on a money judgment that includes findings of violations of this chapter by such licensee.

(b) A person whose license has been revoked under this subsection is not eligible to be considered for the issuance of a new license under this chapter until the person has repaid in full, plus interest at the current legal rate, the amount paid from the mortgage recovery fund resulting from that person's violation of this chapter.

(c) This section does not limit the authority of the director to take disciplinary action against a licensee under this chapter for a violation of this chapter or of rules promulgated or orders issued pursuant to this chapter. The repayment in full to the mortgage recovery fund of all obligations of a licensee under this chapter does not nullify or modify the effect of any other disciplinary proceeding brought under this chapter.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-180 Mortgage brokers—Main office. (1) **Must a licensed mortgage broker have a designated broker?** Yes. Licensed mortgage broker companies must have an approved designated broker at all times.

(2) **How many designated brokers may a mortgage broker have?** The mortgage broker may appoint only one individual to be the designated broker at any given time. The designated broker need not be a principal of the licensee.

It is a prudent business practice to have more than one qualified individual working for the licensee who could be appointed as the designated broker.

(3) **If my designated broker leaves, may I continue to operate my mortgage broker business?** Yes. You may continue to operate your mortgage broker business. However, you must notify the department within five business days of the loss of or change of your designated broker. You must then replace the designated broker within thirty days of the loss or change of the designated broker. If you need more than thirty days to replace the designated broker, you must seek approval from the department. Failure to replace your designated broker, or receive approval from the director for an extension, may result in an enforcement action against you.

(4) **What must I do to replace my designated broker?** You must apply through the ((~~NMLSR~~)) NMLS for approval of the new designated broker. The new designated broker must meet the requirements of WAC 208-660-250(1). You and the new designated broker must meet the good standing requirements of WAC 208-660-007.

(5) **What must I do if I sell all or part of my mortgage broker company?** See WAC 208-660-400(13).

(6) **After my mortgage broker license is approved, may I change my business structure?** Yes. See WAC 208-660-400 (7)(a)(iv).

(7) **May a licensed mortgage broker share an office with a licensed real estate broker?** Yes. A licensed mortgage broker may share an office with a licensed real estate broker. The mortgage broker location must be licensed as a main or branch mortgage broker office.

(8) **If a licensed mortgage broker shares an office with a licensed real estate broker, what must the mortgage broker do to notify the public that the office is shared?** The licensed mortgage broker must clearly identify the mortgage broker business as separate from the real estate business to the public on any signage, advertising, or other material identifying the businesses.

(9) **May I add a trade name (or "DBA") to my mortgage broker license?** Yes. You may add a trade or "DBA" name to the mortgage broker license if you first apply to the department, in a form prescribed by the department, and receive department approval. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the trade name; or

(b) Use your mortgage broker license number together with the trade name.

(10) **May the department deny an application for a proposed DBA name because it is similar to an existing licensee name?** Yes. The director may deny an application for a proposed DBA name if the proposed DBA name is similar to a currently existing licensee name.

(11) **May I conduct my mortgage broker business from more than one location?** Yes. You may establish one or more branch offices under your license. See WAC 208-660-195 for information on licensing branch offices.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-195 Mortgage brokers—Branch offices. (1) **May I open branch offices under my mortgage broker license?** Yes. A licensed mortgage broker may submit license application(s) to the department through the ((~~NMLSR~~)) NMLS to establish branch office(s) under the existing mortgage broker license. Each branch office must be licensed and must pay an annual license fee. See WAC 208-660-550, Department fees and costs.

(2) **If my branch offices are under separate ownership, does that limit my liability for their activities?** No. Licensed mortgage brokers are responsible for the activity and violations at their branch offices regardless of the structure or label given the branch offices. Licensure of a branch office creates a direct line of responsibility from the main office to the branch.

(3) **If my branch offices are under separate ownership, what level of supervision must I maintain?** Because branch offices, regardless of their business structure, are not independent from your license and surety bond, you are responsible for the conduct of anyone conducting business under your license. You must have a written supervisory plan. The details of the plan, and how you implement the plan for your branch offices, must take into account the number of branch offices, their location, and the number of individuals working at the branch offices. You must maintain your written supervisory plan as part of your business books and records.

(4) **How do I apply for a mortgage broker branch office license?** As the licensed mortgage broker, you must apply for a branch office license through the ((~~NMLSR~~)) NMLS and receive approval from the department before operating from any location other than your licensed location. You must be in good standing. You will have to pay application and annual assessment fees for the branch office(s). See WAC 208-660-550, Department fees and costs.

(5) **What does the department consider when reviewing an application for a branch office license?** The department considers:

(a) Whether the mortgage broker is in good standing. See WAC 208-660-007.

(b) Whether the physical address listed in the application can be verified as a branch office location.

(6) ((~~**Must I display my branch office license?** Yes. Your mortgage broker branch office license must be prominently displayed in the branch office.~~

~~(7)~~)) **If I am an internet company, how do I display my license?** You must display your license information, as it appears on your license, including any or all business names, and the license number, on your web site. The information must also include a list of the states in which you are licensed.

((~~(8)~~)) (7) **How do I change information on my mortgage broker branch office license?** You must file a license amendment through the ((~~NMLSR~~)) NMLS at least ten days prior to the change occurring.

((~~(9)~~)) (8) **Does my branch office license expire?** The license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

((~~(10)~~)) (9) **How do I renew my mortgage broker branch office license?**

(a) Before the expiration date, the licensed mortgage broker must submit an on-line renewal and pay the branch office annual assessment fee through the ((~~NMLSR~~)) NMLS.

(b) The renewed mortgage broker branch office license is valid for the term listed on the license or until surrendered, suspended, or revoked.

((~~(11)~~)) (10) **If my mortgage broker branch office license expires, must I apply for a new license?** If you complete all the requirements for renewal by February 28th, each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your branch office license, you must pay an additional fifty percent of your annual assessment for that branch. See subsection ((~~(10)~~)) (9) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license until your license has been renewed.

If you fail to comply with the renewal request requirements by February 28th, each year, you must apply for a new license.

((~~(12)~~)) (11) **If my mortgage broker branch office license has expired, may I still conduct my mortgage broker business from that location?** No. Once the mortgage broker branch office license has expired, you must not conduct any business under the act that requires a license until you renew your license.

((~~(13)~~)) (12) **If my mortgage broker main office license expires, may I still conduct my mortgage broker business from a branch office?** No. Once the mortgage broker main office license expires, you must not conduct any business under the act that requires a license from any location until you renew the main office license.

((~~(14)~~)) (13) **May I add a trade name (or "DBA") to my mortgage broker branch office license?** Yes. You may add a trade name, or "DBA" name, to the mortgage broker branch office license if you first apply to the department, in a form prescribed by the director, and receive department approval. The branch office trade name must at all times be identified as connected with the mortgage broker's license name as it appears on the mortgage broker license. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the branch office trade name; or

(b) Use the branch office trade name and mortgage broker branch office license number together.

(c) See WAC 208-660-180(10).

((~~(15)~~)) (14) **How must I identify my mortgage broker branch office(s)?** The branch office must be prominently identified as a branch or division of the licensed mortgage broker so as not to appear to be an independent enterprise.

((~~(16)~~)) (15) **Does my branch office have to be a physical location?** Yes. The physical location may be at a commercial or residential address but does not have to be in

Washington. See WAC 208-660-420, Out-of-state mortgage brokers and loan originators.

(((~~17~~))) (16) **Must I have a branch manager?** No. Although you may appoint one, the act does not require a branch manager. You and the designated broker are responsible for the business conducted at all locations.

(((~~18~~))) (17) **If I appoint a branch manager, must he or she be licensed?** If the branch manager performs any of the functions of a mortgage broker or loan originator, he or she must be licensed. If they do not perform those functions, they must not be paid a commission or salary based upon the number of transactions closed.

(((~~19~~))) (18) **Must I have a designated broker at each branch?** No. You may have only one designated broker who is responsible for the mortgage broker business at all locations.

(((~~20~~))) (19) **If I want to move my licensed company under the sponsorship of another mortgage broker, what must be completed before the licensed loan originators can start transacting business under the sponsorship of the other mortgage broker?** The loan originators may begin doing business when the other mortgage broker has filed for approval of a new branch office with the ((~~NMLSR~~)) NMLS, has sponsored each of the licensed loan originators through the ((~~NMLSR~~)) NMLS and you have filed the trust account paperwork with the department, you may transact business under the new mortgage broker for up to thirty days without a new license.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-250 Designated brokers—General. (1) **How do I become a designated broker?**

(a) Be eighteen years or older.

(b) Have a high school diploma, an equivalent to a high school diploma, or two years experience in the industry in addition to the experience required in (e) of this subsection. The experience must meet the criteria in (e) of this subsection.

(c) You must pass the Washington designated broker test. See WAC 208-660-260, Designated brokers—Testing. If you will originate loans, you must also take and pass the loan originator national and Washington specific tests and apply for and receive a loan originator license.

(d) You must be appointed to the designated broker position by the licensed mortgage broker through an application and approval process with the department and the ((~~NMLSR~~)) NMLS.

(e) You must have a minimum of two years experience lending or originating residential mortgage loans.

(i) The work experience must be in one or more of the following, within the last five years:

(A) As a mortgage broker or designated broker of a mortgage broker for a minimum of two years; or

(B) As a mortgage banker, responsible individual, or manager of a mortgage banking business; or

(C) As a loan originator with responsibility primarily for originating loans secured by a lien on residential real estate; or

(D) As a branch manager of a lender with responsibility primarily for loans secured by a lien on residential real estate; or

(E) As a manager or supervisor of mortgage loan originators; or

(F) As a mortgage processor, underwriter, or quality control professional; or

(G) As a regulator, examiner, investigator, compliance expert, or auditor, whose primary function is the review of mortgage companies and their compliance processes, and the department determines your background is sufficient.

(ii) The work experience must be evidenced by a detailed work history and:

(A) W-2 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(B) 1099 Federal Income Tax Reporting Forms in the designated broker appointee's name; or

(C) Corporate tax returns signed by the designated broker appointee or corporate officer for a licensed or exempt residential mortgage company; or

(f) In addition to supplying the application information, both you and the licensed mortgage broker must be in good standing with the department; or

(g) Demonstrate financial responsibility, character and general fitness.

(2) **How do I demonstrate financial responsibility?** The department will review your credit history to determine if you have outstanding judgments (except judgments involving medical expenses); current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years.

Specifically, you are not eligible to become a designated broker if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(3) **May I work as the designated broker for more than one company?** Yes. You may be the designated broker for more than one licensee.

(4) **As the designated broker, must I hold a loan originator's license?** Yes. If you perform any of the functions of a loan originator, you must apply for and receive a loan originator license.

(5) **May I work as the designated broker for one licensee and a licensed loan originator for another licensee?** Yes. If you want to originate loans for a mortgage broker different from the mortgage broker for whom you are the designated broker, you must amend your license information through the ((~~NMLSR~~)) NMLS to reflect the new relationship and the second company must sponsor you. Federal law may prohibit a mortgagee from hiring employees who work for more than one mortgage broker or who have multiple employers.

(6) **May a designated broker hire employees or independent contractors apart from the employees or independent contractors working for the mortgage broker licensee?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against a designated broker having employees or independent contractors includes clerical or administrative personnel

whose work is related to the mortgage broker licensee's activities, and loan processors.

(7) **As a designated broker, what reporting requirements must I comply with?** See WAC 208-660-400, Reporting requirements.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-260 Designated brokers—Testing. (1) **Must I pass a test prior to becoming a designated broker?** Yes. You must take and pass the Washington designated broker test. See subsection (3) of this section if you are going to originate loans. See WAC 208-660-250(1) if you have never been a designated broker.

(2) **If I am currently a designated broker, will I have to take the test again?** You will only have to retake tests if you stop working in the industry for five years or longer.

(3) **If I am currently a designated broker that originates loans, will I have to take the loan originator test and obtain a loan originator license?** Yes. You must take and pass the national and state ((~~NMLSR~~)) NMLS tests and obtain the necessary prelicensing education prior to acting as a loan originator.

(4) **Where can I get information about the designated broker test?** Go to the department's web site for information about the designated broker test: http://www.dfi.wa.gov/cs/mb_testing.htm.

(5) **What topics may be covered in the designated broker test?** See WAC 208-660-600(3).

(6) **How soon after failing the designated broker test may I take it again?** After failing the test three consecutive times you must wait at least fourteen days before taking the test again.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-270 Designated brokers—Continuing education. (1) **Where can I get information about continuing education?** The ((~~NMLSR~~)) NMLS will publish a list of approved courses and providers. The providers will have detailed information about the continuing education courses they offer. The department will accept the continuing education courses approved by the ((~~NMLSR~~)) NMLS for designated broker continuing education.

(2) **As a designated broker, how many hours of continuing education must I have?**

(a) The continuing education requirement for designated brokers is nine hours.

(b) You will receive one credit hour by attending one or more mortgage broker commission meeting(s).

(3) **As a designated broker, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) **If I teach a continuing education course approved by the ((~~NMLSR~~)) NMLS, may I use my course as credit toward my annual continuing education requirement?** Yes. As an instructor of a ((~~NMLSR~~)) NMLS approved continuing education course, you may receive credit for your annually required designated broker continuing education courses from the course(s) you teach. You will receive credit at the rate of one course taught equaling two continuing education course credits.

(5) **Is ethics a required continuing education topic for designated brokers?** Yes. You must take two hours of ethics each year you act as a designated broker. The ethics course must include the topics of fraud, consumer protection, and fair lending. You must not take the same course in the same or successive years.

(6) **If I accumulate more than the required designated broker continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

(7) **How do I provide the department with proof of the continuing education courses I have completed?**

(a) For S.A.F.E. required courses, the course provider will report your continuing education to the ((~~NMLSR~~)) NMLS and DFI will have access to that information.

(b) For Washington specific courses, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

(8) **If I fail to complete the required continuing education, what happens to my license?** When your license expires, the department will not renew it and you cannot continue conducting any business under the act. See WAC 208-660-350(20) to renew your license within two months after expiration.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-300 Loan originators—General. (1) **May I work as a loan originator for more than one mortgage broker?** Yes.

(2) **How do I obtain approval to work for more than one mortgage broker?** Using the ((~~NMLSR~~)) NMLS, the company will submit a sponsorship request. The department will notify you and others associated with your license upon approval of your request. The ((~~NMLSR~~)) NMLS will charge a fee for the additional relationship. See also WAC 208-660-550.

(3) **If I work as a loan originator for more than one mortgage broker, may I take an application from a borrower without identifying one specific mortgage broker?** No. You may take an application for only one mortgage broker at a time in any one transaction. Prior to presenting yourself to a specific borrower as licensed to originate mortgage loans, you must state who you represent. You must clearly identify the mortgage broker by name and address on the application, on all disclosures, authorization forms, and other material provided to the borrower. There must be no confusion by the borrower as to which mortgage broker you are representing at any given time.

(4) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location. The licensed location can be the main company office, or any licensed branch.

(5) **May a loan originator transfer loan files to a mortgage broker other than the mortgage broker the loan originator is associated with?** No. Only the borrower may submit a written request to the licensed mortgage broker to transmit the borrower's selected information to another mortgage broker or lender. The licensed mortgage broker must transmit the information within five business days after receiving the borrower's written request.

(6) **Who owns loan files?** Loan files are the property of the mortgage broker named on the loan application and the mortgage broker must keep the original files and documents.

(7) **May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS, AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER, OR LENDER OF YOUR CHOOSING."

(8) **As a loan originator, may I be paid directly by the borrower for my services?** No. As a loan originator, you may not be paid any compensation or fees directly by the borrower.

(9) **May a loan originator charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. A loan originator may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan.

(10) ((~~**As a loan originator, may I be paid my portion of the mortgage broker fee directly from the loan closing?**~~

~~(a) Yes. If authorized in the mortgage broker's demand, the settlement service provider may pay your portion of the mortgage broker fee directly to you; provided however, that the HUD-1 or equivalent settlement statement has the following information:~~

~~(i) Your name as it appears on your loan originator license;~~

~~(ii) Your loan originator license unique identifier; and~~

~~(iii) The amount to be paid to you by the settlement service provider.~~

~~(b) You must provide a copy of the HUD-1 or equivalent settlement statement to the licensed mortgage broker within twenty-four hours of your receipt of funds from closing.~~

~~(11)~~)) **May a loan originator bring a lawsuit against a borrower for the collection of compensation?** No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

((~~(12)~~)) (11) **May I work as a licensed loan originator for a mortgage broker located out of the state?** Yes. You may originate loans for any mortgage broker who sponsors you and who is licensed under Washington law.

((~~(13)~~)) (12) **May a licensed loan originator hire employees or independent contractors to assist in the mortgage broker licensee's activities?** No. Only the mortgage broker licensee can have employees or independent contractors. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel whose work is related to the mortgage broker licensee's activities, and loan processors.

((~~(14)~~)) (13) **Do loan processors have to be licensed as loan originators?** W-2 employee loan processors are not required to have a loan originator license provided they work under the supervision and instruction of a licensed or exempt mortgage broker and do not hold themselves out as able to conduct the activities of a mortgage broker or loan originator. Independent contractor loan processors must be licensed as a mortgage broker, mortgage broker branch office, or loan originator.

((~~(15)~~)) (14) **May loan processors work on files from an unlicensed location?** A loan processor may work on loan files from an unlicensed location under the following circumstances:

(a) The loan files are in electronic format and the loan processor accesses the files directly from the licensed mortgage broker's main computer system. The loan processor may not maintain any electronic files on any computer system other than the system belonging to the licensed mortgage broker.

(b) The loan processor does not conduct any of the activities of a licensed loan originator.

(c) The licensed mortgage broker must have safeguards in place for the computer system that safeguards borrower information.

AMENDATORY SECTION (Amending WSR 11-22-022, filed 10/25/11, effective 11/25/11)

WAC 208-660-350 Loan originators—Licensing. (1) **How do I apply for a loan originator license? Your application consists of an on-line filing through the ((~~NMLSR~~)) NMLS and Washington specific requirements provided directly to DFI. You must pay an application fee through the ((~~NMLSR~~)) NMLS system. You also must:**

(a) **Be eighteen years or older.**

(b) **Have a high school diploma, an equivalent to a high school diploma, or three years experience in the industry. The experience must meet the criteria in WAC 208-660-250 (1)(e)(i) and (ii).**

(c) **Pass a licensing test.** You must take and pass the national and state components of the ((~~NMLSR~~)) NMLS tests. See WAC 208-660-360, Loan originators—Testing.

(d) **Submit an application.** You must submit an on-line application through the ((~~NMLSR~~)) NMLS.

(e) **Prove your identity.** You must provide information to prove your identity.

(f) **Pay the application fee.** You must pay an application fee for your application, as well as an administrative fee

to the ((~~NMLSR~~)) NMLS. See WAC 208-660-550, Department fees and costs.

(g) **Complete prelicensing education.** You must complete prelicensing education. See WAC 208-660-355.

(2) **In addition to reviewing my application, what else will the department consider to determine if I qualify for a loan originator license?**

(a) **General fitness and prior compliance actions.** The department will investigate your background to see that you demonstrate the experience, character, and general fitness that commands the confidence of the community and creates a belief that you will conduct business honestly and fairly within the purposes of the act. This investigation may include a review of the number and severity of complaints filed against you, or any person you were responsible for, and a review of any investigation or enforcement activity taken against you, or any person you were responsible for, in this state, or any jurisdiction. This investigation may also include a review of whether you have had a license issued under the act or any similar state statute suspended.

(b) **License suspensions or revocations.**

(i) You are not eligible for a loan originator license if you have been found to be in violation of the act or the rules.

(ii) You are not eligible for a loan originator license if you have ever had a license issued under the Mortgage Broker Practices Act or the Consumer Loan Act or any similar state statute revoked.

(iii) For purposes of (b) and (c) of this subsection, a "similar statute" may include statutes involving other financial services, such as insurance, securities, escrow or banking.

(c) **Criminal history.**

(i) You are not eligible for a loan originator license if you have ever been convicted of a felony involving an act of fraud, dishonesty, breach of trust, or money laundering.

(ii) You are not eligible for a loan originator license if you have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony not involving fraud, dishonesty, breach of trust, or money laundering, within seven years of the filing of the present application.

(d) **Financial background.**

(i) The department will investigate your financial background including a review of your credit report to determine if you have demonstrated financial responsibility including, but not limited to, an assessment of your current outstanding judgments (except judgments solely as a result of medical expenses); current outstanding tax liens or judgments or other government liens or filings; foreclosure within the last three years; or a pattern of seriously delinquent accounts within the past three years.

(ii) Specifically, you are not eligible to receive a loan originator license if you have one hundred thousand dollars or more of tax liens against you at the time of appointment by a licensed mortgage broker.

(3) **What will happen if my loan originator license application is incomplete?** After submitting your on-line application through the ((~~NMLSR~~)) NMLS, the department will notify you of any application deficiencies.

(4) **How do I withdraw my application for a loan originator license?** Once you have submitted the on-line application through ((~~NMLSR~~)) NMLS you may withdraw the application through ((~~NMLSR~~)) NMLS. You will not receive a refund of the ((~~NMLSR~~)) NMLS application fee but you may receive a partial refund of your licensing fee if the fee exceeds the department's actual cost to investigate the license application.

(5) **When will the department consider my loan originator license application to be abandoned?** If you do not respond as directed by the department's request for information and within fifteen business days, your loan originator license application is considered abandoned and you forfeit all fees paid. Failure to provide the requested information will not affect new applications filed after the abandonment. You may reapply by submitting a new application package and new application fee.

(6) **What happens if the department denies my application for a loan originator license, and what are my rights if the license is denied?** Under the Administrative Procedure Act, chapter 34.05 RCW, you have the right to request a hearing. To request a hearing, notify the department, in writing, within twenty days from the date of the director's notice to you notifying you your license application has been denied. **See also WAC 208-660-009.**

(7) **How will the department provide me with my loan originator license?** The department may use any of the following methods to provide you with your loan originator license:

(a) A license sent to you electronically that you may print.

(b) A license verification available on the department's web site and accessible for viewing by the public.

(8) **May I transfer, sell, trade, assign, loan, share, or give my loan originator license to someone else?** No. A loan originator license authorizes only the individual named on the license to conduct the business at the location listed on the license.

(9) **How do I change information on my loan originator license?** You must submit an amendment to your license through the ((~~NMLSR~~)) NMLS. You may be charged a fee.

(10) **What is an inactive loan originator license?** When a licensed loan originator is not sponsored by a licensed or exempt company, the license is inactive. When an individual holds an inactive license, they may not conduct any of the activities of a loan originator, or hold themselves out as a licensed loan originator. If a licensed loan originator works for a consumer loan company (chapter 31.04 RCW) as a W-2 employee, they may continue to do business under their inactive license until June 30, 2010, or until the company goes onto the ((~~NMLSR~~)) NMLS and sponsors their license.

(11) **When my loan originator license is inactive, am I subject to the director's enforcement authority?** Yes. Your license is granted under specific authority of the director and under certain situations you may be subject to the director's authority even if you are not doing any activity covered by the act.

(12) **May I originate loans from a web site when my license is inactive?** No. You may not originate loans, or engage in any activity that requires a license under the act, while your license is inactive.

(13) **When my loan originator license is inactive, must I continue to pay annual fees, and complete continuing education for that year?** Yes. You must comply with all the annual licensing requirements or you will be unable to renew your inactive loan originator license.

(((~~12~~))) (14) **How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the ((~~NMLSR~~)) NMLS. The department will notify you and all the companies you are working with of the new working relationship if approved.

(((~~13~~))) (15) **When may the department issue interim loan originator licenses?** To prevent an undue delay, the director may issue interim loan originator licenses with a fixed expiration date. The license applicant must have substantially met the initial licensing requirements, as determined by the director, to receive an interim license. In no case shall these requirements be less than the minimum requirements to obtain a license under the S.A.F.E. Act.

(((~~14~~))) (16) **When does my loan originator license expire?** The loan originator license expires annually on December 31st. If the license is an interim license, it may expire in less than one year.

(((~~15~~))) (17) **How do I renew my loan originator license?**

(a) You must continue to meet the minimum standards for license issuance. See RCW 19.146.310.

(b) Before the license expiration date you must renew your license through the ((~~NMLSR~~)) NMLS. Renewal consists of:

(i) Pay the annual assessment fee; and

(ii) Meet the continuing education requirement. You will not have a continuing education requirement in the year in which you complete prelicensing education. See WAC 208-660-370.

(c) The renewed license is valid until it expires, or is surrendered, suspended or revoked.

(((~~16~~))) (18) **If I let my loan originator license expire, must I apply to get a new license?** If you complete all the requirements for renewal on or before February 28th each year, you may renew an existing license. However, if you renew your license during this two-month period, in addition to paying the annual assessment on your license, you must pay an additional fifty percent of your annual assessment. See subsection (((~~15~~))) (17) of this section for the license renewal requirements.

During this two-month period, your license is expired and you must not conduct any business under the act that requires a license.

Any renewal requirements received by the department must be evidenced by either a United States Postal Service postmark or department "date received" stamp prior to March 1st each year. If you fail to comply with the renewal request requirements prior to March 1st, you must apply for a new license.

(((~~17~~))) (19) **If I let my loan originator license expire and then apply for a new loan originator license within one year of the expiration, must I comply with the continuing education requirements from the prior license period?** Yes. Before the department will consider your new loan originator application complete, you must provide proof of satisfying the continuing education requirements from the prior license period.

(((~~18~~))) (20) **May I still originate loans if my loan originator license has expired?** No. Once your license has expired you may no longer conduct the business of a loan originator, or hold yourself out as a licensed loan originator, as defined in the act and these rules.

(((~~19~~))) (21) **What happens to the loan applications I originated before my loan originator license expired?** Existing loan applications must be processed by the licensed mortgage broker or another licensed loan originator working for the mortgage broker.

(((~~20~~))) (22) **May I surrender my loan originator's license?** Yes. Only you may surrender your license before the license expires through the ((~~NMLSR~~)) NMLS.

Surrendering your loan originator license does not change your civil or criminal liability, or your liability for any administrative actions arising from acts or omission occurring before the license surrender.

(((~~21~~))) (23) **Must I display my loan originator license where I work as a loan originator?** No. Neither you nor the mortgage broker company is required to display your loan originator license. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

(((~~22~~))) (24) **If I operate as a loan originator on the internet, must I display my license number on my web site?** Yes. You must display your license number, and the license number and name as it appears on the license of the licensed mortgage broker you represent, on the web site.

(((~~23~~))) (25) **Must I include my license number on any documents?** You must include your license number immediately following your name on solicitations, including business cards, advertisements, and residential mortgage loan applications.

(((~~24~~))) (26) **When must I disclose my loan originator license number?** In the following situations you must disclose your loan originator license number and the name and license number of the mortgage broker you are associated with:

(a) When asked by any party to a loan transaction, including third party providers;

(b) When asked by any person you have solicited for business, even if the solicitation is not directly related to a mortgage transaction;

(c) When asked by any person who contacts you about a residential mortgage loan;

(d) When taking a residential mortgage loan application.

(((~~25~~))) (27) **May I conduct business under a name other than the name on my loan originator license?** No. You must only use the name on your license when conducting business. If you use a nickname for your first name, you must use your name like this: "FirstName "Nickname" LastName."

(((~~26~~))) (28) **Will I have to obtain an individual bond if the company I work for is exempt from licensing?** Reserved.

(((~~27~~))) (29) **Will I have to file quarterly call reports if I have an individual bond?** Reserved.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-355 Loan originators—Prelicensing education. (1) **Must I obtain prelicensing education before I will be given a license?** Yes. You must take 20 hours of prelicensing education from an ((~~NMLSR~~)) NMLS approved provider. The prelicensing education must include at least three hours of federal law and regulations; three hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; two hours related to lending standards for the nontraditional mortgage product marketplace; and at least two hours of training specifically related to Washington law.

(2) **Who provides prelicensing education?** The ((~~NMLSR~~)) NMLS approves course providers and courses for prelicensing education. See the ((~~NMLSR~~)) NMLS Resource Center for a list of approved providers and courses.

(3) **Must I take continuing education in the year I complete the prelicensing education?** No. You will not have a continuing education requirement in the year in which you complete prelicensing education.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-360 Loan originators—Testing. (1) **Must I pass a test prior to becoming a loan originator?** Yes. You must take and pass the ((~~NMLSR~~)) NMLS national and state tests prior to becoming a loan originator. You must receive a score of seventy-five percent or higher to pass the test.

(2) **Where may I find information about the loan originator test?** The ((~~NMLSR~~)) NMLS contracts for its test provider. You will find information on the test provider on the ((~~NMLSR~~)) NMLS web site at www.stateregulatoryregistry.org.

(3) **How much does the loan originator test cost?** Testing costs are set by contract between the test provider and the ((~~NMLSR~~)) NMLS and may be modified from time to time. The department will publish the current testing fee on its web site or you may find it on the ((~~NMLSR~~)) NMLS web site at www.stateregulatoryregistry.org.

(4) **How do I register to take the loan originator test?** The department will provide a link to the ((~~NMLSR~~)) NMLS test provider on its web site.

(5) **What topics may be covered in the loan originator test?** At a minimum, the test topics will include ethics, federal and state law and regulation pertaining to mortgage origination, federal and state law and regulation on fraud, consumer protection, nontraditional mortgage products, and fair lending.

(6) **After passing the loan originator test, will I have to take it again?** You must retake the loan originator test if you have not been a loan originator within the past five years.

(7) **If I have taken and passed the state loan originator test, must I take the ((~~NMLSR~~)) NMLS state test?** If you are licensed on or before July 30, 2009, and you took your loan originator test after May 2007, you will not be required to take the ((~~NMLSR~~)) NMLS state test if you remain licensed.

(8) **How soon after failing the loan originator test may I take it again?** You may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test. After failing three consecutive tests, you must wait at least six months before taking the test again.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-370 Loan originators—Continuing education. (1) **How many hours of continuing education must I have each year to renew my license?**

(a) You must have at least eight hours to satisfy the federal requirement. The eight hours of education must include three hours of federal law and regulations; two hours of ethics on fraud, consumer protection, and fair lending issues; and two hours on lending standards for the nontraditional mortgage product marketplace.

(b) You must have at least one additional hour of continuing education to satisfy the Washington requirement.

(2) **Who approves the continuing education for loan originators?**

(a) The ((~~NMLSR~~)) NMLS approves all education that meets the federal requirement.

(b) Washington has approved providers and courses that can provide education to meet the Washington requirement until the end of 2010.

(3) **Where may I get information about continuing education for loan originators?**

(a) The ((~~NMLSR~~)) NMLS web site will have information about the approved ((~~NMLSR~~)) NMLS courses.

(b) Washington will have information about the Washington approved courses and providers meeting the Washington requirement on its web site through 2010.

(4) **As a loan originator, may I take the same approved course multiple times to meet my annual continuing education requirement?** No. You may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(5) **If I teach an approved continuing education course may I use my course as credit toward my annual loan originator continuing education requirement?** Yes. Up until December 31, 2009, as an instructor of an approved continuing education course, you may receive two continuing education credits for each course hour you teach. If approved as an ((~~NMLSR~~)) NMLS course provider you may receive two credit hours for each one hour taught.

(6) **How do I receive credit toward my continuing education requirement when I teach an approved continuing education course?** When you renew your license at the end of 2009 and seek to get credit for continuing education, submit to the department documentation evidencing approval of the continuing course you taught. The department will credit you with completing two continuing education courses for each one approved course you teach.

(7) **Is ethics a required continuing education course for loan originators?** Yes. You must take at least two ethics hours annually. The annual ethics credits must include the topics of fraud, consumer protection, and fair lending.

(8) **If I take a loan originator continuing education course approved by the ((~~NMLSR~~)) NMLS will the department accept it as part of my continuing education requirement?** Yes. The ((~~NMLSR~~)) NMLS approved continuing education courses will satisfy the federal requirement. Individual states will have individual state specific requirements.

(9) **Can I receive credit for continuing education by attending the Mortgage Broker Practices Act Commission meetings?** Yes. You will receive one credit hour by attending one or more mortgage broker commission meeting(s).

(10) **If I accumulate more than the required loan originator continuing education course credits during a year, may I carry-over the excess credit to the next year?** No. Continuing education credits only apply to the year in which they are taken.

(11) **If I fail to complete the required continuing education, what happens to my loan originator license?** When your license expires, the department will not renew it, and you cannot continue conducting any business under the act. See WAC 208-660-350(16) to renew your license within two months of it expiring. See also, WAC 208-660-350(15).

(12) **How do I provide the department with proof of the continuing education courses I have completed?** For the federal continuing education, the ((~~NMLSR~~)) NMLS will provide the process for receiving and calculating your continuing education. For Washington specific continuing education, you must provide the department with proof of your satisfactory completion of the course, in a form prescribed by the department.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-400 Reporting requirements and notices to the department. (1) ((~~**As a licensed mortgage broker, what annual report must I provide to the department?** You must file a mortgage broker annual report, in a form prescribed by the director. The report must include:~~

~~(a) The total number of residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year; and~~

~~(b) The total dollar volume (principal loan amounts) of the residential mortgage loans secured by Washington real estate that you originated and closed in the prior calendar year. In the case of an open or closed end home equity line of credit, the amount to be reported is the loan or line of credit limit.~~

~~(2) **When must I provide the mortgage broker annual report to the department?** You must provide the completed report to the department by March 31st of each year.~~

~~(3) **What period of time must the mortgage broker annual report cover?** The mortgage broker annual report must cover the prior calendar year from January 1st to December 31st.~~

~~(4) **What action will the department take if I fail to file my mortgage broker annual report?**~~

~~(a) The department may begin an enforcement action against you if you fail to file the report on time.~~

~~(b) When your license is due for renewal, the department will not renew it if you have not filed your annual report.~~

~~(5)~~)) **What are my quarterly filing requirements?** Reserved.

(((~~6) **Will the filing of the fourth quarter call report satisfy the annual report requirement?** Reserved.~~

~~(7)~~)) (2) **As a licensed mortgage broker what are my reporting responsibilities when something of significance happens to my business?**

(a) **Prior notification required.** You must notify the director through amendment to the ((~~NMLSR~~)) NMLS twenty days prior to a change of:

(i) Principal place of business or any of its branch offices;

(ii) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(iii) Legal or trade name; or

(iv) A change of ownership control of ((~~ten~~)) twenty percent or more. The department will consider the qualifications of the new people and notify you whether or not the proposed change is acceptable. You may have to submit fingerprint cards for new controlling people directly to DFI.

(b) **Post notification within ten days.** You must notify the director through the ((~~NMLSR~~)) NMLS or in writing to the director within ten days after an occurrence of any of the following:

(i) Change in mailing address, telephone number, fax number, or e-mail address;

(ii) Cancellation or expiration of its Washington state master business license;

(iii) Change in standing with the Washington secretary of state;

(iv) Change in its standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(v) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340;

(vi) Receipt of notification of cancellation of your surety bond;

(vii) Receipt of notification of license revocation proceedings against you in any state;

(viii) If you, or any officer, director, or principal is convicted of a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(ix) Name and mailing address of your registered agent if you are out-of-state.

(c) **Post notification within twenty days.** You must notify the director in writing within twenty days after the occurrence of any of the following developments:

(i) The filing of a felony indictment or information related to lending or brokering activities against you, or any officer, board director, or principal, or an indictment or information involving dishonesty against you, or any officer, board director, or principal;

(ii) The receipt of service of notice of the filing of any material litigation against you; or

(iii) The change in your residential address or telephone number.

(((~~8)~~)) (3) **Must I notify the department of the physical address of my mortgage broker books and records?**

Yes. You must provide the physical address of your mortgage broker books and records in your initial license application through ((~~NMLSR~~)) NMLS. If the location of your books and records changes, you must provide the department, through the ((~~NMLSR~~)) NMLS, with the new physical address within five business days of the change.

(((~~9~~))) (4) **Must I notify the department if my designated broker leaves, or is no longer my designated broker?** Yes. You must notify the department, through ((~~NMLSR~~)) NMLS, within five business days of the loss of or change of status of your designated broker. See WAC 208-660-180(3).

(((~~10~~))) (5) **If I am a registered agent under the act, must I notify the department if I resign?** Yes. You must provide the department with your statement of resignation letter at least thirty-one days prior to the intended effective date. You must also provide a copy of the resignation letter to the licensed mortgage broker. The department will terminate your appointment thirty-one days after receiving your resignation letter.

(((~~11~~))) (6) **What are my responsibilities when I sell my business?**

(a) At least thirty days prior to the effective date of sale, you must notify the department of the pending sale by completing the following: Update and file all required information through the ((~~NMLSR~~)) NMLS for your main and any branch offices, including updating information about the location of your books and records.

(b) You must give written notice to borrowers whose applications or loans are in process, advising them of the change in ownership.

(c) You must give written notice to third party providers that have or will provide services on loans in process, and all third-party providers you owe money to, bringing accounts payable current.

(d) You must reconcile the trust account and return any funds to the borrowers or others to whom they belong, or transfer funds into a new trust account at the borrower's direction. If excess funds still remain and are unclaimed, follow the procedures provided by the department of revenue's unclaimed property division.

(((~~12~~))) (7) **Must I notify the department if I cease doing business in this state?** Yes. You must notify the department within twenty days after you cease doing business in the state by updating your MU1 record through the ((~~NMLSR, and filing your Mortgage Broker annual report directly with DFI~~)) NMLS.

(((~~13~~))) (8) **Must I notify the department of changes to my trust account?** Yes. You must notify the department within five business days of any change in the status, location, account number, or other particulars of your trust account, made by you or the federally insured financial institution where the trust account is maintained. A change in your trust account includes the addition of a trust account.

(((~~14~~))) (9) **What must I do if my licensed mortgage broker company files for bankruptcy?**

(a) Notify the director within ten business days after filing the bankruptcy.

(b) Respond to the department's request for information about the bankruptcy.

(((~~15~~))) (10) **If I am a designated broker and file for personal bankruptcy, what are my reporting responsibilities?** A designated broker must notify the department in writing within ten business days of filing for bankruptcy protection.

(((~~16~~))) (11) **If I am a designated broker and file for personal bankruptcy, what action may the department take?** The director may require the licensed mortgage broker to replace you with another designated broker.

(((~~17~~))) (12) **If I am a loan originator and file for personal bankruptcy, what are my reporting responsibilities?** A licensed loan originator must notify the director in writing within ten business days of filing for bankruptcy protection.

(((~~18~~))) (13) **If I am a loan originator and file for personal bankruptcy, what action may the department take?** Depending on the circumstances, the director may revoke or condition your license.

(((~~19~~))) (14) **When may I apply for a license after surrendering one due to my personal bankruptcy filing?** If you surrendered your license, you may apply for a license at any time. However, the department may deny your license application for three years after the bankruptcy has been discharged provided that no new bankruptcies have occurred or are in progress.

