WSR 16-04-092

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 12-03—Filed February 1, 2016, 9:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-055 and 12-19-056.

Title of Rule and Other Identifying Information: Water quality standards for surface waters of the state of Washington, chapter 173-201A WAC. Adopt human health toxics criteria into the standards. Adopt clarifying language and new language related to implementation tools for implementing the surface water quality standards. This rule proposal combines rule-making activities announced in two separate preproposal statement of inquiries (CR-101) - WSR 12-19-055 and 12-19-056 and updates rule language previously proposed in January 2015.

Hearing Location(s): The public comment period on the proposed rule is open through April 22, 2016. You may give verbal or written comments at one of the in-person public hearings, or by the end of the comment period. If you attend an online webinar, you may give verbal comments, but written comments need to be submitted through one of the following options: Standard mail: Washington State Department of Ecology, Water Quality Program, Attn: Becca Conklin, Water Quality Standards Coordinator, P.O. Box 47600, Olympia, WA 98504-7600, e-mail swqs@ecy.wa.gov, or fax (360) 407-6426.

All comments are due by 5:00 p.m. on April 22, 2016.

Public Hearing Schedule: We will be holding in-person and online workshops followed by public hearings on this rule proposal. Workshops will consist of a short presentation followed by a question and answer session. The formal public hearing will start after the workshop is over. At that time, we will invite public testimony.

Ecology will provide details about these workshops and public hearings on its web site and through e-mail announcements. For instructions on how to join and participate through the webinar, visit http://www.ecy.wa.gov/programs/wq/rule dev/wac173201A/1203inv.html.

In-Person Hearings

Western Washington - Evening

Date: Tuesday, April 5, 2016
Time: 6:30 p.m.
Location: Georgetown Campus
South Seattle Community College
6737 Corson Avenue South
Building C
Seattle, WA 98108

Eastern Washington - Evening

Date: Wednesday, April 6, 2016
Time: 6:30 p.m.
Location: CenterPlace Regional Events Center
2426 North Discovery Place
Spokane Valley, WA 99216

Webinar Hearings

Daytime Webinar

Date: Thursday, April 7, 2016
Time: 1:30 p.m. - 4:30 p.m.

Evening Webinar

Date: Thursday, April 7, 2016
Time: 6:30 p.m.

Date of Intended Adoption: On or after August 1, 2016.

Submit Written Comments to: Becca Conklin, Water Quality Program, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail swqs@ecy.wa.gov, fax (360) 407-6426, by April 22, 2016, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact water quality reception at ecology, (360) 407-6600, by April 22, 2016, TTY (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology is proposing amendments to water quality standards for surface waters of the state of Washington, chapter 173-201A WAC. The state's water quality standards guide how the state regulates water pollution.

1. This rule making is to amend the water quality standards and provide new human health criteria. Adoption of new human health criteria into Washington's water quality standards will take into account factors used to calculate each chemical criterion such as the amount of fish and shellfish people eat. The new criteria will be used for all federal clean water actions; including wastewater discharge permits, water pollution identification, and water cleanup plans.

2. This proposal will also propose amendments regarding implementation of the water quality standards. The implementation tools being proposed include language revisions to the compliance schedule and variance sections, and a new section to allow the use of intake credits. Ecology is also proposing to add new language clarifying combined sewer overflow (CSO) treatment facilities.

Reasons Supporting Proposal: Ecology is proposing to adopt new human health criteria to protect public health, safety, and welfare. The current human health criteria applied to Washington waters are outdated federal standards that do not reflect current science on protection from toxic chemicals. With adoption of this amendment, our state will have water quality standards for toxics that more accurately reflect the amount of fish and shellfish people eat in Washington.

Adopting new human health criteria was identified as a high priority when ecology conducted a triennial review of the water quality standards in 2010. The triennial review is required by the federal Clean Water Act to ensure that states update standards as needed to reflect new and emerging science and information.

This rule proposal will also provide more language regarding how to implement the water quality standards. The proposed amendments to the implementation tools section of this rule are meant to provide more predictable regulatory tools to help entities that are subject to national pollutant discharge elimination system (NPDES) permits comply with more protective standards. The rule making to amend imple-

mentation tools also directly addresses legislation passed (RCW 90.48.605) that obligates ecology to amend water quality standards to allow compliance schedules in excess of ten years under certain circumstances for permitted discharges.

Statutory Authority for Adoption: RCW 90.48.035 Rulemaking authority.

Statute Being Implemented: Chapter 90.48 RCW, Water pollution control.

Rule is necessary because of federal law, Federal Clean Water Act (33 U.S.C. 1251).

Name of Proponent: Washington state department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Braley, Washington Department of Ecology, Lacey, Washington, (360) 407-6414; Implementation: Cheryl Niemi, Washington Department of Ecology, Lacey, Washington, (360) 407-6440; and Enforcement: Heather Bartlett, Washington Department of Ecology, Lacey, Washington, (360) 407-6405.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Executive Summary: Based on research and analysis required by the Regulatory Fairness Act (RFA), RCW 19.85.070, ecology has determined that the proposed water quality standards (WQS) for surface waters of the state of Washington (chapter 173-201A WAC) does not have a disproportionate impact on small business. This is because the rule is only likely to impact large businesses. (A small business is defined by RFA as having fifty or fewer employees.) Ecology did not, therefore, include language in the proposed rule to minimize disproportionate impacts.

The proposed rule establishes human health criteria that must be met to comply with Washington's WQS. The proposed rule amendments:

- Update the scientific values for:
  - Toxicity factors - reflecting current research.
  - Body weight representative of current population mean - 80kg, up from 70kg.
  - Drinking water intake - 2.4 L/day.
- Change the level of protectiveness:
  - Fish consumption rate - 175 g/day, up from 6.5 g/day.
- Do not change polychlorinated biphenyl (PCB) criteria from current national toxics rule (NTR) levels.
- Set the arsenic criteria to the Safe Water Drinking Act regulatory level.

The proposed rule also updates implementation tools that can be used to meet Washington WQS:

- Removing the time limit on compliance schedules.
- Allowing intake credits where there is no net addition of pollutants.
- Establishes a public, technical, and timed process for variances.

Ecology involved small businesses (or their representatives) and local governments and agencies in the development of this rule during the stakeholder and public processes.

Ecology does not expect the proposed rule to result in significant net loss or gain of any jobs due to quantifiable compliance costs to private industry.

Ecology identified additional possible costs to some private dischargers and potentially in-water construction projects, but was unable to quantify these possible costs due to uncertainty about facility or project attributes and behaviors, water body or site attributes, and the nature of potentially resulting required actions. If additional actions are required, and private businesses incur costs as a result, the impact to net jobs in the state depends on the nature of the actions, and whether on-site, in-state, or out-of-state resources are used to complete them.

If on-site or in-state resources are used, expenditures on them are likely to support offsetting output and jobs in those industries, and ecology does not expect significant reductions in jobs as a result of the proposed rule. If out-of-state resources are used, the model represents this as a loss in output and jobs in industries incurring costs, with no offsetting gains to the suppliers they use to take additional required actions under the proposed rule.

Section 1: Background, Baseline, and Proposed Rule:

1.1 Introduction: Based on research and analysis required by RFA, RCW 19.85.070, ecology has determined that the proposed WQS for surface waters of the state of Washington (chapter 173-201A WAC) does not have a disproportionate impact on small business. This is because the rule is likely to only impact large businesses. (A small business is defined by RFA as having fifty or fewer employees.) Ecology did not, therefore, include language in the proposed rule to minimize disproportionate impacts.

The small business economic impact statement (SBEIS) is intended to be read with the associated cost-benefit analysis (Ecology publication #XX-XX-XXX), which contains more in-depth discussion of the analysis.

1.2 Proposed rule amendments: The proposed rule updates the levels at which toxic pollutants can be present in water and still protect human health. These levels, known as human health criteria (HHC), are determined using the following Environmental Protection Agency (EPA) HHC equations:

- For carcinogens:
  - Freshwater criterion = (RL x BW)/(CSF x [DWI + (FCR x BCF)])
  - Marine criterion = (RL x BW)/(CSF x FCR x BCF)
- For noncarcinogens:
  - Freshwater criterion = (RfD x RSC x BW)/[DWI + (FCR x BCF)]
  - Marine criterion = (RfD x RSC x BW)/(FCR x BCF)

For the above equations:

- RL: Excess cancer risk level. The maximum allowable level of excess cancer.
- BW: Body weight. The representative adult body weight for the population, as based on population attributes.

- CSF: Cancer slope factor. A toxic-specific number representing the risk of cancer associated with exposure to a carcinogenic or potentially carcinogenic substance. A slope factor is an upper bound, approximating a ninety-five percent confidence limit, on the increased cancer risk from a lifetime of exposure to an agent by ingestion.
- DWI: Drinking water intake. Typical drinking water intake, based on the existing NTR (EPA, 1992).
- FCR: Fish consumption rate.
- BCF: Bioconcentration factor. A chemical-specific number representing contaminant uptake.
- RfD: Reference dose. A toxic-specific number representing a daily oral exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.
- RSC: Relative source contribution. The RSC identifies or estimates the portion of a person's total exposure attributed to water and fish consumption and thereby accounts for potential exposure from other sources such as skin absorption, inhalation, other foods, and occupational exposures.

This rule making is proposing to change the human health criteria for water quality as follows:

- Updates to scientific values for:
  - o Toxicity factors - reflecting current research.
  - o Body weight representative of current population mean - 80kg, up from 70kg.
  - o Drinking water intake - 2.4 L/day.
- Changes to the level of protectiveness:
  - o Fish consumption rate - 175 g/day, up from 6.5 g/day.
- Does not change PCB criteria from current NTR levels.
- Sets the arsenic criteria to the Safe Drinking Water Act regulatory level.
- Does not set methylmercury criteria or change total mercury criteria established by NTR.

The proposed rule updates implementation tools that can be used to meet all Washington WQS:

- Removing time limit on compliance schedules.
- Allowing intake credits where there is no net addition of pollutants.
- Establishing a public, technical, and timed process for variances.

It is important to note that the proposed rule changes *real* cancer risk differently for different people, depending on their *real* fish consumption. The proposed rule amendments do not assume *everyone* consumes one hundred seventy-five g/day of fish and shellfish.

1.3 Reasons for the proposed rule amendments: The Federal Clean Water Act (CWA) directs states, with oversight by EPA, to adopt WQS to protect the public health and welfare, enhance the quality of water, and serve the purposes of CWA. Under section 303, states' WQS must include at a minimum:

1. Designated uses for all water bodies within their jurisdictions.

2. Water quality criteria sufficient to protect the most sensitive of the uses.

3. An antidegradation policy consistent with the regulations at 40 C.F.R. 131.12.

States are also required to hold public hearings once every three years for the purpose of reviewing applicable WQS and, as appropriate, modifying and proposing standards. The results of this triennial review must be submitted to EPA, and EPA must approve or disapprove any new or revised standards. Section 303(c) also directs the EPA administrator to promulgate WQS to supersede state standards that have been disapproved, or in cases where the administrator determines that a new or revised standard is needed to meet CWA requirements.

As part of the triennial review, ecology identified a need to adopt new HHC, based on more accurate numbers used in the EPA HHC equations for determining numeric chemical criteria. In this rule making, ecology is proposing the inputs and resultant criteria necessary to protect public health, safety, and welfare. Before the proposal of these new HHC, Washington state continued to use federal standards that do not reflect current science on protection from toxic chemicals, as well as past standards for levels of protectiveness of the population.

Ecology also identified a need to update sections of WQS that direct the implementation of HHC and other WQS. The goal of revising these implementation tools is to provide clear and predictable regulatory requirements to help entities comply with regulatory requirements included in NPDES permits, state waste discharge permits, and CWA section 401 water quality certification. The proposed implementation tools also address legislation (RCW 90.48.605) obligating ecology to amend WQS to allow compliance schedules in excess of ten years under certain circumstances for permitted dischargers.

1.4 Baseline: The baseline generally consists of a collection of existing rules and laws, and their underlying assumptions. For economic analyses, the baseline necessarily also includes the implementation of those regulations, including the guidelines and policies that result in behavior and real impacts. This is what allows us to make a consistent comparison between the state of the world with or without the proposed rule amendments. For this rule making, we discuss the baseline below, grouped into existing:

- Rules and laws.
- NTR criteria assumptions.[1]
- Permitting guidelines.
- 303(d) listing policy.
- Compliance behavior.
- Growth trajectories.
- Allowance for compliance schedules.
- Intake credits.
- Allowance for variances.

[1]The Federal Register (F.R.) citation for the human health criteria are from two sources. 57 F.R. 60848 is NTR which was issued by EPA in 1992. 64 F.R. 61182 is a revision to NTR that changed the PCB criteria from individual aroclors to total PCBs. NTR can be found at 40 C.F.R. 131.36.

1.4.1 Existing rules and laws: The underlying elements of the baseline are existing state and federal laws and rules. Relevant local regulations are included when applicable.

1.4.1.1 Federal requirement: CWA 303 (c)(2)(A) states, about surface WQS:

… Such standards shall be such as to protect the public health or welfare, enhance the quality of the water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes and agricultural, industrial and other purposes and also taking into consideration their use and value for navigation.

1.4.1.2 State requirements: In addition to the federal requirements the department of ecology is required under state statute to "retain and secure high quality waters," and to "vigorously exercise state power" to do so at the state level. (Author's bolding, below.)

Water Pollution Control Act - RCW 90.48.010 Policy enunciated.

It is declared to be the public policy of the state of Washington to **maintain the highest possible standards to insure the purity of all waters of the state** consistent with public health and public enjoyment thereof, the propagation and protection of wild life, birds, game, fish and other aquatic life, and the industrial development of the state, and to that end require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington. Consistent with this policy, the state of Washington will exercise its powers, as fully and as effectively as possible, to retain and secure high quality for all waters of the state. The state of Washington in recognition of the federal government's interest in the quality of the navigable waters of the United States, of which certain portions thereof are within the jurisdictional limits of this state, proclaims a public policy of working cooperatively with the federal government in a joint effort to extinguish the sources of water quality degradation, **while at the same time preserving and vigorously exercising state powers to insure that present and future standards of water quality within the state shall be determined by the citizenry, through and by the efforts of state government, of the state of Washington.**

Water Pollution Control Act - RCW 90.48.035 Rule-making authority.

The department shall have the authority to, and shall promulgate, amend, or rescind such rules and regulations as it shall deem necessary to carry out the provisions of this chapter, including but not limited to rules and regulations relating to standards of quality for waters of the state and for substances discharged therein in order to **maintain the highest possible standards of all waters of the state** in accordance with the public policy as declared in RCW 90.48.010.

Water Pollution Control Act - RCW 90.48.260 Federal Clean Water Act - Department designated as state agency, authority - Delegation of authority - Powers, duties and functions.

The department of ecology is hereby designated as the state water pollution control agency for all purposes of the Federal Clean Water Act as it exists on February 4, 1987, and is hereby authorized to participate fully in the programs of the act.

Water Resources Act of 1971 - RCW 90.54.020 General declaration of fundamentals for utilization and management of waters of the state.

(b) **Waters of the state shall be of high quality.** Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of treatment prior to entry. **Notwithstanding that standards of quality established for the waters of the state would not be violated, wastes and other materials and substances shall not be allowed to enter such waters which will reduce the existing quality thereof,** except in those situations where it is clear that overriding considerations of the public interest will be served.

1.4.2 Previous human health criteria: NTR criteria assumptions: The values for inputs into the equation for NTR (40 C.F.R. 131.36) criteria are listed below. These are inputs into the EPA HHC equations that calculate HHC levels for surface waters, before this proposal of an amended rule.

- Excess cancer risk level = 10^{-6} (one in one million; "RL" in EPA HHC equations below).
- Relative source contribution = 1.0 ("RSC" in EPA HHC equations below).
- Hazard quotient = 1.0 (an underlying factor of "RfD" below).
- Body weight = 70 kg ("BW" in EPA HHC equations below).
- Drinking water intake = 2 L/day ("DWI" in EPA HHC equations below).
- Fish consumption rate = 6.5 g/day for chemicals excluding mercury ("FCR" in EPA HHC equations below).
- Fish consumption rate for mercury = 18.7 g/day.

The EPA HHC equations using these inputs are:

- For carcinogens:
  - Freshwater criterion = (RL x BW)/(CSF x [DWI + (FCR x BCF)])
  - Marine criterion = (RL x BW)/(CSF x FCR x BCF)
- For noncarcinogens:
  - Freshwater criterion = (RfD x RSC x BW)/[DWI + (FCR x BCF)]
  - Marine criterion = (RfD x RSC x BW)/(FCR x BCF)

1.4.3 Existing permitting guidelines: Permitting guidelines help permit writers translate the requirement to meet water quality criteria for protection of human health to permittee-specific requirements. While not a legal requirement, guidance informs how HHC impact permittees who discharge effluent to water bodies. Therefore, in describing the baseline for this analysis of the proposed rule amendments, it is necessary to consider the permitting guidelines in the baseline and proposed scenarios, as they will contribute to the cost and benefit estimates and discussion of impacts.

Ecology uses the Water Quality Program Permit Writer's Manual (Ecology, 2015) for technical guidance when devel-

oping wastewater discharge permits. A general overview of the permitting process for all dischargers includes:

- Ecology receiving the permit application.
- Review of the application for completeness and accuracy.
- Derivation of applicable technology-based effluent limits.
- Determination of whether effluent will cause, or have reasonable potential to cause or contribute to, violation of WQS.
- If yes, derivation of human health-based effluent limits necessary to meet WQS.
- Derivation of monitoring requirements and other special conditions.
- Review process for the draft or proposed permit.
- Issuance of the final permit decision.

For example, within the complex process of NPDES permit-writing (see Ecology, 2011, Figure II-2), a step includes determination of whether toxic pollutants are present in the effluent. Next, the permit writer must determine the best methods of controlling the levels of those toxic chemicals. Using existing technology-based guidelines, or developing them using best professional judgment, a reasonable potential determination is made based on modeling as to whether technology-based controls are sufficient to meet WQS. If not, water quality-based limits are developed.

The basic requirements and process for developing permits will not change under the proposed rule amendments. Extensive discussion of all of the considerations made during the permitting process can be found in Ecology, 2015.

1.4.4 Existing 303(d) impaired water body listing policy: The Federal Clean Water Act's section 303(d) established a process to identify and cleanup polluted waters. Every two years, all states are required to perform a water quality assessment of surface waters in the state, including all the rivers, lakes, and marine waters where data are available. Ecology compiles its own water quality data and federal data, and invites other groups to submit water quality data they have collected. All data submitted must be collected using appropriate scientific methods. The assessed waters are placed in categories that describe the status of water quality. Once the assessment is complete, the public is given a chance to review it and give comments. The final assessment is formally submitted to EPA for approval.

Waters whose beneficial uses - such as for drinking, recreation, aquatic habitat, and industrial use - are impaired by pollutants are placed in the polluted water category in the water quality assessment (303(d) list). These water bodies fall short of state surface WQS and are not expected to improve within the next two years. The 303(d) list, so called because the processes for developing the list and addressing the polluted waters on the list are described in section 303(d) of the Federal Clean Water Act, comprises waters in the polluted water category.

Ecology's assessment of which waters to place on the 303(d) list is guided by:

- Federal laws,
- State WQS, and the
- Policy on the Washington state water quality assessment (WQP Policy 1-11; revised July 2012).

The policy describes how the standards are applied, requirements for the data used, and how to prioritize total maximum daily loads (TMDL), among other issues.[2] In addition, even before a TMDL is completed, the inclusion of a water body on the 303(d) list can reduce the amount of pollutants allowed to be released under permits issued by ecology.

[2]A TMDL is the sum of the load allocations and wasteload allocations, plus reserves for future growth and a margin of safety, which are equal to the Loading Capacity of the water body. This is a requirement of Section 303(d) of the Federal Clean Water Act and is defined in 40 C.F.R. 130.2(i). The term "TMDL" is often also applied to the process to determine a TMDL ("Ecology is doing a TMDL") and to the final documentation of the TMDL ("Ecology has submitted a TMDL").