(((~~20~~))) (15) **Who in the mortgage broker company must notify the department if they are charged with or convicted of a crime?** Licensees, whether on active or inactive license status, must notify the department in writing within ten business days of being:

(a) Charged by indictment or information with any felony, or a gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(b) Convicted of any felony, or any gross misdemeanor involving dishonesty or financial misconduct in any jurisdiction.

(c) Convicted of any felony involving fraud, dishonesty, breach of trust, or money laundering in any jurisdiction.

(d) Convicted outside of Washington for any crime that if charged in Washington would constitute a felony, or gross misdemeanor for dishonesty or financial misconduct.

(((~~21~~))) (16) **Who in the mortgage broker company must notify the department if they are the subject of an administrative enforcement action?** Licensees, whether holding active or inactive licenses, must notify the department in writing within ten business days of the occurrence if:

(a) Charged with any violations by an administrative authority in any jurisdiction; or

(b) The subject of any administrative action, including a license revocation action, in any jurisdiction.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-420 Out-of-state mortgage brokers and loan originators. (1) **May I be a licensed mortgage broker in Washington without a physical office in Washington?** Yes. You are not required by the act to have a physical location in Washington.

(2) **May I be a licensed mortgage broker in Washington and have branch offices both in Washington and outside of Washington?** Yes. However, each of your branch offices that offer Washington residential mortgage loans must hold a Washington license, even if the location is outside Washington.

(3) **May my mortgage broker business be conducted entirely on the internet?** Yes. But you must have a license for all locations including those that offer loans by mail or internet.

(4) **May I work as a loan originator in Washington if I do not have a physical location in Washington?** Yes. You may originate Washington loans from any location licensed under the act, inside or outside of Washington.

(5) **May I work as a licensed loan originator for a licensed mortgage broker that is out of the state?** Yes, as long as the location from which you work is licensed under the act.

(6) **If my mortgage broker business is not located in Washington, where must I keep my records?** If your business is located outside of Washington, you may either maintain the books and records at a location in Washington, or pay the department's travel expenses to the out-of-state location to examine the books and records. Travel expenses may include, but are not limited to, transportation, meals, and lodging.

(7) **What additional requirements must I comply with if my business does not have a physical location in Washington?** You must continuously maintain a registered agent in Washington and provide the department, through the ((~~NMLSR~~)) NMLS, with the registered agent's name, physical and mailing address, and written consent to be the registered agent.

(8) **How do I change the information about my registered agent?** You must update the information in the ((~~NMLSR~~)) NMLS within ten business days from the change.

(9) **If I am a registered agent under the act, what must I do to resign as registered agent?**

(a) Provide the department with a statement of resignation at least thirty-one days prior to the intended effective date of your resignation.

(b) Provide a copy of the statement of resignation to the licensed mortgage broker.

(c) The department will terminate your appointment on the thirty-first day after the date on which the statement of resignation was delivered.

AMENDATORY SECTION (Amending WSR 10-20-125, filed 10/5/10, effective 11/5/10)

WAC 208-660-430 Disclosure requirements. (1) **What disclosures must I make to borrowers and when?** Within three business days of receiving a borrower's loan application, or receiving money from a borrower for third-party provider services, you, as a mortgage broker or loan originator on behalf of a mortgage broker, must make all disclosures required by RCW 19.146.030 (1), (2), (3), and 19.144.020. The one page disclosure summary required by RCW 19.144.020 must be dated when provided to the borrower. The disclosures must be in a form acceptable to the director.

(2) **What is the disclosure required under RCW 19.146.030(1)?** A full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker. A good faith estimate of a fee or cost must be provided if the exact amount of the fee or cost is not determinable. This subsection does not require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

The specific content of the disclosure required under RCW 19.146.030(1) is identified in RCW 19.146.030(2).

(3) **What is the disclosure required under RCW 19.146.030(2)?** Mortgage brokers must disclose the following content:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments, amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase.

Disclosure in compliance with the requirements of the Truth-in-Lending Act and Regulation Z, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of RESPA and Regulation X, as now or hereafter amended, is considered compliance with the disclosure content requirements of this subsection; however, RCW 19.146.030(1) governs the delivery requirement of these disclosures;

(c) If ((~~applicable~~)) the rate is locked, the cost, terms, duration, and conditions of ((~~a lock-in~~)) the rate lock agreement ((~~and whether a lock-in agreement has been entered~~)), whether and under what conditions any lock-in fees are refundable to the borrower, and whether the lock-in agreement is guaranteed by the mortgage broker or lender((~~, and if a lock-in agreement has not been entered, disclosure in a form acceptable to the director that the disclosed interest rate and terms are subject to change~~)) (see subsection (7) of this section);

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower, to the borrower, and transmit the appraisal, title report,

or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent((;

~~(e) Whether and under what conditions any lock-in fees are refundable to the borrower~~)); and

(((~~f~~))) (e) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(4) **What is the disclosure required under RCW 19.144.020?** See WAC 208-600-200.

(5) **How do I disclose the yield spread premium (YSP) from the lender?**

(a) You must disclose the YSP as a dollar amount credited to the borrower on the GFE.

(b) You must direct the settlement service provider to disclose the YSP on line 802 on the HUD-1 or equivalent settlement statement. The YSP must be expressed as a dollar amount.

(c) Failure to properly disclose the yield spread premium (YSP) is a violation of RCW 19.146.0201 (6) and (11), and RESPA.

(6) **Are there additional disclosure requirements related to interest rate locks?** Yes. Pursuant to RCW 19.146.030(3), if subsequent to the written disclosure being provided under this section, a mortgage broker or loan originator enters into a rate lock agreement with a borrower or represents to the borrower that the borrower has entered into a rate lock agreement, then within three business days the mortgage broker or loan originator must deliver or send by first-class mail to the borrower ((~~a written confirmation of the terms of~~)) the rate lock agreement((~~, which must include a copy of the disclosure made under~~)) described in subsection (3)(c) of this section.

(7) **What must I disclose to the borrower if they do not choose to enter into a rate lock agreement?** If a rate lock agreement has not been entered into, you must disclose to the borrower that the disclosed interest rate and terms are subject to change. Compliance with the good faith estimate required by RESPA is deemed compliance with this subsection.

(8) **Will a rate lock agreement always guarantee the interest rate and terms?** No. A rate lock agreement may or may not be guaranteed by the mortgage broker or lender. The rate lock agreement must clearly state whether the rate lock agreement is guaranteed by the mortgage broker or lender.

(9) **How do I disclose the payment of a rate lock fee?** You must disclose payment of a rate lock fee as a cost in Block 2 of the GFE. On the HUD-1, the cost of the rate lock must be recorded on Line 802 and the credit must be recorded in section 204-209 with "P.O.C. (borrower)" recorded to the left of the borrower column.

(10) **Are there any model forms that suffice for the disclosure content under RCW 19.146.030(2)?** Yes. The following model forms are acceptable forms of disclosure:

(a) For RCW 19.146.030 (2)(a), mortgage brokers are encouraged to use the federal truth-in-lending disclosure form for mortgage loan transactions provided under the Truth-in-Lending Act and Regulation Z, as now or hereafter amended. However, the federal truth-in-lending disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(a). The delivery of disclosures is governed by RCW 19.146.030(1).

(b) For RCW 19.146.030 (2)(b), mortgage brokers are encouraged to use the federal good faith estimate disclosure form provided under the Real Estate Settlement Procedures Act and Regulation X, as now or hereafter amended. However, the federal good faith estimate disclosure only suffices for the content of disclosures under RCW 19.146.030 (2)(b). The delivery of disclosures is governed by RCW 19.146.030 (1).

(c) For RCW 19.146.030 (2)(c), (d), (e), (f) and (3), the department encourages mortgage brokers to use the department published model disclosure forms that can be found on the department's web site.

(11) **May my mortgage broker fees increase following the disclosures required under RCW 19.146.030(1)?** Pursuant to RCW 19.146.030(4), a mortgage broker must not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the initial written good faith estimate disclosure required in RCW 19.146.030 (1) and (2)(b), unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided; and

(b) The mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed.

(12) **Are there any situations in which fees that benefit the mortgage broker can increase without additional disclosure?** Yes, there are two possible situations where an increase in the fees benefiting the mortgage broker may increase without the requirement to provide additional disclosures. These situations are:

(a) The additional disclosure is not required if the borrower's closing costs, excluding prepaid escrowed costs of ownership, on the final settlement statement do not exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower. For purposes of this section "prepaid escrowed costs of ownership" mean any amounts prepaid by the borrower for the payment of taxes, property insurance, interim interest, and similar items in regard to the property used as security for the loan; or

(b) The fee or set of fees that benefit the mortgage broker are disclosed as a percentage of the loan amount and the increase in fees results from an increase in the loan amount, provided that:

(i) The increase in loan amount is requested by the borrower; and

(ii) The fee or set of fees that are calculated as a percentage of the loan amount have been disclosed on the initial written disclosure as both a percentage of the loan amount and as a dollar amount based upon the assumed loan amount used in the initial written disclosure; and

(iii) The total aggregate increase in the fee or set of fees that benefit the mortgage broker as a result of the increase in loan amount is less than seven hundred fifty dollars.

This section does not apply to the disclosure required in RCW 19.144.020.

(13) **What action may the department take if I improperly disclose my mortgage broker fees on the good faith estimate and HUD-1/1A statement?** If you fail to disclose your mortgage broker fees as required, the department may request, direct, or order you to refund those fees to the borrower if the result of that disclosure resulted in confusion or deception to the borrower.

(14) **May the department take action against a mortgage broker when mortgage broker fees are disclosed incorrectly on the HUD-1/1A and the incorrect disclosure was made by an independent escrow agent, title company, or lender?** If the mortgage broker can show the department that they disclosed their fees correctly on the good faith estimate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the HUD-1/1A, and the independent escrow agent, title company, or lender has not followed the instructions, the department may not take action against the mortgage broker.

(15) **What action may the department take if I fail to provide additional disclosures as required under RCW 19.146.030(4)?** Generally, the department may request, direct, or order you to refund fees.

(16) **How will the department determine whether to request, direct or order me to refund fees to the borrowers?** Generally, the department will make its determination by answering the following questions:

(a) Has an initial good faith estimate disclosure of costs been provided to the borrower in accordance with RCW 19.146.030 (1) and (2)(b)?

(b) Were any subsequent good faith estimate disclosures of costs provided to the borrower no less than three business days prior to the signing of the loan closing documents? Additionally, was the subsequent disclosure accompanied by a clear written explanation of the change?

(c) How were the costs disclosed in each good faith estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the final settlement statement exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate provided to the borrower no less than three business days prior to the signing of the loan closing documents?

(e) If the costs at closing did exceed the most recent disclosure of costs was the need to charge the fee reasonably foreseeable at the time the written disclosure was provided?

(f) If the costs at closing did exceed the most recent disclosure of costs did the mortgage broker provide a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed, no less than three business days prior to the signing of the loan closing documents?

(17) **If I failed to provide the initial good faith estimate or TILA disclosure under RCW 19.146.030 (1) and (2)(a) and (b) what action may the department take?** If you have not provided the initial good faith estimate or TILA disclosure as required, including both delivery and content requirements, the department may request, direct or order you to refund to the borrower fees that inured to your benefit.

(18) **If I received trust funds from a borrower, but failed to provide the disclosures as required in RCW 19.146.030 (1) and (2), what action may the department take?** If you did not provide the disclosures as required, including both delivery and content requirements, the department may request, direct, or order you to refund to the borrower any trust funds they have paid regardless of whether you have already expended those trust funds on third-party providers.

(19) **Under what circumstances must I redisclose the initial disclosures required under the act?** Generally, any loan terms or conditions that change must be redisclosed to the borrower no less than three business days prior to the signing of the loan closing documents. Some examples are:

(a) Adjustable rate loan terms, including index, margin, and any changes to the fixed period.

(b) The initial fixed period.

(c) Any balloon payment requirements.

(d) Interest only options and any changes to the options.

(e) Lien position of the loan.

(f) Terms and the number of months or years for amortization purposes.

(g) Prepayment penalty terms and conditions.

(h) Any other term or condition that may be specific to a certain loan product.

(20) **If a loan application is canceled or denied within three days of application must I provide the disclosures required under RCW 19.146.030?** If you have not used any borrower trust funds and those funds have been returned to the borrower in conformance with these rules, the disclosures pursuant to RCW 19.146.030 are not required.

(21) **Is a mortgage broker that table funds a loan exempt from disclosures?** No. A mortgage broker must provide all disclosures required by the act, and disclose all fees as required by Regulation X, regardless of the funding mechanism used in the transaction.

(22) **What must I provide to the borrower if I am unable to complete a loan for them and they have paid for services from third-party providers?** If you are unable to complete a loan for the borrower for any reason, and if the borrower has paid you for third-party provider services, and the borrower makes a written request to you, you must provide the borrower with copies of the product from any third-party provider, including, but not limited to, an appraisal, title report, or credit report. You must provide the copies within five business days of the borrower's request.

The borrower may also request that you provide the originals of the documents to another mortgage broker or lender of the borrower's choice. By furnishing the originals to another mortgage broker or lender, you are conveying the right to use the documents to the other broker or lender. You must, upon request by the other broker or lender, provide written evidence of the conveyance. You must provide the originals to the mortgage broker or lender within five business days of the borrower's request.

(23) **Must I provide a written fee agreement when I provide residential mortgage loan modification services?** Yes. You must provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. You must provide a copy of the signed fee agreement to the consumer and you must keep a copy as part of your books and records.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-450 Recordkeeping requirements. (1) **What business books and records must I keep to comply with the act?** The following books and records for your business must be available to the department.

(a) **Mortgage transaction documents.**

(i) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(ii) The initial rate sheet or other supporting rate information;

(iii) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(iv) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures are: The good faith estimate, truth in lending disclosures, Equal Credit Opportunity Act disclosures, affiliated business arrangement disclosures, and RESPA servicing disclosure statement;

(v) Documents and records of compensation paid to employees and independent contractors;

(vi) An accounting of all funds received in connection with loans, including a trust account statement with supporting data;

(vii) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(viii) Settlement statements (the final HUD-1 or HUD-1A);

(ix) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(x) Records of any fees refunded to applicants for loans that did not close;

(xi) All file correspondence and logs; and

(xii) All mortgage broker contracts with lenders and all other correspondence with the lenders.

(b) **Advertisements.** All advertisements placed by or at the request of the mortgage broker that mention rates or fees, and the corresponding rate sheets for the advertised rates. The copies must include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any advertising distributed directly by delivery, facsimile, or computer network. The record of each advertisement must include the date or dates of publication, the name of the publisher if advertised by newsprint, radio, television or telephone information line, or in the case of a flyer, the dates, methods and areas of distribution.

(c) **Trust accounting records.** See WAC 208-660-410, Trust accounting.

(d) **Other.** All other books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation. Examples include, but are not limited to, personnel files, company policy and procedure documents, training materials, records evidencing compliance with applicable federal laws and regulations, and complaint correspondence and supporting documents. See also the department's *Mortgage Broker Examination Manual*, available on the department web site.

(2) **What books and records must I keep for my trust account?** See WAC 208-660-410, Trust accounting.

(3) **How long must I keep my books and records to comply with the act?**

(a) You must keep the books, accounts, records, papers, documents, files, and other information relating to the mortgage broker operation for a minimum of twenty-five months.

(b) You must keep the mortgage transaction documents described in subsection (1)(a) of this section for a minimum of three years. It may be a prudent business practice to keep your books and records longer. For example, if a consumer's loan becomes an adjustable rate mortgage, the consumer may become unhappy that the terms of their mortgage have changed and file a complaint against you. The department must begin an investigation into the complaint. If you do not have the records to show proof of proper disclosures and all other compliance with state and federal laws, the department may rely solely on the consumer's records as evidence in the case.

(4) **Where must I keep my business records?**

(a) You must keep all books and records in a location that is on file with and readily available to the department during normal business hours. In the event of a department examination, the location must have the work space and resources that are conducive to business operations. A readily available location may include places of business, personal residences, computers, safes, or vaults. See WAC 208-660-400(8) for the reporting requirements if the address changes.

(b) If your usual business location is outside of Washington, you may either maintain the books and records at a readily available location in Washington, or pay the department's expenses to travel to the location to examine the books and records stored out-of-state. Travel costs may include, but are not limited to, transportation costs, meals, and lodging.

(5) **May I keep my books and records electronically?** Yes. You may keep the required records described in subsection (1) of this section by electronic display equipment if you can meet all of the following requirements:

(a) The equipment must be made available to the department for the purposes of an examination or investigation;

(b) The records must be stored exclusively in a nonrewritable and nonerasable format;

(c) The hardware or software needed to display the records must be maintained during the required retention period under subsection (3) of this section.

If the department requests the books and records in hard copy, you must provide it in that form and within the time frame requested or directed by the department.

(6) **Abandoned records.** If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, and proper destruction of the records.

AMENDATORY SECTION (Amending WSR 10-20-125, filed 10/5/10, effective 11/5/10)

WAC 208-660-500 Prohibited practices. (1) **What may I request of an appraiser?** You may request an area or

market survey. While there are no strict definitions of these terms, generally they refer to general information regarding a region, area, or plat. The information usually includes the high, low and average sales price, numbers of properties available for sale or that have been sold within a set period, marketing times, days on market, absorption rate or the mixture of different property types in the specified area, among other possible components. An area survey does not contain sufficient information or is not so defining as to allow an appraiser or reader to determine the value of a specified property or property type.

(2) **How may I discuss property values with an appraiser, prior to the appraisal, without the discussion constituting improperly influencing the appraiser?** You may inform the appraiser of your opinion of value, the borrower's opinion of value, or the list or sales price of the property. You are prohibited from telling the appraiser the value you need or that is required for your loan to be successful.

(3) **What business practices are prohibited?** The following business practices are prohibited:

(a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engaging in any unfair or deceptive practice toward any person.

(c) Obtaining property by fraud or misrepresentation.

(d) Soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(e) Charging discount points on a loan which does not result in a reduction of the interest rate. Some examples of discount point misrepresentations are:

(i) A mortgage broker or lender charging discount points on the good faith estimate or settlement statement payable to the mortgage broker or any party that is not the actual lender on the resident mortgage loan.

(ii) Charging loan fees or mortgage broker fees that are represented to the borrower as discount points when such fees do not actually reduce the rate on the loan, or reflecting loan origination fees or mortgage broker fees as discount points.

(iii) Charging discount points that are not mathematically determinable as the same direct reduction of the rate available to any two borrowers with the same program and underwriting characteristics on the same date of disclosure.

(iv) Charging total fees in excess of usual and customary charges, or total fees that are not reasonable in light of the service provided when providing residential mortgage loan modification services.

(f) Failing to clearly and conspicuously disclose whether a payment advertised or offered for a residential mortgage loan includes amounts for taxes, insurance, or other products sold to the borrower. This prohibition includes the practice of misrepresenting, either orally, in writing, or in any advertising materials, a loan payment that includes only principal and interest as a loan payment that includes principal, interest, tax, and insurance.

(g) Failing to provide the exact pay-off amount of a loan you own or service as of a certain date five or fewer business days after being requested in writing to do so by a borrower of record or their authorized representative.

(h) Failing to record a borrower's payment, on a loan you own or service, as received on the day it is delivered to any of the licensee's locations during its regular working hours.

(i) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department.

(j) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower in order to verify that the asset is not otherwise insured.

(k) Willfully filing a lien on property without a legal basis to do so.

(l) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction.

(m) Failing to reconvey title to collateral, if any, within thirty days when the loan is paid in full unless conditions exist that make compliance unreasonable.

(n) Failing to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law.

(o) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan. An example is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted.

(p) Engage in bait and switch advertising.

Bait and switch means a deceptive practice of soliciting or promising a loan at favorable terms, but later "switching" or providing a loan at less favorable terms. While bait and switch will be determined by the facts of a case, the following examples, alone or in combination, may exhibit a bait and switch practice:

(i) A deceptive change of loan program from fixed to variable rate.

(ii) A deceptive increase in interest rate.

(iii) The misrepresentation of discount points. This may include discount points that have a different rate buydown effect than promised, or origination fees that a borrower has been led to believe are discount points affecting the rate.

(iv) A deceptive increase in fees or other costs.

(v) A deceptive disclosure of monthly payment amount. This practice may involve soliciting a loan with payments that do not include monthly amounts for taxes and insurance or other reserved items, while leading the borrower to believe that such amounts are included.

(vi) Additional undisclosed terms such as prepayment penalties or balloon payments, or deceiving borrowers about the effect of disclosed terms.

(vii) Additional layers of financing not previously disclosed that serve to increase the overall cost to the borrower. This practice may involve the surprise combination of first

and second mortgages to achieve the originally promised loan amount.

(viii) Leading borrowers to believe that subsequent events will be possible or practical when in fact it is known that the events will not be possible or practical.

(ix) Advertising or offering rates, programs, or terms that are not actually available at the time. See WAC 208-660-440(5).

(q) Engage in unfair or deceptive advertising practices. Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace.

(r) Negligently making any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department.

(s) Making any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.

(t) Advertising a rate of interest without clearly and conspicuously disclosing the annual percentage rate implied by the rate of interest.

(u) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).

(v) Failing to pay third-party providers within the applicable timelines.

(w) Collecting or charging, or attempting to collect or charge, or use or propose any agreement purporting to collect or charge any fees prohibited by the act.

(x) Acting as a loan originator and real estate broker or salesperson, or acting as a loan originator in a manner that violates RCW 19.146.0201(14).

(y) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

(z) Intentionally delay closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(aa) Steering a borrower to less favorable terms in order to increase the compensation paid to the company or mortgage loan originator.

(bb) Receiving compensation or any thing of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter.

(cc) Abandoning records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format, or proper destruction of the records.

(4) **What additional practices are prohibited when providing residential mortgage loan modification services?** You are prohibited from:

(a) Collecting an advance fee of more than seven hundred fifty dollars;

(b) Collecting an advance fee without a written fee agreement (see also WAC ((~~208-660-XXX~~)) 208-660-430(23));

(c) As a condition to providing loan modification services requiring or encouraging a borrower to:

(i) Sign a waiver of his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(ii) Sign a waiver of his or her right to contest a future foreclosure;

(iii) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(iv) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan;

(v) Cease communication with the lender, investor, or loan servicer or stop or delay making regularly scheduled payments on an existing mortgage unless a mortgage loan modification is completely negotiated and executed with the lender or investor and the modification agreement itself provides for a cessation or delay in making regularly scheduled payments; or

(d) Entering into any contract or agreement to purchase a borrower's property;

(e) Failing in a timely manner to:

(i) Communicate with or on behalf of the borrower;

(ii) Act on any reasonable request from or take any reasonable action on behalf of a borrower;

(f) Engaging in false or misleading advertising. In addition to WAC 208-620-630, examples of false or misleading advertising include:

(i) Advertising which includes a "guarantee" unless there is a bona fide guarantee which will benefit a borrower;

(ii) Advertising which makes it appear that a licensee has a special relationship with lenders when no such relationship exists;

(g) Leading a borrower to believe that the borrower's credit record will not be negatively affected by a mortgage loan modification when the licensee has reason to believe that the borrower's credit record may be negatively affected by the mortgage loan modification.

(5) **What federal guidance has the director adopted for use by the department in determining if a violation under subsection (3)(b) of this section has occurred?** The director has adopted the following documents:

(a) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators "Guidance on Nontraditional Mortgage Product Risks" (released November 14, 2006); and

(b) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators "Statement on Subprime Mortgage Lending," effective July 10, 2007 (published in the Federal Register at Vol. 72, No. 131).

(6) **What must I do to comply with the federal guidelines on nontraditional mortgage loan product risks and statement on subprime lending?** You must adopt written policies and procedures implementing the federal guidelines

that are applicable to your mortgage broker business. The policies and procedures must be maintained as a part of your books and records and must be made available to the department upon request.

(7) **When I develop policies and procedures to implement the federal guidelines, what topics must be included?** The policies and procedures must include, at a minimum, the following:

(a) **Consumer protection.**

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions. Specifically:

• Borrowers must be advised of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated. For example, loan products with low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin must be adequately described to the borrower. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments.

• Borrowers must be advised as to the maximum amount their monthly payment may be if the interest rate increases to its maximum rate under the terms of the loan.

• Borrowers must be advised as to the maximum interest rate that can occur under the terms of the loan.

• Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.

• Borrowers must be made aware of any pricing premium based on reduced documentation.

(b) **Control standards.** ((~~(i)~~)) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

((~~(ii) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the mortgage broker annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products.~~))

(8) **May I charge a loan origination fee or discount points when I originate but do not make a loan?** No. You may not charge a loan origination fee or discount points as described in Regulation X, Part 3500, Appendix A.

(9) **What mortgage broker fees may I charge?** You may charge a mortgage broker fee that was agreed upon between you and the borrower as stated on a good faith estimate disclosure form or similar document provided that such fee is disclosed in compliance with the act and these rules.

(10) **How do I disclose my mortgage broker fees on the good faith estimate and settlement statement?** You must disclose or direct the disclosure of your fees on the good faith estimate and HUD-1/1A Settlement Statement or similar document.

(11) **May I charge the borrower a fee that exceeds the fee I initially disclosed to the borrower?** Pursuant to RCW 19.146.030(4), you may not charge any fee that benefits you if it exceeds the fee you initially disclosed unless:

(a) The need to charge the fee was not reasonably foreseeable at the time the initial disclosure was provided; and

(b) You have provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. See WAC 208-660-430 for specific details, disclosures, and exceptions implementing RCW 19.146.030(4).

AMENDATORY SECTION (Amending WSR 08-05-126, filed 2/20/08, effective 3/22/08)

WAC 208-660-530 Director and department powers—Enforcement authority. (1) **What is a directive?** A directive is a formal request for information from the director. A directive may request the recipient to appear in person to testify or present specific documents or items. A directive may be entitled "directive" or "subpoena."

(2) **What is an administrative enforcement action?** An administrative enforcement action is a formal action, generally initiated by a statement of charges filed by the department against persons who allegedly violated the act. Enforcement actions seek various sanctions, including, but not limited to, license revocation or suspension, business practice prohibition, or fines; and may include ordering restitution for borrowers, recovery of the department's investigation costs, or all of the above.

(3) **What other types of enforcement action may the department pursue against me or my license?** The department may pursue criminal or civil referrals to the attorney general, prosecuting attorneys, or federal authorities, and may initiate civil actions in superior court.

(4) **What does it mean to be found in violation of the act and rules?** For the purposes of evaluating the licensing qualifications of an applicant, any of its principals, or the designated broker, "found in violation of the act and rules" means at least one of the following orders has been issued:

(a) A superior court order stating the applicant, any of its principals, or the designated broker violated any of the provisions of the act or rules; or

(b) A final administrative order after the completion of an administrative hearing and the filing of an initial decision of an administrative law judge stating the applicant, any of its principals, or the designated broker violated any of the provisions of the act or rules; or

(c) An administrative order stating the applicant, any of its principals, or the designated broker violated any of the provisions of the act or rules.

The order containing the finding described above must not have been entered within five years of the filing of the present application. However, if the violation resulted in a conviction of a gross misdemeanor involving dishonesty or financial misconduct, or a felony, the finding must not have been entered within seven years of the filing of the present application.

(5) **May the department sanction me for committing violations in another jurisdiction?** The department may seek sanctions against you for committing a violation in another jurisdiction if the violation could be a basis for the department to seek sanctions under the act or rules. Possible sanctions include those found in RCW 19.146.220.

(6) **May I be subject to a daily fine for violating the act?** Yes. Each licensed mortgage broker and each of its principals, officers, designated brokers, loan originators, employees, independent contractors, and agents must comply with the applicable provisions of the act. Each violation of any applicable provision of the act, or of any order, directive, or requirement of the director may, at the discretion of the director, subject the violator to a fine of up to one hundred dollars for each ((~~offense~~)) violation. Each day's continuance of the violation is a separate and distinct offense. In addition, the director may exercise discretion and by order assess other penalties for a violation of the act.

(7) **Under what circumstances will the department hold a designated broker, principal, or owner who has supervisory authority responsible for the actions of others that violate the act?** A designated broker, principal, or owner with supervisory authority is responsible for any conduct violating the act by a licensee, employee, or independent contractor if they:

(a) Directed or instructed the conduct that was in violation of the act, or had knowledge of the specific conduct, and approved or allowed the conduct; or

(b) Knew, or by the exercise of reasonable care and inquiry should have known, of the conduct in time to prevent it, or minimize the consequences, and did not.

(8) **When conduct violating the act has occurred, what may the department consider when assessing the responsibility of the designated broker, principal, and owner with supervisory authority?** The department may consider the following in an effort to determine who is responsible when a violation of the act has occurred. The following list is not limiting or exhaustive of the factors the department may consider:

(a) The adequacy of any background and experience investigation conducted prior to hiring or contracting with any person;

(b) The adoption of policies and procedures for:

(i) Supervision and training;

(ii) Regularly reviewing work performed;

(iii) Training in the requirements of the act and rules;

(iv) Monitoring continuing education requirements and compliance under the act;

(v) Acting on reports of alleged misconduct;

(c) Adopting a system of review for implementation and compliance with the policies and procedures;

(d) Providing copies of the act and rules; and

(e) The frequency and completeness of review conducted on work performed by any person subject to the act.

The items listed in (a) through (e) of this subsection must be in writing, or compliance with them must be documented in writing, and all documents must be retained as part of the mortgage broker business records. See WAC 208-660-450.

(9) **Do I have the right to have an attorney represent me at an adjudicative hearing and in any superior court proceeding?** Yes. You may have an attorney represent you at your own expense, or you may represent yourself.

(10) **Are there any criminal penalties related to violations of the act?** Yes. Violations of RCW 19.146.050 are class C felonies with a maximum penalty of five years in prison or a fine of ten thousand dollars, or both. Violations of RCW 19.146.235(9) are class B felonies with a maximum penalty of ten years in prison or a fine of twenty thousand dollars, or both. All other violations of the act are misdemeanors with a maximum penalty of ninety days in jail or a fine of not more than one thousand dollars, or both.

(11) **Under the act, is it a crime for any person subject to examination or investigation to knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information?** Yes. Knowingly withholding, abstracting, removing, mutilating, destroying, or secreting books, records, computer records, or other information is a class B felony punishable under RCW 9A.20.021 (1)(b).

(12) **Is a mortgage broker responsible for the payment of third-party providers even if the borrower has agreed to pay the fee?** Yes. If a mortgage broker or loan originator orders the third-party provider service, then the mortgage broker is responsible for paying for the service. However, the mortgage broker or loan originator is not responsible for paying the fee if the third-party provider agrees in writing to accept the fee from the borrower.

(13) **When must third-party providers be paid?** Third-party providers must be paid no later than thirty days after the related loan closing documents are filed, or within ninety days of the service, whichever is sooner, unless:

(a) The third-party provider agrees in writing to a different payment arrangement; or

(b) The third-party provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party provider service.

(14) **What is a "bona fide" dispute between a mortgage broker and third-party provider?** A dispute related to the performance or quality of the third-party provider service that has been reported in writing to the third-party provider. The report must specify the disputed areas of performance or quality.

(15) **When must a dispute regarding the performance or quality of a third-party provider be reported?** The report of a dispute regarding the performance or quality of the third-party provider service must be made in writing and provided to the third-party provider before the payment for the services becomes due; that is, no later than thirty days after the related loan closing documents are filed, or within ninety days of the service, whichever is sooner.

(16) **What is a temporary cease and desist order issued by the department?** A temporary cease and desist

order is an administrative enforcement action by the director, or designee, ordering a mortgage broker or loan originator to stop conducting business, or to stop doing some specific act.

(17) **When does the department use temporary cease and desist orders?** A temporary cease and desist order may be used when the department determines that a mortgage broker or loan originator is violating the act in a manner that is likely to cause substantial injury to the public.

(18) **What happens to my mortgage broker or loan originator license if the department of social and health services (DSHS) certifies me as out of compliance with a support order under RCW 74.20A.320?**

(a) The director will immediately suspend your license without the opportunity for a hearing if the department receives notice from DSHS that you are out of compliance with their support order regulations.

(b) The director will send you a document entitled "Notice of Suspension for Noncompliance with Child Support Order." Your license is suspended from the date of the notice. The suspension of your license remains in effect until the director is notified by DSHS of your compliance with their order. You must not perform any services under the act that require licensing while your license is suspended.

(19) **If the director suspends my license after notice from DSHS that I am not in compliance with a support order, may my license be reinstated?**

(a) The director will reinstate your license when the department has received written notice from DSHS of your compliance, and verified that you meet all licensing requirements under the act.

(b) The department will send you a notice entitled "Notice of Cancellation of Suspension for Noncompliance with Child Support Order." Your license is reinstated from the date of the notice.

(20) **Who may I contact if I have questions about how DSHS determines I am out of compliance with a support order?** Contact DSHS if you have questions about a DSHS certification of your noncompliance with a support order. Reference their case number when you contact them.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-600 Administration and facilitation of prelicensing and continuing education. (1) **Who may offer prelicensing and continuing education courses to principals, designated mortgage brokers, and loan originators?** Prelicensing and continuing education is offered by course providers and courses approved through ((~~NMLSR~~)) NMLS.

(2) **On what topics of education will I be tested?**

(a) **Prelicensing education.** The topics of education will be federal law and regulations, ethics (fraud, consumer protection, fair lending) and lending standards for the nontraditional mortgage marketplace.

(b) **Continuing education.** The topics of education will be the same as for prelicensing education, plus Washington specific topics.

(3) **What specific topics should I study in preparation for any of the required tests?**

(a) **General.**

(i) Ethics in the mortgage industry.

The responsibilities and liabilities of the profession including instruction on fraud, consumer protection, and fair lending issues.

(ii) Lending standards for nontraditional mortgage products.

(iii) Arithmetical computations common to mortgage lending including without limitation, the computation of annual percentage rate, finance charge, amount financed, payment and amortization.

(b) **Compliance and internal audit standards.**

Proper use and application of the department's published standards and guidelines for examinations.

Internal audit and compliance practices, standards, methods and procedures.

Developing policies and procedures for regulatory compliance.

Responding to regulatory inquiries, directives, subpoenas and enforcement orders.

Training and supervision of mortgage professionals.

Establishing, managing, reconciling and reviewing a trust account (trust account compliance under the act and these rules).

(c) **Washington law and associated regulations.**

The Mortgage Broker Practices Act.

The Consumer Protection Act.

The Escrow Agent Registration Act.

The Usury Act.

Unfair practices with respect to real estate transactions (RCW 49.60.222).

Mortgage, deed of trust, and real estate contract statutes set forth in Title 61 RCW.

Real estate and appraisal law, including without limitation, the provisions of chapters 18.85 and 18.140 RCW.

Washington principal and agent law.

Any subsequent act or regulation applying to mortgage brokers.

(d) **Federal law and associated regulations.**

The Real Estate Settlement Procedures Act.

Truth in Lending Act.

Equal Credit Opportunity Act.

Fair Credit Reporting Act.

Fair Housing Act.

Home Mortgage Disclosure Act.

Community Reinvestment Act.

Gramm-Leach-Bliley Act.

Home Ownership Protection Act.

Bank Secrecy Act.

Appraisal regulations.

Underwriting.

The S.A.F.E. Act (Title V of the Housing and Economic Reform Act of 2008 ("HERA")) Public Law No. 110-289.

Any subsequent act or regulation applying to mortgage brokers.

(e) **Mortgage services and products.**

Conventional.

Reverse mortgages.

FHA mortgages.
VA mortgages.
Nonprime mortgages.

WSR 12-13-075
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)
[Filed June 19, 2012, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-01-081.

Title of Rule and Other Identifying Information: WAC 182-501-0070 Healthcare coverage—Noncovered services, 182-501-0160 Exception to rule—Request for a noncovered healthcare service, 182-502-0160 Billing a client, 182-530-1050 Prescription drugs (outpatient)—Definitions, 182-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies, 182-530-2200 (new) How the medicaid agency maintains the formulary, 182-530-2300 (new) The medicaid agency's nonformulary justification process, and 182-531-0100 Scope of coverage for physician-related and healthcare professional services—General and administrative.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Conference Room, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000, on July 25, 2012, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 26, 2012.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by July 25, 2012.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 17, 2012, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: At the direction of the state legislature, HCA is implementing a drug formulary in accordance with the provisions of Section 1927 of the Social Security Act. As part of the implementation, the agency is establishing a process through which medicaid prescribers may request authorization for their patient to receive a nonformulary medication. The proposed rules also include housekeeping changes (e.g., replacing "DSHS" and "the department" with "HCA" and "the agency").

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: Social Security Act, Section 1927.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1344; Implementation and Enforcement: Charles Agte, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1301.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

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

June 19, 2012
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0070 Healthcare coverage—Noncovered services. (1) The ((~~department~~)) medicaid agency or its designee does not pay for any healthcare service not listed or referred to as a covered healthcare service under the medical programs described in WAC ((~~388-501-0060~~)) 182-501-0060, regardless of medical necessity. For the purposes of this section, healthcare services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for payment of healthcare services are described in WAC ((~~388-502-0160~~)) 182-502-0160.

(2) This section does not apply to healthcare services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter ((~~388-534~~)) 182-534 WAC.

(3) The department does not pay for any ancillary healthcare service(s) provided in association with a noncovered healthcare service.

(4) The following list of noncovered healthcare services is not intended to be exhaustive. Noncovered healthcare services include, but are not limited to:

(a) Any healthcare service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanipractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related healthcare services, not specifically allowed under WAC ((~~388-531-0100~~)) 182-531-0100(4).

(e) Discography;

(f) Ear or other body piercing;

(g) Face lifts or other facial cosmetic enhancements;

(h) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, sperm, or surrogate womb;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

(i) Gender reassignment surgery and any surgery related to trans-sexualism, gender identity disorders, and body dysmorphism, and related healthcare services or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;

(j) Hair transplants, epilation (hair removal), and electrolysis;

(k) Marital counseling;

(l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

(m) Nonmedical equipment;

(n) Penile implants;

(o) Prosthetic testicles;

(p) Psychiatric sleep therapy;

(q) Subcutaneous injection filling;

(r) Tattoo removal;

(s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;

(t) Upright magnetic resonance imaging (MRI); and

(u) Vehicle purchase - New or used vehicle.

(5) For a specific list of noncovered healthcare services in the following service categories, refer to the WAC citation:

(a) Ambulance transportation and nonemergent transportation as described in chapter ((~~388-546~~)) 182-546 WAC;

(b) Dental services for clients twenty years of age and younger as described in chapter ((~~388-535~~)) 182-535 WAC;

(c) ((~~Dental services for clients twenty-one years of age and older as described in chapter 388-535 WAC;~~

~~(d)~~)) Durable medical equipment as described in chapter ((~~388-543~~)) 182-543 WAC;

(((~~e~~))) (d) Hearing care services as described in chapter ((~~388-547~~)) 182-547 WAC;

(((~~f~~))) (e) Home health services as described in WAC ((~~388-551-2130~~)) 182-551-2130;

(((~~g~~))) (f) Hospital services as described in WAC ((~~388-550-1600~~)) 182-550-1600;

(((~~h) Physician-related~~)) (g) Healthcare professional services as described in WAC ((~~388-531-0150~~)) 182-531-0150;

(((~~i~~))) (h) Prescription drugs as described in chapter ((~~388-530~~)) 182-530 WAC; ((~~and~~

~~(j)~~)) (i) Vision care services as described in chapter ((~~388-544~~)) 182-544 WAC; and

(j) Vision care exams as described in WAC 182-531-1000.

(6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the ((~~department~~)) agency or its designee denies all or part of a request for a noncovered healthcare service(s), the ((~~department~~)) agency or its designee sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

(a) A statement of the action the ((~~department~~)) agency or its designee intends to take;

(b) Reference to the specific WAC provision upon which the denial is based;

(c) Sufficient detail to enable the recipient to:

(i) Learn why the ((~~department's~~)) agency's or its designee's action was taken; and

(ii) Prepare a response to the ((~~department's~~)) agency's or its designee's decision to classify the requested healthcare service as noncovered.

(d) The specific factual basis for the intended action; and

(e) The following information:

(i) Administrative hearing rights;

(ii) Instructions on how to request the hearing;

(iii) ((~~Acknowledgement~~)) Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;

(iv) Instructions on how to request an exception to rule (ETR) or nonformulary justification (NFJ);

(v) Information regarding ((~~department-covered~~)) agency-covered healthcare services, if any, as an alternative to the requested noncovered healthcare service; and

(vi) Upon the client's request, the name and address of the nearest legal services office.

(7) A client can request an exception to rule (ETR) as described in WAC ((~~388-501-0160~~)) 182-501-0160.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-501-0160 Exception to rule—Request for a noncovered healthcare service. A client and/or the client's provider may request the ((~~department~~)) medicaid agency or its designee to pay for a noncovered healthcare service. This is called an exception to rule (ETR). ETR does not apply to nonformulary drugs (see WAC 182-530-2300).

(1) The ((~~department~~)) agency or its designee cannot approve an exception to rule if the requested service is excluded under state statute.

(2) The item or service(s) for which an exception is requested must be of a type and nature which falls within accepted standards and precepts of good medical practice;

(3) All exception requests must represent cost-effective utilization of medical assistance program funds as determined by the ((~~department~~)) agency or its designee;

(4) A request for an exception to rule must be submitted to the ((~~department~~)) agency or its designee in writing within ninety days of the date of the written notification denying authorization for the noncovered service. For the ((~~department~~)) agency or its designee to consider the exception to rule request:

(a) The client and/or the client's healthcare provider must submit sufficient client-specific information and documentation to ((~~health and recovery services administration's~~)) the agency's medical director or designee which demonstrate the client's clinical condition is so different from the majority that there is no equally effective, less costly covered service or equipment that meets the client's need(s).

(b) The client's healthcare professional must certify that medical treatment or items of service which are covered under the client's medical assistance program and which, under accepted standards of medical practice, are indicated as appropriate for the treatment of the illness or condition, have been found to be:

(i) Medically ineffective in the treatment of the client's condition; or

(ii) Inappropriate for that specific client.

(5) Within fifteen business days of receiving the request, the ((~~department~~)) agency or its designee sends written notification to the provider and the client:

(a) Approving the exception to rule request;

(b) Denying the exception to rule request; or

(c) Requesting additional information.

(i) The additional information must be received by the ((~~department~~)) agency or its designee within thirty days of the date the information was requested.

(ii) The ((~~department~~)) agency or its designee approves or denies the exception to rule request within five business days of receiving the additional information.

(iii) If the requested information is insufficient or not provided within thirty days, the ((~~department~~)) agency or its designee denies the exception to rule request.

(6) The ((~~HRSA~~)) agency's medical director or designee evaluates and considers requests on a case-by-case basis. The ((~~HRSA~~)) agency's medical director has final authority or approve or deny a request for exception to rule.

(7) Clients do not have a right to a fair hearing on exception to rule decisions.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-502-0160 Billing a client. (1) The purpose of this section is to specify the limited circumstances in which:

(a) Fee-for-service or managed care clients can choose to self-pay for medical assistance services; and

(b) Providers (as defined in WAC ((~~388-500-0005~~)) 182-500-0085) have the authority to bill fee-for-service or managed care clients for medical assistance services furnished to those clients.

(2) The provider is responsible for:

(a) Verifying whether the client is eligible to receive medical assistance services on the date the services are provided;

(b) Verifying whether the client is enrolled with a ((~~department-contracted~~)) medicaid agency-contracted managed care organization (MCO);

(c) Knowing the limitations of the services within the scope of the eligible client's medical program (see WAC ((~~388-501-0050 (4)(a) and 388-501-0065~~)) 182-501-0050 (4)(a) and 182-501-0065);

(d) Informing the client of those limitations;

(e) Exhausting all applicable ((~~department~~)) medicaid agency or ((~~department-contracted~~)) agency-contracted MCO processes necessary to obtain authorization for requested service(s);

(f) Ensuring that translation or interpretation is provided to clients with limited English proficiency (LEP) who agree to be billed for services in accordance with this section; and

(g) Retaining all documentation which demonstrates compliance with this section.

(3) Unless otherwise specified in this section, providers must accept as payment in full the amount paid by the ((~~department~~)) agency or ((~~department-contracted~~)) agency-contracted MCO for medical assistance services furnished to clients. See 42 C.F.R. § 447.15.

(4) A provider must not bill a client, or anyone on the client's behalf, for any services until the provider has completed all requirements of this section, including the conditions of payment described in ((~~department's~~)) the agency's rules, the ((~~department's~~)) agency's fee-for-service billing instructions, and the requirements for billing the ((~~department-contracted~~)) agency-contracted MCO in which the client is enrolled, and until the provider has then fully informed the client of his or her covered options. A provider must not bill a client for:

(a) Any services for which the provider failed to satisfy the conditions of payment described in ((~~department's~~)) the agency's rules, the ((~~department's~~)) agency's fee-for-service billing instructions, and the requirements for billing the ((~~department-contracted~~)) agency-contracted MCO in which the client is enrolled.

(b) A covered service even if the provider has not received payment from the ((~~department~~)) agency or the client's MCO.

(c) A covered service when the ((~~department~~)) agency or its designee denies an authorization request for the service because the required information was not received from the provider or the prescriber under WAC ((~~388-501-0165~~)) 182-501-0165 (7)(c)(i).

(5) If the requirements of this section are satisfied, then a provider may bill a fee-for-service or a managed care client for a covered service, defined in WAC ((~~388-501-0050(9)~~)) 182-501-0050(9), or a noncovered service, defined in WAC ((~~388-501-0050(10) and 388-501-0070~~)) 182-501-0050(10) and 182-501-0070. The client and provider must sign and date the ((~~DSHS~~)) HCA form 13-879, Agreement to Pay for Healthcare Services, before the service is furnished. ((~~DSHS~~)) Form 13-879, including translated versions, is available to download at ((~~http://www1.dshs.wa.gov/msa/forms/eforms.html~~)) http://hrsa.dshs.wa.gov/mpforms.shtml. The requirements for this subsection are as follows:

(a) The agreement must:

(i) Indicate the anticipated date the service will be provided, which must be no later than ninety calendar days from the date of the signed agreement;

(ii) List each of the services that will be furnished;

(iii) List treatment alternatives that may have been covered by the ((~~department~~)) agency or ((~~department-contracted~~)) agency-contracted MCO;

(iv) Specify the total amount the client must pay for the service;

(v) Specify what items or services are included in this amount (such as pre-operative care and postoperative care). See WAC ((~~388-501-0070(3)~~)) 182-501-0070(3) for payment of ancillary services for a noncovered service;

(vi) Indicate that the client has been fully informed of all available medically appropriate treatment, including services that may be paid for by the ((~~department~~)) agency or ((~~department-contracted~~)) agency-contracted MCO, and that he or she chooses to get the specified service(s);

(vii) Specify that the client may request an exception to rule (ETR) in accordance with WAC ((~~388-501-0160~~)) 182-501-0160 when the ((~~department~~)) agency or its designee

denies a request for a noncovered service other than a nonformulary drug and that the client may choose not to do so;

(viii) Specify that the client and their prescriber may request a nonformulary justification (NFJ) in accordance with WAC 182-530-2300 for a nonformulary drug and that the client may choose not to do so;

(ix) Specify that the client may request an administrative hearing in accordance with chapter 182-526 WAC ((~~388-526-2610~~)) to appeal the ((~~department's~~)) agency's or its designee denial of a request for prior authorization of a covered service and that the client may choose not to do so;

(((~~ix~~))) (x) Be completed only after the provider and the client have exhausted all applicable ((~~department~~)) agency or ((~~department-contracted~~)) agency-contracted MCO processes necessary to obtain authorization of the requested service, except that the client may choose not to request an ETR or an administrative hearing regarding ((~~department~~)) agency or agency designee denials of authorization for requested service(s); and

(((~~x~~))) (xi) Specify which reason in subsection (b) below applies.

(b) The provider must select on the agreement form one of the following reasons (as applicable) why the client is agreeing to be billed for the service(s). The service(s) is:

(i) Not covered by the ((~~department~~)) agency or the client's ((~~department-contracted~~)) agency-contracted MCO and the ETR process as described in WAC ((~~388-501-0160~~)) 182-501-0160 or the NFJ process as described in WAC 182-530-2300 has been exhausted and the service(s) is denied;

(ii) Not covered by the ((~~department~~)) agency or the client's ((~~department-contracted~~)) agency-contracted MCO and the client has been informed of his or her right to an ETR or NFJ and has chosen not to pursue an ETR as described in WAC ((~~388-501-0160~~)) 182-501-0160 or the NFJ process as described in WAC 182-530-2300;

(iii) Covered by the ((~~department~~)) agency or the client's ((~~department-contracted~~)) agency-contracted MCO, requires authorization, and the provider completes all the necessary requirements; however the ((~~department~~)) agency or its designee denied the service as not medically necessary (this includes services denied as a limitation extension under WAC ((~~388-501-0169~~)) 182-501-0169); or

(iv) Covered by the ((~~department~~)) agency or the client's ((~~department-contracted~~)) agency-contracted MCO and does not require authorization, but the client has requested a specific type of treatment, supply, or equipment based on personal preference which the ((~~department~~)) agency or MCO does not pay for and the specific type is not medically necessary for the client.

(c) For clients with limited English proficiency, the agreement must be the version translated in the client's primary language and interpreted if necessary. If the agreement is translated, the interpreter must also sign it;

(d) The provider must give the client a copy of the agreement and maintain the original and all documentation which supports compliance with this section in the client's file for six years from the date of service. The agreement must be made available to the ((~~department~~)) agency or its designee for review upon request; and

(e) If the service is not provided within ninety calendar days of the signed agreement, a new agreement must be completed by the provider and signed by both the provider and the client.

(6) There are limited circumstances in which a provider may bill a client without executing ((~~DSHS~~)) form 13-879, Agreement to Pay for Healthcare Services, as specified in subsection (5) of this section. The following are those circumstances:

(a) The client, the client's legal guardian, or the client's legal representative:

(i) Was reimbursed for the service directly by a third party (see WAC ((~~388-501-0200~~)) 182-501-0200); or

(ii) Refused to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill the third party insurance carrier for the service.

(b) The client represented himself/herself as a private pay client and not receiving medical assistance when the client was already eligible for and receiving benefits under a medical assistance program. In this circumstance, the provider must:

(i) Keep documentation of the client's declaration of medical coverage. The client's declaration must be signed and dated by the client, the client's legal guardian, or the client's legal representative; and

(ii) Give a copy of the document to the client and maintain the original for six years from the date of service, for ((~~department~~)) agency or the agency's designee review upon request.

(c) The bill counts toward the financial obligation of the client or applicant (such as spenddown liability, client participation as described in WAC 388-513-1380, emergency medical expense requirement, deductible, or copayment required by the ((~~department~~)) agency or its designee). See subsection (7) of this section for billing a medically needy client for spenddown liability;

(d) The client is under the ((~~department's~~)) agency's or ((~~a department-contracted~~)) an agency-contracted MCO's patient review and coordination (PRC) program (WAC ((~~388-501-0135~~)) 182-501-0135) and receives nonemergency services from providers or healthcare facilities other than those to whom the client is assigned or referred under the PRC program;

(e) The client is a dual-eligible client with medicare Part D coverage or similar creditable prescription drug coverage and the conditions of WAC ((~~388-530-7700~~)) 182-530-7700 (2)(a)(iii) are met;

(f) The services provided to a TAKE CHARGE or family planning only client are not within the scope of the client's benefit package;

(g) The services were noncovered ambulance services (see WAC ((~~388-546-0250(2)~~)) 182-546-0250(2));

(h) A fee-for-service client chooses to receive nonemergency services from a provider who is not contracted with the ((~~department~~)) agency or its designee after being informed by the provider that he or she is not contracted with the ((~~department~~)) agency or its designee and that the services offered will not be paid by the client's healthcare program; and

(i) ((~~A department-contracted~~)) An agency-contracted MCO enrollee chooses to receive nonemergency services

from providers outside of the MCO's network without authorization from the MCO, i.e., a nonparticipating provider.

(7) Under chapter ((~~388-519~~)) 182-519 WAC, an individual who has applied for medical assistance is required to spend down excess income on healthcare expenses to become eligible for coverage under the medically needy program. An individual must incur healthcare expenses greater than or equal to the amount that he or she must spend down. The provider is prohibited from billing the individual for any amount in excess of the spenddown liability assigned to the bill.

(8) There are situations in which a provider must refund the full amount of a payment previously received from or on behalf of an individual and then bill the ((~~department~~)) agency for the covered service that had been furnished. In these situations, the individual becomes eligible for a covered service that had already been furnished. Providers must then accept as payment in full the amount paid by the ((~~department~~)) agency or its designee or managed care organization for medical assistance services furnished to clients. These situations are as follows:

(a) The individual was not receiving medical assistance on the day the service was furnished. The individual applies for medical assistance later in the same month in which the service was provided and the ((~~department~~)) agency or its designee makes the individual eligible for medical assistance from the first day of that month;

(b) The client receives a delayed certification for medical assistance as defined in WAC ((~~388-500-0005~~)) 182-500-0025; or

(c) The client receives a certification for medical assistance for a retroactive period according to 42 C.F.R. § 435.914(a) and defined in WAC ((~~388-500-0005~~)) 182-500-0095.

(9) Regardless of any written, signed agreement to pay, a provider may not bill, demand, collect, or accept payment or a deposit from a client, anyone on the client's behalf, or the ((~~department~~)) agency or its designee for:

(a) Copying, printing, or otherwise transferring healthcare information, as the term healthcare information is defined in chapter 70.02 RCW, to another healthcare provider. This includes, but is not limited to:

(i) Medical/dental charts;

(ii) Radiological or imaging films; and

(iii) Laboratory or other diagnostic test results.

(b) Missed, ((~~cancelled~~)) canceled, or late appointments;

(c) Shipping and/or postage charges;

(d) "Boutique," "concierge," or enhanced service packages (e.g., newsletters, 24/7 access to provider, health seminars) as a condition for access to care; or

(e) The price differential between an authorized service or item and an "upgraded" service or item (e.g., a wheelchair with more features; brand name versus generic drugs).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-530-1050 Definitions. In addition to the definitions and abbreviations found in chapter 182-500 WAC ((~~388-500-0005~~)), Medical definitions, the following definitions apply to this chapter.

"Active ingredient" - The chemical component of a drug responsible for a drug's prescribed/intended therapeutic effect. The ((~~department~~)) medicaid agency or its designee limits coverage of active ingredients to those with an eleven-digit national drug code (NDC) and those specifically authorized by the ((~~department~~)) agency or its designee.

"Actual acquisition cost (AAC)" - The net cost a provider paid for a drug, device, or drug-related supply marketed in the package size purchased. The AAC includes discounts, rebates, charge backs and other adjustments to the price of the drug, device or drug-related supply, but excludes dispensing fees.

"Administer" - Includes the direct application of a prescription drug or device by injection, insertion, inhalation, ingestion, or any other means, to the body of a patient by a practitioner, or at the direction of the practitioner.

"Appointing authority" - For the evidence-based prescription drug program of the participating agencies in the state-operated health care programs, the following persons acting jointly: The ((~~administrator~~)) director of the health care authority (HCA), the secretary of the department of social and health services (DSHS), and the director of the department of labor and industries (L&I).

"Automated authorization" - Adjudication of claims using submitted NCPDP data elements or claims history to verify that the ((~~department's~~)) medicaid agency's or its designee's authorization requirements have been satisfied without the need for the ((~~department~~)) medicaid agency or its designee to request additional clinical information.

"Automated maximum allowable cost (AMAC)" - The rate established by the ((~~department~~)) medicaid agency or its designee for a multiple-source drug that is not on the maximum allowable cost (MAC) list and that is designated by two or more products at least one of which must be under a federal drug rebate contract.

"Average manufacturer price (AMP)" - The average price paid to a manufacturer by wholesalers for drugs distributed to retail pharmacies.

"Average sales price (ASP)" - The weighted average of all nonfederal sales to wholesalers net of charge backs, discounts, rebates, and other benefits tied to the purchase of the drug product, whether it is paid to the wholesaler or the retailer.

"Average wholesale price (AWP)" - The average price of a drug product that is calculated from wholesale list prices nationwide at a point in time and reported to the ((~~department~~)) medicaid agency or its designee by the ((~~department's~~)) agency's drug file contractor.

"Combination drug" - A commercially available drug including two or more active ingredients.

"Compendia of drug information" includes the following:

(1) The American Hospital Formulary Service Drug Information;

(2) The United States Pharmacopeia Drug Information; and

(3) DRUGDEX Information System.

"Compounding" - The act of combining two or more active ingredients or adjusting therapeutic strengths in the preparation of a prescription.

"Deliver or delivery" - The transfer of a drug or device from one person to another.

"Dispense as written (DAW)" - An instruction to the pharmacist forbidding substitution of a generic drug or a therapeutically equivalent product for the specific drug product prescribed.

"Dispensing fee" - The fee the ((~~department~~)) medicaid agency or its designee sets to pay pharmacy providers for dispensing ((~~department-covered~~)) agency-covered prescriptions. The fee is the ((~~department's~~)) agency's maximum reimbursement for expenses involved in the practice of pharmacy and is in addition to the ((~~department's~~)) agency's reimbursement for the costs of covered ingredients.

"Drug evaluation matrix" - The criteria-based scoring sheet used to objectively and consistently evaluate the food and drug administration (FDA) approved drugs to determine drug coverage status.

"Drug file" - A list of drug products, pricing and other information provided to the ((~~department~~)) medicaid agency or its designee and maintained by a drug file contractor.

"Drug file contractor" - An entity which has been contracted to provide regularly updated information on drugs, devices, and drug-related supplies at specified intervals, for the purpose of pharmaceutical claim adjudication. Information is provided specific to individual national drug codes, including product pricing.

"Drug rebates" - Reimbursements provided by pharmaceutical manufacturers to state medicaid programs under the terms of the manufacturers' agreements with the Department of Health and Human Services (DHHS).

"Drug-related supplies" - Nondrug items necessary for the administration, delivery, or monitoring of a drug or drug regimen.

"Drug use review (DUR)" - A review of covered outpatient drug use that assures prescriptions are appropriate, medically necessary, and not likely to result in adverse medical outcomes.

"Effectiveness" - The extent to which a given intervention is likely to produce beneficial results for which it is intended in ordinary circumstances.

"Efficacy" - The extent to which a given intervention is likely to produce beneficial effects in the context of the research study.

"Emergency kit" - A set of limited pharmaceuticals furnished to a nursing facility by the pharmacy that provides prescription dispensing services to that facility. Each kit is specifically set up to meet the emergency needs of each nursing facility's client population and is for use during those hours when pharmacy services are unavailable.

"Endorsing practitioner" - A practitioner who has reviewed the Washington preferred drug list (PDL) and has enrolled with the health care authority (HCA), agreeing to allow therapeutic interchange (substitution) of a preferred drug for any nonpreferred drug in a given therapeutic class on the Washington PDL.

"Estimated acquisition cost (EAC)" - The ((~~department's~~)) medicaid agency's estimate of the price providers generally and currently pay for a drug marketed or sold by a particular manufacturer or labeler.

"Evidence-based" and **"evidenced-based medicine (EBM)" -** The application of a set of principles and a method for the review of well-designed studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a healthcare service is safe, effective and beneficial when making population-based coverage policies or individual medical necessity decisions.

"Evidence-based practice center" - A research organization that has been designated by the Agency for Healthcare Research and Quality (AHRQ) of the U.S. government to conduct systematic reviews of all the evidence to produce evidence tables and technology assessments to guide health care decisions.

"Federal upper limit (FUL)" - The maximum allowable reimbursement set by the Centers for Medicare and Medicaid Services (CMS) for a multiple-source drug.

"Formulary" - All drugs covered under WAC 182-530-2000 and not removed from the formulary by the DUR board (see WAC 182-530-2200).

"Formulary drug" - A drug covered under WAC 182-530-2000 and not removed from the formulary by the DUR board with respect to the treatment of a specific disease or condition for an identified population (see WAC 182-530-2200).

"Four brand name prescriptions per calendar month limit" - The maximum number of paid prescription claims for brand name drugs that the ((~~department~~)) medicaid agency or its designee allows for each client in a calendar month without a complete review of the client's drug profile.

"Generic drug" - A nonproprietary drug that is required to meet the same bioequivalency tests as the original brand name drug.

"Inactive ingredient" - A drug component that remains chemically unchanged during compounding but serves as the:

(1) Necessary vehicle for the delivery of the therapeutic effect; or

(2) Agent for the intended method or rate of absorption for the drug's active therapeutic agent.

"Ingredient cost" - The portion of a prescription's cost attributable to the covered drug ingredients or chemical components.

"Innovator multiple source drug" - As set forth in Section 1927 (k)(7)(A)(ii) of the Social Security Act, includes all covered outpatient drugs approved under a new drug application (NDA), product license approval (PLA), establishment license approval (ELA), or antibiotic drug approval (ADA). A covered outpatient drug marketed by a cross-licensed producer or distributor under the approved new drug application will be included as an innovator multiple source drug when the drug product meets this definition.

"Less than effective drug" or **"DESI" -** A drug for which:

(1) Effective approval of the drug application has been withdrawn by the Food and Drug Administration (FDA) for safety or efficacy reasons as a result of the drug efficacy study implementation (DESI) review; or

(2) The secretary of the Department of Health and Human Services (DHHS) has issued a notice of an opportunity for a hearing under section 505(e) of the federal Food, Drug, and Cosmetic Act on a proposed order of the secretary

to withdraw approval of an application for such drug under such section because the secretary has determined the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling.

"Long-term therapy" - A drug regimen a client receives or will receive continuously through and beyond ninety days.

"Maximum allowable cost (MAC)" - The maximum amount that the ((~~department~~)) medicaid agency or its designee reimburses for a drug, device, or drug-related supply.

"Medically accepted indication" - Any use for a covered outpatient drug:

(1) Which is approved under the federal Food, Drug, and Cosmetic Act; or

(2) The use of which is supported by one or more citations included or approved for inclusion in any of the compendia of drug information, as defined in this chapter.

"Modified unit dose delivery system" (also known as blister packs or "bingo/punch cards") - A method in which each patient's medication is delivered to a nursing facility:

(1) In individually sealed, single dose packages or "blisters"; and

(2) In quantities for one month's supply, unless the prescriber specifies a shorter period of therapy.

"Multiple-source drug" - A drug marketed or sold by:

(1) Two or more manufacturers or labelers; or

(2) The same manufacturer or labeler:

(a) Under two or more different proprietary names; or

(b) Under a proprietary name and a generic name.

"National drug code (NDC)" - The eleven-digit number the FDA and manufacturer or labeler assigns to a pharmaceutical product and attaches to the product container at the time of packaging. The NDC is composed of digits in 5-4-2 groupings. The first five digits comprise the labeler code assigned to the manufacturer by the Food and Drug Administration (FDA). The second grouping of four digits is assigned by the manufacturer to describe the ingredients, dose form, and strength. The last grouping of two digits describes the package size.

"Noncontract drugs" - Are drugs manufactured or distributed by manufacturers/labelers who have not signed a drug rebate agreement with the federal Department of Health and Human Services.

"Nonformulary drug" - A drug:

(a) Removed from the formulary by the DUR board with respect to treatment of a specific disease or condition for an identified population (see WAC 182-530-2200);

(b) Prescribed for the treatment of the specific disease or condition identified in (a) of this definition nonformulary drug;

(c) Prescribed for a client in the identified population in (a) of this definition nonformulary drug; and

(d) Included on the agency's nonformulary list with a written explanation of the basis for the drug's removal from the formulary.

"Nonformulary justification" or **"NFJ" -** See WAC 182-530-2300.

"Nonformulary list" - The agency's list of nonformulary drugs and the reasons for removal from the formulary by the DUR board.

"Nonpreferred drug" - A drug that has not been selected as a preferred drug within the therapeutic class(es) of drugs on the preferred drug list.

"Obsolete NDC" - A national drug code replaced or discontinued by the manufacturer or labeler.

"Over-the-counter (OTC) drugs" - Drugs that do not require a prescription before they can be sold or dispensed.

"Peer reviewed medical literature" - A research study, report, or findings regarding the specific use of a drug that has been submitted to one or more professional journals, reviewed by experts with appropriate credentials, and subsequently published by a reputable professional journal. A clinical drug study used as the basis for the publication must be a double blind, randomized, placebo or active control study.

"Pharmacist" - A person licensed in the practice of pharmacy by the state in which the prescription is filled.

"Pharmacy" - Every location licensed by the state board of pharmacy in the state where the practice of pharmacy is conducted.

"Pharmacy and therapeutic (P&T) committee" - The independent Washington state committee created by RCW 41.05.021 (1)(a)(iii) and 70.14.050. At the election of the ((~~department~~)) medicaid agency or its designee, the committee may serve as the drug use review board provided for in WAC ((~~388-530-4000~~)) 182-530-4000.

"Point-of-sale (POS)" - A pharmacy claims processing system capable of receiving and adjudicating claims on-line.

"Practice of pharmacy" - The practice of and responsibility for:

(1) Accurately interpreting prescription orders;

(2) Compounding drugs;

(3) Dispensing, labeling, administering, and distributing of drugs and devices;

(4) Providing drug information to the client that includes, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices;

(5) Monitoring of drug therapy and use;

(6) Proper and safe storage of drugs and devices;

(7) Documenting and maintaining records;

(8) Initiating or modifying drug therapy in accordance with written guidelines or protocols previously established and approved for a pharmacist's practice by a practitioner authorized to prescribe drugs; and

(9) Participating in drug use reviews and drug product selection.

"Practitioner" - An individual who has met the professional and legal requirements necessary to provide a health care service, such as a physician, nurse, dentist, physical therapist, pharmacist or other person authorized by state law as a practitioner.

"Preferred drug" - Drug(s) of choice within a selected therapeutic class that are selected based on clinical evidence of safety, efficacy, and effectiveness.

"Preferred drug list (PDL)" - The ((~~department's~~)) medicaid agency's list of drugs of choice within selected therapeutic drug classes.

"Prescriber" - A physician, osteopathic physician/surgeon, dentist, nurse, physician assistant, optometrist, pharmacist, or other person authorized by law or rule to prescribe

drugs. See WAC 246-863-100 for pharmacists' prescriptive authority.

"Prescription" - An order for drugs or devices issued by a practitioner authorized by state law or rule to prescribe drugs or devices, in the course of the practitioner's professional practice, for a legitimate medical purpose.

"Prescription drugs" - Drugs required by any applicable federal or state law or regulation to be dispensed by prescription only or that are restricted to use by practitioners only.

"Prospective drug use review (Pro-DUR)" - A process in which a request for a drug product for a particular client is screened, before the product is dispensed, for potential drug therapy problems.

"Reconstitution" - The process of returning a single active ingredient, previously altered for preservation and storage, to its approximate original state. Reconstitution is not compounding.

"Retrospective drug use review (Retro-DUR)" - The process in which drug utilization is reviewed on an ongoing periodic basis to identify patterns of fraud, abuse, gross overuse, or inappropriate or not medically necessary care.

"Risk/benefit ratio" - The result of assessing the side effects of a drug or drug regimen compared to the positive therapeutic outcome of therapy.

"Single source drug" - A drug produced or distributed under an original new drug application approved by the Food and Drug Administration (FDA).

"Substitute" - To replace a prescribed drug, with the prescriber's authorization, with:

(1) An equivalent generic drug product of the identical base or salt as the specific drug product prescribed; or

(2) A therapeutically equivalent drug other than the identical base or salt.

"Systematic review" - A specific and reproducible method to identify, select, and appraise all the studies that meet minimum quality standards and are relevant to a particular question. The results of the studies are then analyzed and summarized into evidence tables to be used to guide evidence-based decisions.

"Terminated NDC" - An eleven-digit national drug code (NDC) that is discontinued by the manufacturer for any reason. The NDC may be terminated immediately due to health or safety issues or it may be phased out based on the product's shelf life.

"Therapeutic alternative" - A drug product that contains a different chemical structure than the drug prescribed, but is in the same pharmacologic or therapeutic class and can be expected to have a similar therapeutic effect and adverse reaction profile when administered to patients in a therapeutically equivalent dosage.

"Therapeutic class" - A group of drugs used for the treatment, remediation, or cure of a specific disorder or disease.

"Therapeutic interchange" - To dispense a therapeutic alternative to the prescribed drug when an endorsing practitioner who has indicated that substitution is permitted, prescribes the drug. See therapeutic interchange program (TIP).

"Therapeutic interchange program (TIP)" - The process developed by participating state agencies under RCW 69.41.190 and 70.14.050, to allow prescribers to endorse a Washington preferred drug list, and in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

"Therapeutically equivalent" - Drug products that contain different chemical structures but have the same efficacy and safety when administered to an individual, as determined by:

(1) Information from the Food and Drug Administration (FDA);

(2) Published and peer-reviewed scientific data;

(3) Randomized controlled clinical trials; or

(4) Other scientific evidence.

"Tiered dispensing fee system" - A system of paying pharmacies different dispensing fee rates, based on the individual pharmacy's total annual prescription volume and/or the drug delivery system used.

"True unit dose delivery" - A method in which each patient's medication is delivered to the nursing facility in quantities sufficient only for the day's required dosage.

"Unit dose drug delivery" - True unit dose or modified unit dose delivery systems.

"Usual and customary charge" - The fee that the provider typically charges the general public for the product or service.

"Washington preferred drug list (Washington PDL)" - The list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for purchase of drugs in state-operated health care programs.

"Wholesale acquisition cost" - The price paid by a wholesaler for drugs purchased from a manufacturer.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies. (1) The ((~~department~~)) medicaid agency does not cover:

(a) A drug that is:

(i) Not approved by the Food and Drug Administration (FDA); or

(ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.

(b) A drug prescribed:

(i) For weight loss or gain;

(ii) For infertility, frigidity, impotency;

(iii) For sexual or erectile dysfunction;

(iv) For cosmetic purposes or hair growth; or

(v) For treatment of cough or cold symptoms, except as listed in WAC ((~~388-530-2000~~)) 182-530-2000 (1)(i).

(c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.

(d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.

(e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.

(f) A product:

(i) With an obsolete national drug code (NDC) for more than two years;

(ii) With a terminated NDC;

(iii) Whose shelf life has expired; or

(iv) Which does not have an eleven-digit NDC.

(g) Over-the-counter (OTC) drugs, vitamins, and minerals, except as allowed under WAC ((~~388-530-2000~~)) 182-530-2000 (1)(i).

(h) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).

(i) Free pharmaceutical samples.

(j) Over-the-counter or prescription drugs to promote smoking cessation unless the client is eighteen years old or older and participating in a ((~~department approved~~)) medicaid agency-approved cessation program.

(k) A nonformulary drug except as allowed by WAC 182-530-2300(4).

(2) A noncovered drug can be requested:

(a) As described in WAC 182-530-2300 for a nonformulary drug; or

(b) As described in WAC 182-501-0160 for all other noncovered drugs.

(3) If a noncovered drug is prescribed through the early and periodic screening, diagnosis, and treatment (EPSDT) process, an authorization request may be submitted indicating that the request is EPSDT related, and the request will be evaluated according to the process in WAC ((~~388-501-0165~~)) 182-501-0165. (See WAC ((~~388-534-0100~~)) 182-534-0100 for EPSDT rules).

((~~(3) A client can request an exception to rule (ETR) as described in WAC 388-501-0160.~~))

NEW SECTION

WAC 182-530-2200 How the medicaid agency maintains the formulary. The medicaid agency maintains a formulary developed by the state's drug use review (DUR) board (see WAC 182-530-4000) for the purpose of providing clients access to clinically appropriate, cost-effective pharmaceutical options to treat their medical conditions.

(1) The formulary includes all drugs covered under WAC 182-530-2000 and not removed from the formulary by the DUR board according to the process described in subsection (2) of this section.

(2) The agency periodically presents drugs labeled by the food and drug administration (FDA) for treatment of a specific disease or condition for an identified population, or which have a medically accepted indication for the treatment of the specific disease or condition to the DUR board for review. The following categories of drugs cannot be presented by the agency to the DUR board for review:

(a) Antiretroviral drugs used to treat HIV/AIDS;

(b) Anticancer medication used to kill or slow the growth of cancerous cells;

(c) Antihemophilic drugs;

(d) Insulin or other drugs to lower blood glucose;

(e) Immunosuppressive drugs;

(f) Drugs in therapeutic classes included in the Washington preferred drug list.

(3) If a drug is found by the DUR board to have no significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome for treatment of a specific disease or condition for an identified population over other drugs on the formulary, the drug may be removed from the formulary for treatment of the specific disease or condition for the identified population, provided that the DUR board's written explanation of the basis for removal is made available to the public.

(4) At the DUR board's discretion, nonformulary drugs may be added back to the formulary.

(5) The agency maintains a nonformulary list on a publicly accessible internet site detailing the:

(a) Nonformulary drugs;

(b) Specific disease or condition for an identified population for which the drug is nonformulary; and

(c) DUR board's written explanation of the basis for the drug's removal from the formulary.

(6) Formulary drugs may be subject to authorization requirements and other restrictions detailed in this chapter.

(7) The agency covers nonformulary drugs for specific clients for the treatment of a specific disease or condition according to the nonformulary justification process defined in WAC 182-530-2300(4).

(8) If a dispensing pharmacist makes a professional judgment that the client's need for a nonformulary drug is an emergency, the pharmacist may dispense a nonformulary drug without approval through the nonformulary justification (NFJ) process defined in WAC 182-530-2300(4). The agency will reimburse for the dispensed medication if justification for the emergency is provided to the agency within seventy-two hours of the date of dispense, excluding weekends and Washington state holidays.

(9) The nonformulary status of a drug does not constitute a denial of service.

NEW SECTION

WAC 182-530-2300 The medicaid agency's nonformulary justification process. A client's prescriber or the client with the assistance of the prescriber may request the agency cover a nonformulary drug for the specific client for the treatment of a specific disease or condition. This process is called a nonformulary justification (NFJ).

(1) The medicaid agency only reviews a request for a noncovered service as an NFJ when:

(a) The NFJ is submitted by the prescriber on the form provided by the agency;

(b) The drug is a nonformulary drug; and

(c) The NFJ conforms with the agency's minimum requirements in current published billing instructions, numbered memoranda, provider notices, and any additional requirements in the Washington Administrative Code (WAC) and/or Revised Code of Washington (RCW).

(2) The agency may approve, on a case-by-case basis, an NFJ when the agency determines the drug is medically necessary as defined in WAC 182-500-0070. The agency assesses medical necessity for an NFJ based on:

(a) Evidence showing the client's clinical condition is different from the majority of individuals with the same or similar diagnosis whose treatment needs are met within the scope of covered services;

(b) Evidence that medical treatment, items of service, and all formulary drugs covered under the client's medical assistance program and which, under accepted standards of medical practice, are indicated as appropriate for the treatment of the illness or condition, have been found to be:

(i) Medically ineffective in the treatment of the client's condition after an adequate trial at the maximum dose approved by the FDA; or

(ii) Medically inappropriate for that specific client.

(c) Evidence that the requested nonformulary drug can be reasonably expected to successfully treat or improve the client's function and the condition the nonformulary drug is prescribed to treat when other treatments, items of service, and all formulary outpatient drugs covered under the client's medical assistance program have proven to be medically ineffective or inappropriate for the client.

(3)(a) When the agency receives a request for an NFJ, the agency acknowledges receipt within:

(i) Twenty-four hours if the NFJ is received during normal state business hours; or

(ii) Twenty-four hours of opening for business on the next business day if the NFJ is received outside normal state business hours.

(b) Within five business days the agency:

(i) Approves the NFJ if the requested nonformulary drug is medically necessary according to subsection (2) of this section; or

(ii) Denies the NFJ if the requested nonformulary drug is not medically necessary according to subsection (2) of this section; and

(iii) Sends written notification to the client and a facsimile to the client's prescriber of the agency's determination.

(c) The agency's pharmacists or medical consultants have final authority of approval or denial of the NFJ.

(4) Nonformulary drugs which meet all other conditions of coverage with the exception of their nonformulary status are covered services for the specific client for the treatment of a specific disease or condition when approved under subsection (3) of this section.

(5) A client has the right to request an administrative hearing on NFJ denials.

(6) Drugs determined to be noncovered according to WAC 182-530-2100 (1)(a) through (j) will be reviewed according to the exception to rule (ETR) process in WAC 182-501-0160.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-0100 Scope of coverage for physician-related and healthcare professional services—General and administrative. (1) The ((~~department~~)) medicaid agency covers healthcare services, equipment, and supplies listed in this chapter, according to ((~~department~~)) agency rules and subject to the limitations and requirements in this chapter, when they are:

(a) Within the scope of an eligible client's medical assistance program. Refer to WAC ((~~388-501-0060~~)) 182-501-0060 and ((~~388-501-0065~~)) 182-501-0065; and

(b) Medically necessary as defined in WAC ((~~388-500-0005~~)) 182-500-0070.

(2) The ((~~department~~)) agency evaluates a request for a service that is in a covered category under the provisions of WAC ((~~388-501-0165~~)) 182-501-0065.

(3) The ((~~department~~)) agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC ((~~388-501-0169~~)) 182-501-0169.