Waters placed on the 303(d) list require the preparation of a water cleanup plan (TMDL) or other approved water quality improvement project. The improvement plan identifies how much pollution needs to be reduced or eliminated to achieve clean water, and allocates that amount of required pollution reduction among the existing sources.

Ecology periodically revises the water quality assessment policy based on new information and updates to EPA guidance. Each revision includes a public review process. Ecology submitted a revised 303(d) list to EPA in 2015 and we expect approval from EPA in early 2016, therefore ecology used the revised list for the analysis included in this section.

1.4.5 Past or existing compliance behavior: The baseline includes past or existing compliance behavior. This includes behavior undertaken in response to federal and state laws, rules, permits, guidance, and policies. This also includes business decisions in response to regulatory, economic, or environmental changes. Such behavior might include, but is not limited to, existing treatment technologies, production processes, and effluent volumes.

1.4.6 Past or existing growth trajectories: The proposed rules apply to existing and future dischargers, on existing and future impaired water bodies, and water bodies with and without TMDLs, so the baseline must also account for:

- Attributes and behaviors of future dischargers.
- Future TMDLs.

The regulatory environment that current and future dischargers would encounter under the baseline would include the elements of the baseline described above, as well as any change in TMDLs.

1.4.7 Existing allowance for compliance schedules: The baseline includes existing compliance schedules. A compliance schedule is an enforceable tool used as part of a permit, order, or directive to achieve compliance with applicable effluent standards and limitations, WQS, or other legally applicable requirements. Compliance schedules include a sequence of interim requirements such as actions, operations, or milestone events to achieve the stated goals. Compliance schedules are a broadly used tool for achieving compliance with state and federal regulations; compliance schedules under the Clean Water Act are defined federally at CWA 502(17) and 40 C.F.R. Section 122.2. Under the baseline, compliance schedules may last up to ten years.

1.4.8 Existing intake credits: An intake credit is a procedure that allows permitting authorities to conclude that a permittee does not cause, have the reasonable potential to cause, or contribute to an excursion above WQS when he or she returns an unaltered intake water pollutant to the body of water it was taken from under identified circumstances. In other words, when effluent has the same contaminants and concentrations as water taken in, an intake credit allows authorities to not assign responsibility for those contaminant concentrations to the discharger.

Washington's current WQS do not allow intake credits.

1.4.9 Existing allowance for variances: A variance is a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) for a single discharger, a group of dischargers, or stretch of waters. Variances establish a set of temporary requirements that apply instead of the otherwise applicable WQS and related water quality criteria. A variance may be considered when the standards are expected to be attained by the end of the variance period or the attainable use cannot be reliably determined. Variances can be targeted to specific pollutants, sources, and/or stretches of waters.

The United States EPA has dictated that state variance procedures, as part of state WQS, must be consistent with the substantive requirements of 40 C.F.R. 131.14. EPA has approved state-adopted variances in the past and has indicated that it will continue to do so if:

- Each variance is adopted into rule as part of WQS.
- The state demonstrates that meeting the standard is unattainable based on one or more of the grounds outlined in 40 C.F.R. 131.10(g) for removing a designated use. Note: EPA's new WQS regulation makes this requirement only applicable to Clean Water Act 101 (1)(2) uses (the "fishable/swimmable" uses of the Clean Water Act), which is ecology's intent also. Variances for other uses must include consideration of the "use and value" of the water. (Please see 40 C.F.R. 131.14 for new federal requirements.)
- The justification submitted by the state includes documentation that treatment more advanced than that required by sections 303 (c)(2)(A) and (B) has been carefully considered, and that alternative effluent control strategies have been evaluated.
- The more stringent state criterion is maintained and is binding upon all other dischargers on the stream or stream segment.
- The discharger who is given a variance for one particular constituent is required to meet the applicable criteria for other constituents.
- The variance is granted for a specific period of time and can be renewed upon expiration.
- The discharger either must meet the standard upon the expiration of this time period or must make a new demonstration of "unattainability."
- Reasonable progress is being made toward meeting the standards.
- The variance was subjected to public notice, opportunity for comment, and public hearing. The public notice should contain a clear description of the impact of the variance upon achieving WQS in the affected stretch of waters.

Section 2: Analysis of Compliance Costs: After reviewing, filtering, and assessing real cases of existing effluent data for dischargers using existing analytical methods and permitting practices, we conclude that, based on the reasonable potential analyses using proposed HHC, the majority of facilities will not be impacted. To be impacted, a facility must have the following attributes:

- Discharge a chemical for which criteria values would change as a result of the proposed rule amendments.
- Discharge that chemical in quantities greater than the detection limits for that chemical using required test methods. If a facility uses the required sufficiently sensitive test method, a nondetect in an effluent sample generally means the discharge has no reasonable potential to violate standards.
- Currently, or under the baseline, discharge that chemical in quantities such that the concentration at the edge of the chronic mixing zone exceed the relevant proposed criteria value.
- Not be in an existing TMDL, as ecology will not be revising TMDLs as a result of this rule making.
- Have samples that consistently indicate the presence of the chemical.
- Have a continuous discharge (i.e., *not* be an intermittent discharge, such as stormwater or CSO).

and potentially:

- Discharge to sediments of concern for the chemicals of concern in the discharge, at rates in excess of sediment concentrations, as this may violate nondegradation requirements.

Note that for chemicals with both baseline and proposed HHC below the quantitation limit, the proposed rule will not impose additional costs compared to the baseline.

Some facilities, however, are likely to incur costs under the proposed rule:

- Two industrial facilities may incur additional unquantifiable costs:
- Costs of compliance actions if action required to comply with hazardous waste regulations was insufficient to also meet the proposed HHC.
- Costs of compliance actions if a facility chooses to continue operations rather than curtailing them.
- Quantifiable total capital cost to eleven public and two private facilities to comply with proposed standards for phthalates: $10.6 thousand.
- Unquantifiable costs of source control plan implementation, and compliance schedule or variance acquisition costs if the proposed HHC cannot be met using the source control plan.
- Possible unquantifiable sampling and testing costs, as well as costs of more stringent requirements and best management practices at up to five percent of in-water construction sites seeking Section 401 Certification, if ecology determines turbidity is not a sufficient proxy for the likelihood of contaminating the water column.

- Potential compliance costs to a hypothetical unrepresented discharger, cleanup site, or in-water construction project, to control chemicals not currently observed in samples.

Section 3: Quantification of Cost Ratios: Based on ecology's cost estimate results, we determined that the proposed rule does not impact small businesses (employing fifty or fewer employees, at the highest ownership level).

The smallest business likely to experience identifiable costs due to the proposed rule employs approximately six hundred forty employees.[3] It is therefore not possible to compare relative costs to small versus the largest ten percent of businesses.

[3]Employment data taken from individual company web sites, the Northwest Pulp and Paper Association (available at http://nwpulpandpaper.org/about-us/member-profiles/), and "Find the Company" web site (accessed January 13, 2016, from http://listings.findthecompany.com/).

Section 4: Actions Taken to Reduce Impact of the Rule on Small Businesses: Ecology did not take any action to reduce the impact of the proposed rule on small businesses because the proposed rule does not have a disproportionate impact on small businesses.

Public entities, such as publicly owned treatment works (POTW), are not subject to this analysis under RFA. They were identified by the associated cost-benefit analysis as likely to incur additional costs under the proposed rule. While not required to mitigate costs to small publicly owned entities, ecology notes that small POTWs are not required to test for the chemicals that would cause them to incur costs, and their costs under the proposed rule are mitigated by this exemption.

Section 5: The Involvement of Small Businesses and Local Government in the Development of the Proposed Rule: To support the rule-making effort, in September 2012, ecology established an extensive public process to engage stakeholders and key parties. Ecology held a series of water quality policy forums to engage and educate the public on the complex technical and policy issues involved in adopting HHC. Ecology also convened a delegates' table consisting of delegates from key stakeholder groups to discuss concerns and gain an increased understanding of the broad range of issues associated with this rule making.

As ecology moves forward with rule making, we will continue to use our existing e-mail listserv and web pages to communicate to our stakeholders and interest groups along with continuing to make ourselves available to meet with people as requested.

5.1 Delegates' table business and local government representatives:

- **Chandler, Gary** - Association of Washington Business *(Alternate: Brandon Housekeeper)*
- **Hope, Bruce** - Western States Petroleum Association *(Alternate: Courtney Barnes)*
- **Johnson, Ken -** Weyerhaeuser
- **Judd, Nancy** - Association of Washington Business
- **Kibbey, Heather** - City of Everett
- **Kilroy, Sandra** - King County *(Alternate: Josh Weiss)*
- **Myrum, Tom** - Washington State Water Resources Association
- **O'Keefe, Gerry** - Washington Public Ports Association
- **Rawls, Bruce** - Spokane County (*Alternate: Josh Weiss*)
- **Schroeder, Carl** - Association of Washington Cities
- **Steele, David** - Pacific Coast Shellfish Growers *(Alternate: Margaret Barrette)*
- **Stuhlmiller, John** - Washington Farm Bureau *(Alternate: Evan Sheffels)*

5.2 Water quality policy forums & informational meetings business and local government representatives:

- **Aldrich, Nancy** *(City of Richland)*
- **Archer Parsons, Andrea** *(City of Port Orchard)*
- **Baca, Matthew** *(Earthjustice)*
- **Balliet, Jamie** *(East Columbia Basin Irrigation District)*
- **Barrette, Margaret** *(Pacific Coast Shellfish Growers Association)*
- **Bierlink, Henry** *(Whatcom Farm Friends)*
- **Blair, Lori** *(The Boeing Company)*
- **Boehme, Jonathan** *(City of Port Angeles)*
- **Booth, Kevin** *(Avista Corp)*
- **Borden, Bruce** *(Lowes)*
- **Brazil, Brian** *(TansAlta)*
- **Bridges, Thomas** *(Mukilteo Water & Wastewater District)*
- **Brouillard, Elaine** *(Roza Sunnyside Board of Joint Control)*
- **Budworth, Chad** *(The Boeing Company)*
- **Butkus, Paul** *(PCA /Boise Paper)*
- **Castle, Art** *(Building Industry Association of Washington)*
- **Cave, Scott** *(City of Quincy)*
- **Chisolm, B** *(WAPG)*
- **Crowley, Allison** *(Seattle City Light)*
- **Cummings, Dano** *(City of Spokane)*
- **Daly, Brad** *(City of Walla Walla)*
- **Davis, Marcia** *(City of Spokane)*
- **Dayao, Donnelle** *(City of Sumner)*
- **Deardorff, Gary** *(City of Kennewick)*
- **Defoe, Seth** *(Kennewick Irrigation District)*
- **DeVaney, Jon** *(Yakima Valley Growers-Shippers Association)*
- **Finley, Ande** *(Fisherman Bay Sewer District)*
- **Fleming, Josh** *(Boise Paper)*
- **Gallardo, Angela** *(City of Burien)*
- **Gatchalian, Don** *(Yakima County)*
- **Gaub, Ty** *(U.S. Oil & Refining Co.)*
- **Graham, Jeremy** *(City of Olympia)*
- **Gyselinck, Craig** *(Quincy-Columbia Basin Irrigation District)*
- **Halstrom, Jim** *(Washington State Horticultural Association/WA Water Policy Alliance)*
- **Haslip, Heather** *(Port of Skagit)*
- **Hegel, Kevin** *(City of Montesano)*
- **Hermanson, Mike** *(Spokane County Water Resources)*
- **Hildebrandt, Pete** *(Alcoa & Western States Petroleum Association)*
- **Himebaugh, Jan** *(Building Industry Association of Washington)*
- **Houskeeper, Brandon** *(Association of Washington Business)*

- **Hutton-Tine, Alex** *(Recology)*
- **Iams, Karl** *(U.S. Oil & Refining Co.)*
- **Jack, Richard** *(King County Dept Natural Resources and Parks)*
- **Jarnot, Brittany** *(Everett, Fife, Issaquah, Kent, Lake Stevens, Puyallup, Redmond, Renton)*
- **Johnson, Ken** *(Weyerhaeuser)*
- **Johnson Arledge, Rebecca** *(City of Seattle)*
- **Judd, Nancy** *(Windward Environmental for AWB)*
- **Kibbey, Heather** *(City of Everett)*
- **Kilroy, Sandra** *(King County)*
- **Kook, Shirley** *(Lewis County)*
- **Kounts, John** *(Washington PUD Association)*
- **Krider, Leah** *(The Boeing Company)*
- **Loehr, Lincoln** *(City of Everett)*
- **Mauren, Lorna** *(City of Tacoma)*
- **Meehan, Maureen** *(City of Seattle, Department of Transportation)*
- **Merrill, Laura** *(Washington State Association of Counties)*
- **Morgan, Matt** *(Roza Sunnyside Board of Joint Control)*
- **Norcross, Neil** *(Tesoro Refining & Marketing Co. LLC)*
- **O'Keefe, Gerry** *(WPPA)*
- **Percynski, Beth** *(Procter & Gamble)*
- **Peterson, John** *(Clark Regional Wastewater District)*
- **Phillips, Sandra** *(Spokane Regional Health District)*
- **Plusquellec, Scott** *(City of Seattle, Office of Intergovernmental Relations)*
- **Rae, Alyson** *(Snohomish County)*
- **Ramos, C** *(Boise Paper)*
- **Ransavage, Ryan** *(Miles Sand & Gravel Company)*
- **Rhoads, Kate** *(Seattle Public Utilities)*
- **Rhodes, Brian** *(Western States Petroleum Association and Shell)*
- **Riggs, Michele** *(Cedar Grove Composting)*
- **Sackellares, Robert** *(Georgia Pacific)*
- **Saffery, Susan** *(City of Seattle, Seattle Public Utilities)*
- **Schmidt, Lynn** *(City of Spokane)*
- **Schmidtz, David** *(Phillips 66 Ferndale Refinery)*
- **Schroeder, Carl** *(Association of Washington Cities)*
- **Shopbell, Stephanie** *(South Columbia Basin Irrigation District)*
- **Sklare, Julie** *(City of Everett)*
- **Skrinde, Rolf** *(Twin City Foods)*
- **Spain, Glen** *(Pacific Coast Federation of Fishermen's Associations (PCFFA))*
- **Steinmetz, Marcie** *(Chelan PUD)*
- **Taylor, Calvin** *(City of Tacoma)*
- **Taylor, Toni** *(Spokane County Water Resources Division)*
- **Thorpe, Ed** *(Coalition for Clean Water)*
- **Turner, Doris** *(The Boeing Company)*
- **VanderWood, Jerry** *(Associated General Contractors of Washington)*
- **VanNatta, Kathryn** *(Northwest Public Power Association)*
- **Varner, Phyllis** *(City of Bellevue)*
- **Verity, Laura** *(Ponderay Newsprint Co.)*
- **Vincent, Carla** *(Pierce County SWM)*
- **Wagner, Theresa** *(City of Seattle)*
- **Waldron, Chris** *(PIONEER Technologies Corporation)*
- **Webber, Terry** *(American Forest & Paper Association)*
- **Wendling, Peg** *(City of Bellingham)*
- **Wertz, Ingrid** *(Seattle Public Utilities)*
- **Whitaker, Brandon** *(Port of Everett)*
- **Wood, Jill** *(Island County Public Health)*
- **Wright, Jeff** *(City of Everett)*
- **Zlateff, Dana** *(City of Issaquah)*
- **Zorza, Dubber** *(Hood River Sand & Gravel)*

5.3 Water quality partnership business and local government representatives:

- **Archer-Parsons, Andrea** (City of Port Orchard)
- **Blair, Lori** (Boeing, Environment - Stormwater)
- **Burroughs, Blair** (Washington Association of Sewer & Water Districts)
- **Callahan, Jason** (Washington State House of Representatives)
- **Carstens, Steve** (City of Puyallup)
- **Clark, Mark** (WA State Conservation Commission)
- **Coburn, Gail** (Seattle Public Utilities)
- **Cooper, Betsy** (Department of Natural Resources and Parks)
- **Erwin, Tanyalee** (WSU Puyallup Research and Extension Center)
- **Fohn, Mindy** (Kitsap County Public Works)
- **Gordon, Jay** (Washington State Dairy Federation)
- **Harbison, Patrick** (Cowlitz County Public Works)
- **Hildebrandt, Pete** (Western States Petroleum Association)
- **Johnson, Ken** (Weyerhaeuser Company)
- **Griffin, Heather** (City of Everett Public Works)
- **Leif, Bill** (Snohomish County Department of Public Works)
- **Lewis, Teresa** (Pierce County Public Works and Utilities)
- **Mayhew, Miles** (Seattle Public Utilities)
- **McCabe, Christian** (Northwest Pulp & Paper)
- **McCart, Wes** (Stevens County Commissioner, District 1)
- **Meehan, Maureen** (City of Seattle Department of Transportation)
- **Meyer, Andy** (Association of Washington Cities)
- **Michael, Hal** (Sustainable Fisheries Foundation)
- **Navetski, Doug** (King County)

5.4 E-mail listserv: Ecology also communicated with interested parties using the water quality information (WQInfo) mailing list (listserv). This list includes over one thousand one hundred recipients at public, businesses, local governments, education, military, and other interests.

Section 6: The SIC Codes of Impacted Industries: RFA requires ecology to list the SIC (standard industry classification) codes of impacted industries. The SIC system has long been replaced by the North American Industry Classification System (NAICS).

Based on our analysis of costs, the only likely impacted NAICS code is 3221 (Pulp, Paper, and Paperboard Mills), exclusively through cleanup sites that treat groundwater and are permitted dischargers of treated groundwater to surface waters. Additional possibly impacted NAICS codes include

3221, 3313, and 4247. There are also potential costs to entities seeking Section 401 Certification, if ecology determines that turbidity is no longer an appropriate measure of the likelihood of in-water construction impacting surface water quality with toxic chemicals in sediments.

Section 7: Impact on Jobs: We used the Washington state office of financial management's Washington input-output model (OFM-IO) to assess the proposed rule's impact on jobs across the state. This methodology estimates the impact as reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Compliance costs incurred by an industry are entered in the OFM-IO model as a decrease in spending and investment.[4]

[4]For more information, see http://www.ofm.wa.gov/economy/io/2007/default.asp.

The OFM-IO model addresses only private sector industries, as does the SBEIS. As such, only a subset of total costs estimated and quantified by the cost-benefit analysis are addressed in the jobs impact analysis. Approximately $1.5 thousand in quantifiable costs are likely for private industry. Using the OFM-IO model, this is not likely to result in a net loss or gain of jobs in Washington.

Ecology identified additional possible costs to some private dischargers and potentially in-water construction projects, but was unable to quantify these possible costs due to uncertainty about facility or project attributes and behaviors, water body or site attributes, and the nature of potentially resulting required actions. If additional actions are required, and private businesses incur costs as a result, the impact to net jobs in the state depends on the nature of the actions, and whether on-site, in-state, or out-of-state resources are used to complete them.

If on-site or in-state resources are used, expenditures on them are likely to support offsetting output and jobs in those industries, and ecology does not expect significant reductions in jobs as a result of the proposed rule. If out-of-state resources are used, the model represents this as a loss in output and jobs in industries incurring costs, with no offsetting gains to the suppliers they use to take additional required actions under the proposed rule.

A copy of the statement may be obtained by contacting Becca Conklin, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6413, fax (360) 407-6426, e-mail swqs@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Becca Conklin, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6413, fax (360) 407-6426, e-mail swqs@ecy.wa.gov.

January 29, 2016
Maia D. Bellon
Director

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

AMENDATORY SECTION (Amending WSR 11-09-090, filed 4/20/11, effective 5/21/11)

WAC 173-201A-020 Definitions. The following definitions are intended to facilitate the use of chapter 173-201A WAC:

"1-DMax" or **"1-day maximum temperature"** is the highest water temperature reached on any given day. This measure can be obtained using calibrated maximum/minimum thermometers or continuous monitoring probes having sampling intervals of thirty minutes or less.

"7-DADMax" or **"7-day average of the daily maximum temperatures"** is the arithmetic average of seven consecutive measures of daily maximum temperatures. The 7-DADMax for any individual day is calculated by averaging that day's daily maximum temperature with the daily maximum temperatures of the three days prior and the three days after that date.