(4) The ((~~department~~)) agency covers the following physician-related services and healthcare professional services, subject to the conditions in subsections (1), (2), and (3) of this section:

(a) Allergen immunotherapy services;

(b) Anesthesia services;

(c) Dialysis and end stage renal disease services (refer to chapter ((~~388-540~~)) 182-540 WAC);

(d) Emergency physician services;

(e) ENT (ear, nose, and throat) related services;

(f) Early and periodic screening, diagnosis, and treatment (EPSDT) services (refer to WAC ((~~388-534-0100~~)) 182-534-0100);

(g) Reproductive health services (refer to chapter ((~~388-532~~)) 182-532 WAC);

(h) Hospital inpatient services (refer to chapter ((~~388-550~~)) 182-550 WAC);

(i) Maternity care, delivery, and newborn care services (refer to chapter ((~~388-533~~)) 182-533 WAC);

(j) Office visits;

(k) Vision-related services (refer to chapter ((~~388-544~~)) 182-544 WAC for vision hardware for clients twenty years of age and younger);

(l) Osteopathic treatment services;

(m) Pathology and laboratory services;

(n) Physiatry and other rehabilitation services (refer to chapter ((~~388-550~~)) 182-550 WAC);

(o) Foot care and podiatry services (refer to WAC ((~~388-531-1300~~)) 182-531-1300);

(p) Primary care services;

(q) Psychiatric services, provided by a psychiatrist;

(r) Psychotherapy services for children as provided in WAC ((~~388-531-1400~~)) 182-531-1400;

(s) Pulmonary and respiratory services;

(t) Radiology services;

(u) Surgical services;

(v) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects from birth, illness, or physical trauma, or for mastectomy reconstruction for post cancer treatment;

(w) Oral healthcare services for emergency conditions for clients twenty-one years of age and older, except for cli-

ents of the division of developmental disabilities (refer to WAC ((~~388-531-1025~~)) 182-531-1025); and

(x) Other outpatient physician services.

(5) The ((~~department~~)) agency covers physical examinations for medical assistance clients only when the physical examination is one or more of the following:

(a) A screening exam covered by the EPSDT program (see WAC ((~~388-534-0100~~)) 182-534-0100);

(b) An annual exam for clients of the division of developmental disabilities; or

(c) A screening pap smear, mammogram, or prostate exam.

(6) By providing covered services to a client eligible for a medical assistance program, a provider who has signed an agreement with the ((~~department~~)) agency accepts the ((~~department's~~)) agency's rules and fees as outlined in the agreement, which includes federal and state law and regulations, billing instructions, and ((~~department~~)) agency issuances.

(7) Outpatient drugs are not subject to the rules in this chapter. For rules about outpatient drugs see chapter 182-530 WAC.

WSR 12-13-076
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Community Services Division)
[Filed June 19, 2012, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-08-063.

Title of Rule and Other Identifying Information: The community services division is proposing to amend WAC 388-466-0005 Immigration status requirement for refugee assistance, 388-466-0120 Refugee cash assistance (RCA), and 388-466-0140 Income and resources for refugee assistance eligibility.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on July 25, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 26, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 25, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 10, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments will separate the refugee cash assistance WACs from the refugee medical assistance WACs, and repeal the necessary language related to medicaid funded services.

Reasons Supporting Proposal: The proposed amendments are necessary to conform to 2E2SHB 1738, Laws of 2011, which designates the health care authority as the single state agency responsible for the administration and supervision of Washington's medicaid program.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: No comments received.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kerry Judge-Kemp, 712 Pear Street S.E., Olympia, 98501, (360) 725-4630.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed changes do not have an economic impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328(5):

(b)(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernmental party;

(b)(vii): "[t]his section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

June 11, 2012
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-14-116, filed 6/30/08, effective 8/1/08)

WAC 388-466-0005 Immigration status requirements for refugee cash assistance. (1) You may be eligible for refugee cash assistance (RCA) ((~~and refugee medical assistance (RMA),~~)) if you can provide documentation issued by the U.S. Citizenship and Immigration Services (USCIS), that you are:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the U.S. as a refugee or asylee under section 212 (d)(5) of the INA;

(c) Granted conditional entry under section 203 (a)(7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian Immigrant from Vietnam through the orderly departure program, under section 584 of

the Foreign Operations Appropriations Act, incorporated in the FY88 Continuing Resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d)(5) of the INA;

(g) Certified as a victim of human trafficking by the federal office of refugee resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 Visa;

(i) Admitted as Special Immigrant from Iraq or Afghanistan under section 101 (a)(27) of the INA.

(2) A permanent resident alien meets the immigration status requirements for RCA ((~~and RMA~~)) if the individual was previously in one of the statuses described in subsections (1)(a) through (g) of this section.

AMENDATORY SECTION (Amending WSR 09-21-046, filed 10/14/09, effective 11/4/09)

WAC 388-466-0120 Refugee cash assistance (RCA). (1) **Who can apply for refugee cash assistance (RCA)?**

Anyone can apply to the department of social and health services (DSHS) for refugee cash assistance and have their eligibility determined within thirty days.

(2) **((~~Who is eligible for refugee cash assistance~~)) How do I know if I qualify for RCA?**

You may be eligible for RCA if you meet all of the following conditions:

(a) You have resided in the United States for less than eight months;

(b) You meet the immigration status requirements of WAC 388-466-0005;

(c) You meet the income and resource requirements under chapters 388-450 and 388-470 WAC;

(d) You meet the work and training requirements of WAC 388-466-0150; and

(e) You provide the name of the voluntary agency (VOLAG) which helped bring you to this country.

(3) **((~~Who is not eligible for RCA~~)) What are the other reasons for not being eligible for RCA?**

You may not be able to get RCA if you:

(a) Are eligible for temporary assistance for needy families (TANF) or Supplemental Security Income (SSI); or

(b) Have been denied TANF due to your refusal to meet TANF eligibility requirements; or

(c) Are employable and have voluntarily quit or refused to accept a bona fide offer of employment within thirty consecutive days immediately prior to your application for RCA; or

(d) Are a full-time student in a college or university.

(4) **If I am an asylee, what date will be used as an entry date?**

If you are an asylee, your entry date will be the date that your asylum status is granted. For example: You entered the United States on December 1, 1999 as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000 and were granted asylum on September 1, 2000. Your entry date is September 1, 2000. On September 1, 2000, you may be eligible for refugee cash assistance.

(5) **If I am a victim of human trafficking, what kind of documentation do I need to provide to be eligible for RCA?**

You are eligible for RCA to the same extent as a refugee if you are:

(a) An adult victim, eighteen years of age or older, you provide the original certification letter from the U.S. Department of Health and Human Services (DHHS), and you meet eligibility requirements in subsections (2)(c) and (d) of this section. You do not have to provide any other documentation of your immigration status. Your entry date will be the date on your certification letter;

(b) A child victim under the age of eighteen, in which case you do not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirement;

(c) A family member of a certified victim of human trafficking, you have a T-2, T-3, T-4, or T-5 Visa (Derivative T-Visas), and you meet the eligibility requirements in subsections (2)(c) and (d) of this section.

(6) **Does getting a onetime cash grant from a voluntary agency (VOLAG) affect my eligibility for RCA?**

No. In determining your eligibility for RCA DSHS does not count a onetime resettlement cash grant provided to you by your VOLAG.

(7) **What is the effective date of my eligibility for RCA?**

The date DSHS has sufficient information to make eligibility decision is the date your RCA begins.

(8) **When does my RCA end?**

(a) Your RCA ends on the last day of the eighth month starting with the month of your arrival to the United States. Count the eight months from the first day of the month of your entry into the United States. For example, if you entered the United States on May 28, 2000, May is your first month and December 2000 is your last month of RCA.

(b) If you get a job, your income will affect your RCA based on the TANF rules (chapter 388-450 WAC). If you earn more than is allowed by WAC 388-478-0035, you are no longer eligible for RCA. Your medical coverage may continue for up to eight months from your month of arrival in the United States (WAC 388-466-0130).

(9) **Are there other reasons why RCA may end?**

Your RCA also ends if:

(a) You move out of Washington state;

(b) Your unearned income and/or resources go over the maximum limit (WAC 388-466-0140); or

(c) You, without good cause, refuse to meet refugee employment and training requirements (WAC 388-466-0150).

(10) **Will my spouse be eligible for RCA, if he/she arrives in the U.S. after me?**

When your spouse arrives in the United States, DSHS determines his/her eligibility for RCA and/or other income assistance programs.

(a) Your spouse may be eligible for up to eight months of RCA based on his/her date of arrival into the United States.

(b) If you live together, you and your spouse are part of the same assistance unit and your spouse's eligibility for RCA

is determined based on ((~~your~~)) you and your spouse's combined income and resources (WAC 388-466-0140).

(11) **Can I get additional money in an emergency?**

If you have an emergency and need a cash payment to get or keep your housing or utilities, you may apply for the DSHS program called additional requirements for emergent needs (AREN). To receive AREN, you must meet the requirements in WAC 388-436-0002.

(12) **What can I do if I disagree with a decision or action that has been taken by DSHS on my case?**

If you disagree with a decision or action taken on your case by the department, you have the right to request a review of your case or an administrative hearing (WAC 388-02-0090). Your request must be made within ninety days of the date of the decision or action.

AMENDATORY SECTION (Amending WSR 02-04-057, filed 1/30/02, effective 2/1/02)

WAC 388-466-0140 Income and resources for refugee cash assistance eligibility. (1) **How does DSHS count my income and resources when determining my eligibility for refugee cash assistance?**

We determine your eligibility for RCA using the TANF rules about income and resources in chapters 388-450 and 388-470 WAC, except we do not count a onetime resettlement cash payment provided to you by your voluntary agency (VOLAG).

(((~~(2) How does DSHS count my income and resources when determining my eligibility for refugee medical assistance?~~

~~We determine your eligibility for RMA using the TANF rules about income and resources in chapters 388-450 and 388-470 WAC, except as it stated below:~~

~~(a) Your monthly income can be up to two hundred percent of the federal poverty level (FPL);~~

~~(b) A onetime resettlement cash payment provided to you by your VOLAG is not counted in determining your eligibility for RMA;~~

~~(c) Your RMA eligibility is determined on the basis of your income and resources on the date of your application (WAC 388-466-0130).~~.))

WSR 12-13-077
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Community Services Division)
[Filed June 19, 2012, 11:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-10-070.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-492-0110 What happens if my WASHCAP food benefits end? and 388-492-0120 What happens to my WASHCAP benefits if I am disqualified?

In the preproposal filed as WSR 12-10-070, the department misattributed the rule-making process as "negotiated rule making." DSHS is not developing these rules through a negotiated rule-making process. The department welcomes the public to take part in developing the rules. A copy of the proposal will be sent to everyone on the mailing list and to anyone who requests a copy.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on July 25, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 26, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 25, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 5, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-492-0110 and 388-492-0120 to correct references to other rules regarding eligibility for basic food and WASHCAP.

Reasons Supporting Proposal: These changes are necessary to cross-reference rules necessary to maintain federally authorized programs regarding the allowable use of SNAP benefits.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.08.090, 74.08A.903.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.500, 74.08.090, 74.08A.903.

Rule is necessary because of federal law, 7 C.F.R. § 273.1 and 7 C.F.R. § 273.16.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA, (360) 725-4895.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to … rules of the department of social and health services relating only to client medical or financial eli-

gibility and rules concerning liability for care of dependents.["]

June 11, 2012
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-23-115, filed 11/17/10, effective 12/18/10)

WAC 388-492-0110 What happens if my WASHCAP food benefits end? (1) If your WASHCAP food benefits end because you did not have the review required under WAC 388-492-0100, you must finish the required review or apply for Basic Food benefits:

(a) By contacting the customer service center (CSC) at 1-877-501-2233;

(b) Over the internet;

(c) At any community services office (CSO);

(d) At any home and community services (HCS) office; or

(e) At any Social Security Administration (SSA) office.

(2) If your WASHCAP benefits end because you are disqualified under WAC 388-400-0040 (((~~(14)(b)~~))) (12)(b) or (e), you are not eligible for Basic Food benefits and:

(a) If you get medical assistance, we will send your medical assistance case to your local office;

(b) If you are a HCS client, your medical case will remain at HCS.

(3) If your WASHCAP benefits end for any other reason:

(a) We will send you an application for Basic Food benefits along with the address of your local CSO. If you are an HCS client, your case will remain at your HCS office.

(b) For the local CSO to decide if you are eligible for Basic Food benefits, you must:

(i) Finish the application process for Basic Food benefits under chapter 388-406 WAC; and

(ii) Have an interview for Basic Food benefits under WAC 388-452-0005.

(c) If you get medical assistance, we will send your medical case to the local CSO unless you are an HCS client;

(d) If your WASHCAP benefits closed because SSA ended your SSI, you will still receive the same medical benefits until we decide what medical program you are eligible for under WAC 388-418-0025.

AMENDATORY SECTION (Amending WSR 10-23-115, filed 11/17/10, effective 12/18/10)

WAC 388-492-0120 What happens to my WASHCAP benefits if I am disqualified? (1) If you are disqualified from receiving SSI for any reason, you will not be able to get WASHCAP benefits. See WAC 388-492-0030, Who can get WASHCAP?

(2) If you are disqualified from receiving Basic Food for any reason, you will not get WASHCAP food benefits. This includes clients who:

(a) Are ineligible under WAC 388-400-0040 (((~~(14)(b)~~))) (12)(b) and (e) and 388-442-0010; or

(b) Did not cooperate with quality assurance as required under WAC 388-464-0001.

WSR 12-13-080
PROPOSED RULES
WASHINGTON STATE PATROL
[Filed June 19, 2012, 11:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-10-018.

Title of Rule and Other Identifying Information: Traction tire devices.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue S.E., Olympia, WA 98504-2600, on July 27, 2012, at 9:00 a.m.

Date of Intended Adoption: August 1, 2012.

Submit Written Comments to: Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, e-mail wsprules@wsp.wa.gov, fax (360) 596-4015, by July 26, 2012.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by July 20, 2012, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are needed to coincide with recent legislative changes in 2012 with the passage of SSB 6112. The changes include but may not be limited to updating the language to reference an alternative traction device and outline the testing/certification process for such a device to be considered in the state of Washington.

Reasons Supporting Proposal: Clarifies the process for an approval of an alternative traction device in the state of Washington.

Statutory Authority for Adoption: RCW 46.37.420.

Statute Being Implemented: RCW 43.37.420.

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

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting: Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504, (360) 596-4017; Implementation and Enforcement: Washington State Patrol, P.O. Box 42600, Olympia, WA 98504, (360) 596-4000.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The Washington state patrol (WSP) equipment and standards review (ESR) unit is proposing amendments to chapter 204-24 WAC, Traction tire devices.

These proposed changes are in response to 2012 legislation (SSB 6112) that passed which now allows for an alternative traction device to be considered as an approved device for use on Washington roadways in accordance with the rules of the WSP.

The WSP rules (chapter 204-24 WAC) need to be updated to reference an alterative [alternative] traction device and outling [outlining] the testing/certification process for such a device. In addition, there will need to be updates to the WAC to accommodate for any devices that are certified to outline how/when they can be used. The purpose of this

chapter is to provide minimum standards and operating regulations for alternative traction tire devices.

The proposed amendments to this chapter include but may not be limited to:

- Updating current language to reference an alternative traction tire device.
- Outlining the testing and certification process for an alternative traction device.
- Amending the chapter to accommodate any device that is certified to outline the proper use of the device.
- Adding a suspension or revocation process if there is evidence that the devices failed to comply or no longer complies with any requirement or provision of law or this chapter.
- Adds a hearing and appeal process for suspension/revocations of devices.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT—DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

The ESR unit has analyzed the proposed rule amendments and has determined that small businesses may be impacted by these changes, with some costs that may [be] considered "more than minor" and disproportionate to some small businesses that may apply for approval of the alternative traction tire device manufactured by that small business.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: Since the proposed amendments "make significant amendments to a policy or regulatory program" under RCW 34.05.328 (5)(c)(iii), ESR has determined the proposed rules to be "significant" as defined by the legislature.

As required by RCW 34.05.328 (1)(d), ESR has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

COST OF COMPLIANCE: To consider costs of compliance, ESR has elected to look at the cost that current company who brought this proposal forward to the legislature has incurred in performing the required tests outlined in the proposed rule. While we understand that the cost may differ depending on the conditions and circumstances of each company, this is the best indicator of cost that the agency has at this time.

Cost of Outcomes Evaluations: The major cost anticipated by small businesses for proposed rule changes is the cost to do the testing and certification of the device comparing the alternative traction device to a chain that is approved for use in the state of Washington. The testing is a onetime requirement to show that the product meets or exceeds the referenced chain when tested on a vehicle certified by its manufacturer as complying with the United States Federal Motor Vehicle Safety Standards and on summer tires (as Washington state does not require winter tires to be used in conjunction with a traction aid).

In the case of the current company, their original testing results conducted in accordance with the ONORM standards did not show that the product met or exceeded the reference chain standard where the chain is of diamond configuration. In Washington state cable chains are also allowed so the company opted to do testing on the ladder chain and using summer tires in order to achieve better test results while still complying with the requirements outlined in the proposed rule. The duration of the tests will vary depending on the weather conditions and location, but the cost to conduct the test was approximately $10,000-16,000 (less than one percent of the annual profit of the company's sales in the United States). So for a company with only ten employees this is a cost of $1,000-1,600 per employee.

Summation - Disproportionate Impact and Mitigation: When there are more than minor costs to small businesses as a result of proposed rule changes, the Regulatory Fairness Act requires an analysis to be done comparing these expenses between small businesses and ten percent of the largest businesses.

ESR looked at the possible disproportionate impact of this requirement on small businesses, as compared to ten percent of the largest businesses. However, since there is only one business that has expressed interest in applying for approval of an alternative traction device, it is not possible to accurately delineate and compare costs between small businesses and ten percent of the largest agencies. The patrol continues to work with the one company that has come forward in the drafting of the rules. Changes have been made prior to the filing of the rules which were suggested by the company to further clarify the process for approval.

ESR has however looked at ways that the cost to small businesses could be mitigated. To help mitigate the cost to small businesses, the proposed rule allows for the testing to be conducted as a part of testing already underway for certification under a recognized standard. In addition the rule will allow for testing previously conducted to be submitted for approval provided that the requirements as outlined in the rule are met. Therefore although this will impact any company that manufactures alternative traction tire devices, it is not anticipated that every company will be required to conduct additional testing in order to meet the requirements outlined in the rule and that in some cases there will not be an impact to the business.

In addition, the patrol has taken into consideration the companies that are required to use traction devices as outlined in the statute and whether or not these proposed rules will have an impact on their business. The determination was made that these companies will not be impacted by the proposed changes as the current options to use traction tires and chains will remain. This proposal would only provide another alternative option for company vehicles to use when traveling in restricted areas of roadway if the company chooses to use it.

Summary of Benefits: Since alternative traction tire devices will be used during severe weather conditions to ensure the safety of the motoring public it is essential that there is a mechanism to ensure that devices approved in the state of Washington meet a standard. Since the only current standard established in the state of Washington is the chain,

the proposed rules would compare the alternative traction device against the chain in order to determine approval of the product.

The benefit for the proposed rule changes is to determine whether or not a product meets or exceeds the chain standard to ensure that the product can function in severe weather conditions. In addition, the language will provide law enforcement with the information they need to enforce the traction requirements during the winter season by providing them with a mechanism to determine when the alternative traction devices are no longer safe to use (similar to tread depth of tires).

The standards are necessary in order to protect motorists who travel in areas where traction devices are required by outlining the minimum standards for alternative traction devices to ensure that the product can function in those conditions.

JOBS CREATED OR LOST: This regulation is not a requirement for small businesses; it is an optional application process that a small business can choose to provide to allow their product to be considered approve[d] for use when chains are required in the state of Washington. Therefore, it is not anticipated that the requirements set forth in the current proposal will cause jobs to be lost as a result of small businesses complying with these rules.

CONCLUSION: ESR has given careful consideration to the impact on small businesses of proposed rules in chapter 204-24 WAC, Traction tire devices. In accordance with the Regulatory Fairness Act, chapter 19.85 RCW, ESR has analyzed impacts on small businesses and outlined the reasons for the costs and how the cost has been mitigated.

Please contact Melissa Van Gorkom if you have any questions at (360) 596-4017.

A copy of the statement may be obtained by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail wsprules@wsp.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504-2600, phone (360) 596-4017, fax (360) 596-4015, e-mail wsprules@wsp.wa.gov.

June 12, 2012
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 08-24-030, filed 11/24/08, effective 12/25/08)

WAC 204-24-005 Promulgation. By authority of RCW 46.37.005 and 46.37.420, the Washington state patrol adopts the following standards for tire chains and traction ((~~tires~~)) devices.

AMENDATORY SECTION (Amending WSR 08-24-030, filed 11/24/08, effective 12/25/08)

WAC 204-24-010 Scope. These standards apply to tire chains and traction ((~~tires~~)) devices designed for and used upon a public roadway.

NEW SECTION

WAC 204-24-035 Standards for alternative traction devices. (1) In order for an alternative traction device to be considered approved:

(a) The alternative traction device must be tested in accordance with a recognized standard on vehicles certified by its manufacturer as complying with the United States Federal Motor Vehicle Safety Standards. The testing will:

(i) Be conducted using USDOT approved summer tires.

(ii) For passenger vehicles, at minimum, be done on both front and rear wheel drive vehicles with the device mounted on only the drive tires.

(iii) For vehicle combinations over 10,000 pounds as outlined in WAC 204-24-050(2), at minimum be done:

(A) On a five axle vehicle with the device on one tire on each side of each drive axle and one tire on the last axle of the last trailer or semi-trailer, if seeking approval for a combination with five or less axles.

(B) On a five axle vehicle with the device mounted on all tires on one drive axle and one tire on the last axle of the last trailer or semi-trailer, if seeking approval for a combination with five or more axles.

(iv) Be done in comparison to a tire chain when tested using the same standard to show that the alternative traction device meets or exceeds the standard as compared to the results of the referenced tire chain approved for use in the state of Washington under this chapter.

(v) Include the following tests:

(A) Durability testing of the product;

(B) Acceleration on both snow and ice;

(C) Deceleration on both snow and ice; and

(D) Traction force of the product on snow.

(b) Alternative traction devices must cooperate well with any given electronic driving support such as ABS, ESP, and ASR.

(c) Alternative traction devices should be resistant to UV light, corrosion, water, fuels, spreading salts and alcohols typically used to clear roads during winter.

(d) The following information must be provided to the Washington state patrol:

(i) A copy of the testing standard used, in English.

(ii) Documentation of the testing results, which must include the data produced for each test comparing the alternative traction device to the referenced tire chain. Except that durability testing is not required to be provided for the referenced tire chain.

(iii) A certified statement from the company or manufacturer outlining what measurable indicator of wear can be used by an officer to indicate when the product will no longer provide adequate traction equivalent to a chain.

(iv) Review and approval by a third-party testing agency that the tests were conducted according to the published standard.

(v) Provide certification of the test results, which must contain the following statement "I certify that the test methods, conditions and results reported are accurate and complete" and bear the signature of the tester.

(2) The patrol may suspend or revoke approval for an alternative traction device upon receiving evidence that the device has failed to comply or no longer complies with any

requirement or provision of law or this chapter. The following process will be used:

(a) The patrol will give the applicant or manufacturer notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW, prior to suspension or revocation of the approval, except as provided in subsection (3) of this section.

(b) Upon receiving notice of the action, the applicant or manufacturer may request an administrative hearing to contest the decision. A request for administrative hearing must:

(i) Be made in writing and mailed to the Washington State Patrol Equipment and Standards Section, P.O. Box 42600, Olympia, WA 98504-2600; and

(ii) Be received by the patrol's equipment and standards section within twenty business days after the date of the notice of action.

(c) Failure to request a hearing or failure to appear at a hearing, a prehearing conference, or any other stage of adjudicative proceeding may constitute default and result in the entry of a final order under RCW 34.05.440.

(d) Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action will be promptly instituted and determined. The patrol must give notice as practicable to the applicant or manufacturer.

(e) Unless the patrol finds the immediate revocation is necessary or unless the applicant or manufacturer timely requests a hearing as provided under this section, a decision to revoke or suspend will be effective thirty days from the date of the notice of action decision unless that patrol finds that immediate revocation is necessary.

(3) The patrol may, without prior notification suspend or revoke approval for a device if it finds that there is danger to the public health, safety, or welfare that requires immediate action. For every summary suspension of a letter of approval, an order signed by the patrol must be entered in accordance with the provisions of RCW 34.05.479.

AMENDATORY SECTION (Amending WSR 09-15-150, filed 7/21/09, effective 8/21/09)

WAC 204-24-040 Traction devices. The following equipment items are approved by the state patrol for use as traction devices wherever traction devices are required by the department of transportation:

(1) Tire chains meeting the standards in WAC 204-24-020.

(2) Studded tires meeting the standards in WAC 204-24-030.

(3) Approved traction tires. An approved traction tire must have the following tread characteristics:

(a) A minimum of 4/32 inch tread, measured in the center portion of the tire at three locations equally spaced around the circumference of the tire.

(b) A relatively aggressive tread pattern designed primarily to provide additional starting, stopping, and driving traction on snow or ice. The tread must have ribs, lugs, blocks or buttons the edges of which are at an angle greater than thirty degrees to the tire circumferential centerline.

(c) On at least one side of the tread design, the shoulder lugs protrude at least 1/2-inch in a direction generally perpendicular to the direction of travel.

(d) Tires manufactured to meet these specifications must:

(i) Be permanently labeled on at least one sidewall with the words "mud and snow" or any contraction using the letters "M" and "S" (e.g. MS, M/S, M-S, M & S, etc.); or

(ii) Be permanently labeled on at least one side wall with the mountain/snowflake symbol.

(4) Alternative traction devices. Any alternative traction device approved under this chapter must be used in accordance with the manufacturer's recommendations concerning proper use of the product. The list of approved devices will be maintained on the patrol's web site. Upon suspension or revocation of an approval for an alternative traction device, the device will be removed from the list of approved devices on the patrol's web site.

AMENDATORY SECTION (Amending WSR 08-24-030, filed 11/24/08, effective 12/25/08)

WAC 204-24-050 Use of tire chains or other traction devices. (1) Vehicles under 10,000 pounds gross vehicle weight.

When traffic control signs are posted by the department of transportation it will be unlawful for any vehicle to enter the controlled area without having mounted on its drive tires the traction device specified by the sign, which must also meet the requirements of WAC 204-24-040.

(a) Exception for all wheel drive vehicles. When "chains required" signs are posted, all-wheel drive vehicles will be exempt from the chain requirement when all wheels are in gear and are equipped with approved traction devices as specified in WAC 204-24-040 provided that tire chains for at least one set of drive tires are carried in the vehicle.

(b) Alternative traction devices listed on the patrol's web site as being approved for passenger vehicles as outlined in this chapter will be considered approved for use when "chains required" signs are posted.

(2) Vehicles or combinations of vehicles over 10,000 pounds gross vehicle weight rating (GVWR).

When traffic control signs marked "chains required" are posted by the department of transportation it will be unlawful for any vehicle or combination of vehicles to enter the controlled area without having mounted on its tires, tire chains as follows: Provided, That highway maintenance vehicles operated by the department of transportation for the purpose of snow removal and its ancillary functions are exempt from the following requirements if such vehicle has sanding capability in front of the drive tires.

(a) Vehicles or vehicle combinations with two to four axles including but not limited to trucks, truck-tractors, buses and school buses: For vehicles with a single drive axle, one tire on each side of the drive axle must be chained. For vehicles with dual drive axles, one tire on each side of one of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers; one tire on the last axle of the last trailer or semi-trailer, must be chained. If the trailer or

semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(b) Automobile transporters are any vehicle combination designed and used specifically for the transport of assembled (capable of being driven) highway vehicles. For vehicles with single drive axles, one tire on each side of the drive axle must be chained. For vehicles with dual drive axles, one tire on each side of each of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle of the last trailer or semi-trailer must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(c) Vehicle combinations with five axles consisting of a truck tractor with dual drive axles and a tandem axled semi-trailer; all tires on one drive axle may be chained or one tire on each side of each of the drive axles may be chained. Chains must be applied to a minimum of four tires on the drive axles. On the tandem axle semi-trailer, the chained tire may be on either of the last two axles.

(d) Vehicle combinations with five axles, consisting of a truck and trailer, or truck tractor and semi-trailer with a single drive axle, or truck tractor, semi-trailer and full trailer: For vehicles with a single drive axle, all tires on the drive axle must be chained. For vehicles with dual drive axles, all tires on one of the drive axles must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle of the last trailer or semi-trailer must be chained. If the trailer or semi-trailer has tandem rear axles, the chained tire may be on either of the last two axles.

(e) Vehicle combinations with six or more axles, including but not limited to truck and trailer or truck tractor and semi-trailer or truck tractor semi-trailer and full trailer: For vehicles with a single drive axle, all tires on the drive axle must be chained. For vehicles with dual drive axles where traffic control signs marked "approved traction tires required" are posted, all tires on one of the drive axles must be chained. For vehicles with dual drive axles where traffic control signs marked "chains required" are posted, all tires on one of the drive axles must be chained. In addition, one tire on each side of the additional drive axle must be chained. For vehicle combinations including trailers or semi-trailers, one tire on the last axle must be chained. For vehicles with tandem axle trailers or semi-trailers, the chained tire may be on either of the last two axles.

(f) All vehicles over 10,000 pounds gross vehicle weight rating (GVWR) must carry a minimum of two extra chains for use in the event that road conditions require the use of more chains or in the event that chains in use are broken or otherwise made useless.

(g) Approved chains for vehicles over 10,000 pounds gross vehicle weight rating (GVWR) must have at least two side chains to which are attached sufficient cross chains of hardened metal so that at least one cross chain is in contact with the road surface at all times. Plastic chains will not be allowed.

(h) On the following routes all vehicles and combinations of vehicles over 10,000 gross vehicle weight rating (GVWR) pounds must carry sufficient tire chains to meet the requirements of this chapter from November 1 to April 1 of each year or at other times when chains are required for such vehicles:

(i) I-90 - Between North Bend (MP 32) and Ellensburg (MP 101).

(ii) SR-97 - Between (MP 145) and Junction SR-2.

(iii) SR-2 - Between Dryden (MP 108) and Index (MP 36).

(iv) SR-12 - Between Packwood (MP 135) and Naches (MP 187).

(v) SR-97 - Between the Columbia River (MP 0.00) and Toppenish (MP 59.00).

(vi) SR-410 - From Enumclaw to Naches.

(vii) SR-20 - Between Tonasket (MP 262) and Kettle Falls (MP 342); and SR-20 between Newhalem (MP 120) and Winthrop (MP 192).

(viii) SR-155 - Between Omak (MP 79) and Nespelem (MP 45).

(ix) SR-970 - Between (MP 0) and (MP 10).

(x) SR-14 - Between Gibbons Creek (MP 18.00) and (MP 108.40) intersection of Cliffs Road.

(xi) SR-542 - Mt. Baker highway between (MP 22.91) and (MP 57.26).

(xii) I-82 - Between Ellensburg Exit 3 (MP 3.00) and Selah Exit 26 (MP 26.00).

Vehicles making local deliveries as indicated on bills of lading and not crossing the mountain pass are exempt from this requirement if operating outside of a chain required area.

(3) For the purpose of this section, chained will mean that the tire has either a tire chain approved for use under chapter 204-24 WAC or an alternative traction tire device listed on the patrol's web site as approved for the type of vehicle combination listed in this section.

(4) The Washington state department of transportation or Washington state patrol may prohibit any vehicle from entering a chain/approved traction device control area when it is determined that the vehicle will experience difficulty in safely traveling the area.

AMENDATORY SECTION (Amending WSR 10-19-073, filed 9/16/10, effective 10/17/10)

WAC 204-24-070 Approval of tire chains or traction devices. (1) Any tire chain, wheel chains, or studded tires meeting the standards in this chapter or certified under one of the following:

(a) Conformance to Federal Motor Vehicle Safety Standards, or, if none,

(b) Conformance to current standards and specifications of the Society of Automotive Engineers will be considered as an approved type chain, or studded tire.

(2) ((~~In order for an alternative traction device to be considered approved:~~

~~(a) The alternative traction device must be:~~

~~(i) Tested in accordance with a recognized standard; and~~ ~~(ii) Meet or exceed the standard as compared to the results of a referenced tire chain approved for use in the United States tested using the same standard.~~

~~(b) The following information must be provided to the Washington state patrol:~~

~~(i) Certification of test results, which must contain the following statement "I certify that the test methods, conditions and results reported are accurate and complete" and bear the signature of the tester.~~

~~(ii) A copy of the testing standards used.~~

~~(iii) Documentation of the testing results, which must include the data produced for each test comparing the alternative traction device to the referenced tire chain.~~

~~(3)~~)) Links to the Code of Federal Regulations are available on the Washington state patrol web site at www.wsp.wa.gov. Copies of the C.F.R. may also be ordered through the United States Government Printing Office, 732 N. Capitol Street, N.W., Washington, D.C. 20401. Copies of the SAE standards are available for review at the Washington State Patrol, 210 11th Avenue, Olympia, WA 98504, and may also be ordered from the Society of Automotive Engineers International, 400 Commonwealth Drive, Warrendale, PA 15096.

NEW SECTION

WAC 204-24-080 Hearing procedure. (1) Hearings under this chapter will be pursuant to chapters 34.05 RCW and 10-08 WAC as supplemented by this section.

(2) A presiding officer will conduct a hearing and any prehearing conference(s).

(3) The burden of proof in any hearing will be on the applicant seeking approval, or on the person or agency seeking the suspension or revocation of approval or other action by the patrol.

(4) Oral proceedings must be recorded by the method chosen by the patrol and such recording will become part of the hearing record.

(5) The following process applies to administrative hearings under this chapter:

(a) The patrol will notify the assistant attorney general of the petitioner's request for an administrative hearing.

(b) The assistant attorney general will draft an administrative complaint and send it to the petitioner and to the office of administrative hearings.

(c) The office of administrative hearings will schedule a hearing date, and will notify the petitioner, assistant attorney general, and patrol in writing of the hearing date, time, and location.

(d) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings.

(e) At the hearing, the assistant attorney general will present witnesses and other evidence on behalf of the patrol.

(f) At the hearing, the petitioner may be represented by an attorney or may choose to represent himself or herself. The petitioner or his/her attorney will be allowed to present witnesses and other evidence.

(g) Nothing in this section will prevent the parties from resolving the administrative matter by settlement agreement prior to conclusion of the administrative hearing.

(6) Initial and final order. At the conclusion of the hearing, the administrative law judge will prepare an initial order and send it to the petitioner and the assistant attorney general.

(a) Either the petitioner or the assistant attorney general, or both, may file a petition for review of the initial order with the patrol within twenty days of the date of service of the initial order. A petition for review must:

(i) Specify the portions of the initial order to which exception is taken;

(ii) Refer to the evidence of record which is relied upon to support the petition; and

(iii) Be filed with the patrol within twenty days of the date of service of the initial order.

(b) A party on whom a petition for review has been served may, within ten days of the date of service, file a reply to the petition. Copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(c) The administrative record, the initial order, and any exceptions filed by the parties will be submitted to the patrol for review. Following this review, the patrol will enter a final order that is appealable under the provisions of chapter 34.05 RCW.

NEW SECTION

WAC 204-24-090 Appeal. Any person aggrieved by the decision of the patrol suspending or revoking an approval may appeal such decision to the superior court under the provisions of chapter 34.05 RCW.

WSR 12-13-081
PROPOSED RULES
WASHINGTON STATE PATROL
[Filed June 19, 2012, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-10-020.

Title of Rule and Other Identifying Information: Inspection by the subject of their record.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue S.E., Olympia, WA 98504-2600, on July 27, 2012, at 8:30 a.m.

Date of Intended Adoption: August 1, 2012.

Submit Written Comments to: Deborah Collinsworth, WSP Criminal Records Division, P.O. Box 42619, Olympia, WA 98504-2619, e-mail Deb.collinsworth@wsp.wa.gov, fax (360) 534-2070, by July 26, 2012.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by July 20, 2012, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are needed to coincide with recent legislative changes in 2012 with the passage of ESB 6296. The changes include but may not be limited to updating the language to allow for an individual to obtain a copy of their nonconviction criminal history for a fee.

Reasons Supporting Proposal: This proposal would repeal WAC 446-16-030 as the language is already outlined in this section is redundant with language in WAC 446-20-090.

Statutory Authority for Adoption: RCW 10-97-080 [10.97.080] and [10.97.]090.

Statute Being Implemented: RCW 10-97-080 [10.97.-080] and [10.97.]090.

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

Name of Agency Personnel Responsible for Drafting: Deborah Collinsworth, P.O. Box 42619, Olympia, WA 98504-2619, (360) 534-2102; Implementation and Enforcement: Criminal Records Division, P.O. Box 42619, Olympia, WA 98504-2619, (360) 534-2102.

No small business economic impact statement has been prepared under chapter 19.85 RCW. It is not anticipated that these proposed changes would have a more than minor impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules will implement changes to coincide with legislative changes and is not considered significant as defined in RCW 34.05.328.

June 12, 2012
John R. Batiste
Chief

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 446-16-030	Inspection by the subject of their record.

WSR 12-13-082
PROPOSED RULES
WASHINGTON STATE PATROL
[Filed June 19, 2012, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-10-020.

Title of Rule and Other Identifying Information: Employment—Conviction records.

Hearing Location(s): General Administration Building, Room G-3, 210 11th Avenue S.E., Olympia, WA 98504-2600, on July 27, 2012, at 8:45 a.m.

Date of Intended Adoption: August 1, 2012.

Submit Written Comments to: Deborah Collinsworth, WSP Criminal Records Division, P.O. Box 42619, Olympia, WA 98504-2619, e-mail Deb.collinsworth@wsp.wa.gov, fax (360) 534-2070, by July 26, 2012.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by July 20, 2012, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are needed to coincide with recent legislative changes in 2012 with the passage of ESB 6296. The changes include but may not be limited to updating the language to allow for an individual to obtain a copy of their nonconviction criminal history for a fee.

Reasons Supporting Proposal: This proposal would make amendments to procedures to coincide with recent legislative changes and provide clarification and clean up to existing language.

Statutory Authority for Adoption: Chapters 10.97 and 43.43 RCW.

Statute Being Implemented: Chapters 10.97 and 43.43 RCW.

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

Name of Agency Personnel Responsible for Drafting: Deborah Collinsworth, P.O. Box 42619, Olympia, WA 98504-2619, (360) 534-2102; Implementation and Enforcement: Criminal Records Division, P.O. Box 42619, Olympia, WA 98504-2619, (360) 534-2102.