"Action value" means a total phosphorus (TP) value established at the upper limit of the trophic states in each ecoregion (see Table 230(1)). Exceedance of an action value indicates that a problem is suspected. A lake-specific study may be needed to confirm if a nutrient problem exists.

"Actions" refers broadly to any human projects or activities.

"Acute conditions" are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of short-term exposure to the substance or detrimental environmental condition.

"AKART" is an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.

"Background" means the biological, chemical, and physical conditions of a water body, outside the area of influence of the discharge under consideration. Background sampling locations in an enforcement action would be up-gradient or outside the area of influence of the discharge. If several discharges to any water body exist, and enforcement action is being taken for possible violations to the standards, background sampling would be undertaken immediately up-gradient from each discharge.

"Best management practices (BMP)" means physical, structural, and/or managerial practices approved by the department that, when used singularly or in combination, prevent or reduce pollutant discharges.

"Biological assessment" is an evaluation of the biological condition of a water body using surveys of aquatic community structure and function and other direct measurements of resident biota in surface waters.

"Bog" means those wetlands that are acidic, peat forming, and whose primary water source is precipitation, with little, if any, outflow.

"Carcinogen" means any substance or agent that produces or tends to produce cancer in humans. For implementa-

tion of this chapter, the term carcinogen will apply to substances on the United States Environmental Protection Agency lists of A (known human) and B (probable human) carcinogens, and any substance which causes a significant increased incidence of benign or malignant tumors in a single, well conducted animal bioassay, consistent with the weight of evidence approach specified in the United States Environmental Protection Agency's Guidelines for Carcinogenic Risk Assessment as set forth in 51 FR 33992 et seq. as presently published or as subsequently amended or republished.

"Chronic conditions" are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of repeated or constant exposure over an extended period of time to a substance or detrimental environmental condition.

"Combined sewer overflow (CSO) treatment plant" is a facility that provides at-site treatment as provided for in chapter 173-245 WAC. A CSO treatment plant is a specific facility identified in a department-approved CSO reduction plan (long-term control plan) that is designed, operated and controlled by a municipal utility to capture and treat excess combined sanitary sewage and storm water from a combined sewer system.

"Compliance schedule" or **"schedule of compliance"** is a schedule of remedial measures included in a permit or an order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with an effluent limit, other prohibition, or standard.

"Created wetlands" means those wetlands intentionally created from nonwetland sites to produce or replace natural wetland habitat.

"Critical condition" is when the physical, chemical, and biological characteristics of the receiving water environment interact with the effluent to produce the greatest potential adverse impact on aquatic biota and existing or designated water uses. For steady-state discharges to riverine systems the critical condition may be assumed to be equal to the 7Q10 flow event unless determined otherwise by the department.

"Damage to the ecosystem" means any demonstrated or predicted stress to aquatic or terrestrial organisms or communities of organisms which the department reasonably concludes may interfere in the health or survival success or natural structure of such populations. This stress may be due to, but is not limited to, alteration in habitat or changes in water temperature, chemistry, or turbidity, and shall consider the potential build up of discharge constituents or temporal increases in habitat alteration which may create such stress in the long term.

"Department" means the state of Washington department of ecology.

"Designated uses" are those uses specified in this chapter for each water body or segment, regardless of whether or not the uses are currently attained.

"Director" means the director of the state of Washington department of ecology.

"Drainage ditch" means that portion of a designed and constructed conveyance system that serves the purpose of transporting surplus water; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

"Ecoregions" are defined using EPAs *Ecoregions of the Pacific Northwest* Document No. 600/3-86/033 July 1986 by Omernik and Gallant.

"Enterococci" refers to a subgroup of fecal streptococci that includes *S. faecalis, S. faecium, S. gallinarum,* and *S. avium*. The enterococci are differentiated from other streptococci by their ability to grow in 6.5% sodium chloride, at pH 9.6, and at 10°C and 45°C.

"*E. coli*" or **"*Escherichia coli*"** is an aerobic and facultative gram negative nonspore forming rod shaped bacterium that can grow at 44.5 degrees Celsius that is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive and Methylumbelliferyl glucuronide (MUG) positive.

"Existing uses" means those uses actually attained in fresh or marine waters on or after November 28, 1975, whether or not they are designated uses. Introduced species that are not native to Washington, and put-and-take fisheries comprised of nonself-replicating introduced native species, do not need to receive full support as an existing use.

"Extraordinary primary contact" means waters providing extraordinary protection against waterborne disease or that serve as tributaries to extraordinary quality shellfish harvesting areas.

"Fecal coliform" means that portion of the coliform group which is present in the intestinal tracts and feces of warm-blooded animals as detected by the product of acid or gas from lactose in a suitable culture medium within twenty-four hours at 44.5 plus or minus 0.2 degrees Celsius.

"Geometric mean" means either the nth root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

"Ground water exchange" means the discharge and recharge of ground water to a surface water. Discharge is inflow from an aquifer, seeps or springs that increases the available supply of surface water. Recharge is outflow downgradient to an aquifer or downstream to surface water for base flow maintenance. Exchange may include ground water discharge in one season followed by recharge later in the year.

"Hardness" means a measure of the calcium and magnesium salts present in water. For purposes of this chapter, hardness is measured in milligrams per liter and expressed as calcium carbonate ($CaCO_3$).

"Intake credit" is a procedure for establishing effluent limits that take into account the amount of a pollutant that is present in waters of the state, at the time water is removed from the body of water by the discharger or other facility supplying the discharger with intake water.

"Irrigation ditch" means that portion of a designed and constructed conveyance system that serves the purpose of transporting irrigation water from its supply source to its place of use; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

"Lakes" shall be distinguished from riverine systems as being water bodies, including reservoirs, with a mean detention time of greater than fifteen days.

"Lake-specific study" means a study intended to quantify existing nutrient concentrations, determine existing characteristic uses for lake class waters, and potential lake uses. The study determines how to protect these uses and if any uses are lost or impaired because of nutrients, algae, or aquatic plants. An appropriate study must recommend a criterion for total phosphorus (TP), total nitrogen (TN) in µg/l, or other nutrient that impairs characteristic uses by causing excessive algae blooms or aquatic plant growth.

"Mean detention time" means the time obtained by dividing a reservoir's mean annual minimum total storage by the thirty-day ten-year low-flow from the reservoir.

"Migration or translocation" means any natural movement of an organism or community of organisms from one locality to another locality.

"Mixing zone" means that portion of a water body adjacent to an effluent outfall where mixing results in the dilution of the effluent with the receiving water. Water quality criteria may be exceeded in a mixing zone as conditioned and provided for in WAC 173-201A-400.

"Natural conditions" or **"natural background levels"** means surface water quality that was present before any human-caused pollution. When estimating natural conditions in the headwaters of a disturbed watershed it may be necessary to use the less disturbed conditions of a neighboring or similar watershed as a reference condition. (See also WAC 173-201A-260(1).)

"New or expanded actions" mean human actions that occur or are regulated for the first time, or human actions expanded such that they result in an increase in pollution, after July 1, 2003, for the purpose of applying this chapter only.

"Nonpoint source" means pollution that enters any waters of the state from any dispersed land-based or water-based activities including, but not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, or forest lands; subsurface or underground sources; or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

"Permit" means a document issued pursuant to chapter 90.48 RCW specifying the waste treatment and control requirements and waste discharge conditions.

"pH" means the negative logarithm of the hydrogen ion concentration.

"Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

"Primary contact recreation" means activities where a person would have direct contact with water to the point of complete submergence including, but not limited to, skin diving, swimming, and water skiing.

"Secondary contact recreation" means activities where a person's water contact would be limited (e.g., wading or fishing) to the extent that bacterial infections of eyes, ears, respiratory or digestive systems, or urogenital areas would normally be avoided.

"Shoreline stabilization" means the anchoring of soil at the water's edge, or in shallow water, by fibrous plant root complexes; this may include long-term accretion of sediment or peat, along with shoreline progradation in such areas.

"Storm water" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a storm water drainage system into a defined surface water body, or a constructed infiltration facility.

"Storm water attenuation" means the process by which peak flows from precipitation are reduced and runoff velocities are slowed as a result of passing through a surface water body.

"Surface waters of the state" includes lakes, rivers, ponds, streams, inland waters, saltwaters, wetlands and all other surface waters and water courses within the jurisdiction of the state of Washington.

"Temperature" means water temperature expressed in degrees Celsius (°C).

"Treatment wetlands" means those wetlands intentionally constructed on nonwetland sites and managed for the primary purpose of wastewater or storm water treatment. Treatment wetlands are considered part of a collection and treatment system, and generally are not subject to the criteria of this chapter.

"Trophic state" means a classification of the productivity of a lake ecosystem. Lake productivity depends on the amount of biologically available nutrients in water and sediments and may be based on total phosphorus (TP). Secchi depth and chlorophyll-a measurements may be used to improve the trophic state classification of a lake. Trophic states used in this rule include, from least to most nutrient rich, ultra-oligotrophic, oligotrophic, lower mesotrophic, upper mesotrophic, and eutrophic.

"Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

"Upwelling" means the natural process along Washington's Pacific Coast where the summer prevailing northerly winds produce a seaward transport of surface water. Cold, deeper more saline waters rich in nutrients and low in dissolved oxygen, rise to replace the surface water. The cold oxygen deficient water enters Puget Sound and other coastal estuaries at depth where it displaces the existing deep water and eventually rises to replace the surface water. Such surface water replacement results in an overall increase in salinity and nutrients accompanied by a depression in dissolved oxygen. Localized upwelling of the deeper water of Puget Sound can occur year-round under influence of tidal currents, winds, and geomorphic features.

"USEPA" means the United States Environmental Protection Agency.

"Variance" is a time-limited designated use and criterion as defined in 40 C.F.R. 131.3, and must be adopted by rule.

"Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites((,)) including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. (Water bodies not included in the definition of wetlands as well as those mentioned in the definition are still waters of the state.)

"Wildlife habitat" means waters of the state used by, or that directly or indirectly provide food support to, fish, other aquatic life, and wildlife for any life history stage or activity.

AMENDATORY SECTION (Amending WSR 11-09-090, filed 4/20/11, effective 5/21/11)

WAC 173-201A-240 Toxic substances. (1) Toxic substances shall not be introduced above natural background levels in waters of the state which have the potential either singularly or cumulatively to adversely affect characteristic water uses, cause acute or chronic toxicity to the most sensitive biota dependent upon those waters, or adversely affect public health, as determined by the department.

(2) The department shall employ or require chemical testing, acute and chronic toxicity testing, and biological assessments, as appropriate, to evaluate compliance with subsection (1) of this section and to ensure that aquatic communities and the existing and designated uses of waters are being fully protected.

(3) USEPA Quality Criteria for Water, 1986, as revised, shall be used in the use and interpretation of the values listed in subsection (5) of this section.

(4) Concentrations of toxic, and other substances with toxic propensities not listed in Table 240 of this section shall be determined in consideration of USEPA Quality Criteria for Water, 1986, and as revised, and other relevant information as appropriate.

(5) The following criteria, found in Table 240(((~~(3)~~))), shall be applied to all surface waters of the state of Washington ((~~for the protection of aquatic life~~)). Values are µg/L for all substances except ammonia and chloride which are mg/L, and asbestos which is million fibers/L.

(a) **Aquatic life protection**. The department may revise the ((~~following~~)) criteria in Table 240 for aquatic life on a statewide or water body-specific basis as needed to protect aquatic life occurring in waters of the state and to increase the technical accuracy of the criteria being applied. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act. The department shall ensure there are early opportunities for public review and comment on proposals to develop revised criteria. ((~~Values are µg/L for all substances except Ammonia and Chloride which are mg/L:~~))

(b) **Human health protection.** The following provisions apply to the human health criteria in Table 240. All waters shall maintain a level of water quality when entering downstream waters that provides for the attainment and maintenance of the water quality standards of those downstream waters, including the waters of another state. The human health criteria in the tables were calculated using a fish consumption rate of 175 g/day. Criteria for carcinogenic substances were calculated using a cancer risk level equal to one-in-one-million, or as otherwise specified in this chapter. The human health criteria calculations and variables include chronic durations of exposure up to seventy years. All human health criteria for metals are for total metal concentrations, unless otherwise noted. Dischargers have the obligation to reduce toxics in discharges through the use of AKART.

Table 240(((~~(3)~~)))
Toxics Substances Criteria

((~~Substance~~	~~Freshwater~~		~~Marine Water~~	
	~~Acute~~	~~Chronic~~	~~Acute~~	~~Chronic~~
~~Aldrin/Dieldrin e~~	~~2.5a~~	~~0.0019b~~	~~0.71a~~	~~0.0019b~~
~~Ammonia (un-ionized NH3) hh~~	~~f,e~~	~~g,d~~	~~0.233h,e~~	~~0.035h,d~~
~~Arsenic dd~~	~~360.0e~~	~~190.0d~~	~~69.0e,ll~~	~~36.0d,ee,ll~~
~~Cadmium dd~~	~~i,e~~	~~j,d~~	~~42.0e~~	~~9.3d~~
~~Chlordane~~	~~2.4a~~	~~0.0043b~~	~~0.09a~~	~~0.004b~~
~~Chloride (Dissolved) k~~	~~860.0h,e~~	~~230.0h,d~~	~~-~~	~~-~~
~~Chlorine (Total Residual)~~	~~19.0e~~	~~11.0d~~	~~13.0e~~	~~7.5d~~
~~Chlorpyrifos~~	~~0.083e~~	~~0.041d~~	~~0.011e~~	~~0.0056d~~
~~Chromium (Hex) dd~~	~~15.0e,l,ii~~	~~10.0d,jj~~	~~1,100.0e,l,ll~~	~~50.0d,ll~~

((Substance	Freshwater		Marine Water	
	Acute	Chronic	Acute	Chronic
Chromium (Tri) gg	m,e	n,d	-	-
Copper dd	o,e	p,d	4.8e,ll	3.1d,ll
Cyanide ee	22.0e	5.2d	1.0e,mm	d,mm
DDT (and metabolites)	1.1a	0.001b	0.13a	0.001b
Dieldrin/Aldrin e	2.5a	0.0019b	0.71a	0.0019b
Endosulfan	0.22a	0.056b	0.034a	0.0087b
Endrin	0.18a	0.0023b	0.037a	0.0023b
Heptachlor	0.52a	0.0038b	0.053a	0.0036b
Hexachlorocyclohexane (Lindane)	2.0a	0.08b	0.16a	-
Lead dd	q,e	r,d	210.0e,ll	8.1d,ll
Mercury s	2.1e,kk,dd	0.012d,ff	1.8e,ll,dd	0.025d,ff
Nickel dd	t,e	u,d	74.0e,ll	8.2d,ll
Parathion	0.065e	0.013d	-	-
Pentachlorophenol (PCP)	w,e	v,d	13.0e	7.9d
Polychlorinated Biphenyls (PCBs)	2.0b	0.014b	10.0b	0.030b
Selenium	20.0e,ff	5.0d,ff	290e,ll,dd	71.0d, x,ll,dd
Silver dd	y,a	-	1.9a,ll	-
Toxaphene	0.73e,z	0.0002d	0.21e,z	0.0002d
Zinc dd	aa,e	bb,d	90.0e,ll	81.0d,ll

Notes to Table 240(3):))

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Metals:								
Antimony	7440360	Metals, cyanide, and total phenols					12	180
Arsenic	7440382	Metals, cyanide, and total phenols	360.0 (c,dd)	190.0 (d,dd)	69.0 (c,ll,dd)	36.0 (d,cc,ll,dd)	10 (A)	10 (A)
Asbestos	1332214	Toxic pollutants and hazardous substances					7,000,000 fibers/L (C)	
Beryllium	7440417	Metals, cyanide, and total phenols						
Cadmium	7440439	Metals, cyanide, and total phenols	(I,c,dd)	(I,c,dd)	42.0 (c,dd)	9.3 (d,dd)		
Chromium (III)	16065831	Metals, cyanide, and total phenols	(m,c,gg)	(n,d,gg)				
Chromium (VI)	18540299	Metals, cyanide, and total phenols	15.0 (c,l,ii,dd)	10.0 (d,jj,dd)	1,100.0 (c,l,ll,dd)	50.0 (d,ll,dd)		
Copper	7440508	Metals, cyanide, and total phenols	(o,c,dd)	(p,d,dd)	4.8 (c,ll,dd)	3.1 (d,ll,dd)	1,300 (C)	
Lead	7439921	Metals, cyanide, and total phenols	(q,c,dd)	(r,d,dd)	210.0 (c,ll,dd)	8.1 (d,ll,dd)		
Mercury	7439976	Metals, cyanide, and total phenols	2.1 (c,kk,dd)	0.012 (d,ff,s)	1.8 (c,ll,dd)	0.025 (d,ff,s)	(G)	(G)
Methylmercury	22967926	Nonconventional						

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Nickel	7440020	Metals, cyanide, and total phenols	(t,c,dd)	(u,d,dd)	74.0 (c,ll,dd)	8.2 (d,ll,dd)	150	190
Selenium	7782492	Metals, cyanide, and total phenols	20.0 (c,ff)	5.0 (d,ff)	290 (c,ll,dd)	71.0 (d,x,ll,dd)	120	480
Silver	7440224	Metals, cyanide, and total phenols	(y,a,dd)		1.9 (a,ll,dd)			
Thallium	7440280	Metals, cyanide, and total phenols					0.24	0.27
Zinc	7440666	Metals, cyanide, and total phenols	(aa,c,dd)	(bb,d,dd)	90.0 (c,ll,dd)	81.0 (d,ll,dd)	2,300	2,900
Other chemicals:								
1,1,1-Trichloroethane	71556	Volatile					47,000	160,000
1,1,2,2-Tetrachloroethane	79345	Volatile					0.12 (B)	0.46 (B)
1,1,2-Trichloroethane	79005	Volatile					0.44 (B)	1.8 (B)
1,1-Dichloroethane	75343	Volatile						
1,1-Dichloroethylene	75354	Volatile					1200	4100
1,2,4-Trichlorobenzene	120821	Base/neutral compounds					0.12 (B)	0.14 (B)
1,2-Dichlorobenzene	95501	Volatile					2000	2500
1,2-Dichloroethane	107062	Volatile					9.3 (B)	120 (B)
1,2-Dichloropropane	78875	Volatile					0.71 (B)	3.1 (B)
1,3-Dichloropropene	542756	Volatile					0.24 (B)	2 (B)
1,2-Diphenylhydrazine	122667	Base/neutral compounds					0.015 (B)	0.023 (B)
1,2-Trans-Dichloroethylene	156605	Volatile					600	5,800
1,3-Dichlorobenzene	541731	Volatile					13	16
1,4-Dichlorobenzene	106467	Volatile					460	580
2,3,7,8-TCDD (Dioxin)	1746016	Dioxin					0.000000064	0.000000064
2,4,6-Trichlorophenol	88062	Acid compounds					0.25 (B)	0.28 (B)
2,4-Dichlorophenol	120832	Acid compounds					25	34
2,4-Dimethylphenol	105679	Acid compounds					85	97
2,4-Dinitrophenol	51285	Acid compounds					60	610
2,4-Dinitrotoluene	121142	Base/neutral compounds					0.039 (B)	0.18 (B)
2,6-Dinitrotoluene	606202	Base/neutral compounds						
2-Chloroethyvinyl Ether	110758	Volatile						
2-Chloronaphthalene	91587	Base/neutral compounds					170	180
2-Chlorophenol	95578	Acid compounds					15	17
2-Methyl-4,6-Dinitrophenol (4,6-dinitro-o-cresol)	534521	Acid compounds					7.1	25
2-Nitrophenol	88755	Acid compounds						
3,3'-Dichlorobenzidine	91941	Base/neutral compounds					0.0031 (B)	0.0033 (B)
3-Methyl-4-Chlorophenol (parachlorometa cresol)	59507	Acid compounds					36	36

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
4,4'-DDD	72548	Pesticides/PCBs					0.000036 (B)	0.000036 (B)
4,4'-DDE	72559	Pesticides/PCBs					0.000051 (B)	0.000051 (B)
4,4'-DDT	50293	Pesticides/PCBs					0.000025 (B)	0.000025 (B)
4,4'-DDT(and metabolites)		Pesticides/PCBs	1.1 (a)	0.001 (b)	0.13 (a)	0.001 (b)		
4-Bromophenyl Phenyl Ether	101553	Base/neutral compounds						
4-Chorophenyl Phenyl Ether	7005723	Base/neutral compounds						
4-Nitrophenol	100027	Acid compounds						
Acenaphthene	83329	Base/neutral compounds					110	110
Acenaphthylene	208968	Base/neutral compounds						
Acrolein	107028	Volatile					1.0	1.1
Acrylonitrile	107131	Volatile					0.019 (B)	0.028 (B)
Aldrin	309002	Pesticides/PCBs	2.5 (a,e)	0.0019 (b,e)	0.71 (a,e)	0.0019 (b,e)	0.0000057 (B)	0.0000058 (B)
alpha-BHC	319846	Pesticides/PCBs					0.0005 (B)	0.00056 (B)
alpha-Endosulfan	959988	Pesticides/PCBs					9.7	10
Anthracene	120127	Base/neutral compounds					3,100	4,600
Benzene	71432	Volatile					0.44 (B)	1.6 (B)
Benzidine	92875	Base/neutral compounds					0.00002 (B)	0.000023 (B)
Benzo(a) Anthracene	56553	Base/neutral compounds					0.014 (B)	0.021 (B)
Benzo(a) Pyrene	50328	Base/neutral compounds					0.0014 (B)	0.0021 (B)
Benzo(b) Fluoranthene	205992	Base/neutral compounds					0.014 (B)	0.021 (B)
Benzo(ghi) Perylene	191242	Base/neutral compounds						
Benzo(k) Fluoranthene	207089	Base/neutral compounds					0.014 (B)	0.21 (B)
beta-BHC	319857	Pesticides/PCBs					0.0018 (B)	0.002 (B)
beta-Endosulfan	33213659	Pesticides/PCBs					9.7	10
Bis(2-Chloroethoxy) Methane	111911	Base/neutral compounds						
Bis(2-Chloroethyl) Ether	111444	Base/neutral compounds					0.02 (B)	0.06 (B)
Bis(2-Chloroisopropyl) Ether	108601	Base/neutral compounds					1,100	7,400
Bis(2-Ethylhexyl) Phthalate	117817	Base/neutral compounds					0.23 (B)	0.25 (B)
Bromoform	75252	Volatile					5.8 (B)	27 (B)

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Butylbenzyl Phthalate	85687	Base/neutral compounds					0.56 (B)	0.58 (B)
Carbon Tetrachloride	56235	Volatile					0.2 (B)	0.35 (B)
Chlordane	57749	Pesticides/PCBs	2.4 (a)	0.0043 (b)	0.09 (a)	0.004 (b)	0.000093 (B)	0.000093 (B)
Chlorobenzene	108907	Volatile					380	890
Chlorodibromomethane	124481	Volatile					0.65 (B)	3 (B)
Chloroethane	75003	Volatile						
Chloroform	67663	Volatile					260	1200
Chrysene	218019	Base/neutral compounds					1.4 (B)	2.1 (B)
Cyanide	57125	Metals, cyanide, and total phenols	22.0 (c,ee)	5.2 (d,ee)	1.0 (c,mm,ee)	(d,mm,ee)	19 (D)	270 (D)
delta-BHC	319868	Pesticides/PCBs						
Dibenzo(a,h) Anthracene	53703	Base/neutral compounds					0.0014 (B)	0.0021 (B)
Dichlorobromomethane	75274	Volatile					0.77 (B)	3.6 (B)
Dieldrin	60571	Pesticides/PCBs	2.5 (a,e)	0.0019 (b,e)	0.71 (a,e)	0.0019 (b,e)	0.0000061 (B)	0.0000061 (B)
Diethyl Phthalate	84662	Base/neutral compounds					4,200	5,000
Dimethyl Phthalate	131113	Base/neutral compounds					92,000	130,000
Di-n-Butyl Phthalate	84742	Base/neutral compounds					450	510
Di-n-Octyl Phthalate	117840	Base/neutral compounds						
Endosulfan		Pesticides/PCBs	0.22 (a)	0.056 (b)	0.034 (a)	0.0087 (b)		
Endosulfan Sulfate	1031078	Pesticides/PCBs					9.7	10
Endrin	72208	Pesticides/PCBs	0.18 (a)	0.0023 (b)	0.037 (a)	0.0023 (b)	0.034	0.035
Endrin Aldehyde	7421934	Pesticides/PCBs					0.034	0.035
Ethylbenzene	100414	Volatile					200	270
Fluoranthene	206440	Base/neutral compounds					16	16
Fluorene	86737	Base/neutral compounds					420	610
Hexachlorocyclohexane (gamma-BHC; Lindane)	58899	Pesticides/PCBs	2.0 (a)	0.08 (b)	0.16 (a)		15	17
Heptachlor	76448	Pesticides/PCBs	0.52 (a)	0.0038 (b)	0.053 (a)	0.0036 (b)	0.0000099 (B)	0.00001 (B)
Heptachlor Epoxide	1024573	Pesticides/PCBs					0.0000074 (B)	0.0000074 (B)
Hexachlorobenzene	118741	Base/neutral compounds					0.000051 (B)	0.000052 (B)
Hexachlorobutadiene	87683	Base/neutral compounds					0.69 (B)	4.1 (B)
Hexachlorocyclopentadiene	77474	Base/neutral compounds					150	630

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Hexachloroethane	67721	Base/neutral compounds					0.11 (B)	0.13 (B)
Indeno(1,2,3-cd) Pyrene	193395	Base/neutral compounds					0.014 (B)	0.021 (B)
Isophorone	78591	Base/neutral compounds					27 (B)	110 (B)
Methyl Bromide	74839	Volatile					520	2,400
Methyl Chloride	74873	Volatile						
Methylene Chloride	75092	Volatile					16 (B)	250 (B)
Napthalene	91203	Base/neutral compounds						
Nitrobenzene	98953	Base/neutral compounds					55	320
N-Nitrosodimethylamine	62759	Base/neutral compounds					0.00065 (B)	0.34 (B)
N-Nitrosodi-n-Propylamine	621647	Base/neutral compounds					0.0044 (B)	0.058 (B)
N-Nitrosodiphenylamine	86306	Base/neutral compounds					0.62 (B)	0.69 (B)
Pentachlorophenol (PCP)	87865	Acid compounds	(w,c)	(v,d)	13.0 (c)	7.9 (d)	0.046 (B)	0.1 (B)
Phenanthrene	85018	Base/neutral compounds						
Phenol	108952	Acid compounds					18,000	200,000
Polychlorinated Biphenyls (PCBs)		Pesticides/PCBs	2.0 (b)	0.014 (b)	10.0 (b)	0.030 (b)	0.00017 (E)	0.00017 (E)
Pyrene	129000	Base/neutral compounds					310	460
Tetrachloroethylene	127184	Volatile					4.9 (B)	7.1 (B)
Toluene	108883	Volatile					180	410
Toxaphene	8001352	Pesticides/PCBs	0.73 (c,z)	0.0002 (d)	0.21 (c,z)	0.0002 (d)	0.000032 (B)	0.000032 (B)
Trichloroethylene	79016	Volatile					0.38 (B)	0.86 (B)
Vinyl Chloride	75014	Volatile					0.02 (B, F)	0.26 (B, F)
Ammonia (hh)		Nonconventional	(f,c)	(g,d)	0.233 (h,c)	0.035 (h,d)		
Chloride (dissolved) (k)		Nonconventional	860.0 (h,c)	230.0 (h,d)				
Chlorine (total residual)		Nonconventional	19.0 (c)	11.0 (d)	13.0 (c)	7.5 (d)		
Chlorpyrifos		Toxic pollutants and hazardous substances	0.083 (c)	0.041 (d)	0.011 (c)	0.0056 (d)		
Parathion		Toxic pollutants and hazardous substances	0.065 (c)	0.013 (d)				

Footnotes for aquatic life criteria in Table 240:

a. An instantaneous concentration not to be exceeded at any time.

b. A 24-hour average not to be exceeded.
c. A 1-hour average concentration not to be exceeded more than once every three years on the average.
d. A 4-day average concentration not to be exceeded more than once every three years on the average.
e. Aldrin is metabolically converted to Dieldrin. Therefore, the sum of the Aldrin and Dieldrin concentrations are compared with the Dieldrin criteria.
f. Shall not exceed the numerical value in total ammonia nitrogen (mg N/L) given by:

For salmonids present: $\frac{0.275}{1 + 10^{7.204-pH}} + \frac{39.0}{1 + 10^{pH-7.204}}$

For salmonids absent: $\frac{0.411}{1 + 10^{7.204-pH}} + \frac{58.4}{1 + 10^{pH-7.204}}$

g. Shall not exceed the numerical concentration calculated as follows:
Unionized ammonia concentration for waters where salmonid habitat is an existing or designated use:

$0.80 \div (FT)(FPH)(RATIO)$

where:
RATIO = 13.5; $7.7 \leq pH \leq 9$
RATIO = $(20.25 \times 10^{(7.7-pH)}) \div (1 + 10^{(7.4-pH)})$; $6.5 \leq pH \leq 7.7$
FT = 1.4; $15 \leq T \leq 30$
FT = $10^{[0.03(20-T)]}$; $0 \leq T \leq 15$
FPH = 1; $8 \leq pH \leq 9$
FPH = $(1 + 10^{(7.4-pH)}) \div 1.25$; $6.5 \leq pH \leq 8.0$

Total ammonia concentrations for waters where salmonid habitat is not an existing or designated use and other fish early life stages are absent:

$$Chronic\ Criterion = \left(\frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}}\right) \times \left(1.45 \times 10^{0.028(25-A)}\right)$$

where: A = the greater of either T (temperature in degrees Celsius) or 7.

Applied as a thirty-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on average. The highest four-day average within the thirty-day period should not exceed 2.5 times the chronic criterion.

Total ammonia concentration for waters where salmonid habitat is not an existing or designated use and other fish early life stages are present:

$$Chronic\ Criterion = \left(\frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}}\right) \times B$$

where: B = the lower of either 2.85, or $1.45 \times 10^{0.028 \times (25-T)}$. T = temperature in degrees Celsius.

Applied as a thirty-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on the average. The highest four-day average within the thirty-day period should not exceed 2.5 times the chronic criterion.

h. Measured in milligrams per liter rather than micrograms per liter.
i. $\leq (0.944)(e(1.128[\ln(hardness)]-3.828))$ at hardness = 100. Conversion factor (CF) of 0.944 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.136672 - [(ln hardness)(0.041838)].
j. $\leq (0.909)(e(0.7852[\ln(hardness)]-3.490))$ at hardness = 100. Conversions factor (CF) of 0.909 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.101672 - [(ln hardness)(0.041838)].
k. Criterion based on dissolved chloride in association with sodium. This criterion probably will not be adequately protective when the chloride is associated with potassium, calcium, or magnesium, rather than sodium.
l. Salinity dependent effects. At low salinity the 1-hour average may not be sufficiently protective.
m. $\leq (0.316)(e^{(0.8190[\ \ln(hardness)] + 3.688)})$
n. $\leq (0.860)(e^{(0.8190[\ \ln(hardness)] + 1.561)})$
o. $\leq (0.960)(e^{(0.9422[\ \ln(hardness)] - 1.464)})$
p. $\leq (0.960)(e^{(0.8545[\ \ln(hardness)] - 1.465)})$
q. $\leq (0.791)(e^{(1.273[\ \ln(hardness)] - 1.460)})$ at hardness = 100. Conversion factor (CF) of 0.791 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.46203 - [(ln hardness)(0.145712)].
r. $\leq (0.791)(e^{(1.273[\ \ln(hardness)] - 4.705)})$ at hardness = 100. Conversion factor (CF) of 0.791 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.46203 - [(ln hardness)(0.145712)].

s. If the four-day average chronic concentration is exceeded more than once in a three-year period, the edible portion of the consumed species should be analyzed. Said edible tissue concentrations shall not be allowed to exceed 1.0 mg/kg of methylmercury.

t. $\leq (0.998)(e^{(0.8460[\ \ln(\text{hardness})] + 3.3612)})$

u. $\leq (0.997)(e^{(0.8460[\ \ln(\text{hardness})] + 1.1645)})$

v. $\leq e^{[1.005(\text{pH}) - 5.290]}$

w. $\leq e^{[1.005(\text{pH}) - 4.830]}$

x. The status of the fish community should be monitored whenever the concentration of selenium exceeds 5.0 ug/ l in salt water.

y. $\leq (0.85)(e^{(1.72[\ln(\text{hardness})] - 6.52)})$

z. Channel Catfish may be more acutely sensitive.

aa. $\leq (0.978)(e^{(0.8473[\ln(\text{hardness})] + 0.8604)})$

bb. $\leq (0.986)(e^{(0.8473[\ln(\text{hardness})] + 0.7614)})$

cc. Nonlethal effects (growth, C-14 uptake, and chlorophyll production) to diatoms (*Thalassiosira aestivalis* and *Skeletonema costatum*) which are common to Washington's waters have been noted at levels below the established criteria. The importance of these effects to the diatom populations and the aquatic system is sufficiently in question to persuade the state to adopt the USEPA National Criteria value (36 µg/L) as the state threshold criteria, however, wherever practical the ambient concentrations should not be allowed to exceed a chronic marine concentration of 21 µg/L.

dd. These ambient criteria in the table are for the dissolved fraction. The cyanide criteria are based on the weak acid dissociable method. The metals criteria may not be used to calculate total recoverable effluent limits unless the seasonal partitioning of the dissolved to total metals in the ambient water are known. When this information is absent, these metals criteria shall be applied as total recoverable values, determined by back-calculation, using the conversion factors incorporated in the criterion equations. Metals criteria may be adjusted on a site-specific basis when data are made available to the department clearly demonstrating the effective use of the water effects ratio approach established by USEPA, as generally guided by the procedures in USEPA Water Quality Standards Handbook, December 1983, as supplemented or replaced by USEPA or ecology. Information which is used to develop effluent limits based on applying metals partitioning studies or the water effects ratio approach shall be identified in the permit fact sheet developed pursuant to WAC 173-220-060 or 173-226-110, as appropriate, and shall be made available for the public comment period required pursuant to WAC 173-220-050 or 173-226-130(3), as appropriate. Ecology has developed supplemental guidance for conducting water effect ratio studies.

ee. The criteria for cyanide is based on the weak acid dissociable method in the 19th Ed. Standard Methods for the Examination of Water and Wastewater, 4500-CN I, and as revised (see footnote dd, above).

ff. These criteria are based on the total-recoverable fraction of the metal.

gg. Where methods to measure trivalent chromium are unavailable, these criteria are to be represented by total-recoverable chromium.

hh. The listed fresh water criteria are based on un-ionized or total ammonia concentrations, while those for marine water are based on un-ionized ammonia concentrations. Tables for the conversion of total ammonia to un-ionized ammonia for freshwater can be found in the USEPA's Quality Criteria for Water, 1986. Criteria concentrations based on total ammonia for marine water can be found in USEPA Ambient Water Quality Criteria for Ammonia (Saltwater)-1989, EPA440/5-88-004, April 1989.

ii. The conversion factor used to calculate the dissolved metal concentration was 0.982.

jj. The conversion factor used to calculate the dissolved metal concentration was 0.962.

kk. The conversion factor used to calculate the dissolved metal concentration was 0.85.

ll. Marine conversion factors (CF) which were used for calculating dissolved metals concentrations are given below. Conversion factors are applicable to both acute and chronic criteria for all metals except mercury. The CF for mercury was applied to the acute criterion only and is not applicable to the chronic criterion. Conversion factors are already incorporated into the criteria in the table. Dissolved criterion = criterion x CF

Metal	CF
Arsenic	1.000
Cadmium	0.994
Chromium (VI)	0.993
Copper	0.83
Lead	0.951
Mercury	0.85
Nickel	0.990
Selenium	0.998
Silver	0.85
Zinc	0.946

mm. The cyanide criteria are: 2.8µg/l chronic and 9.1µg/l acute and are applicable only to waters which are east of a line from Point Roberts to Lawrence Point, to Green Point to Deception Pass; and south from Deception Pass and of a line from Partridge Point to Point Wilson. The chronic criterion applicable to the remainder of the marine waters is l µg/L.

~~(((4) USEPA Quality Criteria for Water, 1986, as revised, shall be used in the use and interpretation of the values listed in subsection (3) of this section.~~

~~(5) Concentrations of toxic, and other substances with toxic propensities not listed in subsection (3) of this section shall be determined in consideration of USEPA Quality Criteria for Water, 1986, and as revised, and other relevant information as appropriate. Human health-based water quality criteria used by the state are contained in 40 C.F.R. 131.36 (known as the National Toxics Rule).~~

~~(6) Risk-based criteria for carcinogenic substances shall be selected such that the upper-bound excess cancer risk is less than or equal to one in one million.~~))

Footnotes for human health criteria in Table 240:

A. This criterion for total arsenic is the maximum contaminant level (MCL) developed under the Safe Drinking Water Act. The MCL for total arsenic is applied to surface waters where consumption of organisms-only and where consumption of water + organisms reflect the designated uses. When the department determines that a direct or indirect industrial discharge to surface waters designated for domestic water supply may be adding arsenic to its wastewater, the department will require the discharger to develop and implement a pollution prevention plan to reduce arsenic through the use of AKART. Industrial wastewater discharges to a privately or publicly owned wastewater treatment facility are considered indirect discharges.

B. This criterion was calculated based on an additional lifetime cancer risk of one-in-one-million (1×10^{-6} risk level).

C. This criterion is based on a regulatory level developed under the Safe Drinking Water Act.

D. This recommended water quality criterion is expressed as total cyanide, even though the integrated risk information system RfD used to derive the criterion is based on free cyanide. The multiple forms of cyanide that are present in ambient water have significant differences in toxicity due to their differing abilities to liberate the CN-moiety. Some complex cyanides require even more extreme conditions than refluxing with sulfuric acid to liberate the CN-moiety. Thus, these complex cyanides are expected to have little or no "bioavailability" to humans. If a substantial fraction of the cyanide present in a water body is present in a complexed form (e.g., Fe4[Fe(CN)6]3), this criterion may be overly conservative.

E. This criterion applies to total PCBs, (e.g., the sum of all congener or all isomer or homolog or Aroclor analyses). The PCBs criteria were calculated using a chemical-specific risk level of 4×10^{-5}. Because that calculation resulted in a higher (less protective) concentration than the current criterion concentration (40 C.F.R. 131.36) the state made a chemical-specific decision to stay at the current criterion concentration.

F. This criterion was derived using the cancer slope factor of 1.4 (linearized multistage model with a twofold increase to 1.4 per mg/kg-day to account for continuous lifetime exposure from birth).

G. The human health criteria for mercury are contained in 40 C.F.R. 131.36.

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

AMENDATORY SECTION (Amending WSR 11-09-090, filed 4/20/11, effective 5/21/11)

WAC 173-201A-420 Variance. ((~~(1) The criteria established in WAC 173-201A-200 through 173-201A-260 and 173-201A-600 through 173-201A-612 may be modified for individual facilities, or stretches of waters, through the use of a variance. Variances may be approved by the department when:~~

~~(a) The modification is consistent with the requirements of federal law (currently 40 C.F.R. 131.10(g) and 131.10(h));~~

~~(b) The water body is assigned variances for specific criteria and all other applicable criteria must be met; and~~

~~(c) Reasonable progress is being made toward meeting the original criteria.~~

~~(2) The decision to approve a variance is subject to a public and intergovernmental involvement process.~~

~~(3) The department may issue a variance for up to five years, and may renew the variance after providing for another opportunity for public and intergovernmental involvement and review.~~

~~(4) Variances are not in effect until they have been incorporated into this chapter and approved by the USEPA.~~)) (1) **General provisions.** Variances for individual facilities, a group of facilities, or stretches of waters may be issued for the criteria and designated uses established in WAC 173-201A-200 through 173-201A-260 and 173-201A-600 through 173-201A-612. The following conditions apply when considering issuance of a variance:

(a) A variance may be considered when the standards are expected to be attained by the end of the variance period or the attainable use cannot be reliably determined.