No small business economic impact statement has been prepared under chapter 19.85 RCW. It is not anticipated that these proposed changes would have a more than minor impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules will implement changes to coincide with legislative changes and is not considered significant as defined in RCW 34.05.328.

June 12, 2012
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-090 Inspection of record by the subject of record. (1) Any person desiring to inspect his or her criminal history record information or request a copy of his or her nonconviction data for a reasonable fee may do so at the central records keeping office of any criminal justice agency or at the Washington state patrol identification and criminal history section, during normal business hours, Monday through Friday, excepting legal holidays.

(2) Any person desiring to inspect his or her criminal history record information or request a copy of his or her nonconviction data for a reasonable fee must first permit his or her fingerprints to be taken by the criminal justice agency for identification purposes, if requested to do so. The criminal justice agency in its discretion may accept other identification in lieu of fingerprints.

(3) A reasonable period of time, not to exceed thirty minutes, will be allowed each individual to visually examine criminal history record information pertaining to himself or herself.

(4) ((~~Visual examination only will be permitted of such information unless the individual asserts the belief that their criminal history record information is inaccurate, or incomplete; and unless the person requests correction or completion of the information on a form furnished by the criminal justice agency, or requests deletion pursuant to RCW 10.97.060. Retention or reproduction of nonconviction data is authorized only when it is the subject of challenge.~~

~~(5)~~)) If any person who desires to examine his or her criminal history record information is unable to read or is otherwise unable to examine same because of a physical disability, he or she may designate another person of their own choice to assist him or her. The person about whom the infor-

mation pertains must execute, with his or her mark, a form provided by the criminal justice agency consenting to the inspection of criminal history information pertaining to himself or herself by another person for the purpose of it being read or otherwise described to him or her. Such designated person will then be permitted to read or otherwise describe or translate the criminal history record information to the person about whom it pertains.

((~~(6)~~)) (5) Each criminal justice agency will develop procedures to ensure that no individual improperly retains or mechanically reproduces nonconviction data during the process of inspection.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-100 Inspection—Timeliness and manner of agency response. (1) A criminal justice agency not maintaining criminal history record information of the individual requesting inspection will not be obligated to further processing of inspection request.

(2) A criminal justice agency maintaining criminal history record information of the individual requesting inspection must respond in the manner following and as soon as administratively convenient, but in no event later than ten business days from the date of the receipt of the request.

(a) If the criminal history record information concerns offenses for which fingerprints were not submitted to the section, the agency must respond by disclosing the identifiable descriptions and notations of arrests, charges, and dispositions that are contained in the files of the agency.

(b) If the criminal history record information concerns offenses for which fingerprints were submitted to the section, the agency upon request of the subject of the record, must forward the request to the section for processing.

(c) The section will copy all Washington state criminal history record information in the files of the section relating to the individual requester and forward it to the criminal justice agency submitting the request. The section may provide a copy of the individual's nonconviction data directly to the subject of record upon written request from the individual for a reasonable fee.

(d) Upon receipt by the criminal justice agency of the requester's criminal history record information, the agency will notify the requester at his or her designated address or telephone number that the requested information is available for inspection. The subject of the criminal history record information must appear at the agency during its normal business hours for purpose of inspecting the record.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-285 Employment—Conviction records((~~—Child and adult abuse information~~)). ((~~After January 1, 1988, certain child and adult abuse~~)) Conviction information will be furnished by the state patrol upon written or electronic request of any applicant, business or organization, the state board of education, or the department of social and health services. This information will consist of the following:

(1) Convictions of crimes ((~~against children or other persons as defined in RCW 43.43.830(6), and as amended by chapter 9A.44 RCW~~));

(2) Department of health disciplinary authority final decisions of specific findings of physical or sexual abuse or exploitation of a child and any subsequent criminal charges associated with the conduct that is the subject of the disciplinary authority final decision for the businesses and professions defined in chapter 9A.44 RCW; and

(3) Criminal history information will be furnished from the section, consistent with the provisions of RCW 43.43.830 through 43.43.840, upon receipt of a written or electronic request.

School districts, the superintendent of public instruction, educational service districts and their contractors will also receive conviction information under RCW 10.97.030 and 10.97.050 pursuant to chapter 159, Laws of 1992.

The section will also furnish any similar records maintained by the Federal Bureau of Investigation or records in custody of the National Crime Information Center, if available, subject to their policies and procedures regarding such dissemination.

(a) The business or organization making such request will not make an inquiry to the Washington state patrol or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who has been offered a position as an employee or volunteer that an inquiry may be made.

(b) For positive identification, the request for criminal history information form may be accompanied by fingerprint cards of a type specified by the section, and must contain a certification by the business or organization; the state board of education; or the department of social and health services, that the information is being requested and will be used only for the purposes as enumerated in RCW 43.43.830 through 43.43.845.

(c) In the absence of fingerprint cards, the applicant may provide a right thumb fingerprint impression in the area provided on the request for criminal history information form. In the event of a possible match to the applicant's name and date of birth, the right thumb fingerprint impression will be used for identification verification purposes only.

(d) After processing a properly completed request for criminal history information form, if the conviction record, disciplinary authority final decision, or equivalent response from a federal law enforcement agency shows no evidence of crimes ((~~against persons~~)), an identification declaring the showing of no evidence will be issued to the business or organization by the section within fourteen working days of receipt of the request. Possession of such identification will satisfy future record check requirements for the applicant for a two-year period.

(e) The business or organization must notify the applicant of the state patrol's response within ten calendar days after receipt by the business or organization. The employer must provide a copy of the response to the applicant and must notify the applicant of such availability.

(f) The business or organization will be immune from civil liability for failure to request background information

on a prospective employee or volunteer unless the failure to do so constitutes gross negligence.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-300 Privacy—Security. (1) All employers or prospective employers receiving conviction records pursuant to RCW 43.43.815, must comply with the provisions of WAC 446-20-210 through 446-20-250 relating to privacy and security of the records.

(2) Businesses or organizations, the state board of education, and the department of social and health services receiving conviction records ((~~of crimes against persons~~)) or disciplinary board final decision information must comply with the provisions of WAC 446-20-220 (1) and (3) relating to privacy and security of the records.

(a) The business or organization must use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited. A business or organization violating this prohibition is subject to a civil action for damages.

(b) No employee of the state, employee of a business or organization, or the organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-310 Audits. (1) All employers or prospective employers receiving conviction records pursuant to RCW 43.43.815 must comply with the provisions of WAC 446-20-260 through 446-20-270 relating to audit of the recordkeeping system.

(2) Businesses or organizations, the state board of education and the department of social and health services receiving conviction records ((~~of crimes against persons~~)) or disciplinary board final decision information may be subject to periodic audits by Washington state patrol personnel to determine compliance with the provisions of WAC 446-20-300 (2).

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-600 Fees. (1) A nonrefundable fee must accompany each request for conviction records submitted for a name and date of birth background check or a background check requested by fingerprint search at the state level pursuant to RCW 43.43.830 through 43.43.845, and chapter 10.97 RCW unless through prior arrangement, an account is authorized and established.

(2) A nonrefundable FBI fee will be charged for fingerprint cards submitted for federal searches. It will be the responsibility of the section to collect all fees due and forward fingerprint cards and fees to the FBI.

(3) A nonrefundable fee will be charged for taking fingerprint impressions by the section. Fees are to be deposited in the Washington state patrol fingerprint identification account.

(4) A reasonable fee will be charged for a request for nonconviction data in lieu of a record review pursuant to RCW 10.97.080.

(5) All fees are to be made payable to the Washington state patrol and are to be remitted by cash, cashier's check, money order or check written on a business account. Credit cards may be used only for payment of electronic requests and for any other fingerprint or conviction record services the state patrol has implemented credit card payment procedures. The section must adjust the fee schedule as may be practicable to ensure that direct and indirect costs associated with the provisions of these chapters are recovered.

((~~(5)~~)) (6) Pursuant to the provisions of RCW 43.43.838 and chapter 28A.410 RCW, no fees will be charged to a nonprofit organization, or volunteers in school districts and educational service districts for background checks.

WSR 12-13-084
PROPOSED RULES
WASHINGTON STATE PATROL
[Filed June 19, 2012, 11:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-10-019.

Title of Rule and Other Identifying Information: Ignition interlock breath alcohol devices.

Hearing Location(s): Washington State Patrol (WSP), Seattle Crime Laboratory, Large Conference Room, 2203 Airport Way South, Suite 250, Seattle, WA 98134-2028, on July 30, 2012, at 10:00 a.m.

Date of Intended Adoption: August 1, 2012.

Submit Written Comments to: Trooper Steve Luce, WSP Impaired Driving Section, 811 West Roanoke Street, Seattle, WA 98102, e-mail steve.luce@wsp.wa.gov, fax (206) 720-3246, by July 27, 2012.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by July 20, 2012, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are needed to coincide with recent legislative changes in 2012 with the passage of SHB [2SHB] 2443. The changes include but may not be limited to establishing a fee process and providing other clean up to existing language in the chapter.

Reasons Supporting Proposal: Outlines procedures to coincide with recent legislative changes and provides clarification to existing language.

Statutory Authority for Adoption: RCW 43.43.395, 46.37.005, and 46.04.215.

Statute Being Implemented: RCW 43.43.395 and section 15, chapter 183, Laws of 2012.

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

Name of Proponent: Washington state department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Trooper Steve Luce, 811 East Roanoke Street, Seattle, WA

98102, (206) 720-3018; Implementation and Enforcement: Impaired Driving Section, 811 East Roanoke Street, Seattle, WA 98102, (206) 720-3018.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The WSP impaired driving section (IDS) is proposing amendments to chapter 204-50 WAC, Ignition interlock breath alcohol devices.

The purpose of this chapter is to outline the rules pertaining to all aspects of ignition interlock breath alcohol devices in the state of Washington.

The proposed amendments to this chapter include:

- WAC 204-50-030, removal and revising definitions:
  (a) Circumvention - revised.
  (b) Fees - added.
  (c) Manufacturer - revised.
  (d) Vendor - revised.
  (e) Violation Reset - revised.
- WAC 204-50-040, revising language pertaining to the certification process of ignition interlock devices which includes the following:
  (a) Collection and payment of fees.
  (b) Field and laboratory testing.
  (c) Letter size map of state.
- WAC 204-50-042, service centers.
  (a) Payment of fees.
  (b) Annual certification renewal and inspection.
  (c) Restricted driver training.
  (d) Provide copy of liability insurance for all vehicles and business license.
- WAC 204-50-046, ignition interlock technicians.
  (a) Payment of fees.
  (b) Update background disqualifiers for ignition interlock technicians.
- WAC 204-50-050, modifications to a certified ignition interlock device.
  (a) Requires notification of version changes.
  (b) Outlines that IDS will determination [determine] if recertifcation [recertification] of device is required.
- WAC 204-50-070 and 204-50-080, calibration of the ignition interlock device (IID).
  (a) Terms - vendor, service center and ignition interlock technician, removed. Certification must be done by the manufacturer.
  (b) Calibration procedures to include an as found check and two consecutive accuracy checks.
  (c) Payment of fees.
  (d) IID Mail in program, removed.
- WAC 204-50-090, device security.
  (a) Changes in the IID software and anticircumvention configuration will only be administered by the manufacturer.
  (b) Anticircumvention features must be used on all breath tests.
  (c) Remote access codes prohibited.
- WAC 204-50-100, IID installation.
  (a) Payment of fees.
  (b) Use of forms.
  (c) Requirement to take a digital reference image or photograph upon installation of the IID.
- WAC 204-50-110, mandatory IID operational features.
  (a) Allow four to five minutes for random breath test.
  (b) Term "rolling" replaced with "random."
  (c) Disconnect of the control head constitutes a violation reset and activation of the vehicle's horn.
  (d) Moves requirements for violation reset from definitions section to IID requirements section.
  (e) Requirements for camera or photo identification devices.
- WAC 204-50-120, additional requirements: Removes vendor or service center.
- WAC 204-50-130, IID removal: Requires removal to take place when a lessee is sixty [days] past due on their account.
- New section - fees.
  (a) Outlines that the patrol will maintain a fee schedule.
  (b) Requires all fees be collected and provided to the manufacturer within fifteen days following the end of the month.
  (c) Requires the manufacturer to submit electronic payment to the patrol within thirty days of the end of the calendar month in which they were collected electronically to the patrol.
  (d) Requires log/record of payments received.
  (e) Allows the patrol to review financial record/log as part of inspection.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT—DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated.

The impaired driving section has analyzed the proposed rule amendments and has determined that small businesses may be impacted by these changes, with some costs that may considered "more than minor" and disproportionate to some small businesses that provide certified ignition interlock devices.

All ignition interlock manufacturers maintaining a Washington state ignition interlock device certification will be required to comply with these proposed rule changes.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: Since the proposed amendments "make significant amendments to a policy or regulatory program" under RCW 34.05.328 (5)(c)(iii), IDS has determined the proposed rules to be "significant" as defined by the legislature.

As required by RCW 34.05.328 (1)(d), IDS has analyzed the probable costs and probable benefits of the proposed

amendments, taking into account both the qualitative and quantitative benefits and costs.

COST OF COMPLIANCE: RCW 43.43.395 as amended during the 2012 legislative session states "When reasonable [reasonably] available in the area, as determined by the state patrol, an ignition interlock device must employ technology capable of taking a photo identification of the user giving the breath sample and recording on the photo the time the breath sample was given." WSP has reviewed availability of technology in the state of Washington and determined that it exists across the state as ignition interlock providers are already using this technology and is therefore including this requirement in the amended rules.

The ignition interlock community will also be subject to administrative fees as outlined in section 15, chapter 183, Laws of 2012. These fees will be established under a fee schedule by the patrol based on analysis of industry standards and cost.

Cost of Outcomes Evaluations.

Disproportionate Economic Impact Analysis: When there are more than minor costs to small businesses as a result of proposed rule changes, the Regulatory Fairness Act requires an analysis to be done comparing these expenses between small businesses and ten percent of the largest businesses. Of the six ignition interlock companies providing services in Washington state, five are national companies and would be considered large businesses. The sixth company, although national, is respresented [represented] by four small individually owned businesses. The proposed WAC changes focus on four areas:

1. The requirements for cameras and fees. These changes are the result of legislative change and the economic impact was addressed at that time. This WAC change addresses how the legislative action will be incorporated into the current system.

2. The WAC changes clarify current business practices to ensure greater uniformity between participating companies. There will be little economic impact on the providers.

3. The WAC clarifies the role of the manufacturer as the controlling entity for each interlock system and delineates the responsibilities of the manufacturer. For one company who works more independently from their manufacturer, this will require a change in business practice, but it is anticipated that the economic impact from this would be minor.

4. The proposed WAC change would require a change in the instrument's software. Five of the six certified ignition interlock devices certified in Washington function on a Windows based program which is easily programmed and therefore would have a minimal impact from the proposed changes. Those five certified devices service ninety-eight percent of the ignition interlocks installed in Washington state and would therefore be considered the larger businesses in the state.

The device owned by the four small businesses service two percent of the interlocks installed in Washington state and works on a DOS based program and that is not easily programmed. The manufacturer continues to be silent on whether reprogramming DOS based devices will be an issue. Therefore IDS is unsure whether this could result in a more than minor impact on the four small businesses, since the impact and cost for reprogramming is unknown due to the nonresponse of the manufacturer.

Consequently, we are unable at this time to determine the disproportionate cost impact on small businesses as it relates to costs associated with the software changes proposed but do recognized [recognize] that could be "more than minor." All six of the manufactures [manufacturers] provide instruments to a significant number of other states. Five of the six manufacturers have incurred the research and development (R&D) costs that would be required to meet the legislative intent. The manufacturer that supports the four small businesses has not incorporated the new technology required by the legislature. The cost of the R&D would be borne by the manufacturer. It is unknown what portion of this expense the manufacturer would pass on to the small businesses it supports.

Mitigating Expenses for Outcomes Evaluations: The patrol is implementing the software changes required by the proposed WAC to meet the intent of recent legislation. Some of the impacts outlined in this statement such as the fees cannot be mitigated as they are legislatively mandated. However, if in working with the manufacturers we find that portions of this proposal may be mitigated, the patrol will take that into consideration.

Summary of Benefits: The proposed rule changes will further enhance the credibility and integrity of the state ignition interlock program. These revisions will increase confidence in the program and add to the solid foundation of a program that has developed the best first offense ignition interlock laws in the nation. These revisions will further increase the safety of the thousands of citizens that travel on the public roadways in the state of Washington everyday.

JOBS CREATED OR LOST: The proposed WAC changes address changes to the operational features of the ignition interlock device and therefore should not have an impact on jobs created or lost.

CONCLUSION: IDS has given careful consideration to the impact on small businesses of proposed rules in chapter 204-50 WAC, Ignition interlock breath alcohol devices. In accordance with the Regulatory Fairness Act, chapter 19.85 RCW, IDS has analyzed impacts on small businesses and outlined the reasons for the costs and ways that cost can be mitigated.

Please contact Trooper Steve Luce if you have any questions at (206) 720-3018.

A copy of the statement may be obtained by contacting Trooper Steve Luce, WSP Impaired Driving Section, 811 East Roanoke Street, Seattle, WA 98102, phone (206) 720-3108 ext. 24106, fax (206) 720-3246, e-mail steve.luce@wsp.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Trooper Steve Luce, WSP Impaired Driving Section, 811 East Roanoke Street, Seattle, WA 98102, phone (206) 720-3108 ext. 24106, fax (206) 720-3246, e-mail steve.luce@wsp.wa.gov.

June 12, 2012

John R. Batiste

Chief

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

WAC 204-50-030 Definitions. The following definitions will apply throughout this chapter:

(1) Alcohol - ((~~Means~~)) The unique chemical compound ethyl alcohol. For the purpose of ignition interlock devices, all devices will be specific for ethyl alcohol.

(2) Bogus sample - Any air sample that is altered, diluted, contaminated, stored, or filtered human breath, or which is obtained from an air compressor, hot air dryer, balloon, manual air pump, or other mechanical device, and is provided by an individual attempting to start or continue to operate a vehicle equipped with an ignition interlock device.

(3) Breath alcohol concentration BrAC - Is the amount of alcohol in a person's breath determined by chemical analysis, which shall be measured by grams of alcohol per 210 liters of breath.

(4) Certification - The testing and approval process required by RCW 46.04.215, 43.43.395 and chapter 204-50 WAC.

(5) Chief - The chief of the Washington state patrol or his or her designee.

(6) Circumvention - ((~~Means~~)) The attempted or successful bypass of the proper functioning of an ignition interlock device including, but not limited to((~~,~~)):

(a) The operation of a vehicle without a properly functioning ignition interlock device((~~,~~));

(b) The push start of a vehicle with the ignition interlock device((~~,~~));

(c) The disconnection of any part of the device including the control head while the vehicle is in operation or alteration of the ignition interlock device((~~,~~));

(d) The introduction of a bogus sample other than a deep-lung sample from the driver of the vehicle((~~,~~));

(e) The introduction of an intentionally contaminated or altered breath sample((~~,~~));

(f) The intentional disruption or blocking of a digital image identification device;

(g) The continued operation of the interlock vehicle after the ignition interlock device detects excess breath alcohol.

(7) Court (or originating court) - The particular Washington state court, if any, that has required the use of an ignition interlock device by a particular individual or has responsibility for the preconviction or postconviction supervision of an individual required to use or using the ignition interlock device.

(8) DOL - The department of licensing of the state of Washington.

(9) Fail level - The BrAC of .025 g/210L or a level set by the originating court, if lower, at which the ignition interlock device will prevent the operator from starting the vehicle, and/or once the vehicle is started, the level at which the operator must record a test below((~~, or must shut off the vehicle, to avoid registering a violation reset~~)).

(10) Fee - Nonrefundable administrative fee set by schedule paid to the patrol by the manufacturer through electronic funds transfer.

(11) Ignition interlock device - An electronic device that is installed in a vehicle which requires submitting to a BrAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the ignition interlock device detects a BrAC test result below the alcohol setpoint, the ignition interlock device will allow the vehicle's ignition switch to start the engine. If the ignition interlock device detects a BrAC test result above the alcohol setpoint, the vehicle will be prohibited from starting.

((~~(11)~~)) (12) Ignition interlock technician - A person employed by the ignition interlock device manufacturer or vendor and certified by the impaired driving section to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state.

((~~(12)~~)) (13) Impaired driving section - The section of the Washington state patrol that has been designated by the chief of the Washington state patrol to coordinate and regulate ignition interlock devices.

((~~(13)~~)) (14) Initial start failure - A breath sample introduced into an ignition interlock device when a restricted operator is attempting to start a vehicle with a BrAC higher than .025 g/210L or the alcohol concentration as prescribed by the originating court.

((~~(14)~~)) (15) Lessee - A person who has entered into an agreement with a manufacturer, vendor, or service center to lease an ignition interlock device.

((~~(15)~~)) (16) Letter of certification - ((~~Means~~)) A letter issued by the Washington state patrol that authorizes a manufacturer's ignition interlock device to be used as an ignition interlock device under this chapter; or an ignition interlock technician to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state; or a service center location to service, install, monitor, and calibrate ignition interlock devices currently certified for use in Washington state.

((~~(16)~~)) (17) Lockout - A period of time where the ignition interlock device will not allow a breath sample to be delivered or a vehicle's engine to be started.

((~~(17)~~)) (18) Manufacturer - The person, company, or corporation who:

(a) Produces the ignition interlock device((~~, and~~));

(b) Maintains certification of the device;

(c) Pays all fees to the state of Washington in accordance with this chapter;

(d) Maintains oversight, direction and compliance of all vendors, service centers and ignition interlock technicians associated with their certified ignition interlock device;

(e) Certifies to the impaired driving section that a service center, vendor, or ignition interlock technician is qualified to service, install, monitor, calibrate, remove, instruct, and provide information on the manufacturer's ignition interlock device.

((~~(18)~~)) (19) OAC - Office of the administrator of the court.

((~~(19)~~)) (20) Patrol - The Washington state patrol as defined in RCW 43.43.010.

((~~(20)~~)) (21) Restricted operator - A person whose driving privileges are restricted by court order or the department of licensing to operating only motor vehicles equipped with an approved, functioning ignition interlock device.

((~~(21)~~)) (22) Service center - A location certified by the impaired driving section to service, install, monitor, remove

and calibrate certified ignition interlock devices in Washington state.

(((~~(22)~~))) (23) Tampering - Any act or attempt to disable or circumvent the legal operation of an ignition interlock device.

(((~~(23)~~))) (24) Vendor - An impaired driving section approved company, business, or distributor who is contracted by and under the direction and oversight of a manufacturer to manage service centers and/or technicians.

(((~~(24)~~))) (25) Violation reset - An unscheduled service of the ignition interlock device ((~~and required~~)) which includes the following:

(a) Calibration as outlined in WAC 204-50-080 (3)(a);

(b) Visual inspection of wiring harness;

(c) Download of the ignition interlock device's data storage system ((~~by a service center because the restricted operator has recorded a fail level or a restricted operator failed to have the ignition interlock device serviced within the time period described in this chapter~~)).

(((~~(25)~~))) (26) Wet bath simulator - A device which when filled with a certified alcohol and water simulator solution, maintained at a known temperature, provides a vapor sample of a known alcohol concentration.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

WAC 204-50-040 Ignition interlock device certification. (1) An application must be approved and letter of certification issued by the chief or designee before a manufacturer's ignition interlock device is authorized for installation pursuant to this chapter.

(2) **Application for letter of certification for an ignition interlock device.**

(a) A manufacturer must submit an application to the impaired driving section for a letter of certification for its ignition interlock device and pay all applicable fees.

(b) In order to have an ignition interlock device certified, the applicant(s) must:

(i) Complete the application form provided by the impaired driving section.

(ii) Provide written verification that the ignition interlock device complies with all applicable standards set under RCW 43.43.395 and chapter 204-50 WAC, including written documentation from an International Organization for Standardization (ISO) certified testing laboratory that two samples of the manufacturer's ignition interlock device meets or exceeds the minimum test standards in sections one and two of the model specifications for breath alcohol ignition interlock devices (BAIID) as published in the Federal Register, Volume 57, Number 67, Tuesday, April 7, 1992, on pages 11774 - 11787, or as rules are adopted. Only a notarized statement as outlined in RCW 43.43.395 (3)(b)(i), from a laboratory that is certified by the International Organization for Standardization and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards.

(iii) Provide two ignition interlock devices for field and laboratory testing ((~~and review~~)).

(iv) Attach to the application a declaration on the form provided by the impaired driving section that:

(A) The manufacturer, and its employees will cooperate with the impaired driving section at all times, including its inspection of the manufacturer's installation, service, repair, calibration, use, removal, or performance of ignition interlock device.

(B) The manufacturer agrees to collect and pay all applicable fees, provide all downloaded ignition interlock device data, reports and information related to the ignition interlock device to the impaired driving section in an impaired driving section approved electronic format.

(C) The manufacturer, vendor, and/or ignition interlock technician agrees to provide testimony relating to any aspect of the installation, service, repair, calibration, use, removal or performance of the ignition interlock at no cost on behalf of the state of Washington or any other political subdivision.

(v) Provide the alcohol reference value and type of calibration device used to check the ignition interlock device.

(vi) Provide the Washington state software ignition interlock device configuration profile.

(vii) Provide the impaired driving section, a letter size map of the state of Washington showing the area covered by each certified fixed site and/or mobile service center, areas and the name, address, certification number and telephone number of each service center.

(3) **Issuance of a letter of certification for an ignition interlock device or renewal of letter of certification for an ignition interlock device.**

(a) The chief or designee will have the authority to issue a letter of certification for a device if all the requirements have been met by the applicant.

(b) Upon receipt of an application for letter of certification, the chief or designee will:

(i) Approve an application under this section if all requirements of this section have been met; or

(ii) Deny the application if all requirements of this chapter have not been met by the applicant. If an applicant is denied, the applicant must wait ninety days before the applicant may resubmit its application for letter of certification for an ignition interlock device.

(c) The chief or designee will notify the applicant in writing if an application for a letter of certification has been denied. The notice of denial will be sent to the applicant via certified mail, return receipt requested.

(d) A letter of certification for an ignition interlock device will be effective the date stated on the letter.

(e) A letter of certification for an ignition interlock device will be valid for three years or until it is surrendered, suspended, or revoked.

(f) A letter of certification for an ignition interlock device will be subject to annual review by the impaired driving section and at its discretion during the course of the certification period.

(4) **Renewal of a letter of certification for an ignition interlock device.**

(a) A manufacturer must submit an application to the impaired driving section requesting a renewal of a letter of certification for an ignition interlock device and pay all applicable fees. The renewal request may be submitted ninety days

prior to the expiration of a letter of certification, but a renewal request must be submitted within thirty days prior to the expiration of a letter of certification.

(b) For a manufacturer to have its letter of certification for an ignition interlock device renewed, it must submit:

(i) A written request for renewal of a letter of certification for an ignition interlock device.

(ii) Written verification that the ignition interlock device complies with all applicable standards set in RCW 43.43.395 and chapter 204-50 WAC, including a current report from an ISO certified testing laboratory that two samples of the manufacturer's ignition interlock device meets or exceeds the minimum test standards in sections one and two of the model specifications for breath alcohol ignition interlock devices (BAIID) as published in the Federal Register, Volume 57, Number 67, Tuesday, April 7, 1992, on pages 11774 - 11787, or as rules are adopted. Only a notarized statement as outlined in RCW 43.43.395 (3)(b)(i), from a laboratory that is certified by the International Organization for Standardization and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards.

(iii) The ignition interlock device for field testing to be completed by the impaired driving section.

(c) The chief or designee will notify the manufacturer in writing if renewal of a letter of certification has been denied. The notice of nonrenewal will be sent to the certified holder via certified mail, return receipt requested.

(5) **Revocation of a letter of certification for an ignition interlock device.**

(a) The chief or designee may revoke a letter of certification for an ignition interlock device for a manufacturer's, vendor's, service center's or ignition interlock technician's violation of any of the laws or regulations related to the installation, servicing, monitoring, removal and calibration of ignition interlock devices, including but not limited to, "additional requirements" listed in WAC 204-50-120.

(b) A copy of a notice of revocation for a certification for an ignition interlock device will be provided to the DOL and to the OAC for the state of Washington.

(c) Upon revocation of a letter of certification for an ignition interlock device, the manufacturer's ignition interlock device(s) will be removed from the list of certified ignition interlock devices on the patrol's web site.

(d) If a manufacturer holding a letter of certification for an ignition interlock device is no longer in business, it shall immediately send written notification to the impaired driving section informing it that the manufacturer is no longer in business, and the impaired driving section will revoke its letter of certification.

(e) If a manufacturer holding a letter of certification wishes to voluntarily relinquish its letter of certification, the manufacturer shall send written notice to the impaired driving section advising it that the manufacturer is relinquishing its letter of certification for an ignition interlock device.

(f) Upon voluntary surrender or revocation of a letter of certification for a manufacturer's ignition interlock device, the impaired driving section shall notify all vendors and/or service centers that all of a manufacturer's uncertified ignition interlock devices must be removed and replaced by a certified ignition interlock device within sixty-five days of the effective date of such surrender or revocation. The service center will notify all affected lessees of the revocation of the manufacturer's certification and requirement that a certified service center install and/or replace the ignition interlock device.

(g) The impaired driving section will maintain a file of all current, revoked, and voluntarily surrendered letters of certification for the time period required by the patrol records retention schedule.

(h) The chief or designee will notify the manufacturer in writing if a letter of certification has been revoked. The notice of revocation will be sent to the certificate holder via certified mail, return receipt requested.

(6) All ignition interlock devices must employ fuel cell technology on or before June 10, 2015. An ignition interlock device that does not employ fuel cell technology after June 10, 2015, will not be an approved device in Washington state and will have its letter of certification denied or revoked.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

WAC 204-50-042 Service center certification and inspection. (1) An application must be approved, all applicable fees paid and a letter of certification issued by the chief or designee before a fixed or mobile service center may repair, install, remove, or service a certified ignition interlock device pursuant to this chapter.

(2) **Application for certification for a fixed site service center.**

(a) A manufacturer ((~~or vendor~~)) must submit an application to the impaired driving section for a letter of certification for a fixed service center.

(b) In order to have a fixed service center certified, the applicant(s) must:

(i) Complete the application form provided by the impaired driving section. In the application form the applicant shall disclose:

(A) The physical address of the service center;

(B) The days and hours of operation for the service center;

(C) The type of the certified ignition interlock device it will service;

(D) The type of calibration device it will use for the ignition interlock device(s) it will service.

(ii) Submit a copy of the ignition interlock device data reader download procedures.

(iii) Submit a written statement from a manufacturer that authorizes the service center to install the manufacturer's certified ignition interlock device.

(iv) Submit a list of all fees that may be charged to the lessee to install the manufacturer's certified ignition interlock device.

(3) **Renewal of certification for a fixed site service center.** The impaired driving section will conduct an annual inspection of all certified fixed site service centers. Upon successful completion of the inspection and payment of all applicable fees the certification will be renewed.

(4) **Application for certification for a mobile site service center.**

(a) A manufacturer ((~~or vendor~~)) must submit an application to the impaired driving section for a letter of certification for a mobile service center.

(b) In order to have a mobile service center certified, the applicant(s) must:

(i) Submit the information required in subsection (1)(b)(i) through (iii) of this section.

(ii) Submit a copy of liability insurance for ((~~the~~)) all vehicles to be used as ((~~the~~)) a mobile service center.

(iii) Submit certification number(s) of the fixed site service center(s) overseeing the mobile service center and the technician(s) that will work from the mobile service center(s).

(iv) Submit a list of all fees or rates that may be charged to a lessee to install, remove, repair, or service an ignition interlock device by a mobile service center.

((~~(4)~~)) (5) **Inspection of fixed and/or mobile service center.** A vendor or manufacturer must agree to allow access for a representative from the impaired driving section to conduct an inspection at any time during scheduled business hours to ensure compliance as required in chapter 204-50 WAC.

((~~(5)~~)) (6) **Service center requirements.** To receive and maintain a letter of certification, a fixed site service center must:

(a) Be located in a facility which properly accommodates installing, inspecting, downloading, calibrating, repairing, monitoring, maintaining, servicing, and/or removing of ignition interlock devices.

(b) Have posted a current copy of all fees and rates a lessee may be charged to install, remove, repair or service an ignition interlock device by a fixed or mobile service center. The fees and rates must be plainly visible and capable of being read at all times by the public.

(c) Provide lessees a statement of charges clearly specifying warranty details, monthly lease amount, any additional charges anticipated for routine calibration and service checks and what items, if any, are provided without charge.

(d) Provide the lessee written notice of any changes in the statement of charges regardless of what person or agency requested the change, prior to the implementation of such changes.

(e) Comply with all municipal and/or county zoning regulations for commercial businesses and provide a corresponding business license.

(f) Have and maintain a designated waiting area that is separate from the installation area for the lessee. The designated waiting area must be shielded from the installation area so a lessee or any other unauthorized person cannot witness the installation or service of the ignition interlock device.

(g) Have an area and the electronic equipment available for restricted drivers to view training videos provided by the impaired driving section or manufacturer.

((~~(6)~~)) (7) **Issuance of letter of certification for a fixed and/or mobile service center.**

(a) The chief or designee will have the authority to issue a letter of certification to a fixed and/or mobile service center if all qualifications outlined in this chapter have been met by the applicant.

(b) A letter of certification or a service center must be posted and visible to the public.

(c) The chief or designee will notify ((~~an applicant~~)) the manufacturer in writing if a letter of certification has been denied. The notice of denial will be sent to the applicant via certified mail, return receipt requested.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

WAC 204-50-046 Ignition interlock technician certification. (1) **The chief or designee will have the authority to issue a letter of certification for an ignition interlock technician.** An application must be approved and letter of certification issued by the impaired driving section before an ignition interlock technician may repair, install, remove, or service a certified ignition interlock device pursuant to this chapter.

(2) **Application for letter of certification for an ignition interlock technician.**

(a) A manufacturer((~~, vendor, or service center~~)) must submit an application to the impaired driving section for a letter of certification for each ignition interlock technician employed at a fixed or mobile service center and pay all applicable fees to the state of Washington.

(b) In order to receive a letter of certification for an ignition interlock technician, the applicant((~~(s)~~)) shall:

(i) Complete the application form provided by the impaired driving section.

(ii) ((~~Beginning January 1, 2012, or prior to the next renewal,~~)) Have its employee complete the knowledge and skills examination administered by the impaired driving section. An applicant's employee must score eighty percent or higher on the knowledge and skills examination to be eligible for a letter of certification.

(iii) Submit, at the expense of the manufacturer, service center, vendor or applicant, a criminal history report conducted within the preceding thirty days of the date on the application. The criminal history report shall be attained from either the patrol's identification and criminal history section if the employee has lived in Washington for five years immediately preceding the date of the application or, a criminal background check from the agency responsible for keeping criminal history in the state or states of the previous residence of an employee who has not lived in Washington for the five years immediately preceding the date of application.

(c) The chief or designee will refuse to issue or may revoke a letter of certification for the ignition interlock technician if the ignition interlock technician:

(i) Has been convicted of:

(A) Any alcohol related traffic offense within the last three years;

(B) A DUI, as defined in chapter 46.61 RCW, two or more times within the last five years;

(C) Any offense classified as a class B or C felony within the five years prior to the date of the applicant filing an application for certification as an ignition interlock technician((~~.~~));

((~~(ii)~~)) (D) Any class A felony or any "sex offense" as defined in RCW 9.94A.030, regardless of the date of conviction; or

(E) Any gross misdemeanor within the last three years.

(ii) The chief or designee may refuse to issue or may revoke a letter of certification for the ignition interlock technician if the ignition interlock technician has been convicted of:

(A) Any misdemeanor within the last year; or

(B) Has demonstrated a willful disregard for complying with ordinances, statutes, administrative rules or court orders, whether at the local, state or federal level;

(iii) Fails to demonstrate character and general fitness sufficient to command the confidence of the impaired driving section and warrant a belief that the duties of a technician will be conducted honestly, fairly and efficiently in the conduct of ignition interlock service. In determining character and general fitness, the impaired driving section may consider:

(A) Prior contacts with law enforcement;

(B) Criminal record;

(C) Reputation in the community;

(D) Associations; and

(E) Current driver's license status and abstract driving record.

(iv) Has been granted a deferred prosecution under chapter 10.05 RCW for an alcohol related traffic offense within the last three years.

((~~(iii)~~)) (v) Is not at least eighteen years of age.

((~~(iv)~~)) (vi) Does not possess a valid Washington driver's license if:

(A) The ignition interlock technician is employed by a service center that provides a mobile service center; or

(B) The ignition interlock technician must operate a lessee's vehicle to provide services in accordance with this chapter.

(d) The term "conviction" as used in this section will have the same meaning as used in chapter 9.94A RCW.

(3) **Issuance of letter of certification for an ignition interlock technician.**

(a) The chief or designee will have the authority to issue a letter of certification for an ignition interlock technician if an application has been approved and all qualifications set out in this chapter have been met by the applicant.

(b) A letter of certification for an ignition interlock technician will be effective the date stated in the letter and contain a certification number specific to the ignition interlock technician.

(c) A letter of certification for an ignition interlock technician will be valid for one year or until suspended, superseded, or revoked by the impaired driving section.

(d) A letter of certification for an ignition interlock technician will be subject to review by the impaired driving section at its discretion during the course of the certification period.

(e) The chief or designee will deny an application for a letter of certification for an ignition interlock technician if all qualifications are not met by the applicant, and it will notify the ((~~applicant and service provider or vendor or both~~)) manufacturer within ten days of such determination.

(f) The chief or designee will notify the ((~~applicant~~)) manufacturer in writing if an application for letter of certification has been denied. The notice of denial will be sent to the applicant via certified mail, return receipt requested.

(4) **Renewal of a letter of certification for an ignition interlock technician.**

(a) A letter of certification for an ignition interlock technician certification must be renewed and all applicable fees paid on an annual basis.

(b) An application to renew a letter of certification for an ignition interlock technician must be submitted to the impaired driving section at least thirty days prior to the expiration of the certification.

(c) An incomplete or untimely application may result in the expiration of a letter of certification for an ignition interlock technician. If a letter of certification for an ignition interlock technician expires, the ignition interlock technician identified in the expired letter of certification shall immediately stop working as an ignition interlock technician until a new letter of certification is issued by the chief or designee.

(d) Renewal of a letter of certification for an ignition interlock technician will be the same as the process outlined in this section, except the submission of a criminal history report may be submitted by the ignition interlock technician.

(e) If there is pending action against an ignition interlock technician for any violation of the rules outlined in this chapter, an application for the renewal of a letter of certification will not be processed until the pending action has reached a final resolution.