(b) The variance applies to specific parameters and all other applicable standards remain in effect for the water body.

(c) The modification must be consistent with the requirements of federal regulations (currently 40 C.F.R. 131.14).

(d) Reasonable progress must be made toward meeting the underlying standards during the variance period.

(e) A variance renewal may be considered if the renewal request meets the above conditions.

(2) **Types of variances.** Upon request or on its own initiative, the department will consider granting the following types of variances to existing water quality standards:

(a) An individual variance is a time-limited designated use and parameter-specific change to the standard(s) of the receiving water body for a specific discharger. The temporary standard(s) only apply at the point(s) of compliance for the individual facility.

(b) A multidischarger variance is a time-limited designated use and parameter-specific change to the standard(s) of any water body that receives discharges from a permitted facility defined within the scope of the multidischarger variance. Any permitted discharger that is defined within the scope of the variance may be covered under the variance that is granted by the department, provided all requirements of the variance for that discharger are met.

(c) A water body variance is a time-limited designated use and parameter-specific change to the standard(s) for a stretch of waters. Any discharger of the specific parameter that is defined within the geographic scope of the water body variance may be covered under the variance that is granted by the department, provided all requirements of the variance for that discharger are met.

(3) **Requirements.** Any entity initiating a variance request or applying for coverage for an individual, multidischarger, or water body variance must submit the following information to the department:

(a) The pollutant-specific criteria and designated use(s) proposed to be modified by the variance, and the proposed duration of the variance.

(b) A demonstration that attaining the water quality standard for a specific pollutant is not feasible for the requested duration of the variance based on 40 C.F.R. 131.14.

(c) An evaluation of treatment or alternative actions that were considered to meet effluent limits based on the underlying water quality criteria, and a description of why these options are not technically, economically, or otherwise feasible.

(d) Sufficient water quality data and analyses to characterize receiving and discharge water pollutant concentrations.

(e) A description and schedule of actions that the discharger(s) proposes to ensure the underlying water quality standard(s) are met or the highest attainable use is attained within the variance period. Dischargers are also required to submit a schedule for development and implementation of a pollutant minimization plan for the subject pollutant(s).

(f) If the variance is for a water body or stretch of water, the following information must also be provided to the department:

(i) The results from a pollutant source assessment that quantifies the contribution of pollution from permitted sources and nonpermitted sources;

(ii) All cost-effective and reasonable best management practices for permitted sources that address the pollutant the variance is based upon; and

(iii) Best management practices for nonpermitted sources that meet the requirements of chapter 90.48 RCW.

(g) Any additional information the department deems necessary to evaluate the application.

(4) **Public review and notification.** The decision to grant a variance is a formal rule making subject to a public and intergovernmental involvement process.

(a) The department will provide notice of the proposed variance and consult with Indian tribes or other states that have jurisdiction over adjacent and downstream waters of the proposed variance.

(b) The department shall maintain and make publicly available a list of dischargers that are covered under the variances that are in effect.

(5) **Period during which the variance is in effect.** A variance is a time-limited designated use and criterion.

(a) Each variance will be granted for the minimum time estimated to meet the underlying standard(s) or, if during the period of the variance it is determined that a designated use cannot be attained, then a use attainability analysis (WAC 173-201A-440) will be initiated.

(b) The ability to apply a variance in permits or other actions may be terminated by the department as a result of a mandatory interim review.

(c) Variances are in effect after they have been incorporated into this chapter and approved by the USEPA.

(6) **Contents of a variance.** At a minimum a variance adopted into rule will include the following:

(a) The time period for which the variance is applicable.

(b) The geographic area or specific waters in which the variance is applicable.

(c) A description of the permitted and unpermitted dischargers covered by the variance.

(d) Identification of required actions and a schedule, including any measurable milestones, for all pollution sources (permitted and unpermitted) subject to the variance. Dischargers are required to use adaptive management to fine-tune and update actions, schedules, and milestones in order to achieve the goals of the variance.

(e) A provision allowing the department to reopen and modify any permits and to revise BMP requirements for unpermitted dischargers as a result of the mandatory interim review of the variance (see subsection (8) of this section).

(7) **Variance permit conditions.** The department must establish and incorporate into NPDES permits all conditions necessary to implement and enforce an approved variance, including:

(a) Effluent limits that represent currently achieved or achievable effluent conditions, or effluent limits that are sufficient to meet the underlying water quality standard upon expiration of the variance;

(b) Monitoring and reporting requirements; and

(c) A provision allowing the department to reopen and modify the permits based on the mandatory interim review of the variance.

(8) **Mandatory interim review.** The department will conduct an interim review of each variance at least once every five years after the variance is adopted and approved to determine that conditions of the variance are being met and to evaluate whether the variance is still necessary.

(a) Review process for individual discharger and multi-discharger variances:

(i) The review shall be coordinated with the public review process of the permit renewal if the variance is being implemented in a permit.

(ii) The review will be focused on the discharger's compliance with permit conditions that are required by the variance as well as an evaluation of whether the variance is still necessary.

(b) Review process for water body variances:

(i) Variances for stretches of waters will be reviewed in a public process conducted by the department every five years after the variance is adopted into this chapter and approved by the USEPA.

(ii) The review will evaluate whether the variance is still necessary, any new information on sources of the pollutant that indicates that reductions could be made that would allow water quality standards to be met in a shorter time frame, as well as any new information that indicates water quality improvements may require more time.

(c) A variance that applies to a permit will be shortened or terminated if the review determines that:

(i) The conditions and requirements of the variance and associated permit requirements have not been complied with unless reasons outside the control of the discharger prevented meeting any condition or requirement; or

(ii) Water quality standards could be met in a shorter time frame, based on new information submitted to the department.

NEW SECTION

WAC 173-201A-460 Intake credits. (1) **General provisions.** The following provisions apply to the consideration of intake credits in determining reasonable potential and establishing water quality based effluent limits (WQBELs).

(a) An "intake pollutant" is the amount of a pollutant that is present in waters of the state (including groundwater except as provided in (c) of this subsection) at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water.

(b) An intake pollutant must be from the "same body of water" as the discharge in order to be eligible for an intake

credit. An intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding will be established if a discharger demonstrates:

(i) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and

(ii) There is a direct hydrological connection between the intake and discharge points.

(c) An intake pollutant in groundwater partially or entirely due to human activity is not eligible for use of an intake credit.

(d) Where intake water for a facility is provided by a municipal water supply system and the supplier provides treatment of the raw water that removes an intake water pollutant, the concentration of the intake water pollutant will be determined at the point where the water enters the water supplier's distribution system.

(e) Where a facility discharges intake pollutants from multiple sources that originate from the receiving water body and from other water bodies, the department may derive an effluent limit reflecting the flow-weighted amount of each source of the pollutant provided that conditions in subsection (3) of this section are met and adequate monitoring to determine compliance can be established and is included in the permit.

(f) The department may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(2) **Consideration of intake pollutants in reasonable potential determination.**

(a) The department may determine there is no reasonable potential for the discharge of an identified intake pollutant to cause or contribute to an exceedance of a narrative or numeric water quality criterion where a discharger demonstrates that all the following conditions are met:

(i) The facility removes the intake water containing the pollutant from the same body of water into which the discharge is made;

(ii) The facility does not alter the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutant had not been removed from the body of water;

(iii) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the identified intake pollutant had not been removed from the body of water;

(iv) The facility does not increase the identified intake pollutant concentration at the edge of the mixing zone, or at the point of discharge if a mixing zone is not allowed, as compared to the pollutant concentration in the intake water, unless the increased concentration does not cause or contribute to an excursion above an applicable water quality standard; and

(v) The facility does not contribute any additional mass of the identified intake pollutant to its wastewater.

(b) Upon a finding under (a) of this subsection that an intake pollutant in the discharge does not cause, have the reasonable potential to cause, or contribute to an exceedance of an applicable water quality standard, the department is not required to include a water quality-based effluent limit for the identified intake pollutant in the facility's permit.

(3) **Consideration of intake pollutants in establishing water quality based effluent limits.**

(a) This subsection applies only when the ambient background concentration of the intake pollutant does not meet the most stringent applicable water quality criterion for that pollutant;

(b) The requirements of subsection (2)(a)(i) and (iv) also apply to this subsection.

(c) A discharger may add mass of the pollutant to its waste stream if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.

(d) Where the conditions of this subsection are met, the department may establish effluent limits using an intake credit. The facility's permit must specify how compliance with the limits will be assessed.

AMENDATORY SECTION (Amending WSR 03-14-129, filed 7/1/03, effective 8/1/03)

WAC 173-201A-510 Means of implementation. (1) **Permitting.** The primary means to be used for controlling municipal, commercial, and industrial waste discharges shall be through the issuance of waste discharge permits, as provided for in RCW 90.48.160, 90.48.162, and 90.48.260. Waste discharge permits, whether issued pursuant to the National Pollutant Discharge Elimination System or otherwise, must be conditioned so the discharges authorized will meet the water quality standards. No waste discharge permit can be issued that causes or contributes to a violation of water quality criteria, except as provided for in this chapter.

(a) Persons discharging wastes in compliance with the terms and conditions of permits are not subject to civil and criminal penalties on the basis that the discharge violates water quality standards.

(b) Permits must be modified by the department when it is determined that the discharge causes or contributes to a violation of water quality standards. Major modification of permits is subject to review in the same manner as the originally issued permits.

(2) **Miscellaneous waste discharge or water quality effect sources.** The director shall, through the issuance of regulatory permits, directives, and orders, as are appropriate, control miscellaneous waste discharges and water quality effect sources not covered by subsection (1) of this section.

(3) **Nonpoint source and storm water pollution.**

(a) Activities which generate nonpoint source pollution shall be conducted so as to comply with the water quality standards. The primary means to be used for requiring compliance with the standards shall be through best management practices required in waste discharge permits, rules, orders,

and directives issued by the department for activities which generate nonpoint source pollution.

(b) Best management practices shall be applied so that when all appropriate combinations of individual best management practices are utilized, violation of water quality criteria shall be prevented. If a discharger is applying all best management practices appropriate or required by the department and a violation of water quality criteria occurs, the discharger shall modify existing practices or apply further water pollution control measures, selected or approved by the department, to achieve compliance with water quality criteria. Best management practices established in permits, orders, rules, or directives of the department shall be reviewed and modified, as appropriate, so as to achieve compliance with water quality criteria.

(c) Activities which contribute to nonpoint source pollution shall be conducted utilizing best management practices to prevent violation of water quality criteria. When applicable best management practices are not being implemented, the department may conclude individual activities are causing pollution in violation of RCW 90.48.080. In these situations, the department may pursue orders, directives, permits, or civil or criminal sanctions to gain compliance with the standards.

(d) Activities which cause pollution of storm water shall be conducted so as to comply with the water quality standards. The primary means to be used for requiring compliance with the standards shall be through best management practices required in waste discharge permits, rules, orders, and directives issued by the department for activities which generate storm water pollution. The consideration and control procedures in (b) and (c) of this subsection apply to the control of pollutants in storm water.

(4) **General allowance for compliance schedules.**

(a) Permits((~~,~~)) and orders((~~, and directives of~~)) issued by the department for existing discharges may include a schedule for achieving compliance with effluent limits and water quality ((~~criteria contained in this chapter~~)) standards that apply to:

(i) Aquatic life uses; and

(ii) Uses other than aquatic life.

((~~Such~~)) (b) Schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits and the water quality standards in the shortest practicable time. ((~~Decisions regarding~~)) The department will decide whether to issue schedules of compliance ((~~will be made~~)) on a case-by-case basis ((~~by the department~~)). Schedules of compliance may not be issued for new discharges. Examples of schedules of compliance that may be issued ((~~to allow for~~)) include:

(i) Construction of necessary treatment capability;

(ii) Implementation of necessary best management practices;

(iii) Implementation of additional storm water best management practices for discharges determined not to meet water quality ((~~criteria~~)) standards following implementation of an initial set of best management practices; and

(iv) Completion of necessary water quality studies((~~; or (v) resolution of a pending water quality standards' issue through rule-making action~~)) related to implementation of permit requirements to meet effluent limits.

(((~~(b)~~))) (c) For the period of time during which compliance with water quality ((~~criteria~~)) standards is deferred, interim effluent ((~~limitations~~)) limits shall be formally established, based on the best professional judgment of the department. Interim effluent ((~~limitations~~)) limits may be numeric or nonnumeric (e.g., construction of necessary facilities by a specified date as contained in an ((~~ecology~~)) order or permit), or both.

(((~~(c)~~))) (d) Prior to establishing a schedule of compliance, the department shall require the discharger to evaluate the possibility of achieving water quality ((~~criteria~~)) standards via nonconstruction changes (e.g., facility operation, pollution prevention). Schedules of compliance ((~~may in no case exceed ten years, and~~)) shall meet requirements in WAC 173-220-140 and shall require compliance with the specified requirements as soon as practicable. Compliance schedules shall generally not exceed the term of any permit unless the department determines that a longer time period is needed to come into compliance with the applicable water quality standards.

(e) When an approved total maximum daily load, or TMDL, has established waste load allocations for permitted dischargers, a longer period of time for a compliance schedule may be authorized if the department has determined that:

(i) The permittee is not able to meet its waste load allocation in the TMDL solely by controlling and treating its own effluent;

(ii) The permittee has made significant progress to reduce pollutant loading during the term of the permit;

(iii) The permittee is meeting all of its requirements under the TMDL as soon as possible; and

(iv) Actions specified in the compliance schedule are sufficient to achieve water quality standards as soon as possible.

(5) **Compliance schedules for dams:**

(a) All dams in the state of Washington must comply with the provisions of this chapter.

(b) For dams that cause or contribute to a violation of the water quality standards, the dam owner must develop a water quality attainment plan that provides a detailed strategy for achieving compliance. The plan must include:

(i) A compliance schedule that does not exceed ten years;

(ii) Identification of all reasonable and feasible improvements that could be used to meet standards, or if meeting the standards is not attainable, then to achieve the highest attainable level of improvement;

(iii) Any department-approved gas abatement plan as described in WAC 173-201A-200 (1)(f)(ii);

(iv) Analytical methods that will be used to evaluate all reasonable and feasible improvements;

(v) Water quality monitoring, which will be used by the department to track the progress in achieving compliance with the state water quality standards; and

(vi) Benchmarks and reporting sufficient for the department to track the applicant's progress toward implementing the plan within the designated time period.

(c) The plan must ensure compliance with all applicable water quality criteria, as well as any other requirements established by the department (such as through a total maximum daily load, or TMDL, analysis).

(d) If the department is acting on an application for a water quality certification, the approved water quality attainment plan may be used by the department in its determination that there is reasonable assurance that the dam will not cause or contribute to a violation of the water quality standards.

(e) When evaluating compliance with the plan, the department will allow the use of models and engineering estimates to approximate design success in meeting the standards.

(f) If reasonable progress toward implementing the plan is not occurring in accordance with the designated time frame, the department may declare the project in violation of the water quality standards and any associated water quality certification.

(g) If an applicable water quality standard is not met by the end of the time provided in the attainment plan, or after completion of all reasonable and feasible improvements, the owner must take the following steps:

(i) Evaluate any new reasonable and feasible technologies that have been developed (such as new operational or structural modifications) to achieve compliance with the standards, and develop a new compliance schedule to evaluate and incorporate the new technology;

(ii) After this evaluation, if no new reasonable and feasible improvements have been identified, then propose an alternative to achieve compliance with the standards, such as site specific criteria (WAC 173-201A-430), a use attainability analysis (WAC 173-201A-440), or a water quality offset (WAC 173-201A-450).

(h) New dams, and any modifications to existing facilities that do not comply with a gas abatement or other pollution control plan established to meet criteria for the water body, must comply with the water quality standards at the time of project completion.

(i) Structural changes made as a part of a department approved gas abatement plan to aid fish passage, described in WAC 173-201A-200 (1)(f)(ii), may result in system performance limitations in meeting water quality criteria for that parameter at other times of the year.

(6) **Combined sewer overflow treatment plant.** The influent to these facilities is highly variable in frequency, volume, duration, and pollutant concentration. The primary means to be used for requiring compliance with the human health criteria shall be through the application of narrative limitations which include, but are not limited to, best management practices required in waste discharge permits, rules, orders and directives issued by the department.

WSR 16-05-025
PROPOSED RULES
LAKE WASHINGTON INSTITUTE OF TECHNOLOGY

[Filed February 8, 2016, 11:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-01-127.

Title of Rule and Other Identifying Information: WAC 495D-121-590 Student conduct code—Prohibited student conduct.

Hearing Location(s): Lake Washington Institute of Technology, West Building, W305A, 11605 132nd Avenue N.E., Kirkland, WA 98034, on April 5, 2016, at 11:00 a.m. and 5:00 p.m.

Date of Intended Adoption: May 2, 2016, regular board meeting.

Submit Written Comments to: Terry Byington, 11605 132nd Avenue N.E., Kirkland, WA 98034, e-mail terry.byington@lwtech.edu, fax (425) 739-8299, by April 4, 2016.

Assistance for Persons with Disabilities: Contact Meena Park by April 1, 2016, Meena.park@lwtech.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to the student code of conduct were necessitated by the federal Campus Sexual Violence Act which requires colleges to explicitly prohibit and define sexual violence. Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f) and 34 C.F.R. Part 668 - paragraph 8B[)], and plain language edits.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Rule is necessary because of federal law, Campus Sexual Violence Act.

Name of Proponent: Lake Washington Institute of Technology, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dr. Ruby Hayden, 11605 132nd Avenue N.E., Kirkland, WA 98034, (425) 739-8208; and Enforcement: Andrea Fechner, 11605 132nd Avenue N.E., Kirkland, WA 98034, (425) 739-8455.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These changes effect only internal college processes dealing with students. There is no financial impact on any small business or school district.

A cost-benefit analysis is not required under RCW 34.05.328. The agency's rules are not subject to RCW 34.05.328(5).

February 5, 2016
Terry Byington
Executive Director
Government and
External Relations

AMENDATORY SECTION (Amending WSR 14-14-047, filed 6/25/14, effective 7/26/14)

WAC 495D-121-590 Student conduct code—Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct((,)) which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Disruptive activity.** Participation in any activity that obstructs or disrupts:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity;

(b) The free flow of pedestrian or vehicular movement on college property or at a college activity;

(c) Any student's ability to profit from the instructional program; or

(d) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(5) **Imminent danger.** Where the student presents an imminent danger to college property, or to himself or herself, or other students or persons in college facilities on or off campus, or to the education processes of the college.

(6) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(7) **Property violation.** Attempted or actual damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other person or organization; or

(d) Possession of such property or money after it has been stolen.

(8) **Noncompliance.** Failure to comply with:

(a) The direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so;

(b) A college attendance policy as published in the student handbook or course syllabus; or

(c) A college rule or policy as set forth in the *Lake Washington Institute of Technology Policies and Procedures Manual* which may be found in the library or online.

(9) **Weapons.** Possession, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, martial arts weapons, explosive device, dangerous chemicals, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or

(b) A student with a valid concealed weapons permit may store a firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in advance to bringing weapons to the college, in writing, and shall be subject to such terms or conditions incorporated therein.

(10) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization

that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(11) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(12) **Alcohol.** Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling, or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.

(13) **Marijuana.** The use, possession, delivery, sale, or being ((~~visibly~~)) observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(14) **Drugs.** Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional. Being observably under the influence of any lawfully prescribed drug when enrolled in classes that require operation of heavy equipment or other dangerous equipment.

(15) **Obstruction.** Obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity.

(16) **Disorderly conduct.** Conduct which is disorderly, lewd, obscene, or a breach of peace on college premises or at college sponsored activities.

(17) **Discrimination.** Discriminatory action which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental, or physical disability; age (((~~40+~~))); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(18) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** ((~~The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, or gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.~~)) "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is

physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(19) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; age (((~~(40+)~~))); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(20) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(21) **Misuse of information resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization;

(i) Failure to comply with the college's acceptable use policy.

(22) **Breach of campus safety.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community. Breaching campus safety or security includes, but is not limited to:

(a) Unauthorized access to college facilities; intentionally damaging door locks; unauthorized possession of college keys or access cards; duplicating college keys or access cards; or propping open of exterior doors;

(b) Tampering with fire safety equipment, such as fire extinguishers, smoke detectors, alarm pull stations or emergency exits;

(c) Placement of equipment or vehicles, including bicycles, so as to obstruct the means of access to/from college buildings;

(d) Entering or remaining in any closed college facility or entering after the closing time of the college facility without permission of a college official;

(e) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(23) **Abuse of procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption or interference with the orderly conduct of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member;

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(24) **Violation of laws.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(25) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

WSR 16-05-036
PROPOSED RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed February 9, 2016, 1:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-20-126.

Title of Rule and Other Identifying Information: How does service credit from more than one retirement system affect my indexed retirement allowance?

Hearing Location(s): Department of Retirement Systems, Conference Room 115, 6835 Capitol Boulevard S.E.,

Tumwater, WA 98502, on Tuesday, March 22, 2016, at 10:00 a.m.

Date of Intended Adoption: March 22, 2016.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail Rules@drs.wa.gov, fax (360) 753-3166, by March 21, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by March 17, 2016, TTY (866) 377-8895 or (360) 586-5450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: When a member in certain retirement plans (LEOFF 2, PERS 3, SERS 3, TRS 3) has at least twenty years of service credit, and leaves employment, their defined benefit increases by approximately three percent for each year they delay receiving it. These rules will clarify how the department applies this benefit when the member retires from more than one retirement plan. This revision also removes references to gainsharing from chapter 415-02 WAC.

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Agency Personnel Responsible for Drafting: Jacob White, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7219; and Implementation: Dave Nelsen, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

February 9, 2016
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-24-099, filed 12/1/10, effective 1/1/11)

WAC 415-02-030 Definitions. This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW((~~s~~)) and WAC((~~s~~)).

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010(30) (TRS); RCW 41.35.010(14) (SERS); RCW 41.40.010(17) (PERS); and RCW 41.37.010(14) (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120(15).

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is ***not*** a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means thirty consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010(10) and 41.32.345 (TRS); RCW 41.35.010(6) (SERS); RCW 41.37.010(6) (PSERS); and RCW 41.40.010(8) (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into ((~~an~~)) investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions ((~~rate~~)) and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030(2) (LEOFF), 41.32.010(11) (TRS), 41.34.020(5) (Plan 3), 41.35.010(4) (SERS), 41.37.010(4) (PSERS) and 41.40.010(4) (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500(3).

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030(12).

(18) ((~~**Gainsharing** is the process through which members of certain plans share in the extraordinary investment gains on earnings on retirement assets under chapters 41.31 and 41.31A RCW.~~

~~(19)~~)) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

(((~~(20)~~))) (19) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

(((~~(21)~~))) (20) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least twenty service credit years, that is increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

(21) **Indexed retirement plan** means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Firefighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

(22) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

(((~~(22)~~))) (23) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

(((~~(23)~~))) (24) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

(((~~(24)~~))) (25) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

(((~~(25)~~))) (26) **Participant** means an eligible employee who participates in a deferred compensation ((~~or dependent care assistance~~)) plan.

(((~~(26)~~))) (27) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation ((~~or dependent care assistance~~)) plan.

(((~~(27)~~))) (28) **Pension plan** is a plan that provides a lifelong post retirement payment of benefits to employees.

(((~~(28)~~))) (29) **PERS** means the Washington public employees' retirement system created by chapter 41.40 RCW.

(((~~(29)~~))) (30) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

(((~~(30)~~))) (31) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

(((~~(31)~~))) (32) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

(((~~(32)~~))) (33) **Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

(((~~(33)~~))) (34) **Plan year** is the twelve-month period that begins on January 1st and ends on December 31st of the same calendar year.

(((~~(34)~~))) (35) **Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

(((~~(35)~~))) (36) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

(((~~(36)~~))) (37) **Public record** is defined in RCW 42.17.-020(41).

(((~~(37)~~))) (38) **Restoration** is the process of restoring a member's service credit for prior periods.

(((~~(38)~~))) (39) **Retirement system employer - See "employer."**

(((~~(39)~~))) (40) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

(((~~(40)~~))) (41) **Separation date** is the date a member ends employment in a position eligible for retirement or disability benefit coverage.

(((~~(41)~~))) (42) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

(((~~(42)~~))) (43) **Split account** is the account the department establishes for a member or retiree's ex-spouse.

(((~~(43)~~))) (44) **Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

(((~~(44)~~))) (45) **Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

(((~~(45)~~))) (46) **Survivor benefit** is a feature of a retirement plan that provides continuing payments to a beneficiary after the death of a member or retiree.

(((~~(46)~~))) (47) **TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

(((~~(47)~~))) (48) **The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

(((~~(48)~~))) (49) **WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

AMENDATORY SECTION (Amending WSR 08-10-025, filed 4/25/08, effective 5/26/08)

WAC 415-02-550 What happens to my defined contributions if I transfer to Plan 3 *after* the department of retirement systems accepts my property division dissolution order? (1) **Who may use this section?** You may use

this section if you were a member of PERS Plan 2, SERS Plan 2, or TRS Plan 2 and ***first*** obtained a property division dissolution order using the language in RCW 41.50.670(2) and WAC 415-02-510 or 415-02-520, and ***then*** transfer to Plan 3.[1]

(2) **What happens if the property division dissolution order (using the language in RCW 41.50.670(2) and WAC 415-02-510) *did not* split my account?** Refer to WAC 415-02-530 for information about your defined benefit account and about your and your ex-spouse's defined contribution accounts after you transfer to Plan 3.

(3) **What happens if the property dissolution order used the language in WAC 415-02-520 and *did* split my account?**

(a) Your ***ex-spouse's*** **account will remain in Plan 2.** Your ex-spouse is ineligible to transfer to Plan 3.

(b) The balance of your accumulated contributions remaining in your Plan 2 account after it was split will be transferred to your Plan 3 defined contributions account. (Refer to chapter 415-111 WAC for information about your defined contribution account.)

(4) ((~~**How will gainsharing be applied to my account?** Gainsharing is not applied to Plan 2 member accounts. If gainsharing is applied after you have transferred to Plan 3, only you will receive the gainsharing amount.~~

~~(5)~~)) **Terms used:**

(a) Dissolution order - RCW 41.50.500.

(b) Ex-spouse - WAC 415-02-030.

(c) ((~~Gainsharing - Chapter 41.31 RCW (Plan 1); chapter 41.31A RCW (Plan 3); WAC 415-02-030; 415-111-440.~~

~~(d)~~)) PERS - Public employees' retirement system.

(((~~e~~))) (d) Plan 3 retirement systems - WAC 415-111-100.

(((~~f~~))) (e) SERS - School employees' retirement system.

(((~~g~~))) (f) Split accounts - WAC 415-02-030.

(((~~h~~))) (g) TRS - Teachers' retirement system.

Footnote to section:

[1]The section does not apply to retirees, because retirees cannot transfer to Plan 3.

NEW SECTION

WAC 415-113-066 How does service credit from more than one retirement system affect my indexed retirement allowance? (1) **May I combine service credit from more than one retirement system to receive an indexed retirement allowance?** If you are a dual member, you may combine service credit from any dual member system to be eligible for an indexed retirement allowance.

(2) **How will my indexed retirement allowance be calculated?** If there is a period of at least one month between your separation from employment in an indexed retirement plan and your date of retirement, the department will calculate your indexed retirement allowance in the following two ways and use the higher of the two results:

(a) Method 1: Use the average compensation from the indexed retirement plan. Index the retirement allowance (for the indexed retirement plan only) from the date both of the following have occurred, to the date of retirement:

(i) Separation from the indexed retirement plan; and

(ii) Accrual of twenty years of service from one or more of the systems in which service credit was earned.

(b) Method 2: Use the highest average compensation from any of the systems in which service credit was earned. Index the retirement allowance (for the indexed retirement plan only) from the date both of the following have occurred, to the date of retirement:

(i) Separation from all systems; and

(ii) Accrual of twenty years of service from one or more of the systems in which service credit was earned.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the WAC sections listed in (a) through (e) of this subsection:

(a) "Average compensation" - WAC 415-113-030

(b) "Dual member" - WAC 415-113-041

(c) "Dual member system" - WAC 415-113-030

(d) "Indexed retirement allowance" - WAC 415-02-030

(e) "Indexed retirement plan" - WAC 415-02-030

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-113-084	How will my benefit be computed if I retire retroactively from LEOFF Plan 2?

WSR 16-05-037
PROPOSED RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed February 9, 2016, 1:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-24-124.

Title of Rule and Other Identifying Information: WAC 415-104-011, law enforcement officers' and firefighters' retirement system definitions, and WAC 415-104-225 Am I a LEOFF member?

Hearing Location(s): Department of Retirement Systems, Conference Room 115, 6835 Capitol Boulevard S.E., Tumwater, WA 98502, on Tuesday, March 22, 2016, at 10:00 a.m.

Date of Intended Adoption: March 22, 2016.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail Rules@drs.wa.gov, fax (360) 753-3166, by March 21, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by March 17, 2016, TTY (866) 377-8895 or (360) 586-5450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide further clarity to the department's interpretation of terms used in the administration of LEOFF retirement benefits. Terms being clarified include: Full-time employee, fully compensated employee, and supervisory firefighter personnel.

Statutory Authority for Adoption: RCW 41.50.050(5).

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

Name of Agency Personnel Responsible for Drafting: Jacob White, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7219; and Implementation: Dave Nelsen, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

February 9, 2016
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

WAC 415-104-011 Definitions. All definitions in RCW 41.26.030 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.26 RCW are defined in this chapter.

(1) **Commissioned** means that an employee is employed as an officer of a general authority Washington law enforcement agency and is empowered by that employer to enforce the criminal laws of the state of Washington.

(2) **Director of public safety** means a person who is employed on or after January 1, 1993, by a city or town on a full-time, fully compensated basis to administer the programs and personnel of a public safety department.

This definition applies only to cities or towns in which the population did not exceed ten thousand at the time the person became employed as a director of public safety.

(3) **Elective employer** means the employer of the LEOFF Plan 1 elected official during the member's leave of absence from the LEOFF employer for the purpose of serving in elective office.

(4) **Full-time employee** means an employee who is ((~~regularly scheduled~~)) normally expected to earn basic salary from an employer for a minimum of one hundred sixty hours ((~~each~~)) in a calendar month.

(5) **Fully compensated employee** means an employee who is normally expected to earn((~~s~~)) a basic monthly salary ((~~and benefits from an employer in an amount comparable to the salary received by other full-time employees of the same employer who:~~

~~(a) Hold the same or similar rank; and~~

~~(b) Are employed in a similar position~~)) no less than one hundred sixty times the state minimum hourly wage. Nominal sums including, but not limited to, stipends or ancillary benefits such as insurance or leave accrual, provided to volunteer firefighters are not compensation for the purpose of determining whether a firefighter is fully compensated.

(6) **LEOFF** means the law enforcement officers' and firefighters' retirement system established by chapter 41.26 RCW.

(7) **LEOFF employer** means the employer, as defined in RCW 41.26.030, who employs the member as a law enforcement officer or firefighter.

(8) **LEOFF Plan 1 elected official** means a LEOFF Plan 1 member who is a civil service employee on leave of absence because he or she has been elected or appointed to an elective public office and who chooses to preserve retirement rights as an active LEOFF member under the procedure described in this chapter.

(9) **Plan 1 and Plan 2.**

(a) "Plan 1" means the law enforcement officers' and firefighters' retirement system providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(b) "Plan 2" means the law enforcement officers' and firefighters' retirement system providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(10) **Public safety officer** means a person who is employed on or after January 1, 1993, on a full-time, fully compensated basis by a city or town to perform both law enforcement and firefighter duties.

This definition applies only to cities or towns in which the population did not exceed ten thousand at the time the person became employed as a public safety officer.

(11) **Uniformed firefighter position** means a position which may only be filled by uniformed personnel as that term is defined in RCW 41.56.030 (7)(e) as in effect on July 1, 1995. A position only qualifies as a uniformed firefighter position if the employer has identified it as such for all purposes. An employer may designate a position as uniformed regardless of whether the employer is covered by public employees' collective bargaining under chapter 41.56 RCW.

AMENDATORY SECTION (Amending WSR 09-05-011, filed 2/6/09, effective 3/9/09)

WAC 415-104-225 Am I a LEOFF member? If you are employed by an employer as a full-time, fully compensated law enforcement officer or firefighter, you are required to be a LEOFF member.

(1) **Law enforcement officers.**

(a) You are a law enforcement officer only if you are commissioned and employed on a full-time, fully compensated basis as a:

(i) City police officer;

(ii) Town marshal or deputy marshal;

(iii) County sheriff;

(iv) Deputy sheriff, if you passed a civil service exam for deputy sheriff and you possess all of the powers, and may perform any of the duties, prescribed by law to be performed by the sheriff;

(b) Effective January 1, 1994, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a:

(i) General authority Washington peace officer under RCW 10.93.020(3);

(ii) Port district general authority law enforcement officer and you are commissioned and employed by a port district general authority law enforcement agency;

(iii) State university or college general authority law enforcement officer; or

(c) Effective January 1, 1993, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a public safety officer or director of public safety of a city or town if, at the time you first became employed in this position, the population of the city or town did not exceed ten thousand. See RCW 41.26.030(3).

(d) If you meet the requirements of (a), (b) or (c) of this subsection, you qualify as a law enforcement officer regardless of your rank or status as a probationary or permanent employee.

(e) You are not a law enforcement officer if you are employed in either:

(i) A position that is clerical or secretarial in nature and you are not commissioned; or

(ii) A corrections officer position and the only training required by the Washington criminal justice training commission for your position is basic corrections training under WAC 139-10-210.

(2) **Firefighters.**

(a) You are a firefighter if you are employed in a uniformed firefighter position by an employer on a full-time, fully compensated basis, and as a consequence of your employment, you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires.

(i) "Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, fire safety inspections, lecturing, performing community fire drills and inspecting homes and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling and extinguishing fires.

(ii) You are a firefighter if you qualify as supervisory firefighter personnel.

(A) To qualify as "supervisory firefighter personnel" you must:

(I) Supervise firefighters or other supervisory firefighter personnel;

(II) Be in a position located within a firefighting department or organization whose primary or sole purpose is fire protection activities; and

(III) Direct fire protection activities.

(B) This includes first line supervisors of firefighters, who typically direct from the scene of a fire, up to and including positions that are administrative in nature when the primary duty is to provide executive leadership for fire protection activities, such as setting strategic priorities for the organization.

Example A: A City Administrator supervises various city departments including a fire department. The City Administrator supervises the Fire Chief, who is a firefighter, as well as other department heads. The City Administrator would not be considered supervisory firefighter personnel because, while the duties of the position include oversight of the fire department, it is not the primary duty of the position. Furthermore, the position is not located within a firefighting department or organization whose primary or sole purpose is fire protection activities.

Example B: A Fire Chief of a large fire department does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the Fire Department. The Fire Chief supervises three battalion chiefs, a Human Resources Director, and a Chief Financial Officer. The Fire Chief is supervisory firefighter personnel because the position supervises firefighters, is located within an organization whose sole purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

Example C: An Administrator of an organization whose primary purpose is fire protection activities does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the organization. The Administrator supervises two Battalion Chiefs, a Human Resources Director, and a Chief Financial Officer. The Administrator is supervisory firefighter personnel because the position supervises firefighters, is located within an organization whose primary purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

(iii) If your employer requires firefighters to pass a civil service examination, you must be actively employed in a position that requires passing such an examination in order to qualify as a firefighter unless you qualify as supervisory firefighter personnel.

(iv) You are a firefighter if you meet the requirements of this section regardless of your rank or status as a probationary or permanent employee or your particular specialty or job title.

(v) You do not qualify for membership as a firefighter if you are a volunteer firefighter or resident volunteer firefighter.

(b) You are a firefighter if you are employed on a full-time, fully compensated basis by an employer as an emergency medical technician (EMT). To be an "emergency medical technician" you must:

(i) Be certified by the department of health to perform emergency medical services at the level of care of an EMT; and

(ii) Complete the requirements of your employer, if any, to perform the job duties of an EMT.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Commissioned" - WAC 415-104-011.

(b) "Director of public safety" - WAC 415-104-011.

(c) "Employer" - RCW 41.26.030.

(d) "Firefighter" - RCW 41.26.030.

(e) "Full time" - WAC 415-104-011.

(f) "Fully compensated" - WAC 415-104-011.

(g) "Law enforcement officer" - RCW 41.26.030.

(h) "Member" - RCW 41.26.030.

(i) "Public safety officer" - WAC 415-104-011.

(j) "Uniformed firefighter position" - WAC 415-104-011.

WSR 16-05-049
PROPOSED RULES
PARKS AND RECREATION COMMISSION

[Filed February 11, 2016, 3:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-01-011.

Title of Rule and Other Identifying Information: WAC 352-32-010 Definitions and chapter 352-04 WAC, Policy—Meetings and delegation.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501-5414, on March 31, 2016, at 9:00 a.m.

Date of Intended Adoption: March 31, 2016.

Submit Written Comments to: Washington State Parks and Recreation Commission, 1111 Israel Road S.W., Olympia, WA, e-mail diana.dupuis@parks.wa.gov, fax (360) 586-0355, by March 25, 2016.

Assistance for Persons with Disabilities: Contact Becki Ellison by March 8, 2016, (360) 902-8502.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is clarifying language for WAC 352-32-010 Definitions. It adds the designation of "drones" under the definition of remote controlled aircraft.

Chapter 352-04 WAC is adding language allowing for brief adjudicative proceedings in regards to expulsion notices. A contention of an expulsion notice would be delegated by the director and no longer need to be heard in front of the commission. This allows for a more timely hearing for the public.

Statutory Authority for Adoption: Chapter 79A.05 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Clarifying language in WAC 352-32-010 aids ability to enforce rules and allow for use regarding remote controlled aircraft.

There is no fiscal impact.

Additions to chapter 352-04 WAC will make for a more expedited hearing process for individuals who may contest an eviction notice. Any fiscal impact would be in saved staff time in processing associated paperwork.

Name of Proponent: Washington state parks and recreation commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Diana Dupuis, 1111 Israel Road S.W., (360) 902-8847; and Enforcement: Robert Ingram, 1111 Israel Road S.W., (360) 902-8615.

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

February 11, 2016
Valeria Evans
Management Analyst

NEW SECTION

WAC 352-04-060 Brief adjudicative proceedings. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative proceedings shall be used in all matters related to appeals of expulsion orders issued pursuant to WAC 352-32-200.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-32-010 Definitions. Whenever used in this chapter the following terms shall be defined as herein indicated:

"Aircraft" shall mean any machine designed to travel through the air, whether heavier or lighter than air; airplane, dirigible, balloon, helicopter, etc. The term aircraft shall not include paraglider or remote controlled aircraft.

"Aquatic facility" shall mean any structure or area within a state park designated by the director or designee for aquatic activities((,)) including, but not limited to, swimming pools, wading pools, swimming beaches, floats, docks, ramps, piers or underwater parks.

"Bivouac" shall mean to camp overnight on a vertical rock climbing route on a ledge or in a hammock sling.

"Campfires" shall mean any open flame from a wood source.

"Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.

"Camping party" shall mean an individual or a group of people (two or more persons not to exceed eight) that is organized, equipped and capable of sustaining its own camping activity in a single campsite. A "camping party" is a "camping unit" for purposes of RCW 79A.05.065.

"Commercial recreation provider" is any individual or organization that packages and sells a service that meets the definition of a commercial recreation use.

"Commercial recreation use" is a recreational activity in a state park that is packaged and sold as a service by an organization or individual, other than state parks or a state park concessionaire.