(f) The chief or designee will notify the ((~~service center~~)) manufacturer in writing if renewal of a letter of certification has been denied. The notice of nonrenewal will be sent to the certificate holder via certified mail, return receipt requested.

(5) **Surrender of a letter of certification for an ignition interlock technician.**

(a) An ignition interlock technician letter of certification may be surrendered upon written request from the ((~~vendor, service center~~)) manufacturer, or an ignition interlock technician or if the impaired driving section receives written notification that the ignition interlock technician is no longer employed by ((~~a certified service center representing~~)) the same manufacturer under which the current ignition interlock technician certification was issued.

(b) The original letter of certification must be returned to the impaired driving section. If the original certification is not provided with the written notification the impaired driving section will instruct an inspector to obtain the original certification.

(6) **Suspension or revocation of a letter of certification for an ignition interlock technician.**

(a) The chief or designee may suspend or revoke certification of an ignition interlock technician who no longer meets all of the requirements outlined under the Revised Code of Washington or this chapter.

(b) The chief or designee will notify the ignition interlock technician, and manufacturer ((~~and vendor~~)) in writing if a letter of certification has been suspended or revoked. The notice of suspension or revocation will be sent to the certificate holder via certified mail, return receipt requested.

(c) During a period of suspension of a letter of certification for an ignition interlock technician, the suspended ignition interlock technician shall cease any and all activities related to the repair, installation, removal, or service of a certified ignition interlock device in the state of Washington.

(d) If a letter of certification for an ignition interlock technician is suspended or revoked the ignition interlock technician shall, on demand, surrender the certification and return it to the impaired driving section.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

WAC 204-50-050 Modifications to a certified ignition interlock device. (1) A manufacturer((~~, vendor or service center~~)) shall immediately notify the impaired driving section, in writing, of any material modification. A material modification is any ((~~additional~~)) addition or reduction in features, software version changes, configuration profile changes or alteration in the components and/or the design of the certified ignition interlock device. Written notification of a material modification may be submitted to the impaired driving section in an electronic format approved by the impaired driving section.

(2) A manufacturer must resubmit evidence of compliance as required in WAC 204-50-040 to the impaired driving section within thirty days of notifying the impaired driving section of a material modification.

(3) The impaired driving section will determine if the device must be submitted for recertification.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

WAC 204-50-070 Variable calibration of an ignition interlock device. To be certified, an ignition interlock device must be capable of being preset, by only the manufacturer((~~, vendor, service center or by an ignition interlock technician~~)), at any fail level from .02 through .09 g/210L BrAC (plus or minus .005 g/210L BrAC). The actual setting of each ignition interlock device, unless otherwise mandated by the originating court, must be .025 g/210L BrAC. The capability to change this setting must be made secure, by the manufacturer((~~, vendor, service center or by an ignition interlock technician~~)).

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

WAC 204-50-080 Certified ignition interlock device maintenance, calibration and reports. (1) Each restricted operator shall have the ignition interlock device installed in the restricted operator's vehicle(s) examined by the manufacturer, vendor, service center or ignition interlock technician for correct calibration and evidence of tampering at intervals not to exceed sixty-five days, or more often as may be ordered by the originating court.

(2) The restricted driver must pay a calibration fee at least once every sixty days.

(3) An ignition interlock device must be calibrated for accuracy by using a wet bath simulator or dry gas alcohol standard with an alcohol reference value between .030 and .050 g/210L.

(a) The calibration process will consist of the following procedures:

(i) Prior to introducing a reference sample into a device, a three second purge must be expelled from the wet bath simulator or dry gas standard.

(ii) An "as found" check to introduce the sample into the device without adjustment for accuracy. The test must be conducted prior to any adjustment for accuracy and the results must be recorded on the data logger.

(iii) The ((~~result must be~~)) accuracy check will consist of two consecutive reference checks with the result of each individual check being within plus or minus ten percent of the reference value introduced into the ignition interlock device. (((~~a~~))) The time period from the first accuracy check to the second consecutive accuracy check must not exceed five minutes.

(iv) Any ignition interlock device not passing calibration must be removed from service and the serial number of the device kept on record for three years. An ignition interlock device removed from service for not passing calibration may be placed back in service only if it is repaired to meet the standards as outlined in this chapter and all repairs are documented and kept in the record for three years.

(b) Wet bath simulators must:

(i) Use a mercury in glass or digital thermometer. These thermometers must read 34 plus or minus .2 degrees Centigrade during analysis and be certified annually using a National Institute of Standards and Technology (NIST) traceable digital reference thermometer.

(ii) Be found on the current National Highway Traffic Safety Administration confirming products list of calibrating units for breath alcohol testers.

(iii) Use alcohol reference solutions prepared and tested in a laboratory such that their reference value is shown to be traceable to the National Institute of Standards and Technology. The 500 ml bottles containing simulator solution must be tamper proof and labeled with the following: Lot or batch number, value of the reference sample in g/210L, and date of preparation and/or the expiration which must not be longer than one year from the date of preparation.

(((~~b~~))) (c) Dry gas alcohol standards must be certified to a known reference value and traceable to National Institute of Standards and Technology - NIST Traceable Reference Material (NIST-NTRM) ethanol standards. The reference value will be adjusted for pressure changes due to elevation to which the dry gas is being used.

(i) Dry gas alcohol standard tanks must:

(A) Be stored in an environment where the temperature range remains between 50-104 degrees Fahrenheit.

(B) Have a label which will contain the following: Components and concentration of the reference value of the gas, expiration date which must not be longer than three years from the date of preparation, and the lot or batch number.

(ii) Each service center using a dry gas alcohol standard will have:

(A) An elevation chart which will be used to determine the proper reference value for the elevation for which the gas standard is being used.

(B) The certificate of analysis from the dry gas standard manufacturer.

(((~~3~~))) (4) The results of any circumvention or bypass attempt and each calibration including the reference value,

"as found" check, calibration check(s), and any adjustments made for accuracy and/or elevation pressure must be recorded on the ignition interlock device data logger and/or data base.

(((~~(4)~~))) (5) Data contained in an ignition interlock device's memory or data logger must be downloaded and the manufacturer, vendor and/or service center must make an electronic copy of the client data and the results of each examination.

(((~~(5)~~))) (6) Data downloaded by a manufacturer, vendor and/or service center from an ignition interlock device must be:

(a) Reviewed by the manufacturer, vendor, ignition interlock technician, and/or service center. Any evidence of noncompliance, violations, or signs of tampering and/or circumvention must be reported as requested by, and in a format acceptable to the originating court, impaired driving section and/or DOL.

(b) All information obtained as a result of each calibration or inspection must be retained by the manufacturer, vendor or service center for three years from the date the ignition interlock device is removed from the vehicle.

(((~~(6) The mail-in calibration and examination program will cease on January 1, 2012. Any service center proposing to offer a mail-in calibration and examination program to their lessees must obtain written approval from the impaired driving section prior to implementing the mail-in program.~~

~~(a) To obtain approval for a mail-in calibration and examination program, a service center must submit a copy of written procedures outlining how the mail-in program will comply with the requirements of this chapter.~~

~~(b) Written procedures for a mail-in calibration and examination program must include:~~

~~(i) A requirement that all restricted operators enrolled in the mail in program have the ignition interlock device calibrated, downloaded, the ignition interlock device's wiring harness physically inspected in the vehicle in which it was installed at a fixed site or mobile service center of the manufacturer every one hundred thirty days for the period of installation.~~

~~(ii) A restriction prohibiting restricted operators from using the program during the last four months of a restricted operator's DOL or court mandated ignition interlock device period.~~

~~(iii) A disqualification for a restricted operator from the mail-in program if their data reader or data base shows a breath alcohol sample equal to or greater than .040 g/210L, or if a restricted operator and/or lessee has a violation reset condition.~~

~~(c) The manufacturer, vendor, ignition interlock technician or service center must provide a restricted operator with written instructions on how to utilize the mail-in program.~~

~~(d) A mail-in program does not eliminate or take the place of any requirements outlined in WAC 204-50-120.~~))

(7) The manufacturer, vendor and/or service center must provide, upon request, additional reports in a format acceptable to and at no cost to DOL, impaired driving section and/or the originating court.

(8) A service center must maintain records documenting all calibrations, downloads and any other services performed on an ignition interlock device, including service of a violation reset. Charges for installations, calibrations, downloads and service must be made using a numbered billing invoice. The billing invoice must contain the date of service and all fees for service must be itemized.

(9) Retention of the record of installation, calibrations, downloads, service and associated invoices must be maintained on site for a minimum of three years.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

WAC 204-50-090 Ignition interlock device security. (1) A manufacturer and its vendors, service center(s), and ignition interlock technicians must take all ((~~reasonable~~)) steps necessary to prevent tampering or physical circumvention of an ignition interlock device. These steps must include:

(a) Special locks, seals, and installation procedures that prevent or record evidence of tampering and/or circumvention attempts;

(b) Installation and/or use of all anticircumvention features required under this chapter;

(c) Breath anticircumvention features such as alternating breath flow, hum tone, breath temperature and any other impaired driving section approved anticircumvention features must be activated during all start up and random breath tests;

(d) Changes in software and ignition interlock device configuration, including anticircumvention features and the Washington state configuration profile will only be administered by the manufacturer((~~, and/or vendor~~)).

(2) In addition, a service center or ignition interlock technician will affix to the ignition interlock device a label containing the following notation: "Warning - This ignition interlock device has been installed under the laws of the state of Washington. Attempts to disconnect, tamper with, or circumvent this ignition interlock device may subject you to criminal prosecution. For more information, call (insert manufacturer, vendor or service center's toll free number)."

(3) No owner or employee of a manufacturer, vendor or service center may authorize or assist with the disconnection of an ignition interlock device, or enable the use of any "emergency bypass" mechanism or any other "bypass" procedure that allows a person restricted to use the vehicle equipped with a functioning ignition interlock device, to start or operate a vehicle without providing all required breath samples. Doing so may subject the person to criminal prosecution under RCW 46.20.750 and may cause the revocation of a manufacturer's, vendor's, service center, and/or ignition interlock technician's certification under chapter 204-50 WAC.

(4) The sale or use of any type of remote code allowing a restricted driver to bypass a lockout condition or any user to not provide a breath sample on vehicle start up is prohibited.

(5) All known ignition interlock device circumventions or tampering must be reported to the impaired driving section in an impaired driving section approved electronic format within seven days of determining that an ignition interlock device was circumvented or tampered with.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

WAC 204-50-100 Installation of ignition interlock devices. (1) An ignition interlock device can only be installed by a certified ignition interlock technician.

(2) The installation verification fee will be collected from the lessee by the service center or ignition interlock technician at the time of installation and recorded in a log.

(3) An ignition interlock technician shall not install an ignition interlock device on a vehicle unless the restricted operator is:

(a) Successful in completing all training provided by the impaired driving section and/or manufacturer prior to initially using the ignition interlock device;

(b) The registered owner of the vehicle or has a signed ((~~letter of authorization from the registered owner~~)) "Non-owned Installation Approval Form" approving the ignition interlock device installation; and

(c) Provided ignition interlock device training by the manufacturer, vendor, service center, and/or certified technician. If the impaired driving section and/or DOL provides educational materials to the manufacturer, vendor, service center and/or technician, those training materials will be provided to and completed by the restricted operator and/or lessee in addition to the training required under this section.

((~~(3)~~)) (4) An ignition interlock technician shall:

(a) Record the following information before installing an ignition interlock device:

(i) The full name, current address, phone number, driver's license number of the lessee and/or restricted operator.

(ii) The vehicle license registration number for the vehicle in which the ignition interlock device is to be installed.

(iii) The unique serial number of the ignition interlock device installed and corresponding vehicle license registration number of the single vehicle in which it was installed.

(b) Ensure that no restricted operator, lessee or other unauthorized person witnesses the installation, service or removal of an ignition interlock device.

(c) Inspect all vehicles prior to installation of an ignition interlock device to determine if parts of a vehicle affected by an ignition interlock device are in acceptable condition and an ignition interlock device shall not be installed until the vehicle is in acceptable condition.

(d) Follow the manufacturer's instructions and regulations outlined in this chapter for the installation, servicing and removal of ignition interlock devices.

(e) Install the following physical anti-tampering measures:

(i) Place all connections and associated wiring between an ignition interlock device and a vehicle in an area of the vehicle not immediately accessible or visible to the lessee or restricted operator.

(ii) Cover with a unique and easily identifiable seal, epoxy, resin, shrink wrap, sheathing, or tamper proof tape:

(A) Any portion of an ignition interlock device that can be disconnected;

(B) Any wires used to install the ignition interlock device that are not inside a secured enclosure; and

(C) Mark points likely to be accessed when attempting to tamper with the ignition interlock device with other material unless the ignition interlock device is capable of recording such attempts to tamper with it.

((~~(4)~~)) (5) A service center or ignition interlock technician will:

(a) Thoroughly train a restricted operator on the proper use and functionality of an ignition interlock device; ((~~and~~))

(b) Provide a user reference, operation, and problem-solving guide in English or Spanish to the restricted operator when an ignition interlock device is installed; and

(c) Upon installation of the ignition interlock device, take a digital reference image or photograph of the restricted driver which must be stored at the service center for the duration of the installation.

((~~(5)~~)) (6) A service center or ignition interlock technician will be available during all posted hours of operation to answer all questions and handle any problems related to a restricted operator's ignition interlock device, including repair or replacement of an inoperable or malfunctioning ignition interlock device.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

WAC 204-50-110 Mandatory requirements for an ignition interlock device. (1) Notwithstanding other provisions of this chapter, a certified ignition interlock device must:

(a) Be designed to permit a "restart" within two minutes of a stall or when the ignition has been turned off, except a "restart" will not be permitted during a violation reset condition.

(b) Automatically and completely purge residual alcohol before allowing subsequent tests.

(c) Allow a minimum of 1500 ml or 1.5 L of breath for an acceptable breath sample.

(d) Allow a minimum of four minutes and a maximum of six minutes for random breath tests to be initiated prior to an indication of a missed test and a violation reset. The device must be capable of notifying the restricted driver of this time period. Acceptable forms of notification are use of an indicator light, audible tone, voice modulation and/or countdown timer.

(e) Be installed in such a manner that it will not interfere with the normal operation of the vehicle after it has been started.

((~~(e)~~)) (f) Include a supply of two disposable mouth pieces upon installation, designed to minimize the introduction of saliva into an ignition interlock device, and an additional mouth piece with every sixty to sixty-five day calibration period.

((~~(f) Be~~)) (g) Have all components uniquely serial numbered.

((~~(g)~~)) (h) Uniquely identify and record each time the vehicle is attempted to be started and/or started, the results of all tests, retests or failures as being a malfunction of the device or from the operator not meeting the requirements, how long the vehicle was operated, and any indication of

bypassing or tampering with the ignition interlock device, or tests.

((~~(h) On or before June 10, 2015,~~)) (i) Require a restricted operator to wait five minutes before attempting to start the vehicle a second or third time and thirty minutes prior to the fourth or subsequent attempts to initially start the vehicle when the initial start failure occurs.

((~~(i)~~)) (j) Require the operator of the vehicle to submit to a random retest within ten minutes of starting the vehicle. A ((~~rolling~~)) random retest must continue at ((~~randomly~~)) variable intervals ranging from ten to forty-five minutes after the previous retest for the duration of the travel. If a bypass is recorded at start up, the random breath testing procedure will continue for the duration of travel.

((~~(j)~~)) (k) Be equipped with a method of immediately notifying law enforcement officers if a violation reset occurs from a ((~~rolling~~)) random retest or the result of the retest exceeds the lower of .025 g/210L BrAC or the alcohol concentration as prescribed by the originating court or any disconnection of the ignition interlock device control head for longer than one minute after vehicle start up. Acceptable forms of notification are repeated honking of the vehicle's horn((~~, repeated flashing of the vehicle's headlamps,~~)) or the use of an audible signaling device. Such notification may be disabled only by switching the engine off, or by the achievement of a retest at a level the lower of .025 g/210L BrAC or the maximum allowable alcohol concentration as set by the originating court.

((~~(k)~~)) (l) Enter into violation reset when the restricted operator has:

(i) Recorded a random test failure;

(ii) Disconnected the control head after start up;

(iii) Failed to submit to a random retest;

(iv) Failed to have the ignition interlock device serviced within the time period described in this chapter.

(m) Enter into a lockout if a violation reset occurs unless the vehicle is serviced at a mobile or fixed site service center by a certified technician where it will be calibrated, downloaded and the wiring harness physically inspected within five days of when the violation reset occurred.

(n) Contain a digital image identification device as prescribed in RCW 43.43.395. The digital image device will not distract or impede the driver in any manner from safe and legal operation of the vehicle and will:

(i) Encode a digital or photographic image of the vehicle driver including the time, date and BrAC level of all breath attempts. All images and data for a sixty-five day use period must be stored in the device's memory to be downloaded and stored by the manufacturer for three years.

(ii) Capture a digital image or photograph of the driver:

(A) Within five seconds after starting the vehicle.

(B) Upon initial notification that a random retest is required.

(C) When a violation reset condition is initiated.

(D) Randomly at the discretion of the manufacturer.

(iii) Produce a digital image, identifiable verification or a photograph of the restricted driver in all lighting conditions; extreme brightness, darkness and low light conditions.

(2) The manufacturer, vendor, ignition interlock technician or service center shall notify the originating court (if any) of such violation reset conditions within five days of servicing the ignition interlock device in a format acceptable to the originating court. The manufacturer, vendor or service center must provide notification to DOL and impaired driving section in an acceptable electronic format should DOL or impaired driving section promulgate rules requiring such notification of a violation reset condition.

(3) In addition to any other information required by DOL, the impaired driving section, or by an originating court, all reports to DOL, the impaired driving section or to an originating court concerning a particular ignition interlock device must include:

(a) The full name, address, and driver's license number of the restricted operator, lessee, and registered owner;

(b) The vehicle license registration number of the single vehicle in which the ignition interlock device was installed;

(c) The unique serial number of the ignition interlock device; and

(d) The toll free telephone number, and certification number of the installing service center and ignition interlock technician who installed and prepared the report for the ignition interlock device.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

WAC 204-50-120 Additional requirements. (1) Notwithstanding other provisions of this chapter, each manufacturer of a certified ignition interlock device((~~, either on its own or through a vendor or service center~~)) shall:

(a) Guarantee repair or replacement of a defective ignition interlock device within the state of Washington within a maximum of forty-eight hours of receipt of a complaint or known failure of an ignition interlock device.

(b) Demonstrate to the satisfaction of impaired driving section, a service delivery plan under which any restricted operator may obtain installation and routine service of that manufacturer's ignition interlock device within a seventy-five mile radius of his or her place of residence.

(c) Receive written approval from impaired driving section and require mobile service ignition interlock technicians to sign an agreement to abide by all aspects of WAC 204-50-080 before mobile service centers may work outside of the umbrella of their overseeing fixed site service center(s) to provide service in rural counties of the state. Qualifying rural counties under the Washington state department of health guidelines include: Jefferson, Pacific, Wahkiakum, Klickitat, San Juan, Columbia, Garfield, Adams, Lincoln, Pend Oreille, Stevens, Ferry, and Okanogan counties.

(d) Provide written notification of any changes to a manufacturer's service center network to the impaired driving section within seven days of such change.

(e) Maintain a twenty-four hour, three hundred sixty-five days a year toll-free telephone number for lessees and/or restricted operators to call if they have problems with the ignition interlock device they have leased from the manufacturer, vendor or service center. Calls must either be answered by an ignition interlock technician qualified to service the manufacturer's ignition interlock devices, or the call must be

returned by a qualified technician within thirty minutes of the original call.

(2) The manufacturer shall provide to the impaired driving section proof on or before the expiration date listed on the current valid insurance on file with the impaired driving section that the manufacturer has products liability insurance coverage with minimum liability limits of one million dollars per occurrence, and three million dollar aggregate. Liability covered must include, but not limited to: Defects in product design, materials, and workmanship during manufacture, calibration, installation, removal, and all completed operations. Such insurance must be provided by a company authorized to offer such coverage in the state, and such company must include the state of Washington as an additional insured, and must agree to notify the impaired driving section not less than thirty days before the expiration or termination of such coverage. Insurance coverage required in this subsection must be in addition to, and not considered a replacement for coverage required in subsection (3) of this section.

(3) A ((~~vendor or service center~~)) manufacturer shall provide the impaired driving section proof on or before the expiration date listed on the current valid insurance on file with the impaired driving section that each and every service center has:

(a) Garage keepers liability insurance coverage with minimum liability limits of fifty thousand dollars. Liability covered must include, but not be limited to, damage to lessee's vehicle and personal property while in the care and/or custody of the service center.

(b) Operations insurance coverage with minimum liability limits of one million dollars per occurrence, and two million dollars aggregate. Liability covered must include, but not be limited to, defects in materials and workmanship during installation, removal, service, calibration, and monitoring.

(c) Insurance provided by a company authorized to offer such coverage in the state, and such company must include the state of Washington as an additional insured, and must agree to notify the impaired driving section not less than thirty days before expiration or termination of such coverage.

(d) Insurance coverage required in this subsection must be in addition to and not considered a replacement for other coverage required in this section.

(4) A vendor or service center shall notify the DOL in an acceptable format and if so requested by the originating court, notify the originating court, if any, of the removal of an ignition interlock device under any circumstances other than:

(a) Immediate ignition interlock device repair needs.

(b) Removal of the ignition interlock device in order to switch it to a replacement vehicle to be operated by the restricted operator. Report of such a vehicle switch including the license of the vehicle must be transmitted to the DOL, and the originating court within two business days of such a switch, if so requested by the originating court at the time of initial installation of the ignition interlock device. Report of such a vehicle switch must be transmitted to the DOL within two business days of such a switch, if so requested by the DOL. **NOTE:** Whenever an ignition interlock device is removed for repair, and cannot be immediately reinstalled, a substitute ignition interlock device must be utilized. Under no circumstances will a manufacturer, service center or ignition interlock technician knowingly permit a restricted operator to drive a vehicle not equipped with a functioning ignition interlock device.

AMENDATORY SECTION (Amending WSR 10-24-074, filed 11/30/10, effective 1/1/11)

WAC 204-50-130 Requirements for removing an ignition interlock device. (1) A ((~~vendor~~)) manufacturer will determine a restricted operator's compliance of this section in accordance with RCW 46.20.720.

(2) The manufacturer or its service center must return the vehicle in normal operating condition after it removes an ignition interlock device.

(3) An ignition interlock technician or service center can only remove an ignition interlock device for which they have been certified to service, unless an ignition interlock technician or service center has received approval from the impaired driving section allowing it to remove an ignition interlock device that it has not been certified to service.

(4) An ignition interlock device will be removed from the vehicle in which it is installed when a restricted driver or lessee becomes sixty days past due on their account. If the restricted driver does not appear for a removal appointment and makes no attempt to contact the manufacturer, the replacement cost of the ignition interlock device may be added to the lessee's account.

(5) A manufacturer or its service center shall provide any final report requested by the originating court, impaired driving section and/or requested by DOL to the requestor once the ignition interlock device has been removed from a restricted operator's vehicle(s).

NEW SECTION

WAC 204-50-135 Fees. (1) The impaired driving section will maintain a fee schedule in accordance with section 15, chapter 183, Laws of 2012. Fees outlined in this fee schedule will be:

(a) Collected and recorded by vendors, service centers, ignition interlock technicians and manufacturers.

(b) Submitted to the manufacturer within fifteen days of the end of the calendar month in which they were collected along with the record on a form provided by the patrol, if they are collected by vendors, service centers or ignition interlock technicians.

(c) Submitted electronically by the manufacturer to the patrol within thirty days of the end of the calendar month in which they were collected along with the record on a form provided by the patrol.

(2) Annual fees will be added to the record for the month in which the certification or renewal is due and paid to the patrol as outlined in subsection (1) of this section.

(3) The record provided to the manufacturer will include the type of fee collected, name or driver's license number of customer (if applicable), total amount paid, name and certification number of vendor, service center or ignition interlock technician who collected payment.

(4) The patrol may review financial records to ensure compliance with this chapter and may revoke or suspend a

certification for nonpayment of fees and/or any financial discrepancies found.

WSR 12-13-085
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(By the Code Reviser's Office)
[Filed June 19, 2012, 12:18 p.m.]

WAC 388-845-0030, 388-845-0060, 388-845-0105, 388-845-0110, 388-845-0205, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0750, 388-845-0820, 388-845-0900, 388-845-1310, 388-845-1600, 388-845-1605, 388-845-1607, 388-845-1615, 388-845-1620, 388-845-1710, 388-845-2000, 388-845-2200, 388-845-3000, 388-845-3055, 388-845-3056, 388-845-3060, 388-845-3061, 388-845-3062, 388-845-3063, 388-845-3065, 388-845-3070 and 388-845-3075, proposed by the department of social and health services in WSR 11-23-155 appearing in issue 11-24 of the State Register, which was distributed on December 21, 2011, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 12-13-086
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LICENSING
(By the Code Reviser's Office)
[Filed June 19, 2012, 12:20 p.m.]

WAC 308-104-075, proposed by the department of licensing in WSR 11-24-106 appearing in issue 11-24 of the State Register, which was distributed on December 21, 2011, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 12-13-087
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)
[Filed June 19, 2012, 1:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-23-017.

Title of Rule and Other Identifying Information: WAC 182-548-1400 Federally qualified health centers (FQHC)—Reimbursement and limitations and 182-549-1400 Rural health clinics (RHC)—Reimbursement and limitations.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreet DirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on July 25, 2012, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 26, 2012.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by July 25, 2012.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 17, 2012, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules implement revised alternative payment methodology (APM) for FQHCs and RHCs. The revisions comply with the level of appropriations made by the legislature for services provided by FQHCs and RHCs for the fiscal biennium that began July 1, 2011. Emergency rules are currently in place while the agency's permanent rule-making process is completed. See http://www.hca.wa.gov/medicaid_laws_rules.html. Center for Medicare and Medicaid Services approved the agency's state plan amendments on January 11, 2012.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, medicaid, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, HCA, P.O. Box 45504, Olympia, WA 98504, (360) 725-1306; Implementation and Enforcement: Jean Bui, HCA, P.O. Box 45510, Olympia, WA 98504, (360) 725-1973.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes that they do not impose more than minor costs for affected small businesses.

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

June 19, 2012
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-548-1400 Federally qualified health centers—Reimbursement and limitations. (1) ((~~Effective~~)) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the agency's payment methodology for federally qualified health centers (FQHC) ((~~conforms to 42 U.S.C. 1396a(bb). As set forth in 42 U.S.C. 1396a (bb)(2) and (3), all FQHCs that provide services on January 1, 2001, and through December 31, 2008, are reim-~~

~~bursed on~~)) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) ((~~Effective~~)) For services provided beginning January 1, 2009, FQHCs have the choice to ((~~continue being~~)) be reimbursed under the PPS or to be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM ((~~must~~)) will be at least as much as payments that would have been made under the PPS.

(3) The ((~~department~~)) agency calculates ((~~the FQHC's~~)) FQHC PPS encounter rates as follows:

(a) Until ((~~the~~)) an FQHC's first audited medicaid cost report is available, the ((~~department~~)) agency pays an average encounter rate of other similar FQHCs within the state, otherwise known as an interim rate;

(b) Upon availability of the FQHC's first audited medicaid cost report, the ((~~department~~)) agency sets ((~~the clinic's~~)) FQHC encounter rates at one hundred percent of its total reasonable costs as defined in the cost report. ((~~The~~)) FQHCs receive((~~s~~)) this rate for the remainder of the calendar year during which the audited cost report became available. ((~~Thereafter,~~)) The encounter rate is then ((~~inflated~~)) increased each January 1st by the percent change in the medicare economic index (MEI) ((~~for primary care services~~)).

(4) For FQHCs in existence during calendar years 1999 and 2000, the ((~~department~~)) agency sets ((~~the payment~~)) encounter rates prospectively using a weighted average of one hundred percent of the ((~~center's~~)) FQHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The ((~~department~~)) agency adjusts ((~~a~~)) PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC ((~~388-548-1500~~)) 182-548-1500.

(b) ((~~The~~)) PPS base encounter rates are determined using audited cost reports, and each year's rate is weighted by the total reported encounters. The ((~~department~~)) agency does not apply a capped amount to these base encounter rates. The formula used to calculate ((~~the~~)) base encounter rates is as follows:

$$\text{Specific FQHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each FQHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, ((~~the~~)) encounter rates ((~~is~~)) are increased by the MEI for primary care services, and adjusted for any increase or decrease ((~~within~~)) in the ((~~center's~~)) FQHC's scope of services.

(5) The ((~~department~~)) agency calculates the FQHC's APM encounter rate for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) ((~~Beginning January 1, 2009,~~)) The APM utilizes the FQHC base encounter rates, as described in ((~~WAC 388-548-1400~~)) subsection (4)(b) of this section.

((~~(i) The~~)) (b) Base rates are adjusted to reflect any ((~~valid~~)) approved changes in scope of service ((~~between~~)) in calendar years 2002 ((~~and~~)) through 2009.

((~~(ii)~~)) (c) The adjusted base rates are then ((~~inflated~~)) increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index. The result is the year 2009 APM rate for each FQHC that chooses to be reimbursed under the APM.

~~((b) The department will ensure that the APM pays an amount that is at least equal to the PPS, the annual inflator used to increase the APM rates is the greater of the APM index or the MEI.~~

~~(c) The department will periodically rebase the APM rates. The department will not rebase rates determined under the PPS.~~))

(6) This subsection describes the encounter rates that the agency pays FQHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay FQHCs at the encounter rates described in subsection (5) of this section.

(b) Each FQHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM uses each FQHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency will recoup from FQHCs any amount in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rates that the agency pays FQHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each FQHC has the choice of receiving either its PPS rate as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For FQHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For FQHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for FQHCs receiving their initial FQHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight

index from the base year through calendar year 2008 and by the cumulative percentage increase in the MEI from calendar years 2009 through 2011. The rates were increased by the MEI effective January 1, 2012, and will be increased by the MEI each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency will recoup from FQHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-022).

(d) For FQHCs that choose to be paid under the revised APM, the agency will periodically rebase the encounter rates using the FQHC cost reports and other relevant data. Rebasing will be done only for FQHCs that are reimbursed under the APM.

(e) The agency will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) The ((department)) agency limits encounters to one per client, per day except in the following circumstances:

(a) The visits occur with different healthcare professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(((7))) (9) FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(((8))) (10) Payments for ((nonFQHC)) non-FQHC services provided in an FQHC are made on a fee-for-service basis using the ((department's)) agency's published fee schedules. ((NonFQHC)) Non-FQHC services are subject to the coverage guidelines and limitations listed in chapters ((388-500 through 557)) 182-500 through 182-557 WAC.

(((9))) (11) For clients enrolled with a managed care organization (MCO), covered FQHC services are paid for by that plan.

~~(((10) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The department does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service regardless of the type of service performed.~~

~~(11)~~)) (12) For clients enrolled with ((a managed care organization (MCO))) an MCO, the ((department)) agency pays each FQHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each FQHC, the ((department)) agency performs an annual reconciliation of the enhancement payments. For each FQHC, the ((department)) agency will compare the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter rate) less ((FFS)) fee-for-service equivalent of MCO services. If the ((center)) FQHC has been overpaid, the ((department)) agency will recoup the appropriate amount. If the ((center)) FQHC has been underpaid, the ((department)) agency will pay the difference.

(13) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service regardless of the type of service performed.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-549-1400 Rural health clinics—Reimbursement and limitations. (1) ((Effective)) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the agency's payment methodology for rural health clinics (RHC) ((conforms to)) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3). ((RHCs that provide services on January 1, 2001 through December 31, 2008 are reimbursed on a prospective payment system (PPS).

Effective)) (2) For services provided beginning January 1, 2009, RHCs have the choice to ((continue being)) be reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42((.)) U.S.C. 1396a (bb)(6), payments made under the APM ((must)) will be at least as much as payments that would have been made under the PPS.

(((2))) (3) The ((department)) agency calculates ((the RHC's)) RHC PPS encounter rates for RHC core services as follows:

(a) Until ((the)) an RHC's first audited medicare cost report is available, the ((department)) agency pays an average encounter rate of other similar RHCs (whether the RHC is classified as hospital-based or free-standing) within the state, otherwise known as an interim rate.

(b) Upon availability of the RHC's first audited medicare cost report, the ((department)) agency sets ((the clinic's)) RHC's encounter rates at one hundred percent of its costs as defined in the cost report divided by the total number of encounters the ((clinic)) RHC has provided during the time period covered in the audited cost report. ((The)) RHCs ((will)) receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then ((inflated)) increased each January 1st by the percent change in the medicare economic index (MEI) ((for primary care services)).

(((3))) (4) For RHCs in existence during calendar years 1999 and 2000, the ((department)) agency sets the ((payment)) encounter rates prospectively using a weighted average of one hundred percent of the ((clinic's)) RHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The ((department)) agency adjusts ((a)) PPS base encounter rates to account for an increase or decrease in the

scope of services provided during calendar year 2001 in accordance with WAC ((~~388-549-1500~~)) 182-549-1500.

(b) ((~~The~~)) PPS base encounter rates are determined using medicare's audited cost reports, and each year's rate is weighted by the total reported encounters. The ((~~department~~)) agency does not apply a capped amount to these base encounter rates. The formula used to calculate ((~~the~~)) base encounter rates is as follows:

$$\text{Specific RHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, ((~~the~~)) encounter rates ((~~is~~)) are increased by the MEI and adjusted for any increase or decrease in the ((~~clinic's~~)) RHC's scope of services.

(((~~4~~))) (5) The ((~~department~~)) agency calculates ((~~the~~)) RHC's APM encounter rates for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) ((~~Beginning January 1, 2009,~~)) The APM utilizes the RHC base encounter rates as described in ((~~WAC 388-549-1400 (3)(b)~~)) subsection (4)(b) of this section.

((~~The~~)) (b) Base rates are ((~~inflated~~)) increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index.

(c) The result is the year 2009 APM rates for each RHC that chooses to be reimbursed under the APM.

(~~(b) To ensure that the APM pays an amount that is at least equal to the PPS in accordance with 42 USC 1396a (bb)(6), the annual inflator used to increase the APM rates is the greater of the APM index or the MEI.~~

~~(c) The department periodically rebases the APM rates. The department does not rebase rates determined under the PPS.~~

~~(d) When rebasing the APM encounter rates, the department applies a productivity standard to the number of visits performed by each practitioner group (physicians and mid-levels) to determine the number of encounters to be used in each RHC's rate calculation. The productivity standards are determined by reviewing all available RHC cost reports for the rebasing period and setting the standards at the levels necessary to allow ninety-five percent of the RHCs to meet the standards. The encounter rates of the clinics that meet the standards are calculated using each clinic's actual number of encounters. The encounter rates of the other five percent of clinics are calculated using the productivity standards. This process is applied at each rebasing, so the actual productivity standards may change each time encounter rates are rebased.~~

~~(5)~~)) (6) This subsection describes the encounter rates that the agency pays RHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay RHCs at the encounter rate described in subsection (5) of this section.

(b) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM uses each RHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency will recoup from RHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rate that the agency pays RHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For RHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For RHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for RHCs receiving their initial RHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from calendar years 2009 through 2011. The rates will be increased by the MEI effective January 1, 2012, and each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency will recoup from RHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(d) For RHCs that choose to be paid under the revised APM, the agency will periodically rebase the encounter rates using the RHC cost reports and other relevant data. Rebasing will be done only for RHCs that are reimbursed under the APM.

(e) The agency will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) The ((~~department~~)) agency pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different healthcare professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(((~~6~~))) (9) RHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(((~~(7)~~))) (10) Payments for non-RHC services provided in an RHC are made on a fee-for-service basis using the ((~~department's~~)) agency's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters ((~~388-500 through 388-557~~)) 182-500 through 182-557 WAC.

(((~~(8)~~))) (11) For clients enrolled with a managed care organization (MCO), covered RHC services are paid for by that plan.

(((~~(9) The department does not pay the encounter rate or the enhancements for clients in state-only programs. Services provided to clients in state-only programs are considered fee-for-service, regardless of the type of service performed.~~

~~(10)~~))) (12) For clients enrolled with ((~~a managed care organization (MCO)~~))) an MCO, the ((~~department~~)) agency pays each RHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The RHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each RHC, the ((~~department~~)) agency performs an annual reconciliation of the enhancement payments. For each RHC, the ((~~department~~)) agency will compare the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the ((~~clinic~~)) RHC has been overpaid, the ((~~department~~)) agency will recoup the appropriate amount. If the ((~~clinic~~)) RHC has been underpaid, the ((~~department~~)) agency will pay the difference.

(13) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service, regardless of the type of service performed.

WSR 12-13-088
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed June 19, 2012, 1:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-10-015.

Title of Rule and Other Identifying Information: WAC 182-543-9100 Reimbursement method—Other DME, 182-543-9200 Reimbursement method—Wheelchairs, 182-543-9300 Reimbursement method—Prosthetics and orthotics, 182-543-9400 Reimbursement method—Medical supplies and related services, and 182-553-500 Home infusion therapy/parenteral nutrition program—Coverage, services, limitations, prior authorization, and reimbursement.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreet DirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on July 25, 2012, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 26, 2012.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by July 25, 2012.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 17, 2012, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To achieve targeted durable medical equipment (DME) savings directed by the legislature in the budget for 2011-2013, the agency is reducing rates for medical equipment and supplies for DME-medical supplies and equipment, DME - Other DME, DME - Wheelchairs and accessories, enteral nutrition, home infusion therapy/parenteral nutrition, respiratory care (oxygen), and prosthetics and orthotics. The agency is opening the necessary sections in order for the permanent changes to be made to the reimbursement methodologies.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Ming Wu, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1763.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes that they do not impose more than minor costs for affected small businesses.

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

June 19, 2012
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-07-022, filed 3/12/12, effective 4/12/12)

WAC 182-543-9100 Reimbursement method—Other DME. (1) The agency sets, evaluates and updates the maximum allowable fees for purchased other durable medical equipment (DME) at least once yearly using one or more of the following:

(a) The current medicare rate, as established by the federal centers for medicare and medicaid services (CMS), for a new purchase if a medicare rate is available;

(b) A pricing cluster; or

(c) On a by report basis.

(2) Establishing reimbursement rates for purchased other DME based on pricing clusters.

(a) A pricing cluster is based on a specific healthcare common procedure coding system (HCPCS) code.

(b) The agency's pricing cluster is made up of all the brands/models for which the agency obtains pricing information. However, the agency may limit the number of brands/models included in the pricing cluster. The agency considers all of the following when establishing the pricing cluster:

(i) A client's medical needs;

(ii) Product quality;

(iii) Introduction, substitution or discontinuation of certain brands/models; and/or

(iv) Cost.

(c) When establishing the fee for other DME items in a pricing cluster, the maximum allowable fee is the median amount of available manufacturers' list prices for all brands/models as noted in subsection (2)(b) of this section.

(3) The agency evaluates a by report (BR) item, procedure, or service for medical necessity, appropriateness and reimbursement value on a case-by-case basis. The agency calculates the reimbursement rate for these items at ((~~eighty-five~~)) eighty percent of the manufacturer's list or manufacturer's suggested retail price (MSRP) as of July 31st of the base year or one hundred twenty-five percent of the wholesale acquisition cost from the manufacturer's invoice.

(4) Monthly rental reimbursement rates for other DME. The agency's maximum allowable fee for monthly rental is established using one of the following:

(a) For items with a monthly rental rate on the current medicare fee schedule as established by the federal Centers for Medicare and Medicaid Services (CMS), the agency equates its maximum allowable fee for monthly rental to the current medicare monthly rental rate;

(b) For items that have a new purchase rate but no monthly rental rate on the current medicare fee schedule as established by the federal Centers for Medicare and Medicaid Services (CMS), the agency sets the maximum allowable fee for monthly rental at one-tenth of the new purchase price of the current medicare rate;

(c) For items not included in the current medicare fee schedule as established by the federal Centers for Medicare and Medicaid Services (CMS), the agency considers the maximum allowable monthly reimbursement rate as by report. The agency calculates the monthly reimbursement rate for these items at one-tenth of ((~~eighty-five~~)) eighty percent of the manufacturer's list or manufacturer's suggested retail price (MSRP).

(5) Daily rental reimbursement rates for other DME. The agency's maximum allowable fee for daily rental is established using one of the following:

(a) For items with a daily rental rate on the current medicare fee schedule as established by the Centers for Medicare and Medicaid Services (CMS), the agency equates its maximum allowable fee for daily rental to the current medicare daily rental rate;

(b) For items that have a new purchase rate but no daily rental rate on the current medicare fee schedule as established by CMS, the agency sets the maximum allowable fee for daily rental at one-three-hundredth of the new purchase price of the current medicare rate;

(c) For items not included in the current medicare fee schedule as established by CMS, the agency considers the maximum allowable daily reimbursement rate as by report. The agency calculates the daily reimbursement rate at one-three-hundredth of ((~~eighty-five~~)) eighty percent of the manufacturer's list or manufacturer's suggested retail price (MSRP) as of July 31st of the base year or one hundred twenty-five percent of the wholesale acquisition cost from the manufacturer's invoice.

(6) The agency does not reimburse for DME and related supplies, prosthetics, orthotics, medical supplies, related services, and related repairs and labor charges under fee-for-service (FFS) when the client is any of the following:

(a) An inpatient hospital client;

(b) Eligible for both medicare and medicaid, and is staying in a skilled nursing facility in lieu of hospitalization;

(c) Terminally ill and receiving hospice care; or

(d) Enrolled in a risk-based managed care plan that includes coverage for such items and/or services.

(7) The agency rescinds any purchase order for a prescribed item if the equipment was not delivered to the client before the client:

(a) Dies;

(b) Loses medical eligibility;

(c) Becomes covered by a hospice agency; or

(d) Becomes covered by a managed care organization.

(8) A provider may incur extra costs for customized equipment that may not be easily resold. In these cases, for purchase orders rescinded in subsection (7) of this section, the agency may pay the provider an amount it considers appropriate to help defray these extra costs. The agency requires the provider to submit justification sufficient to support such a claim.

(9) The agency may adopt policies, procedure codes, and/or rates that are inconsistent with those set by medicare if the agency determines that such actions are necessary.

AMENDATORY SECTION (Amending WSR 12-07-022, filed 3/12/12, effective 4/12/12)

WAC 182-543-9200 Reimbursement method—Wheelchairs. (1) The agency reimburses a DME provider for purchased wheelchairs based on the specific brand and model of wheelchair dispensed. The agency decides which brands and/or models of wheelchairs are eligible for reimbursement based on all of the following:

(a) A client's medical needs;

(b) Product quality;

(c) Cost; and

(d) Available alternatives.

(2) The agency sets, evaluates and updates the maximum allowable fees at least once yearly for wheelchair purchases, wheelchair rentals, and wheelchair accessories (e.g., cushions and backs) using the lesser of the following:

(a) The current medicare fees;

(b) The actual invoice for the specific item; or

(c) A percentage of the manufacturer's list or manufacturer's suggested retail price (MSRP) as of January 31st of the base year, or a percentage of the wholesale acquisition cost (AC). The agency uses the following percentages:

(i) For basic standard wheelchairs, sixty-five percent of MSRP or one hundred forty percent of AC;

(ii) For add-on accessories and parts, eighty-four percent of MSRP or one hundred forty percent of AC;

(iii) For up-charge modifications and cushions, eighty percent of MSRP or one hundred forty percent of AC;

(iv) For all other manual wheelchairs, eighty percent of MSRP or one hundred forty percent of AC; and

(v) For all other power-drive wheelchairs, eighty-five percent of MSRP or one hundred forty percent of AC.

(3) The agency may adopt policies, procedure codes, and/or rates that are inconsistent with those set by medicare if the agency determines that such actions are necessary.

AMENDATORY SECTION (Amending WSR 12-07-022, filed 3/12/12, effective 4/12/12)

WAC 182-543-9300 Reimbursement method—Prosthetics and orthotics. (1) The agency sets, evaluates and updates the maximum allowable fees for prosthetics and orthotics at least once yearly as follows:

(a) For items with a rate on the current medicare fee schedule, as established by the federal Centers for Medicare and Medicaid Services (CMS), the agency equates its maximum allowable fee to the current medicare rate; and

(b) For those items not included in the medicare fee schedule, as established by CMS, the rate is considered by report. The agency evaluates a by report item, procedure, or service based upon medical necessity criteria, appropriateness, and reimbursement value on a case-by-case basis. The agency calculates the reimbursement for these items at eighty-five percent of the manufacturer's list or manufacturer's suggested retail price (MSRP) as of July 31st of the base year or one hundred twenty-five percent of the wholesale acquisition cost from the manufacturer's invoice.

(2) The agency follows healthcare common procedure coding system (HCPCS) guidelines for product classification and code assignation.

(3) The agency's reimbursement for a prosthetic or orthotic includes the cost of any necessary molds, fitting, shipping, handling or any other administrative expenses related to provision of the prosthetic or orthotic to the client.

(4) The agency's hospital reimbursement rate includes any prosthetics and/or orthotics required for surgery and/or placed during the hospital stay.

(5) The agency may adopt policies, procedure codes, and/or rates that are inconsistent with those set by medicare if the agency determines that such actions are necessary.

AMENDATORY SECTION (Amending WSR 12-07-022, filed 3/12/12, effective 4/12/12)

WAC 182-543-9400 Reimbursement method—Medical supplies and related services. (1) The agency sets, evaluates and updates the maximum allowable fees for medical supplies and nondurable medical equipment (DME) items at least once yearly using one or more of the following:

(a) The current medicare rate, as established by the federal Centers for Medicare and Medicaid Services (CMS), if a medicare rate is available;

(b) A pricing cluster;

(c) Based on input from stakeholders or other relevant sources that the agency determines to be reliable and appropriate; or

(d) On a by report basis.

(2) Establishing reimbursement rates for medical supplies and non-DME items based on pricing clusters.

(a) A pricing cluster is based on a specific healthcare common procedure coding system (HCPCS) code.

(b) The agency's pricing cluster is made up of all the brands for which the agency obtains pricing information. However, the agency may limit the number of brands included in the pricing cluster if doing so is in the best interests of its clients as determined by the agency. The agency considers all of the following when establishing the pricing cluster:

(i) A client's medical needs;

(ii) Product quality;

(iii) Cost; and

(iv) Available alternatives.

(c) When establishing the fee for medical supplies or other ((~~nonDME~~)) non-DME items in a pricing cluster, the maximum allowable fee is the median amount of available manufacturers' list or manufacturers' suggested retail prices (MSRP).

(3) The agency evaluates a by-report (BR) item, procedure, or service for its medical necessity, appropriateness and reimbursement value on a case-by-case basis. The agency calculates the reimbursement rate at eighty-five percent of the manufacturer's list or manufacturer's suggested retail price (MSRP) as of July 31st of the base year or one hundred twenty-five percent of the wholesale acquisition cost from the manufacturer's invoice.

(4) The agency may adopt policies, procedure codes, and/or rates that are inconsistent with those set by medicare if the agency determines that such actions are necessary.

(5) For clients residing in skilled nursing facilities, see WAC 182-543-5700.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-553-500 Home infusion therapy/parenteral nutrition program—Coverage, services, limitations, prior authorization, and reimbursement. (1) The home infusion therapy/parenteral nutrition program covers the following for eligible clients, subject to the limitations and restrictions listed:

(a) Home infusion supplies, limited to one month's supply per client, per calendar month.

(b) Parenteral nutrition solutions, limited to one month's supply per client, per calendar month.

(c) One type of infusion pump, one type of parenteral pump, and/or one type of insulin pump per client, per calendar month and as follows:

(i) All rent-to-purchase infusion, parenteral, and/or insulin pumps must be new equipment at the beginning of the rental period.

(ii) The ((~~department~~)) agency covers the rental payment for each type of infusion, parenteral, or insulin pump for up to twelve months. (The ((~~department~~)) agency considers a pump purchased after twelve months of rental payments.)

(iii) The ((~~department~~)) agency covers only one purchased infusion pump or parenteral pump per client in a five-year period.

(iv) The ((~~department~~)) agency covers only one purchased insulin pump per client in a four-year period.

(2) Covered supplies and equipment that are within the described limitations listed in subsection (1) of this section do not require prior authorization for reimbursement.

(3) Requests for supplies and/or equipment that exceed the limitations or restrictions listed in this section require prior authorization and are evaluated on an individual basis according to the provisions of WAC ((~~388-501-0165~~)) 182-501-0165 and ((~~388-501-0169~~)) 182-501-0169.

(4) ((~~Department~~)) The agency may adopt policies, procedure codes, and/or rates that are inconsistent with those set by medicare if the agency determines that such actions are necessary.

(5) Agency reimbursement for equipment rentals and purchases includes the following:

(a) Instructions to a client or a caregiver, or both, on the safe and proper use of equipment provided;

(b) Full service warranty;

(c) Delivery and pickup; and

(d) Setup, fitting, and adjustments.

(((~~5~~))) (6) Except as provided in subsection (6) of this section, the ((~~department~~)) agency does not pay separately for home infusion supplies and equipment or parenteral nutrition solutions:

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

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

(i) The client has a preexisting diagnosis that requires parenteral support; and

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

(((~~6~~))) (7) The ((~~department~~)) agency pays separately for a client's infusion pump, parenteral nutrition pump, insulin pump, solutions, and/or insulin infusion supplies when the client:

(a) Resides in a nursing facility; and

(b) Meets the criteria in WAC ((~~388-553-300~~)) 182-553-300.

WSR 12-13-100
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed June 20, 2012, 10:26 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Amend Regulation II, Section 2.07 (Gasoline Dispensing Facilities).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on July 26, 2012, at 8:45 a.m.

Date of Intended Adoption: July 26, 2012.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by July 25, 2012.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by July 19, 2012, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Remove language that refers to dispensing gasoline into a motor vehicle fuel tank, and allow testing companies to submit compliance test results no later than five days, rather than two days, after completing tests.

Reasons Supporting Proposal: Reduce potential confusion concerning the applicability of the section.

It is anticipated that allowing additional days to submit compliance test results will reduce noncompliance by allowing for timely test result submittals around weekends and holidays.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Mario Pedroza, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4023; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

June 20, 2012
Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION II, SECTION 2.07 GASOLINE DISPENSING FACILITIES

(a) Applicability

(1) The requirements of Section 2.07 of this regulation apply to any facility that dispenses gasoline ((~~into a motor vehicle fuel tank~~)) from a stationary storage tank with a rated capacity of more than 1,000 gallons. The provisions of this rule do not apply to any Stage 1 or Stage 2 vapor recovery system that is not required by this rule. This rule does not require the installation of any In Station Diagnostics (ISD) system.

(2) This rule shall have an effective date of September 1, 2011.

(b) Definitions

(1) **CARB-CERTIFIED** means a Stage 1 or Stage 2 vapor recovery system, equipment, or any component thereof, for which the California Air Resources Board (CARB) has evaluated its performance and issued an Executive Order. Each equipment component listed on the applicable certified-CARB Executive Order must be installed. Equipment component(s) not listed in a CARB Executive Order may not be installed as replacement for a certified part.

(2) **INSTALL or INSTALLING** means establishing or placing in service CARB-certified Stage 1 or Stage 2 vapor recovery equipment at a facility within the Agency's jurisdiction, and includes repairs completed as part of compliance testing. Equipment repairs performed by an owner or operator to correct defects discovered through self-inspection are not included in this definition.

(3) **ORVR** means the Onboard Refueling Vapor Recovery system contained within a vehicle that captures the gasoline vapors that are displaced when gasoline is dispensed to the vehicle tank.

(4) **OWNER or OPERATOR** means a person who owns, leases, supervises, or operates a facility subject to this regulation.

(5) **STAGE 1 MODIFICATION** means any of the following equipment changes or projects, including but not limited to:

(A) Installation or replacement of a stationary storage tank rated more than 1,000 gallons that stores gasoline;

(B) Replacement of Stage 1 components that are upgrades, including but not limited to replacement of all spill buckets, all drop tubes, or all adaptors.

(6) **STAGE 2 MODIFICATION** means any of the following equipment changes or projects, including but not limited to:

(A) Addition of new fueling position(s);

(B) Replacement of all existing dispensers;

(C) Converting vapor-balance system to vacuum-assist system or converting vacuum-assist system to vapor-balance system;

(D) Replacement of Stage 2 vapor recovery components that are upgrades, including but not limited to dispensing configuration changes to include six-pack to blending dispenser conversions, and replacement of pre-ORVR dispensers to ORVR-compatible or Enhanced Vapor Recovery (EVR) technology.

(7) **SYSTEM** means the complete and integrated components necessary to provide the vapor recovery emission control service for a gasoline dispensing facility required in Section 2.07 of this regulation. A system may be the Stage 1 vapor recovery equipment, the Stage 2 vapor recovery equipment, and/or the combined integration of appropriate Stage 1 and Stage 2 vapor recovery equipment at a gasoline dispensing facility.

(8) **TEST or TESTING** means the performance of a test or method or series of tests or methods to determine the integrity, functionality or effectiveness of CARB-certified Stage 1 or Stage 2 vapor recovery equipment at a facility within the Agency's jurisdiction.

(c) Installation Requirements

(1) Installation Requirements - Stage 1

(A) All gasoline dispensing facilities with a current annual gasoline throughput greater than 200,000 gallons or with a gasoline storage tank installed after January 1, 1979 shall be equipped with a CARB-certified Stage 1 vapor recovery system.

(B) After April 1, 2001, all gasoline dispensing facilities that install or replace a gasoline tank or a Stage 1 vapor recovery system shall be equipped with a CARB-certified EVR system. This requirement includes installations defined as a Stage 1 modification in Section 2.07 of this regulation.

(C) Any person installing a CARB-certified Stage 1 vapor recovery system must install the system in accordance with the applicable CARB Executive Order in effect on the date of installation.

(D) Any person installing CARB-certified Stage 1 vapor recovery equipment shall be certified as required in Section 2.07(f) of this regulation.

(E) All gasoline dispensing facilities with dual-point Stage 1 vapor recovery systems shall be equipped with Stage 1 swivel adapters if the facility is required to be equipped with a Stage 2 vapor recovery system under Section 2.07 (c)(2) of this regulation.

(2) Installation Requirements - Stage 2

(A) All gasoline dispensing facilities with a current annual gasoline throughput greater than 600,000 gallons (or 840,000 gallons for Kitsap County only) shall be equipped with a CARB-certified Stage 2 vapor recovery system.

(B) All gasoline dispensing facilities with both a current annual gasoline throughput greater than 200,000 gallons and a gasoline storage tank installed after August 2, 1991 shall be equipped with a CARB-certified Stage 2 vapor recovery system.

(C) All gasoline dispensing facilities with Stage 2 vapor recovery systems installed after April 1, 2003 shall employ either CARB-certified ORVR-compatible systems or CARB-certified EVR systems. This requirement includes installations defined as a Stage 2 modification.

(D) Any person installing a CARB-certified Stage 2 vapor recovery system must install the system in accordance with the applicable CARB Executive Order in effect on the date of installation.

(E) Any person installing CARB-certified Stage 2 vapor recovery equipment shall be certified as required in Section 2.07(f) of this regulation.

(d) Maintenance Requirements

(1) Maintenance Requirements - All Stage 1 vapor recovery systems shall be operated and maintained in accor-

dance with the applicable CARB Executive Order in effect on the date of installation.

(2) Maintenance Requirements - Stage 2

(A) All Stage 2 vapor recovery systems installed after April 1, 2003 must be ORVR-compatible and must be operated and maintained in accordance with the applicable CARB Executive Order in effect on the date of installation. However, ISD system installation is not required.

(B) All Stage 2 vapor recovery systems installed prior to April 1, 2003 shall be operated and maintained in accordance with the applicable CARB Executive Order in effect as of April 1, 2003, even if CARB later decertifies the system. For Stage 2 vapor recovery systems installed prior to April 1, 2003, the installation of equipment determined by the manufacturer to be interchangeable with the original approved equipment is allowed.

(C) Defects listed in Table 1 are evidence that the installed equipment is not operated or maintained in accordance with Section 2.07 of this regulation. The defects listed in Table 1 shall be included in the operation and maintenance plan required for the facility.

Table 1
Stage 2 Defects

Equipment	Inspection Procedures	Defects
Nozzle	Visually inspect for leaking gasoline.	Visible gasoline leaks.
Hose (from dispenser to nozzle) including whip hose	Visually inspect the hose for leaking gasoline.	Visible gasoline leaks.

(e) Testing requirements

(1) Stage 1 Initial Installation Testing Requirements

(A) Owners or operators must obtain the Stage 1 compliance tests identified in Table 2, and each test must be conducted in accordance with the test procedures identified in Table 2. The compliance tests shall be completed after initial installation of any Stage 1 system and prior to dispensing fuel commercially.

(B) Stage 1 compliance tests shall be performed by person(s) who are certified as required in Section 2.07(f) of this regulation.

(C) The tests listed in Table 2 are exempt from the requirements of Section 3.07 of Regulation I.

Table 2
Initial Installation Stage 1 Compliance Tests

	CARB Tests Required	CARB Test Procedures[1]	Date of Adoption
Stage 1 EVR Vapor Recovery Systems	Leak Rate Test[2]	TP-201.1C or TP-201.1D	October 8, 2003
	Static Pressure Decay[3]	TP-201.3	March 17, 1999
	Static Torque of Adaptors	TP-201.1B	October 8, 2003
	Leak Rate/Cracking P/V[4]	TP-201.1E	October 8, 2003

[1] Or test procedures that have been approved by CARB as equivalent to CARB procedures.
[2] TP-201.1C has no overfill prevention device and TP-201.1D is required for drop tubes with overfill prevention.
[3] Except that test procedure TP-201.3B (dated 4/12/96) shall be used for above-ground storage tanks.
[4] The test procedures are also listed in Exhibit 2 of the CARB Executive Order.

(2) Stage 2 Testing Requirements

(A) Owners or operators must obtain the Stage 2 compliance tests identified in Table 3 annually, and each test must be conducted in accordance with the test procedures identified in Table 3. In addition, each test shall be completed no less than 335 days and no more than 395 days since the last annual test.

(B) For stations with vapor-balance systems, the first annual test completed after September 1, 2011 shall be completed on an annual schedule as specified above or by January 15, 2012, whichever date comes first.

(C) Owners or operators must obtain a Static Pressure Decay Test semiannually. One test shall be completed during the annual testing required in Section 2.07 (e)(2)(A) of this regulation and the other semiannual test shall be completed no less than 150 days and no more than 210 days since the last Static Pressure Decay Test.

(D) Owners or operators must obtain the Stage 2 compliance tests identified in Table 3 after initial installation of any Stage 2 system and prior to dispensing fuel commercially.

(E) Stage 2 compliance tests shall be performed by persons who are certified as required in Section 2.07(f) of this regulation.

(F) The tests listed in Table 3 are exempt from the requirements of Section 3.07 of Regulation I.

Table 3
Annual Stage 2 Compliance Tests

Stage 2 Vapor Recovery Systems	CARB Tests Required	CARB Test Procedures[1]	Date of Adoption
All Vapor-Balance	Static Pressure Decay[2]	TP-201.3	March 17, 1999
	Dynamic Back Pressure	TP-201.4	July 3, 2002
	Tank-Tie Test[3]	TP-201.3C	March 17, 1999
	Static Torque of Adaptors[4]	TP-201.1B	October 8, 2003
All Vacuum-Assist[5]	Static Pressure Decay[2]	TP-201.3	March 17, 1999
	Dynamic Back Pressure	TP-201.4	July 3, 2002
	Air-to-Liquid Ratio	TP-201.5	February 1, 2001
	Tank-Tie Test[3]	TP-201.3C	March 17, 1999
	Static Torque of Adaptors[4]	TP-201.1B	October 8, 2003

[1] Or test procedures that have been approved by CARB as equivalent to CARB procedures.

[2] For static pressure decay test, test procedure TP-201.3B (dated 4/12/96) shall be used for above-ground storage tanks.

[3] Tank-tie test must be conducted at least once, or after any tank configuration changes to show the tanks are manifolded. The tank-tie test records must be kept on-site to verify compliance.

[4] For static torque of adaptors, testing is required only for stations equipped with dual-point Stage 1 vapor recovery systems.

[5] Vapor return line vacuum integrity tests shall be conducted on each vacuum-assist system equipped with a central vacuum pump annually, in accordance with Exhibit 4 of CARB Executive Orders G-70-165 and G-70-186, as applicable.

(3) Failed Compliance Tests

Owners or operators must notify the Agency in writing within 24 hours of any failed compliance tests, if the defective equipment cannot be repaired or replaced by the person conducting the test on the day of the test. If the defective equipment cannot be repaired by the close of the next business day following the failed compliance test, the owner or operator must stop receiving and/or dispensing gasoline from the defective equipment until it is repaired and retested, and passes all required compliance tests. The requirements in Section 2.07 (e)(3) of this regulation do not include any operation of equipment necessary to conduct a retest. Equipment operation after a failed compliance test is evidence of a continuing violation until a passing test has been completed for that equipment.

(4) Test Reports

(A) After the testing required by Section 2.07 of this regulation has been conducted, the owner or operator must obtain a written test report.

(B) The written report must include the following information:

- name and address of the person(s) who conducted each test,
- date of the testing,
- equipment tested,
- test procedures or methods used,
- results of the tests, and
- any repairs made or corrective actions taken necessary to pass the tests.

(C) Owners or operators must keep a copy of the test report on-site at the facility and available for inspection for at least 2 years after the date the report was prepared.

(5) Compliance Testing Activity Reports

(A) Persons completing the Stage 1 or Stage 2 testing identified in Section 2.07 of this regulation shall submit compliance testing activity reports to the Agency. Compliance testing activity reports must be submitted on approved forms through the Agency website and must be received by the Agency no later than 5 ((2)) days after completion of the compliance test on-site.

(B) Compliance testing activity reports shall include, but not be limited to, the following information:

- identification of the facility,
- date of the testing,
- identification of each test conducted,
- results (pass/fail) of each test conducted,
- name of the person(s) who conducted each test and current certification credential information for each such person, and
- statement of whether repairs were completed, and if so, description of all repairs undertaken and/or completed.

(f) Certification for Persons Testing or Installing

(1) Persons testing or installing CARB-certified Stage 1 or Stage 2 vapor recovery equipment as required by Section 2.07 of this regulation must be certified by the International Code Council or other association that the Agency has determined provides an examination where persons can demonstrate their knowledge of regulatory codes, standards, and practices pertaining to CARB-certified Stage 1 or Stage 2 vapor recovery equipment, or have passed another qualifying examination approved by the Agency.

(2) Persons testing or installing CARB-certified Stage 1 or Stage 2 vapor recovery equipment must be certified every other year. Such persons must possess a valid certification at the time of performing any testing or installation of CARB-certified Stage 1 or Stage 2 vapor recovery equipment required by Section 2.07 of this regulation. Subsequent certifications must occur within 2 years of the anniversary date

of a person's first certification under Section 2.07(f) of this regulation.

(3) All testing must be conducted consistent with the requirements of Section 2.07(e) of this regulation.

(4) The certification requirements in Section 2.07(f) of this regulation do not apply to owners or operators of gasoline dispensing facilities.

(g) Recordkeeping Requirements for Owners or Operators

Owners or operators must keep a copy of all records required by this rule on-site at the facility and available for inspection for at least 2 years after the date the record was prepared.

WSR 12-13-102
PROPOSED RULES
BOARD OF ACCOUNTANCY
[Filed June 20, 2012, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-04-048.

Title of Rule and Other Identifying Information: WAC 4-30-132 What are the program standards for CPE?

Hearing Location(s): The Doubletree Hotel Seattle Airport, Cascade 13 Room, 18740 International Boulevard, SeaTac, WA, on July 26, 2012, at 9:00 a.m.

Date of Intended Adoption: July 26, 2012.

Submit Written Comments to: Cheryl M. Sexton, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507-9131, e-mail cheryls@cpaboard.wa.gov, fax (360) 664-9190, by July 19, 2012.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by July 19, 2012, TTY (800) 833-6388 or (800) 833-6385.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose: (1) To allow continuing professional education (CPE) credit for volunteer service on the board, on board committees, or on board approved peer review committees to include credit for time preparing for committee meetings.

(2) Clarify the definition of interactive self-study programs.

Effects: (1) The award of additional CPE may encourage successful professionals to enhance their competency by these volunteer services and in turn benefit the profession.

(2) The amendment will clearly advise the regulated CPA of the program standards for interactive self-study CPE programs.

Reasons Supporting Proposal: (1) Volunteers serving on the board, its committees, and on board approved peer review committees currently receive CPE credit for actual time spent on board, board committee, or board approved peer review committee activities. The activities include board meetings, committee meetings, and desk reviews. These volunteers spend many hours preparing for these activities such as, reviewing a board/committee meeting agenda package, reviewing peer review reports prior to a committee meeting, researching issues/standards related to an agenda item/report. These activities contribute to the volunteer's professional knowledge and competence. Without competent volunteers the board, board committees, and board approved peer review committees cannot succeed.

(2) The agency has found the definition to lack clarity. The amendment will provide the needed clarity to avoid any confusion/questions by the regulated CPAs.

Statutory Authority for Adoption: RCW 18.04.055(7), 18.04.215(5).

Statute Being Implemented: RCW 18.04.055(7), 18.04.-215(5).

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

Name of Proponent: The Washington state board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Richard C. Sweeney, CPA, 711 Capitol Way South, Suite 400, Olympia, WA, (360) 586-0163.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.-328 (5)(a).

June 20, 2012
Richard C. Sweeney
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-132 What are the program standards for CPE? (1) **Qualifying program:** A program qualifies as acceptable CPE for purposes of RCW 18.04.215(5) if it is a formal program of learning which contributes to the CPA's professional knowledge and competence. A formal program means:

- The program is at least fifty minutes in length;
- Attendance is recorded;
- Participants sign in to confirm attendance and, if the program is greater than four credit hours, participants sign out during the last hour of the program; and
- Attendees are provided a certificate of completion.

(2) **Undergraduate and graduate courses:** A graduate or undergraduate course qualifies for CPE credit if it meets the standards in subsections (1) and (5) of this section. For both undergraduate and graduate courses one quarter credit equals 10 CPE credit hours and one semester credit equals 15 CPE credit hours.

(3) **Committee meetings:** Generally, CPE credit is not allowed for attending committee meetings. A meeting qualifies for CPE credit only if it meets the standards in subsections (1) and (5) of this section.

(4) **CPE credit hours for volunteer service on the board and its committees and volunteer service on board approved peer review committees:** You may receive up to ((~~thirty-two~~)) sixty-four hours of technical CPE credit each calendar year for actual time spent on board, board commit-

tee, or board approved peer review committee activities including actual time you spend preparing for committee meetings.

(5) **Subject areas:** Programs dealing with the following general subject areas are acceptable so long as they meet the standards in subsection (1) of this section:

(a) **Technical subjects include:**

(i) Auditing standards or procedures;

(ii) Compilation and review of financial statements;

(iii) Financial statement preparation and disclosures;

(iv) Attestation standards and procedures;

(v) Projection and forecast standards or procedures;

(vi) Accounting and auditing;

(vii) Management advisory services;

(viii) Personal financial planning;

(ix) Taxation;

(x) Management information services;

(xi) Budgeting and cost analysis;

(xii) Asset management;

(xiii) Professional ethics (other than those programs used to satisfy the requirements of WAC 4-30-134(3));

(xiv) Specialized areas of industry;

(xv) Human resource management;

(xvi) Economics;

(xvii) Business law;

(xviii) Mathematics, statistics, and quantitative applications in business;

(xix) Business management and organization;

(xx) General computer skills, computer software training, information technology planning and management; and

(xxi) Negotiation or dispute resolution courses;

(b) **Nontechnical subjects include:**

(i) Communication skills;

(ii) Interpersonal management skills;

(iii) Leadership and personal development skills;

(iv) Client and public relations;

(v) Practice development;

(vi) Motivational and behavioral courses; and

(vii) Speed reading and memory building.

Subjects other than those listed above may be acceptable provided you can demonstrate they contribute to your professional competence. You are solely responsible for demonstrating that a particular program contributes to your professional competency.

(6) **Group programs:** You may claim CPE credit for group programs such as the following so long as the program meets the standards in subsections (1) and (5) of this section:

(a) Professional education and development programs of national, state, and local accounting organizations;

(b) Technical sessions at meetings of national, state, and local accounting organizations and their chapters;

(c) Formal in-firm education programs;

(d) Programs of other organizations (accounting, industrial, professional, etc.);

(e) Dinner, luncheon, and breakfast meetings which are structured as formal educational programs;

(f) Firm meetings for staff and/or management groups structured as formal education programs. Portions of such meetings devoted to communication and application of general professional policy or procedure may qualify, but portions devoted to firm administrative, financial and operating matters generally will not qualify.

(7) **CPE credit:** CPE credit is allowable only for those programs taken in time periods after the first CPA license is issued pursuant to the authority of the board under chapter 18.04 RCW. Credit is not allowed for programs taken to prepare an applicant for the ethics examination as a requirement for initial licensure. CPE credit is given in half-hour increments only after the first full CPE credit hour has been earned. A minimum of fifty minutes constitutes one CPE credit hour and, after the first fifty-minute segment has been earned, twenty-five minutes constitutes one-half CPE credit hour. For example:

• Twenty-five minutes of continuous instruction counts as zero CPE credit hour if that instruction is the first CPE course taken;

• Fifty minutes of continuous instruction counts as one CPE credit hour; and

• Seventy-five minutes of continuous instruction counts as one and one-half CPE credit hours.

Attendees obtain CPE credit only for time spent in instruction; no credit is allowed for preparation time unless the attendee is the discussion leader for the particular CPE segment or program.

(8) **Self-study programs:** Credit for self-study programs is allowed for reporting purposes on the date you completed the program as established by the evidence of completion provided by the program sponsor.

(a) **Interactive self-study programs:** Interactive means electronic or other delivery formats for delivery of CPE in which feedback is provided during the study of the material in a manner to validate the individual's understanding of the material. The amount of credit allowed for interactive self-study is that which is recommended by the program sponsor on the basis of the average completion time under appropriate "field tests." In order to claim CPE credit for interactive self-study programs, you must obtain evidence of satisfactory completion of the course from the program sponsor. Self-study CPE courses registered with the National Association of State Boards of Accountancy (NASBA) as a Quality Assurance Service (QAS) sponsor may be accepted as interactive.

(b) **Noninteractive self-study programs:** The amount of credit allowed for noninteractive self-study is one-half the average completion time as determined by the program sponsor on the basis of appropriate "field tests." To claim CPE credit for noninteractive self-study programs, you must obtain evidence of satisfactory completion of the course from the program sponsor.

(9) **Instructor, discussion leader, or speaker:** If you serve as an instructor, discussion leader or speaker at a program which meets the standards in subsections (1) and (5) of this section, the first time you present the program you may claim CPE credit for both preparation and presentation time. One hour of credit is allowed for each fifty minutes of instruction. Additionally, you may claim credit for actual preparation time up to two times the presentation hours. No credit is allowed for subsequent presentations. A maximum of seventy-two CPE credit hours are allowed for preparation and presentation during each CPE reporting period.

(10) **Published articles, books:** You may claim CPE credit for published articles and books, provided they contribute to your professional competence. Credit for preparation of such publications may be claimed on a self-declaration basis for up to thirty hours in a CPE reporting period. In exceptional circumstances, you may request additional credit by submitting the article(s) or book(s) to the board with an explanation of the circumstances that justify a greater credit. The amount of credit awarded for a given publication will be determined by the board.

(11) **Carry-forward:** CPE credit hours you complete during one CPE reporting period cannot be carried forward to the next period.

(12) **Carry-back:** As specified in WAC 4-30-134(8), CPE credit hours you complete during one CPE reporting period can be carried back to the previous reporting period only after the board has approved your extension request or has required the carry-back as part of sanctions for failure to complete required CPE.

(13) **Credential examination:** CPE credit may not be claimed for CPA examination review courses. You may not claim CPE credit for preparing for or taking a credential examination unless you complete a formal review course and receive a certificate of completion meeting the requirements of WAC 4-30-138. CPE credit may not be claimed for CPA examination review courses.

WSR 12-13-103
PROPOSED RULES
BOARD OF ACCOUNTANCY

[Filed June 20, 2012, 10:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-04-048.

Title of Rule and Other Identifying Information: WAC 4-30-130 What are the requirements for participating in quality assurance review (QAR)?, to monitor CPA and CPA firm compliance with audit, compilation, review, and other attestation standards.

Hearing Location(s): The Doubletree Hotel Seattle Airport, Cascade 13 Room, 18740 International Boulevard, SeaTac, WA, on July 26, 2012, at 9:00 a.m.

Date of Intended Adoption: July 26, 2012.

Submit Written Comments to: Cheryl M. Sexton, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507-9131, e-mail cheryls@cpaboard.wa.gov, fax (360) 664-9190, by July 19, 2012.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by July 19, 2012, TTY (800) 833-6388 or (800) 833-6385.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose: To require all CPA firms that issue any attestation or compilation reports on financial statements to participate in a board approved peer review program.

Effects: Peer reviews are designed to improve the quality of accounting and auditing services provided by CPAs as well as provide public protection. CPA firms participating in board approved peer review programs will benefit by achieving a nationally recognized "seal of approval."

Changes in Existing Rule: Currently, CPA firms that issue review and compilation reports are not required to undergo a peer review. These firms must participate in the board's QAR program. The board, through volunteers, evaluates financial statements and the reports of CPA firms via a desk review of financial statements chosen by the CPA firm to assess their compliance with applicable professional standards. Under this proposal, all CPA firms issuing reports purporting to be in accordance with professional standards must engage a qualified peer to complete a more thorough review of the firm's accounting and auditing practice.

Reasons Supporting Proposal: The quality of attest and compilation services is primarily demonstrated in the CPA firm's workpapers. The current QAR program, due to constrained resources and volunteer reviewers, does not review workpapers. The peer review process does review the CPA firm's workpapers. This enhances the board's demonstration of promoting the dependability of information which is used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises. Currently, approximately forty-five licensing jurisdictions have peer review requirements in effect.

Statutory Authority for Adoption: RCW 18.04.055(9).

Statute Being Implemented: RCW 18.04.055(9).

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

Name of Proponent: The Washington state board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Richard C. Sweeney, CPA, 711 Capitol Way South, Suite 400, Olympia, WA, (360) 586-0163.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A preliminary analysis of the financial effect on the small CPA firms (sole owners up to ten professionals, including the owner) currently enrolled in the board's QAR program indicates a maximum effect on these firms every three-year review cycle of +- $500 overall but with a +- $50 benefit to firms that need improvement. This financial impact ignores the financial benefit to the board from reduced demand on staff time. The change in program administration has no expected effect on the revenue or administrative time of these firms.

Given these factors, the executive director has concluded there is less than a minor financial impact on this component of the small business environment in this state and the effect as noted above is not disproportionate to the effect peer review has had on the larger CPA firms since the inception of the national peer review process. Accordingly, no small business economic impact study is included.

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328 (5)(a).

June 20, 2012
Richard C. Sweeney
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-130 What are the ((~~requirements for participating in~~)) quality assurance review (QAR) requirements for licensed CPA firms? (1) **Purpose.** The Washington state board of accountancy is charged with protection of the public interest and ensuring the dependability of information used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private or governmental. The purpose of the QAR program is to monitor licensees' compliance with audit, compilation, review, and other attestation standards.

(2) **Peer review.** Generally, all licensed firms offering and/or performing attest services as defined by WAC 4-30-010(5), compilation services, as defined by WAC 4-30-010(12), or other professional services for which a report expressing assurance is prescribed by professional standards in Washington state, are required to participate in a board-approved peer review program as a condition of renewing each CPA firm license under RCW 18.04.215 and WAC 4-30-114. However, certain exemptions are listed in subsection (10) of this section. Board-approved peer review programs include:

(a) The inspection processes of the Public Company Accounting Oversight Board (PCAOB);

(b) Peer review programs administered by the American Institute of CPAs (AICPA);

(c) Peer review programs administered by the Washington Society of CPAs (WSCPA); and

(d) Other programs recognized and approved by the board.

(3) **Enrollment in peer review:** A licensed firm must enroll in a board-approved peer review program *before* issuing a report for each of the following types of service or any other service the board determines:

(a) Compilation on historical financial statements;

(b) Review on historical financial statements;

(c) Audit report on financial statements, performance audit reports, or examination reports on internal controls for nonpublic enterprises;

(d) Agreed-upon procedures;

(e) Forecasts; and

(f) Projections.

The schedule for the firm's peer review shall be established according to the peer review program's standards. The board does not require any licensee to become a member of any organization administering a peer review program.

(4) **Participation in peer review.** Every firm that is required to participate in a peer review program shall have a peer review in accordance with the peer review program standards.

(a) It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review date.

(b) Any firm that receives a peer review grade of "fail" or "pass with comments," or is rejected or terminated by a peer review program for any reason shall have twenty-one days to provide written notice to the board of such termination or rejection, and to request authorization from the board to enroll in another board-approved peer review program.

(c) In the event a firm is merged, otherwise combined, dissolved or separated, the peer review program shall determine which firm is considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(d) A firm choosing to change to another peer review program may do so only if there is not an open active peer review and if the peer review is performed in accordance with the minimum standards for performing and reporting on peer reviews.