((~~"Commercial recreation provider" is any individual or organization that packages and sells a service that meets the definition of a commercial recreation use.~~))

"Commercial use (nonrecreation)" is any activity involving commercial or business purpose within a state park that may impact park facilities, park visitors or staff and is compatible with recreational use and stewardship, limited in duration and does not significantly block/alter access or negatively impact recreational users.

"Commission" shall mean the Washington state parks and recreation commission.

"Conference center" shall mean a state park facility designated as such by the director or designee that provides specialized services, day-use and overnight accommodations available by reservation for organized group activities.

"Day area parking space" shall mean any designated parking space within any state park area designated for daytime vehicle parking.

"Director" shall mean the director of the Washington state parks and recreation commission or the director's designee.

"Disrobe" shall mean to undress so as to appear nude.

"Emergency area" is an area in the park separate from the designated overnight camping area, which the park manager decides may be used for camping when no alternative camping facilities are available within reasonable driving distances.

"Environmental interpretation" shall mean the provision of services, materials, publications and/or facilities, including environmental learning centers (ELCs), for other than basic access to parks and individual camping, picnicking, and boating in parks, that enhance public understanding, appreciation and enjoyment of the state's natural and cultural heritage through agency directed or self-learning activities.

"Environmental learning centers (ELCs)" shall mean those specialized facilities, designated by the director or designee, designed to promote outdoor recreation experiences and environmental education in a range of state park settings.

"Extra vehicle" shall mean each additional unhitched vehicle in excess of the one recreational vehicle that will be parked in a designated campsite or parking area for overnight.

"Fire" shall mean any open flame from any source or device including, but not limited to, campfires, stoves, candles, torches, barbeques and charcoal.

"Fish" shall mean all marine and freshwater fish and shellfish species including all species of aquatic invertebrates.

"Foster family home" means an agency which regularly provides care on a twenty-four-hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed.

"Geocache" shall mean geocaches, letterboxes, and related activities. Geocaching is an outdoor treasure hunting game in which participants (called "geocachers") use a Global Positioning System receiver or other navigational techniques to hide and seek containers (called "geocaches" or "caches").

"Group" shall mean twenty or more people engaged together in an activity.

"Group camping areas" are designated areas usually primitive with minimal utilities and site amenities and are for the use of organized groups. Facilities and extent of development vary from park to park.

"Hiker/biker campsite" shall mean a campsite that is to be used solely by visitors arriving at the park on foot or bicycle.

"Intimidate" means to engage in conduct that would make a reasonable person fearful.

"Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor and a moped.

"Multiple campsite" shall mean a designated and posted camping facility encompassing two or more individual standard, utility or primitive campsites.

"Obstruct pedestrian or vehicular traffic" means to walk, stand, sit, lie, or place an object in such a manner as to block passage by another person or a vehicle, or to require another person or a driver of a vehicle to take evasive action to avoid physical contact. Acts authorized as an exercise of one's constitutional right to picket or to legally protest, and acts authorized by a permit issued pursuant to WAC 352-32-165 shall not constitute obstruction of pedestrian or vehicular traffic.

"Out-of-home care" means placement in a foster family home or with a person related to the child under the authority of chapters 13.32A, 13.34, or 74.13 RCW.

"Overflow area" shall mean an area in a park separate from designated overnight and emergency camping areas, designated by the park manager, for camping to accommodate peak camping demands in the geographic region.

"Overnight accommodations" shall mean any facility or site designated for overnight occupancy within a state park area.

"Paraglider" shall mean an unpowered ultralight vehicle capable of flight, consisting of a fabric, rectangular or elliptical canopy or wing connected to the pilot by suspension lines and straps, made entirely of nonrigid materials except for the pilot's harness and fasteners. The term "paraglider" shall not include hang gliders or parachutes.

"Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.

"Person related to the child" means those persons referred to in RCW 74.15.020 (2)(a)(i) through (vi).

"Personal watercraft" means a vessel of less than sixteen feet that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

"Popular destination park" shall mean any state park designated by the director or designee as a popular destination park because, it is typically occupied to capacity on Friday or Saturday night during the high use season.

"Primitive campsite" shall mean a campsite not provided with flush comfort station nearby and which may not have any of the amenities of a standard campsite.

"Public assembly" shall mean a meeting, rally, gathering, demonstration, vigil, picketing, speechmaking, march, parade, religious service, or other congregation of persons for the purpose of public expression of views of a political or religious nature for which there is a reasonable expectation that a minimum of twenty persons will attend based on information provided by the applicant. Public assemblies must be open to all members of the public, and are generally the subject of attendance solicitations circulated prior to the event, such as media advertising, flyers, brochures, word-of-mouth notification, or other form of prior encouragement to attend.

Alternatively, the agency director or designee may declare an event to be a public assembly in the following cases: Where evidentiary circumstances and supporting material suggest that more than one hundred persons will attend, even where the applicant does not indicate such an expectation; or where there is reason to expect a need for spe-

cial preparations by the agency or the applicant, due to the nature or location of the event.

"Ranger" shall mean a duly appointed Washington state parks ranger who is vested with police powers under RCW 79A.05.160, and shall include the park manager in charge of any state park area.

"Recreation vehicle" shall mean a vehicle/trailer unit, van, pickup truck with camper, motor home, converted bus, or any similar type vehicle which contains sleeping and/or housekeeping accommodations.

"Remote controlled aircraft" shall mean nonpeopled model aircraft and other unmanned aircraft systems, including those commonly known as "drones" that are flown by using internal combustion, electric motors, elastic tubing, or gravity/wind for propulsion. The flight is controlled by a person on the ground using a hand held radio control transmitter.

"Residence" shall mean the long-term habitation of facilities at a given state park for purposes whose primary character is not recreational. "Residence" is characterized by one or both of the following patterns:

(1) Camping at a given park for more than thirty days within a forty-day time period April 1 through September 30; or forty days within a sixty-day time period October 1 through March 31. As provided in WAC 352-32-030(7), continuous occupancy of facilities by the same camping party shall be limited to ten consecutive nights April 1 through September 30. Provided that at the discretion of the park ranger the maximum stay may be extended to fourteen consecutive nights if the campground is not fully occupied. Campers may stay twenty consecutive nights October 1 through March 31 in one park, after which the camping unit must vacate the overnight park facilities for three consecutive nights. The time period shall begin on the date for which the first night's fee is paid.

(2) The designation of the park facility as a permanent or temporary address on official documents or applications submitted to public or private agencies or institutions.

"Seaweed" shall mean all species of marine algae and flowering sea grasses.

"Sno-park" shall mean any designated winter recreational parking area.

"Special groomed trail area" shall mean those sno-park areas designated by the director as requiring a special groomed trail permit.

"Special recreation event" shall mean a group recreation activity in a state park sponsored or organized by an individual or organization that requires reserving park areas, planning, facilities, staffing, or other services beyond the level normally provided at the state park to ensure public welfare and safety and facility and/or environmental protection.

"Standard campsite" shall mean a designated camping site which is served by nearby domestic water, sink waste, garbage disposal, and flush comfort station.

"State park area" shall mean any area under the ownership, management, or control of the commission, including trust lands which have been withdrawn from sale or lease by order of the commissioner of public lands and the management of which has been transferred to the commission, and specifically including all those areas defined in WAC 352-16-020. State park areas do not include the seashore conservation area as defined in RCW 79A.05.605 and as regulated under chapter 352-37 WAC.

"Trailer dump station" shall mean any state park sewage disposal facility designated for the disposal of sewage waste from any recreation vehicle, other than as may be provided in a utility campsite.

"Upland" shall mean all lands lying above mean high water.

"Utility campsite" shall mean a standard campsite with the addition of electricity and which may have domestic water and/or sewer.

"Vehicle" shall include every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway. For the purposes of this chapter, this definition excludes bicycles, wheelchairs, motorized foot scooters, electric personal assistive mobility devices (EPAMDs), snowmobiles and other nonlicensed vehicles.

"Vehicle parking permit" means the permit issued on a daily, multiple day or annual basis for parking a vehicle in any state park area designated for daytime vehicle parking, excluding designated sno-park parking areas.

"Vessel" shall mean any watercraft used or capable of being used as a means of transportation on the water.

"Walk-in campsite" shall mean a campsite that is accessed only by walking to the site and which may or may not have vehicle parking available near by.

"Watercraft launch" is any developed launch ramp designated for the purpose of placing or retrieving watercraft into or out of the water.

"Water trail advisory committee" shall mean the twelve-member committee constituted by RCW 79A.05.420.

"Water trail camping sites" shall mean those specially designated group camp areas identified with signs, that are near water ways, and that have varying facilities and extent of development.

"Wood debris" shall mean down and dead tree material.

WSR 16-05-061
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed February 12, 2016, 1:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-17-057.

Title of Rule and Other Identifying Information: Chapter 246-71 WAC, Medical marijuana authorization data base, proposing a new chapter regarding rules for a medical marijuana authorization data base.

Hearing Location(s): The department of health (department) will conduct two public hearings for this rule proposal. Written comments may be submitted to the department at any time up until the second public hearing on March 25, 2016. Further information regarding how and where to send written public comments or make hearing arrangements for those with disabilities may be found below.

Public Hearing #1: On March 22, 2016, at 2:00 p.m., at the Red Lion Hotel at the Park (Ballroom A), 303 West North

River Drive, Spokane, WA 99201. *Assistance for persons with disabilities must be arranged with the department by March 15, 2016.*

Public Hearing #2: On March 25, 2016, at 1:00 p.m., at the Capital Event Center at ESD 113 (Pacific/Grays Harbor Room), 6005 Tyee Drive S.W., Tumwater, WA 98512. *Assistance for persons with disabilities must be arranged with the department by March 18, 2016.*

Date of Intended Adoption: April 8, 2016.

Submit Written Comments to: Susan Reynolds, P.O. Box 47852, Olympia, WA 98504-7852, e-mail https://fortress.wa.gov/doh/policyreview/, fax (360) 236-2901, by March 25, 2016.

Assistance for Persons with Disabilities: Contact Susan Reynolds by dates under hearing locations, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to create new rules to implement the medical marijuana authorization data base. The rules are needed to allow for the creation of recognition cards for patients and their designated providers. The cards allow them to possess larger amounts of marijuana products, purchase the products without sales tax, and provide arrest protection. Rules will also outline how authorized users may access data in the data base.

Reasons Supporting Proposal: RCW 69.51A.230 requires the department of health to adopt rules to implement a medical marijuana authorization data base. The proposed rules would create an effective, consistent and enforceable process for adding qualifying patients and designated providers to the authorization data base, and ensuring confidentiality of patient information.

Statutory Authority for Adoption: RCW 69.51A.230.

Statute Being Implemented: RCW 69.51A.230.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Chris Baumgartner, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4819.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Describe the Proposed Rule, Including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

The Washington state department of health is proposing a chapter of rules that would:

- Establish the requirements for the department to contract with an entity to create, administer and maintain a medical marijuana authorization data base; and
- Establish a process to obtain recognition cards for patients and designated providers who are authorized to use medical marijuana.

The proposed rule is one element of the department's overall implementation of 2SSB 5052 which aims to align the medical marijuana market into the recreational market.

On April 24, 2015, Governor Inslee signed 2SSB 5052 (chapter 70, Laws of 2015), the Cannabis Patient Protection Act. This act creates licensing and regulation of all marijuana producers, processors and retail stores under the oversight of the renamed Washington state liquor and cannabis board (LCB). It also directs the department of health to complete tasks that include:

- Contracting with a third party to create and administer a medical marijuana authorization data base, and authorizes rules relating to the operation of the data base;
- Adopting rules regarding products sold to patients and their designated providers;
- Consulting with LCB about requirements for a retail store to get a medical marijuana endorsement;
- Creating a medical marijuana consultant certification program, and developing and approving continuing education for health care practitioners who authorize the medical use of marijuana; and
- Completing three reports: Making recommendations to the legislature about establishing medical marijuana specialty clinics, reporting costs of establishing the authorization data base; and examining the feasibility of changing marijuana's schedule I designation in the state Controlled Substances Act.

Section 21 of 2SSB 5052 (chapter 70, Laws of 2015, regular session) requires the department of health to adopt rules to establish a medical marijuana authorization data base. The proposed medical marijuana authorization data base rules will establish the requirements for a third party vendor to create, administer and maintain the data base. The purpose of the data base is to provide a process for issuing recognition cards to patients and designated providers who are authorized to use medical marijuana and allow access to various entities who need to verify a card's validity or perform other regulatory work.

Only a marijuana retailer licensed by LCB and holding an LCB medical marijuana endorsement may obtain permission to access the department's authorization data base and issue recognition cards. The probable compliance requirements that a business is likely to need in order to comply with the proposed rule are to follow the requirements of WAC 246-71-020, 246-71-030.

The kinds of professional services that a business is likely to need in order to comply with the proposed rule are employing staff who have successfully completed a department approved medical marijuana consultant training program and hold a valid medical marijuana consultant certificate in accordance with chapter 246-72 WAC (proposed separately). Under proposed LCB rules, a retail marijuana store with a medical endorsement is required to have medical marijuana consultants on staff, to add qualifying patients and designated providers to the authorization data base.

Background: The department requested stakeholders to provide feedback on the potential cost to implement the proposed changes through four public stakeholder meetings, written feedback and survey response. Stakeholders included

current medical marijuana outlets, prospective operators of retail marijuana outlets, patients and patient advocates, and health care practitioners. Through stakeholder input the department's determination is that the collective cost of the rule changes are nominal, based on current and projected revenue data. More detailed cost estimates are included in the section below.

Identify Which Businesses are Required to Comply with the Proposed Rule Using the North American Industry Classification System (NAICS) Codes and What the Minor Cost Thresholds Are:

Table A

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	Number of Businesses in WA	Minor Cost Threshold = 0.1% of Average Annual Payroll	Minor Cost Threshold = 0.03% of Average Annual Revenue
None available	Marijuana Retail Store with Medical Endorsement	188	Not available	$88,965[1]

[1] Based on average daily current revenue of $9,885 for medical marijuana-only outlets operating under Initiative 502, multiplied by three hundred operating days per year (six days per week), or about $3,094,000 per year. This does not count prospective sales to recreational marijuana.

Analyze The Probable Cost of Compliance: Identify the Probable Costs to Comply with the Proposed Rule, Including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or review [revenue].

The table below identifies sections of the rule that based on the analysis will not result in compliance costs.

Table: Rule sections that will not likely result in cost:

#	WAC Section	Section Title
1	WAC 246-71-010	Definitions.
2	WAC 246-71-060	Data base access by qualifying patients or designated providers.
3	WAC 246-71-070	Data base access by prescribers and dispensers.
4	WAC 246-71-080	Data base access by local, state, tribal, and federal law enforcement and prosecutorial officials.
5	WAC 246-71-090	Data base access by the department of revenue.
6	WAC 246-71-100	Confidentiality.
7	WAC 246-71-110	Penalties and sanctions.
8	WAC 246-71-150	Release of aggregate information from the data base.

The department analyzed the cost of compliance to the proposed rules in the following sections: WAC 246-71-020 Adding qualifying patients and designated providers to the data base, 246-71-030 Renewing qualifying patients and designated providers in the data base, 246-71-120 Process to obtain a replacement recognition card, 246-71-130 Removal of a qualifying patient or designated provider from the data base, and 246-71-140 Revocation of a designated provider.

Description of the Proposed Rules: The proposed rules establish the steps and requirements for the initial addition of someone into the data base, the required renewals for cards, and the replacement of cards. The rules also list the required information that must be entered into the data base for each patient and designated provider. The rules require a medical marijuana consultant certificate holder to enter a qualifying patient's or designated provider's information into the authorization data base. The rule requires consultants at a medical outlet to:

- Ensure that the authorization form provided is valid and meets all requirements specified in the statute and from the form's instructions, and have been printed by the authorizing practitioner on approved tamper resistant paper.
- Verify the identity of every patient age eighteen and older and every designated provider's valid photographic identification. Except for patients under the age of eighteen, a person cannot be entered into the data base without valid photographic identification.
- Check the data base to ensure that a designated provider is not currently associated with a different patient in the data base, before associating them with a new patient in the data base. If a designated provider is still associated to a different patient, the consultant cannot enter the designated provider into the data base as associated with the new patient.

Stakeholder input determined the majority of medical outlets will employ more than one staff holding a medical marijuana consultant certificate, to meet the requirements for adding qualifying patients and designated providers to the data base and creating recognition cards. Because these stores already are required by Washington state LCB rules to interface with their seed to sale system we are assuming they

already have a computer(s) with internet access for the purpose of entering information into the data base.

Probable costs to comply with the proposed rule, include the following:

- Average wage for medical marijuana consultant certified staff: $22.00 an hour with benefits.
- Annual full-time employee hours worked: 2,088 hours.
- Labor: $137,808 annually per medical outlet, based on three full-time employees. Some of these may be existing employees who obtain a medical marijuana consultant certificate. But for the purposes of this analysis, the department assumes that consultants would be considered new employees.
- Recognition card creation: The estimated labor cost to enter information into the authorization data base and create a recognition card is between $5.40 and $11.00 per card.
- Recognition card renewal: Estimated labor cost to produce a renewal recognition card is between $3.60 and $7.20 per card.
- Recognition card replacement: The estimated labor cost to produce a replacement recognition card is $3.60 per card, plus minor costs for the card material and lamination.

Using the state of Colorado's medical marijuana registry and its population we estimate that we will have approximately eighty thousand cards created per year. This is based on the assumption that since the card is optional for those eighteen and over that approximately half of all patients who could receive a card will. We estimate a five percent new application rate or four thousand after the new year and a ninety-five percent renewal rate or seventy-six thousand. So each year we estimate receiving $80,000 in card fees. Projected staffing levels are indeterminate at this time, but stakeholders indicate there will be a need to increase staff at the majority of medical outlets in the first year of business to meet demands.

Current estimated sales revenue for retail outlets based on LCB data exceeds $9,885.00 a day per outlet. Annual sales revenue for the one hundred eighty-eight licensed retail stores from January through November 2015, has exceeded $259,785,729.00. The average annual sales per retail store would be approximately $1.5 million. Estimated one time costs for complying with WAC 246-71-020, 246-71-030, 246-71-120, 246-71-130, and 246-71-140 are approximately $140,000. The department estimates about six hundred retail marijuana outlets may eventually obtain a medical marijuana endorsement allowing them [to] potentially have authorization data base access. Survey responses from retail marijuana outlets indicated the number of employees per store ranges from two to forty, with the average being nine employees. Compliance with the proposed rule is expected to increase sales and revenue for affected businesses.

WAC 246-71-040 Requirements for recognition cards.

Description of the Proposed Rule: The proposed rule states the requirements for recognition cards. The rule identifies equipment requirements and establishes the steps and requirements for issuing recognition cards at medical outlets. The rule also states the requirements that must be met by the data base vendor.

The rule does require businesses to have certain equipment available in order to create the recognition cards. This equipment includes:

- Cost of combined equipment: $300.00 initial cost (printer, laminator, paper, supplies).
- Supplies: $100.00 monthly.

The data base software application is supplied free of charge by the department to the medical outlets.

WAC 246-71-050 Data base access by marijuana retailers with medical endorsements.

Description of the Proposed Rule: The proposed rule establishes the process employees of medical outlets will use to confirm the validity of a recognition card presented by a patient or designated provider. This includes requirements for medical outlet employees to register with the department to receive credentials for access to the data base.

The department estimates that fifteen to twenty minutes will be required to register for access to the data base. The time to verify the validity of recognition cards is estimated to be ten minutes or less per card. Checking card validity will be part of the regular duties of designated employees, so the cost should be minimal.

WAC 246-71-990 Recognition card fees.

Description of the Proposed Rule: The proposed rule establishes the process for medical outlets to collect and remit a one dollar fee for each initial, replacement, and renewal recognition card.

The department only anticipates minor costs of employee time involved to remit periodic payments. The one dollar fee is established in law.

Analyze Whether Compliance with the Proposed Rule Will Cause Businesses to Lose Sales or Revenue: When surveyed, stakeholders indicated that the proposed rule will not cause businesses to lose sales or revenue, but would likely increase their client volume, which may increase sales and revenue compared to when a retailer is operating with no medical marijuana endorsement.