(5) **Reporting requirements.** Every firm must provide the following information, along with the appropriate fees, with every application for renewal of a firm license by April 30th of the year of expiration that may consist of but is not limited to:

(a) Certify whether the firm does or does not perform attest services or compilation services as defined by WAC 4-30-010 (5), (12), or other professional services for which a report expressing assurance is prescribed by professional standards in Washington state;

(b) If the firm is subject to the peer review requirements, provide the name of the approved peer review program in which the firm is enrolled, and the period covered by the firm's most recent peer review;

(c) Certify the result of the firm's most recent peer review.

Failure to timely submit complete information and the related fee by the April 30th due date can result in the assessment of late fees. The board may waive late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

(6) **Documents required.** A firm that has opted out of participating in the AICPA Facilitated State Board Access (FSBA) program shall provide to the board copies of the following documents related to the peer review report:

(a) Peer review report issued;

(b) Firm's letter of response, if any;

(c) Letter of acceptance from peer review program;

(d) Recommended action letter from the peer review program, if any;

(e) A letter from the firm to the board describing corrective actions taken by the firm that relate to recommendations of the peer review program;

(f) Other information the firm deems important for the board's understanding of the information submitted; and

(g) Other information the board deems important for the understanding of the information submitted.

(7) **Document retention.** Firms shall retain all documents relating to peer review reports, including working papers of the underlying engagement subject to peer review that was reviewed, until the acceptance of a subsequent peer review by the peer review program or for five years from the date of acceptance of the peer review by the peer review program, whichever is sooner.

(8) **Extensions.** The board may grant an extension of time for submission of the peer review report to the board. Extensions will be determined by the board on a case-by-case basis.

(9) **Verification.** The board may verify the certifications of peer review reports that firms provide.

(10) **Exemption from peer review.**

(a) Out-of-state firms that do not have a physical location in this state, but perform attest or compilation services in this state, and are otherwise qualified for practice privileges under RCW 18.04.195 (1)(b) are not required to participate in the board's program if the out-of-state firm participates in a board-approved peer review program or similar program approved or sponsored by another state's board of accountancy.

~~(((3) **Structure and implementation.** The board will annually appoint a quality assurance review committee co-chaired by a current or former board member and an individual selected by the board from the other committee members. The committee shall direct the following functions:~~

~~(a) Evaluation of financial statements and the reports of licensees thereon to assess their compliance with applicable professional standards;~~

~~(b) Evaluation of licensees' reports and on other information covered by those reports for conformity with applicable professional standards;~~

~~(c) Improvement of reporting practices of licensees through education and rehabilitative measures;~~

~~(d) Evaluation of licensees' peer review reports; and~~

~~(e) Such other functions as the board may assign to the committee.~~

~~(4) **Process.**~~

~~(a) Once every three years the board requires a licensed firm with an office in this state to participate in the board's quality assurance review program. Participating firms will be required to submit quality assurance review status information, along with the appropriate fee, by the following April 30th.~~

~~Failure to timely submit complete quality assurance review status information and the related fee postmarked by the April 30th due date, can result in the assessment of late fees. The board may waive late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.~~

~~(b) Participating firms may request exemption from the requirements of (e) of this subsection if within the three years immediately preceding the date of board request:~~

~~(i) The firm has not issued any attestation or compilation reports; or~~

~~(ii) The firm has participated in a board-approved peer review program. The board has approved:~~

~~(A) The inspection processes of the Public Company Accounting Oversight Board (PCAOB);~~

~~(B) Peer review programs administered by the American Institute of CPAs (AICPA); and~~

~~(C) Peer review programs administered by the Washington Society of CPAs (WSCPA).~~

~~(c) Participating firms requesting exemption based on peer review must submit a copy of the peer review report, response to the peer review report, if applicable, and letter of acceptance from the reviewing organization. Firms that fail a peer review may request exemption, but must submit a copy of the peer review report and related correspondence, at the discretion of the board, for consideration on an individual basis.~~

~~(d) Each participating firm shall submit, for each of its offices, one licensee report and the information covered by that report, for each of the following types of service or any other service the board determines:~~

~~(i) Compilation report on historical financial statements;~~

~~(ii) Review report on historical financial statements;~~

~~(iii) Agreed-upon procedures;~~

~~(iv) Forecasts; and~~

~~(v) Projections.~~

~~(e) Firms issuing audit reports on financial statements, performance audit reports, or examination reports on internal controls for nonpublic enterprises must participate in a board-approved peer review program administered by the American Institute of CPAs (AICPA) or the Washington Society of CPAs (WSCPA).~~

~~(f) A participating firm shall select these reports from all reports prepared during the twelve months preceding the date of board request or, if no reports have been issued within the last twelve months, from all reports during the preceding three years.~~

~~(g) If reports issued by all offices of a firm are reviewed and issued in a controlled, centralized process, only one each of the type of licensee reports, including the information covered by the reports, specified above need be submitted by the firm as a whole.~~

~~(h) Any documents submitted in accordance with (d) of this subsection may have the name of the client, the client's address, and other identifying factors omitted, provided that the omission does not render the type or nature of the entity undeterminable. Dates may not be omitted.~~

~~(i) Reports submitted to the committee pursuant to (d) of this subsection and comments of reviewers, the committee and the board on such reports or workpapers relating thereto, shall also be preserved in confidence except to the extent that they are communicated by the board to the licensees who issued the reports or disclosure is required under administrative procedure rules or by direction of a court of law.~~

~~(j) The committee's evaluation of the licensee reports and other information covered by those reports shall be directed toward the following:~~

~~(i) Presentation of the financial statements covered by the licensee reports and/or other information covered by those reports in conformity with applicable professional standards for presentation and disclosure;~~

~~(ii) Compliance by licensees with applicable reporting standards; and~~

~~(iii) Compliance by licensees with the rules of the board and other regulations relating to the practice of public accounting.~~

~~(5) **Remedies.** If the board determines that a report and/or other information covered by the report referred to the board by the committee is substandard or seriously questionable with respect to applicable professional standards, the board may take one or more of the following actions:~~

~~(a) Send the licensee a letter of comment detailing the perceived deficiencies and require the licensee to develop quality control procedures to ensure that similar occurrences will not occur in the future;~~

~~(b) Require any licensee who had responsibility for issuance of a report, or who substantially participated in preparation of the report and/or related workpapers, to successfully complete specific courses or types of continuing education as specified by the board;~~

~~(c) Require that the licensee responsible for a substandard report submit all or specified categories of its reports to a preissuance review in a manner and for a duration prescribed by the board. The cost of the preissuance review will be at the firm's expense;~~

~~(d) Require the licensee responsible for a substandard report to submit to a peer review conducted in accordance with standards acceptable to the board. The cost of the peer review will be at the licensee's expense;~~

~~(e) Require the licensee responsible for substandard work to submit to on-site field review or other investigative procedures of work product and practices by board representatives in order to assess the degree or pervasiveness of substandard work. The board may assess the costs of such field review or procedures to the licensee if the results of such investigative efforts substantiate the existence of substandard work product;~~

~~(f) Initiate an investigation pursuant to RCW 18.04.295, 18.04.305, and/or 18.04.320.~~

~~(6)~~)) (b) Firms that do not perform attest services as defined by WAC 4-30-010(5), compilation services, as defined by WAC 4-30-010(12), or other professional services for which a report expressing assurance is prescribed by professional standards in Washington state are not required to participate in a peer review program, and shall request exemption on each firm license renewal application.

(c) Firms that prepare financial statements *which do not require reports* under Statements on Standards for Accounting and Review Services (SSARS) 8 as codified in SSARS 19 (management use only compilation reports) and that perform no other attest or compilation services, are not required to participate in a peer review program; however, such engagements conducted by a firm that is otherwise required to participate in a peer review program shall be included in the selection of engagements subject to peer review.

(11) **Quality assurance oversight.**

(a) The board will:

(i) Annually appoint a compliance assurance oversight committee, and such other committees as the board, in its discretion deems necessary, to provide oversight of the administration of approved peer review programs in order to provide reasonable assurance that peer reviews are being conducted and reported on in accordance with the minimum standards for performing and reporting on peer reviews;

(ii) Consider reports from the compliance assurance oversight committee;

(iii) Direct the evaluation of peer review reports and related documents submitted by firms;

(iv) Determine the appropriate action for firms that have unresolved matters relating to the peer review process or that have not complied with, or acted in disregard of the peer review requirements;

(v) Determine appropriate action for firms when issues with a peer review report may warrant further action; and

(vi) Take appropriate actions the board, in its discretion, deems appropriate to carry out the functions of the quality assurance review program and achieve the purpose of the peer review requirement.

(b) The **compliance assurance oversight committee** shall conduct oversight of approved peer review programs at least semiannually to provide reasonable assurance that such programs are in compliance with the minimum standards for performing and reporting on peer reviews.

(i) The compliance assurance oversight committee's oversight procedures may consist of but are not limited to:

(A) Attending the peer review program's report acceptance body (RAB) meetings during consideration of peer review documents;

(B) Observing the peer review program administrator's internal review of program and quality control compliance.

(C) Observing the peer review program's review of the administrator's process.

(ii) The compliance oversight assurance committee shall report to the board any modifications to approved peer review programs and shall make recommendations regarding the continued approval of peer review programs.

(12) **Remedies.** The board's quality assurance review program is intended to monitor the quality of a firm's attest and compilation practices and compliance with professional standards (RCW 18.04.065(9)). If the board determines that a firm's attest or compilation engagement performance and/or reporting practices are not in accordance with applicable professional standards and, therefore, the board determines that one or more of the engagements are, or could be, substandard or seriously questionable, the board will take appropriate action to protect the public interest including, but not limited to:

(a) Require the firm to develop quality control procedures to provide reasonable assurance that similar occurrences will not occur in the future;

(b) Require any individual licensee who had responsibility for, or who substantially participated in the substandard or seriously questionable compilation or attest engagement(s), to successfully complete specific courses or types of continuing education as specified by the board;

(c) Require that the reviewed firm responsible for one or more substandard or seriously questionable compilation or attest engagement(s) submit all or specified categories of its compilation or attest working papers and reports to a preissuance evaluation performed by a board-approved licensee in a manner and for a duration prescribed by the board. Prior to the firm issuing the reports on the engagements reviewed, the board-approved licensee shall submit to the board for board acceptance a report of the findings, including the nature and frequency of recommended actions to the firm. The cost of the board-approved preissuance evaluation will be at the firm's expense;

(d) Require the reviewed firm to engage a board-approved licensee to conduct a board-prescribed on-site field review of the firm's work product and practices or perform other investigative procedures to assess the degree or pervasiveness of substandard or seriously questionable work product. The board-approved licensee engaged by the firm shall submit a report of the findings to the board within thirty days

of the completion of the services. The cost of the board-prescribed on-site review or other board-prescribed procedures will be at the firm's expense; or

(e) Initiate an investigation pursuant to RCW 18.04.295, 18.04.305, and/or 18.04.320; and

(f) The specific rating of a peer review report, individually, is not a sufficient basis to warrant disciplinary action.

(13) The board may solicit and review licensee reports and/or other information covered by the reports from clients, public agencies, banks, and other users of such information.

WSR 12-13-105
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed June 20, 2012, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-122 and 12-10-083.

Title of Rule and Other Identifying Information: WAC 232-16-440 Toppenish Creek Game Reserve. (Cort Meyer.), 232-28-283 Big game and wild turkey auction, raffle, and special incentive permits, and 232-28-436 2012-2013 Migratory waterfowl seasons and regulations.

Hearing Location(s): Natural Resources Building, Conference Room 172, 1111 Washington Street S.E., Olympia, WA 98501, on August 3-4, 2012, at 8:30 a.m.

Date of Intended Adoption: On or after August 3-4, 2012.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by Thursday, July 19, 2012.

Assistance for Persons with Disabilities: Contact Tammy Lininger by July 27, 2012, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 232-16-440 Toppenish Creek Game Reserve, this amendment is intended to eliminate the Toppenish Creek #2 reserve due to hydrology changes that have significantly reduced the value of the reserve to waterfowl; WAC 232-28-436 2012-13 Migratory waterfowl seasons and regulations, the new WAC specifies legal season dates, bag limits, and open areas to hunt waterfowl, coot, and snipe for the 2012-13 hunting season; WAC 232-28-283 Big game and wild turkey auction, raffle, and special incentive permits, and the proposal removes Game Management Unit (GMU) 186 and adds GMU 175 to the hunt area for the Rocky Mountain bighorn sheep raffle hunt. The anticipated effect is reduced bighorn ram harvest in GMU 186 and a slight increase in GMU 175.

Reasons Supporting Proposal: WAC 232-16-440 Toppenish Creek Game Reserve, the amendment will allow additional public hunting recreation for upland birds on United States Fish and Wildlife Service lands on the Toppenish National Wildlife Refuge; WAC 232-28-436 2012-13 Migratory waterfowl seasons and regulations, waterfowl seasons and regulations are developed based on cooperative management programs among states of the Pacific Flyway and the United States Fish and Wildlife Service, considering population status and other biological parameters. The rule establishes waterfowl seasons and regulations to provide recreational opportunity, control waterfowl damage, and conserve the waterfowl resources of Washington; and WAC 232-28-283 Big game and wild turkey auction, raffle, and special incentive permits, the reason for the change to the hunt area is that the number of mature rams in GMU 186 has declined. GMU 175 has several mature rams and has recently experienced a disease outbreak. Reducing the number of rams in GMU 175 also may be helpful in terms of reducing the number of potentially wandering rams spreading the disease.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.150, 77.32.070, 77.32.530.

Statute Being Implemented: RCW 77.04.012, 77.04.-055, 77.12.047, 77.12.150, 77.32.070, 77.32.530.

Rule is necessary because of federal law, C.F.R. Title 50, Part 20; Migratory Bird Treaty Act.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Nate Pamplin, Natural Resources Building, Olympia, (306) 902-2693; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not directly regulate small business.

A cost-benefit analysis is not required under RCW 34.05.328. These are not hydraulics rules.

June 20, 2012
Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Temporary Regulation 256 (part), filed 9/8/66)

WAC 232-16-440 Toppenish Creek Game Reserve. (Cort Meyer.) ((~~(1)~~)) Commencing at the NE corner of the SE1/4 of the NW1/4 of Section 26, Township 10, Range 20E.W.M.; thence west one and three-quarters mile to the NW corner of the SE1/4 of the NE1/4 of Section 28, Township 10, Range 20; thence south one-quarter mile; thence east one-quarter mile; thence south three-quarters mile to the SW corner of the NW1/4 of the NW1/4 of Section 34; thence east three-quarters mile; thence south one-quarter mile; thence east three-quarters mile to center of Section 35; thence north one and one-quarter miles to place of beginning. All in Township 10 north, Range 20E.W.M.

((~~(2) **Toppenish Creek Game Reserve No. 2,** (Upper Toppenish Creek) Yakima County. . . . it shall be unlawful to hunt or trap within said area:~~

~~All of Section 21; the west half of the northwest quarter of Section 22; the west half of the southwest quarter of Section 22; the southeast quarter of southwest quarter of Section 22; the south half of the northeast quarter of southwest quarter of Section 22; the north half of north half of Section 28; north half of northwest quarter of Section 27; north half of the~~

~~southeast quarter of northwest quarter of Section 27; all being in Township 10 north, Range 18E.W.M.~~))

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

WAC 232-28-283 Big game and wild turkey auction, raffle, and special incentive permits.

AUCTION PERMITS

(1) BLACK-TAILED DEER AUCTION PERMIT

Season dates: September 1 - December 31
Hunt Area: Those GMUs open to black-tailed deer hunting EXCEPT GMU 485 and those GMUs closed to black-tailed deer hunting by the fish and wildlife commission.
Weapon type: Any legal weapon.
Bag limit: One additional any buck black-tailed deer.
Number of permit hunters selected: 1

(2) MULE DEER AUCTION PERMIT

Season dates: September 1 - December 31
Hunt Area: Those GMUs open to mule deer hunting EXCEPT those GMUs closed to mule deer hunting by the fish and wildlife commission.
Weapon type: Any legal weapon.
Bag limit: One additional any buck mule deer.
Number of permit hunters selected: 1

(3) WHITE-TAILED DEER AUCTION PERMIT

Season dates: September 1 - December 31
Hunt Area: Those GMUs open to white-tailed deer hunting EXCEPT those GMUs closed to white-tailed deer hunting by the fish and wildlife commission.
Weapon type: Any legal weapon.
Bag limit: One additional any buck white-tailed deer.
Number of permit hunters selected: 1

(4) WESTSIDE ELK AUCTION PERMIT

Season dates: September 1 - December 31
Hunt Area: Western Washington EXCEPT GMU 485, those GMUs closed to elk hunting, and those GMUs not opened to branch antlered bull elk hunting by the fish and wildlife commission.
Weapon type: Any legal weapon.
Bag limit: One additional any bull elk.
Number of permit hunters selected: 1

(5) EASTSIDE ELK AUCTION PERMIT

Season dates: September 1 - December 31
Hunt Area: Eastern Washington EXCEPT GMU 157, those GMUs closed to elk hunting, and those GMUs not opened to branch antlered bull elk hunting by the fish and wildlife commission.
Weapon type: Any legal weapon.
Bag limit: One additional any bull elk.
Number of permit hunters selected: 1

(6) CALIFORNIA BIGHORN SHEEP AUCTION PERMIT

Season dates: September 1 - December 31
Hunt Area: Any open sheep unit with two or more ram permits during the respective license year, EXCEPT sheep units in Walla Walla, Columbia, Garfield, Asotin, or Pend Oreille counties are not open.
Weapon: Any legal weapon.
Bag limit: One California bighorn ram.
Number of permit hunters selected: 1

(7) MOOSE AUCTION PERMIT

Season dates: September 1 - December 31
Hunt Area: Any open moose unit.
Weapon: Any legal weapon.
Bag limit: One moose of either sex.
Number of permit hunters selected: 1

(8) MOUNTAIN GOAT AUCTION PERMIT

Season dates: September 1 - December 31
Hunt Area: Any open goat unit with two or more permits during the respective license year.
Weapon: Any legal weapon.
Bag limit: One mountain goat of either sex.
Number of permit hunters selected: 1

RAFFLE PERMITS

(9) BLACK-TAILED DEER RAFFLE PERMIT

Season dates: September 1 - December 31
Hunt Area: Those GMUs open to black-tailed deer hunting EXCEPT GMU 485 and those GMUs closed to deer hunting by the fish and wildlife commission.
Weapon: Any legal weapon.
Bag limit: One additional any buck black-tailed deer.
Number of permit hunters selected: 1

(10) MULE DEER RAFFLE PERMIT

Season dates: September 1 - December 31
Hunt Area: Those GMUs open to mule deer hunting EXCEPT those GMUs closed to mule deer hunting by the fish and wildlife commission.
Weapon: Any legal weapon.
Bag limit: One additional any buck mule deer.
Number of permit hunters selected: 1

(11) WHITE-TAILED DEER RAFFLE PERMIT

Season dates: September 1 - December 31
Hunt Area: Those GMUs open to white-tailed deer hunting EXCEPT those GMUs closed to white-tailed deer hunting by the fish and wildlife commission.
Weapon: Any legal weapon.
Bag limit: One additional any buck white-tailed deer.
Number of permit hunters selected: 1

(12) WESTSIDE ELK RAFFLE PERMIT

Season dates: September 1 - December 31
Hunt Area: Western Washington EXCEPT GMU 485, those GMUs closed to elk hunting, and those GMUs not open to branch antlered bull elk hunting by the fish and wildlife commission.
Weapon: Any legal weapon.
Bag limit: One additional any bull elk.

Number of permit hunters selected: 1

(13) EASTSIDE ELK RAFFLE PERMIT

Season dates: September 1 - December 31
Hunt Area: Eastern Washington EXCEPT GMU 157, those GMUs closed to elk hunting, and those GMUs not opened to branch antlered bull elk hunting by the fish and wildlife commission.
Weapon: Any legal weapon.
Bag limit: One additional any bull elk.
Number of permit hunters selected: 1

(14) CALIFORNIA BIGHORN SHEEP RAFFLE PERMIT

Season dates: September 1 - December 31
Hunt Area: Any open bighorn sheep unit with two or more ram permits during the respective license year, EXCEPT sheep units in Walla Walla, Columbia, Garfield, Asotin, or Pend Oreille counties are not open.
Weapon: Any legal weapon.
Bag limit: One California bighorn ram.
Number of permit hunters selected: 1

(15) MOOSE RAFFLE PERMIT

Season dates: September 1 - December 31
Hunt Area: Any open moose unit.
Weapon: Any legal weapon.
Bag limit: One moose of either sex.
Number of permit hunters selected: 2

(16) MOUNTAIN GOAT RAFFLE PERMIT

Season dates: September 1 - December 31
Hunt Area: Any open goat unit with two or more permits during the respective license year.
Weapon: Any legal weapon.
Bag limit: One mountain goat of either sex.
Number of permit hunters selected: 1

(17) TURKEY RAFFLE PERMIT

Season dates: April 1 - May 31 and September 1 - December 31
Hunt Area: Statewide.
Weapon: Archery or shotgun only.
Bag limit: Three additional wild turkeys, but not to exceed more than one turkey in Western Washington or two turkeys in Eastern Washington.
Number of permit hunters selected: 1

(18) ROCKY MOUNTAIN BIGHORN SHEEP RAFFLE PERMIT

Bag limit: One Rocky Mountain bighorn ram.
Hunt Area: GMUs 113, 175, 181((~~, 186~~)).
Season dates: September 1 - December 31
Weapon: Any legal weapon.
Number of permit hunters selected: 1

(19) THREE-DEER RAFFLE PERMIT

Bag limit: One additional any buck black-tailed deer, one additional any buck mule deer, and one additional any buck white-tailed deer; total harvest not to exceed three animals.
Hunt Area: For black-tailed deer, those GMUs open to black-tailed deer hunting EXCEPT GMU 485 and those GMUs closed to deer hunting by the fish and wildlife commission. For mule deer, those GMUs open to mule deer hunting EXCEPT those GMUs closed to mule deer hunting by the fish and wildlife commission. For white-tailed deer, those GMUs open to white-tailed deer hunting EXCEPT those GMUs closed to white-tailed deer hunting by the fish and wildlife commission.
Season dates: September 1 - December 31
Weapon: Any legal weapon.
Number of permit hunters selected: 1

(20) NORTHEAST WASHINGTON BIG GAME RAFFLE PERMIT

Bag limit: Permit hunter may harvest three of six possible species. Species that may be harvested under this permit include: One additional any buck white-tailed deer, one additional any bull elk, one any bull moose, one additional any legal cougar, one additional any legal black bear, and one additional any legal turkey (gobbler and turkey with visible beard ONLY); total harvest not to exceed three animals.
Hunt Area: GMUs 101-124.
Season dates: September 1 - December 31 for white-tailed deer, elk, and moose. April 15 - May 31 and September 1 - December 31 for black bear. September 1 - March 31 for cougar. April 15 - May 31 for turkey
Weapon: Any legal weapon EXCEPT archery and shotgun only for turkey.
Number of permit hunters selected: 1

(21) SOUTH-CENTRAL WASHINGTON BIG GAME RAFFLE PERMIT

Bag limit: One additional any bull elk, one additional any buck deer, and one California bighorn sheep ram; total harvest not to exceed three animals.
Hunt Area: For elk, any 300 or 500 series GMU EXCEPT those GMUs closed to elk hunting and those GMUs not open to branch antlered bull elk hunting by the fish and wildlife commission. For deer, any 300 or 500 series GMU EXCEPT those GMUs closed to deer hunting by the fish and wildlife commission. For California bighorn sheep, those bighorn sheep hunt areas south of Interstate 90 and west of Interstate 82 open to bighorn sheep hunting by the fish and wildlife commission with two or more permits during the respective license year.
Season dates: September 1 - December 31
Weapon: Any legal weapon.
Number of permit hunters selected: 1

(22) SOUTHEAST WASHINGTON BIG GAME RAFFLE PERMIT

Bag limit: Permit hunter may harvest four of five possible species. Species that may be harvested under this permit include: One additional any buck white-tailed deer, one additional any buck mule deer, one additional any bull elk, one additional any legal cougar, and one additional any legal black bear; total harvest not to exceed four animals.
Hunt Area: GMUs 139-154 and 162-186.
Season dates: September 1 - December 31 for white-tailed deer, mule deer, and elk. April 15 - June 15 and September 1 - December 31 for black bear. September 1 - March 31 for cougar
Weapon: Any legal weapon.

Number of permit hunters selected: 1

(23) NORTH-CENTRAL WASHINGTON BIG GAME RAFFLE PERMIT

Bag limit: Permit hunter may harvest three of five possible species. Species that may be harvested under this permit include: One additional any buck white-tailed deer, one additional any buck mule deer, one any ram California bighorn sheep, one additional any legal cougar, and one additional any legal black bear; total harvest not to exceed three animals.
Hunt Area: For white-tailed deer, mule deer, cougar, and black bear, any 200 series GMU EXCEPT those GMUs closed to deer hunting by the fish and wildlife commission. For California bighorn sheep, those bighorn sheep hunt areas in Chelan or Okanogan counties open to bighorn sheep hunting by the fish and wildlife commission with two or more permits during the respective license year.
Season dates: September 1 - December 31 for white-tailed deer, mule deer, and California bighorn sheep. April 15 - May 15 and September 1 - December 31 for black bear. September 1 - March 31 for cougar
Weapon: Any legal weapon.
Number of permit hunters selected: 1

SPECIAL INCENTIVE PERMITS

(24) WESTERN WASHINGTON ELK INCENTIVE PERMITS

Hunt Area: Western Washington EXCEPT GMUs 418, 485, 522, and those GMUs closed to elk hunting or closed to branch antlered bull elk hunting by the fish and wildlife commission.
Season dates: September 1 - December 31
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.
Bag limit: One additional elk.
Number of permit hunters selected: 2

(25) EASTERN WASHINGTON ELK INCENTIVE PERMITS

Hunt Area: Eastern Washington EXCEPT GMU 157 and those GMUs closed to elk hunting or closed to branch antlered bull elk hunting by the fish and wildlife commission.
Season dates: September 1 - December 31
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.
Bag limit: One additional elk.
Number of permit hunters selected: 2

(26) DEER INCENTIVE PERMITS

Hunt Area: Statewide, for use in any area open to general or permit hunting seasons EXCEPT GMUs 157, 418, 485, 522, and those GMUs closed to deer hunting by the fish and wildlife commission.
Season dates: September 1 - December 31
Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons and any legal weapon at other times if there are no firearm restrictions.
Bag limit: One additional any deer.
Number of permit hunters selected: 5

PERMIT ISSUANCE PROCEDURE

(27) Auction permits: The director will select a conservation organization(s) to conduct annual auction(s). Selection of the conservation organizations will be based on criteria adopted by the Washington department of fish and wildlife. Big game and wild turkey auctions shall be conducted consistent with WAC 232-28-292.

(28) Raffle permits: Raffle permits will be issued to individuals selected through a Washington department of fish and wildlife drawing or the director may select a conservation organization(s) to conduct annual raffles. Selection of a conservation organization will be based on criteria adopted by the Washington department of fish and wildlife. Big game and wild turkey raffles shall be conducted consistent with WAC 232-28-290.

(29) Special incentive permits: Hunters will be entered into a drawing for special deer and elk incentive permits for prompt reporting of hunting activity in compliance with WAC 232-28-299.

(30) For permit hunts where the permittee may harvest multiple species, the permittee must select the species he/she wants to hunt within fourteen days of notification of being selected.

QUALIFICATIONS FOR PARTICIPATION AND REQUIREMENTS:

(31) Permittee shall contact the appropriate regional office of the department of fish and wildlife when entering the designated hunt area or entering the region to hunt outside the general season.

(32) The permittee may be accompanied by others; however, only the permittee is allowed to carry a legal weapon or harvest an animal.

(33) Any attempt by members of the permittee's party to herd or drive wildlife is prohibited.

(34) If requested by the department, the permittee is required to direct department officials to the site of the kill.

(35) The permit is valid during the hunting season dates for the year issued.

(36) The permittee will present the head and carcass of the bighorn sheep killed to any department office within seventy-two hours of date of kill.

(37) The permittee must abide by all local, state, and federal regulations including firearm restriction areas and area closures.

(38) Hunters awarded the special incentive permit will be required to send the appropriate license fee to the department of fish and wildlife headquarters in Olympia. The department will issue the license and transport tag and send it to the special incentive permit winner.

(39) Permit hunters awarded a cougar permit may only use dogs in GMUs that have a cougar season open to dog use (WAC 232-28-285).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-435	2011-12 Migratory waterfowl seasons and regulations.

NEW SECTION

WAC 232-28-436 2012-13 Migratory waterfowl seasons and regulations.

DUCKS

Statewide: Oct. 13-17, 2012 and Oct. 20, 2012 - Jan. 27, 2013; except scaup season closed Oct. 13 - Nov. 2.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 22-23, 2012.

Daily Bag Limit: 7 ducks, to include not more than 2 hen mallard, 2 pintail, 3 scaup, 1 canvasback, and 2 redhead statewide; and to include not more than 1 harlequin, 2 scoter, 2 long-tailed duck, and 2 goldeneye in Western Washington.

Possession Limit: 14 ducks, to include not more than 4 hen mallard, 4 pintail, 6 scaup, 2 canvasback, and 4 redhead statewide; and to include not more than 1 harlequin, 4 scoter, 4 long-tailed duck, and 4 goldeneye in Western Washington.

Season Limit: 1 harlequin in Western Washington.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SEA DUCKS

Hunters must possess a special 2012-2013 hunting authorization and harvest record card for sea ducks when hunting harlequin, scoter, long-tailed duck, and goldeneye in Western Washington. Hunters who did not possess a 2011-12 sea duck harvest record card must submit an application form to Washington state department of fish and wildlife (WDFW). Immediately after taking a sea duck into possession, hunters must record in ink the information required on the harvest record card.

COOT (Mudhen)

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily Bag Limit: 25 coots.

Possession Limit: 25 coots.

SNIPE

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily Bag Limit: 8 snipe.

Possession Limit: 16 snipe.

GEESE (except Brant)

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 22-23, 2012, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily Bag Limit: 4 Canada geese.

Possession Limit: 8 Canada geese.

Western Washington Goose Seasons

Goose Management Area 1: Island, Skagit, Snohomish counties. Oct. 13, 2012 - Jan. 27, 2013 for snow, Ross', and blue geese. Oct. 13-25, 2012 and Nov. 3, 2012 - Jan. 27, 2013 for other geese (except brant).

Daily Bag Limit: 4 geese.

Possession Limit: 8 geese.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SNOW GEESE

Hunters must purchase a special 2012-13 migratory bird hunting authorization and harvest record card for snow geese when hunting snow, Ross', and blue geese in Goose Management Area 1. Hunters who did not possess a 2011-12 snow goose harvest record card must submit an application form to WDFW. Immediately after taking a snow, Ross', or blue goose into possession, hunters must record in ink the information required on the harvest record card.

SNOW GOOSE QUALITY HUNTING PROGRAM IN GOOSE MANAGEMENT AREA 1

All hunters must obey posted signs regarding access restrictions. Quality hunt units are not available for commercial uses.

SKAGIT COUNTY SPECIAL RESTRICTIONS

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or to discharge a firearm for the purpose of hunting snow geese within 100 feet of any paved public road in other areas of Skagit County.

While hunting snow geese, if a hunter is convicted of (a) trespass; (b) shooting from, across, or along the maintained part of any public highway; (c) discharging a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or discharging a firearm within 100 feet of any paved public road for the purpose of hunting snow geese in other areas of Skagit County; or (d) exceeding the daily bag limit for geese, authorization will be invalidated for the remainder of the current snow goose season and an authorization will not be issued for the subsequent snow goose season.

Goose Management Area 2A

Cowlitz and Wahkiakum counties, and that part of Clark County north of the Washougal River: Open in all areas except Ridgefield NWR from 8:00 a.m. to 4:00 p.m., Saturdays, Sundays, and Wednesdays only, Nov. 10-25, 2012 and

Dec. 5, 2012 - Jan. 27, 2013. Ridgefield NWR open from 8:00 a.m. to 4:00 p.m., Tuesdays, Thursdays, and Saturdays only, Nov. 10-24, 2012 and Dec. 6, 2012 - Jan. 26, 2013, except closed Nov. 22, 2012, Dec. 25, 2012, and Jan. 1, 2013.

Bag Limits for Goose Management Area 2A:

Daily Bag Limit: 4 geese, to include not more than 1 dusky Canada goose and 3 cackling geese.

Possession Limit: 8 geese, to include not more than 1 dusky Canada goose and 6 cackling geese.

Season Limit: 1 dusky Canada goose.

Goose Management Area 2B

Pacific County: Open from 8:00 a.m. to 4:00 p.m., Saturdays and Wednesdays only, Oct. 13-24, 2012 and Nov. 3, 2012 - Jan. 19, 2013.

Bag Limits for Goose Management Area 2B:

Daily Bag Limit: 4 geese, to include not more than 1 dusky Canada goose, 3 cackling geese, and 1 Aleutian goose.

Possession Limit: 8 geese, to include not more than 1 dusky Canada goose, 6 cackling geese, and 2 Aleutian geese.

Season Limit: 1 dusky Canada goose.

Special Provisions for Goose Management Areas 2A and 2B:

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

The goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed area quotas which collectively total 40 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of 40 duskys, to be distributed 5 for Zone 1 (Ridgefield NWR); 5 for Zone 2 (Cowlitz County south of the Kalama River); 15 for Zone 3 (Clark County except Ridgefield NWR); 7 for Zone 4 (Cowlitz County north of the Kalama River and Wahkiakum County); and 8 for Zone 5 (Pacific County). Quotas may be shifted to other zones during the season to optimize use of the statewide quota and minimize depredation.

Hunters must possess a special 2012-13 migratory bird hunting authorization for Goose Management Area 2A/2B and daily goose harvest record card when hunting geese in Goose Management Areas 2A and 2B. New hunters and those who did not maintain a valid 2011-12 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time.

Immediately after taking any goose into possession, hunters must record in ink the information required on the harvest record card. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. All geese shall be presented intact and fully feathered at the check station. If a hunter takes the season bag limit of 1 dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest record card, authorization will be invalidated and the hunter will not be able to hunt geese in Goose Management Areas 2A and 2B for the remainder of the season and the special late goose season. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B.

Special Late Goose Season for Goose Management Area 2A:

Open to WDFW master hunter program graduates and youth hunters (15 years of age or under, who are accompanied by a master hunter) possessing a valid 2012-13 southwest Washington goose hunting authorization and harvest record card, in areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.: Saturdays and Wednesdays only, Feb. 2 - Mar. 6, 2013.

Daily Bag Limit: 4 geese, to include not more than 1 dusky Canada goose and 3 cackling geese.

Possession Limit: 8 geese, to include not more than 1 dusky Canada goose and 6 cackling geese.

Season Limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. WDFW will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late goose season will be closed by emergency action if the harvest of dusky Canada geese exceeds 45 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions listed above for the special late season in Goose Management Area 2A.

Goose Management Area 3

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B: Oct. 13-25, 2012 and Nov. 3, 2012 - Jan. 27, 2013.

Daily Bag Limit: 4 geese.

Possession Limit: 8 geese.

Eastern Washington Goose Seasons

Goose Management Area 4

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties: Saturdays, Sundays, and Wednesdays only during Oct. 13, 2012 - Jan. 20, 2013; Nov. 22 and 23, 2012; Dec. 25, 27, 28, and 31, 2012; Jan. 1, 2013, and every day Jan. 21-27, 2013.

Goose Management Area 5

Includes all parts of Eastern Washington not included in Goose Management Area 4: Oct. 13-17, 2012, every day from Oct. 20, 2012 - Jan. 27, 2013.

Bag Limits for all Eastern Washington Goose Management Areas:

Daily Bag Limit: 4 geese.

Possession Limit: 8 geese.

BRANT

Open in Skagit County only on the following dates: Jan. 12, 13, 16, 19, 20, 23, 26, and 27, 2013.

If the 2012-13 preseason brant population in Skagit County is below 6,000 (as determined by the early January survey), the brant season in Skagit County will be canceled.

Open in Pacific County only on the following dates: Jan. 5, 6, 8, 10, 12, 13, 15, 17, 19, and 20, 2013.

AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT BRANT

Hunters must possess a special 2012-13 migratory bird hunting authorization and harvest record card for brant when hunting brant. Hunters who did not possess a 2011-12 brant harvest record card must submit an application form to WDFW. Immediately after taking a brant into possession, hunters must record in ink the information required on the harvest record card.

Bag Limits for Skagit and Pacific counties:

Daily Bag Limit: 2 brant.

Possession Limit: 4 brant.

SWANS

Season closed statewide.

MANDATORY REPORTING FOR MIGRATORY BIRD HARVEST RECORD CARDS

Hunters must report 2012-13 harvest information from band-tailed pigeon harvest record cards to WDFW for receipt by Sept. 30, 2012, and harvest information from brant, sea duck, and snow goose harvest record cards to WDFW for receipt by Feb. 15, 2013. Every person issued a migratory bird hunting authorization and harvest record card must return the entire card to WDFW or report the card information at the designated internet site listed on the harvest record card. Any hunter failing to report by the deadline will be in noncompliance of reporting requirements. Hunters who have not reported hunting activity by the reporting deadline for any harvest record card acquired in 2012-13 will be required to pay a $10 administrative fee before any new 2013-14 migratory bird authorization and harvest record card will be issued. A hunter may only be penalized a maximum of $10 during a license year.

FALCONRY SEASONS

DUCKS, COOTS, AND SNIPE (Falconry)

(Bag limits include geese and mourning doves.)

Oct. 13-17, 2012 and Oct. 20, 2012 - Jan. 27, 2013 statewide.

Daily Bag Limit: 3, straight or mixed bag with geese and mourning doves during established seasons.

Possession Limit: 6, straight or mixed bag with geese and mourning doves during established seasons.

GEESE (Falconry)

(Bag limits include ducks, coot, snipe, and mourning doves.)

Goose Management Area 1: Oct. 13, 2012 - Jan. 27, 2013 for snow, Ross', or blue geese. Oct. 13-25, 2012 and Nov. 3, 2012 - Jan. 27, 2013 for other geese.

Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, Nov. 10-25, 2012 and Dec. 5, 2012 - Jan. 27, 2013.

Goose Management Area 2B: Saturdays and Wednesdays only, Oct. 13-24, 2012 and Nov. 3, 2012 - Jan. 19, 2013.

Goose Management Areas 3, 4, and 5: Oct. 13-25, 2012 and Nov. 3, 2012 - Jan. 27, 2013.

Daily Bag Limit for All Areas: 3 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Possession Limit for All Areas: 6 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.