Analyze Whether the Proposed Rule May Impose More Than Minor Costs on Businesses in the Industry: The department has calculated the minor cost threshold to be approximately $88,965. Assumed costs to comply with the proposed rule include:

- $140,000 related to ongoing compliance costs for having up to three certified staff enter patients or designated providers information into the data base and storing it, and issuing renewal or replacement cards;
- $300 in one time equipment costs;
- $100 in monthly supply costs;
- Other minimal cost as noted in this analysis.

The department has determined that proposed rules will have more than minor costs on businesses in the industry.

Determine Whether the Proposed Rule May Have a Disproportionate Impact on Small Businesses as Compared to the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rule: Based on our survey of currently licensed retail stores,

the largest businesses employed approximately forty staff. Of the fifty-seven stores that responded to our survey the average number of staff were nine per store.

While the proposed rule will impose costs on businesses, it is indeterminate whether or not there will be a disproportionate impact on small businesses. This is due to the fact that no store is currently able to sell medical products with their endorsement until July 1, 2016.

We could have limited the staffing costs imposed by allowing any employee to enter someone into the data base, but concerns from patients about protecting their private health information we believe warranted restricting card creation to only staff trained and certified as a marijuana consultant. Current staff can become certfifed [certified] as consultants so stores do not necessarily have to hire new staff.

We did also attempt to ensure the rule only required the base minimum equipment necessary to produce the cards with the appropriate security features needed.

Describe How Small Businesses Were Involved in the Development of the Proposed Rule: The department conducted four stakeholder meetings, collecting input verbally and in writing on the proposed rule. Stakeholders included current medical marijuana outlets, prospective operators of retail marijuana outlets, patients and patient advocates, potential customers, health care practitioners, and other interested parties. Stakeholder input indicated the medical outlets supported the proposed rule language and the implementation of the authorization data base.

Identify the Estimated Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule: The estimated number of jobs that will be created as a result of compliance with the proposed rule is based on a survey of current retail outlets licensed by LCB and reporting sales, and projections for the number of retail outlets that will become medically endorsed. The number of medical outlets is estimated to be six hundred six in the first year of business operation. If each outlet hired three department-certified medical marijuana consultants who would access the authorization data base in order to cover all shifts, potentially one thousand eight hundred eighteen new jobs may be created by compliance with these rules. However, it is unknown how many existing retail employees may obtain a department certification, which would reduce the number of new jobs created. No jobs are anticipated to be lost as a result of compliance with the proposed rule.

A copy of the statement may be obtained by contacting Susan Reynolds, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4819, fax (360) 236-2901, e-mail medicalmarijuana@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Susan Reynolds, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4819, fax (360) 236-2901, e-mail medicalmarijuana@doh.wa.gov.

February 12, 2016
John Wiesman, DrPH, MPH
Secretary

Chapter 246-71 WAC

MEDICAL MARIJUANA AUTHORIZATION DATA BASE

NEW SECTION

WAC 246-71-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authorization" means a form developed by the department that is completed and signed by a qualifying patient's health care professional and printed on tamper-resistant paper approved by the Washington pharmacy quality assurance commission.

(2) "Consultant" means a person who holds a valid medical marijuana consultant certificate issued by the secretary under chapter 246-72 WAC and who is employed by a retail outlet with a medical marijuana endorsement.

(3) "Credential for access" or "credentials" means information, electronic device, or certificate provided by the department or the department's designee to a data requestor to electronically access the data base. The authentication may include, but is not limited to, a user name, password, or an identification electronic device or certificate.

(4) "Data base" means the medical marijuana authorization data base established under RCW 69.51A.230.

(5) "Department" means the Washington state department of health.

(6) "Designated provider" has the same meaning as RCW 69.51A.010(4).

(7) "Dispenser" means a person authorized to dispense controlled substances other than marijuana under chapter 69.50 RCW.

(8) "Health care practitioner" or "authorizing health care practitioner," for purposes of this chapter only, means a physician licensed under chapter 18.71 RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician licensed under chapter 18.57 RCW, an osteopathic physician's assistant licensed under chapter 18.57A RCW, a naturopath licensed under chapter 18.36A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(9) "Official" means an official of a local, state, tribal, or federal law enforcement or prosecutorial agency.

(10) "Prescriber" means a person authorized to prescribe or dispense controlled substances other than marijuana under chapter 69.50 RCW.

(11) "Qualifying patient" or "patient" has the same meaning as RCW 69.51A.010(19).

(12) "Recognition card" means a card issued to qualifying patients and designated providers by a marijuana retailer with a medical marijuana endorsement that has entered them into the medical marijuana authorization data base.

(13) "Retail outlet with a medical marijuana endorsement" or "endorsed outlet" means a location licensed by the WSLCB under RCW 69.50.325 for the retail sale of usable marijuana and marijuana-infused products to the public, and under RCW 69.50.375 to qualifying patients and designated providers for medical use.

(14) "Valid photographic identification" means:

(a) A driver's license or instruction permit issued by any state of the United States or province of Canada. If the patient's driver's license has expired, the patient must also show a valid temporary driver's license with the expired card.

(b) A state identification card issued by any state of the United States or province of Canada.

(c) An official passport issued by any nation.

(d) A United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents.

(e) A merchant marine identification card issued by the United States Coast Guard.

(f) An enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses.

A recognition card, whether current or expired, does not qualify as valid photographic identification.

(15) "Vendor" means the third-party administrator with whom the department has contracted to operate the data base.

(16) "WSCLB" means the Washington state liquor and cannabis board.

NEW SECTION

WAC 246-71-020 Adding qualifying patients and designated providers to the data base. A qualifying patient or designated provider may take their authorization to an endorsed outlet to be entered into the data base.

(1) Only a consultant employed by an endorsed outlet is allowed to enter a qualifying patient's or designated provider's information into the data base.

(2) Consultants must register with the department to receive credentials to access the data base. The process for registration will be established by the department.

(3) The department shall verify the consultant's identity and certificate status before providing credentials to access the data base.

(4) The consultant shall access the data base using the credentials issued by the department or the department's designee. If the credentials are lost or missing, or the security of the credentials is compromised, the consultant shall notify the department by telephone and in writing within one business day.

(5) The consultant shall ensure that the authorization form provided is valid, complete, unaltered, and meets all requirements specified in RCW 69.51A.030 and complies with the instructions on the form. If any requirement is not met, or the form is altered or incomplete, the person cannot be entered into the data base.

(6) The consultant shall verify the identity of every patient age eighteen and older and every designated provider by inspecting the patient's or designated provider's valid photographic identification. Except for patients under the age of eighteen, a person cannot be entered into the data base without valid photographic identification.

(7) In the event of an inexact match of names on the identification and the authorization, the consultant shall ensure that the patient or designated provider named on the authorization form is the same person presenting the authorization for entry into the data base.

(8) The consultant shall check the data base to ensure that a designated provider is not currently associated with a different patient in the data base before associating the designated provider with a new patient in the data base. If a designated provider is still associated with a different patient, the consultant cannot enter the designated provider into the data base as associated with the new patient.

(9) The consultant shall enter the following information into the data base for each patient and designated provider (unless specified below):

(a) The type of valid photographic identification verified and the unique number from the identification;

(b) Full legal name, as it appears on the valid photographic identification, including first name, middle initial, last name, and generational suffixes, if any;

(c) Date of birth;

(d) Actual address if different from the address on the identification;

(e) Gender;

(f) Name of the authorizing health care practitioner;

(g) Authorizing health care practitioner's full license number;

(h) Business address of the authorizing health care practitioner;

(i) Telephone number of the authorizing health care practitioner, as listed on the authorization form;

(j) The patient's qualifying condition(s);

(k) For the designated provider only, the patient the designated provider is authorized to assist;

(l) The date the authorization was issued;

(m) The date the authorization expires; and

(n) The number of plants the patient is allowed to grow. If the authorizing health care practitioner does not indicate a specific number, the presumptive number is six plants. The health care practitioner cannot authorize more than fifteen plants. An authorization for more than fifteen plants is invalid.

(10) All requests for, uses of, and disclosures of information from the data base by authorized persons must be consistent with chapter 69.51A RCW and this chapter.

NEW SECTION

WAC 246-71-030 Renewing qualifying patients and designated providers in the data base. (1) Recognition cards expire on the expiration date indicated on the patient's or designated provider's authorization. To be valid, an authorization must expire no later than:

(a) Twelve months after the date it was issued for patients age eighteen and over;

(b) Twelve months after the date it was issued for designated providers; or

(c) Six months after the date it was issued for patients under the age of eighteen.

(2) To renew a recognition card a patient or designated provider must receive a new authorization following reexamination of the patient by a health care practitioner. The quali-

fying patient or designated provider may take their new authorization to an endorsed outlet to be entered into the data base.

(3) The procedures in WAC 246-71-020 must be used to enter the patient's or designated provider's new authorization into the data base.

(4) The consultant shall ensure that the information required by WAC 246-71-020(9) is updated and accurate at the time of renewal.

NEW SECTION

WAC 246-71-040 Requirements for recognition cards. (1) An endorsed outlet must have the following equipment readily available and maintained in good working order:

(a) A computer with internet access and capability of running a supported version of a common web browser;

(b) A digital camera with at least 10 megapixel resolution;

(c) A standard color printer able to print at least 300 dots per inch;

(d) A laminator that can laminate 8 inch by 11 1/2 inch card stock paper; and

(e) A solid white backdrop to use as the background for each picture.

(2) When issuing a recognition card to a qualifying patient or designated provider, an endorsed outlet must comply with the following requirements:

(a) Only a consultant employed by the endorsed outlet is allowed to print and create a card;

(b) The consultant shall take a picture of the face of the patient or designated provider at the same time they are entered into the data base following the process specified by the department;

(c) The consultant shall create, print and laminate the card, and issue it to the patient or designated provider following the process specified by the department; and

(d) The consultant shall return the authorization to the patient or designated provider. The endorsed outlet shall not retain a copy of the authorization.

(3) The data base vendor shall ensure recognition cards contain the following:

(a) A randomly generated and unique identification number;

(b) The name of the patient or designated provider;

(c) For designated providers, the unique identification number of the patient they are assisting;

(d) A photograph of the patient or designated provider;

(e) The amounts of marijuana concentrates, usable marijuana, or marijuana-infused products the patient or designated provider is authorized to purchase or obtain at an endorsed outlet;

(f) The number of plants the patient or designated provider is authorized to grow;

(g) The effective date and expiration date of the card;

(h) The name of the health care professional who issued the authorization; and

(i) Additional security features required by the department to ensure the validity of the card.

NEW SECTION

WAC 246-71-050 Data base access by marijuana retailers with medical endorsements. Employees of an endorsed outlet may access the data base to confirm the validity of a recognition card presented by a patient or designated provider.

(1) An employee of an endorsed outlet must register with the department to receive credentials for access. The registration process shall be established by the department.

(2) The department shall verify the employee's identity and employment status before providing credentials to access the data base.

(3) The employee shall access the data base using the credentials issued by the department or the department's designee. If the credentials issued are lost or missing, or the security of the credentials is compromised, the employee shall notify the department by telephone and in writing within one business day.

(4) An endorsed outlet owner or manager shall inform the department and the data base vendor in writing immediately upon the termination of employment of an employee with access.

(5) All requests for, uses of, and disclosures of information from the data base by authorized persons must be consistent with chapter 69.51A RCW and this chapter.

NEW SECTION

WAC 246-71-060 Data base access by qualifying patients or designated providers. Qualifying patients and designated providers may request and receive their own authorization information from the data base or information about any person or entity that has queried their name or information.

(1) A patient or designated provider may submit a request using a process and format established by the department for requesting and receiving information from the data base.

(2) The department shall require proof of identity including, but not limited to, valid photographic identification prior to releasing any information to a patient or designated provider.

(3) The information will be delivered using a process and format established by the department.

NEW SECTION

WAC 246-71-070 Data base access by prescribers and dispensers. Prescribers and dispensers may access patient information in the data base for the purpose of providing medical or pharmaceutical care for their patients.

(1) Prescribers and dispensers who want access to the data base shall register with the department in order to receive credentials for access. The registration process shall be established by the department.

(2) The department shall verify the prescriber's or dispenser's identity and health care practitioner license(s) before providing credentials to access the data base.

(3) Prescribers and dispensers shall access the data base using the credentials issued by the department or the depart-

ment's designee. If the credentials issued are lost or missing, or the security of the credentials is compromised, the prescriber or dispenser shall notify the department by telephone and in writing within one business day.

(4) Prescribers and dispensers registered to access the data base must inform the department and the data base vendor immediately in writing when they no longer have the authority to prescribe or dispense controlled substances.

(5) All requests for, uses of, and disclosures of information from the data base by authorized persons must be consistent with chapter 69.51A RCW and this chapter.

NEW SECTION

WAC 246-71-080 Data base access by local, state, tribal, and federal law enforcement and prosecutorial officials. Officials who are engaged in a bona fide specific investigation of suspected marijuana-related activity that may be illegal under Washington state law may access the data base to confirm the validity of the recognition card of a patient or designated provider.

(1) Officials who want access to the data base shall register with the department in order to receive credentials for access. The registration process shall be established by the department.

(2) The department or the department's designee shall verify the official's identity and position before providing credentials to access the data base.

(3) Officials shall access the data base using the credentials issued by the department or the department's designee. If the credentials issued are lost or missing, or the security of the credentials is compromised, the official shall notify the department or its designee by telephone and in writing within one business day.

(4) Officials with an active data base account must inform the department and the data base vendor in writing immediately when they no longer hold a position as a law enforcement or prosecutorial official.

(5) All requests for, uses of, and disclosures of information from the data base by authorized persons must be consistent with chapter 69.51A RCW and this chapter.

NEW SECTION

WAC 246-71-090 Data base access by the department of revenue. The Washington department of revenue may access information in the data base to verify tax exemptions under chapters 82.08 and 82.12 RCW. The process and format for request and receiving the information shall be established by the department and the data base vendor in coordination with the Washington department of revenue.

NEW SECTION

WAC 246-71-100 Confidentiality. (1) Under RCW 42.56.625, records in the data base containing names and other personally identifiable information of qualifying patients and designated providers are exempt from public disclosure, inspection, or copying.

(2) The vendor must retain data base records for at least five calendar years to permit the WSLCB and Washington department of revenue to verify eligibility for tax exemptions.

NEW SECTION

WAC 246-71-110 Penalties and sanctions. (1) Pursuant to RCW 69.51A.240, unlawful access to the data base is a class C felony.

(2) If the department or vendor determines a person or entity has intentionally, knowingly, or negligently accessed, used or disclosed data base information in violation of chapter 69.51A RCW or this chapter, the department may take action including, but not limited to:

(a) Terminating access to the data base;

(b) Filing a complaint with appropriate health profession disciplining authority; or

(c) Reporting the violation to the appropriate government agency, including WSLCB or law enforcement.

NEW SECTION

WAC 246-71-120 Process to obtain a replacement recognition card. A patient or designated provider may request a replacement recognition card at an endorsed outlet if the original recognition card is lost or stolen.

(1) The replacement recognition card will expire on the same date as the original recognition card unless the patient is reexamined by a health care practitioner and a new authorization is provided.

(2) Only consultants shall issue a replacement recognition card to the patient or designated provider. The consultant shall issue the replacement recognition card in compliance with the procedure in WAC 246-71-030.

(3) Information regarding the issuance of a replacement recognition card must be entered into the data base as determined by the department prior to the card being printed and given to the patient or designated provider.

NEW SECTION

WAC 246-71-130 Removal of a qualifying patient or designated provider from the data base. (1) The vendor must automatically deactivate patient and designated provider records in the data base upon expiration of a recognition card.

(2) Patients and designated providers may request to be removed from the data base before the expiration of their recognition card using the process established by the department.

(3) The authorizing health care practitioner may request removal of a patient or designated provider from the data base if the patient no longer qualifies for the medical use of marijuana. This request must be made using the process established by the department.

NEW SECTION

WAC 246-71-140 Revocation of a designated provider. (1) Patients may revoke their designation of a specific designated provider. The revocation must be in writing using a form developed by the department. The patient must send

the revocation to the vendor and give a copy to the designated provider. The vendor must verify the form's authenticity prior to revoking the designated provider and deactivating the designated provider's recognition card.

(2) A patient may designate a new designated provider after revoking a prior designated provider. The new designated provider must receive an authorization form from the patient's authorizing health care practitioner. The new designated provider may then go to a retail outlet to be entered into the data base and receive a recognition card.

(3) A person may stop serving as a designated provider by providing a letter to the patient. If the person is currently in the data base as a designated provider for the patient, the person shall also submit a form established by the department to the vendor. The vendor shall verify the form's authenticity prior to revoking the designated provider in the data base and deactivating the designated provider's recognition card.

NEW SECTION

WAC 246-71-150 Release of aggregate information from the data base. (1) The department may provide aggregate information from the data base, with all personally identifiable information redacted, for the purpose of statistical analysis and oversight of agency performance and actions.

(2) To obtain information from the program a person or public or private entity must submit a request on a form established by the department.

(3) All requests for, uses of, and disclosures of information from the authorization data base must be consistent with chapter 69.51A RCW and this chapter.

NEW SECTION

WAC 246-71-990 Recognition card fees. (1) Endorsed outlets must collect a one dollar fee for each initial, replacement, and renewal recognition card. The fee shall be collected by the endorsed outlet from the patient or designated provider when the card is issued.

(2) Endorsed outlets must periodically remit fees collected using the process established by the department.

(3) Failure by an endorsed outlet to promptly remit fee revenue when due will result in notice to the WSLCB and any other action necessary to ensure compliance.

WSR 16-05-066
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Consumer Services Division)

[Filed February 15, 2016, 2:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-028.

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 March 23, 2016, at 9-11 a.m.

Date of Intended Adoption: March 30, 2016.

Submit Written Comments to: Sara Rietcheck, 150 Israel Road S.W., P.O. Box 41200, Olympia, WA 98504-1200, e-mail sara.rietcheck@dfi.wa.gov, fax (360) 586-5068, by March 14, 2016.

Assistance for Persons with Disabilities: Contact Sara Rietcheck by March 14, 2016, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules must be amended to implement changes to the law, to aid the regulated industries by having consistent rules within the mortgage marketplace, and to make technical changes for clarity and consistency.

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 Guidelines 3.a. and e. dated October 12, 2011.

Statutory Authority for Adoption: Chapter 43.320 RCW, RCW 19.146.223.

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: Charles Clark, 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.

February 15, 2015 [2016]
Charles Clark, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

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, televi-

sion, public address system, or other audio broadcasts; or internet pages or social media 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, or residential mortgage loan modification, for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan or loan modification.

"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 mort-

gage 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 or loan estimate and applicable 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.

"Dwelling" means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. 1026.2.

"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, National Credit Union Administration, Federal Deposit Insurance Corporation and Consumer Financial Protection Bureau.

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~~)) 1002.

• "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~~)) 12 C.F.R. Part ((~~3500 et seq~~)) 1024.

• "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), 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~~)) Telemarketing 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~~)) 1026.

"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.

"License number" means the NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

"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 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. An individual "offers or negoti-

ates terms of a residential mortgage loan for compensation or gain" if the individual:

(a) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms;

(b) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or

(c) Recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower; and

(d) Receives or expects to receive payment of money or anything of value in connection with the activities described under the definitions of "loan originator" or "mortgage loan originator" of this section or as a result of any residential mortgage loan terms entered into as a result of such activities.

"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 definition.

"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." See WAC 208-660-106.

"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~~)) 12 C.F.R. Part ((~~3500, Section 3500 (2)(b)~~)) 1024.2(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" also includes any 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 or holds himself or herself out as being able to perform residential mortgage loan modification services.

"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."

"NMLS" means a 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, loan originator, or lender in which the mortgage broker, loan originator, or lender 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 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.

"Residential mortgage loan modification services." See WAC 208-660-105.

"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 NMLS.

AMENDATORY SECTION (Amending WSR 09-24-091, filed 12/1/09, effective 1/1/10)

WAC 208-660-008 Exemptions. (1) **Who is exempt from all provisions of the act?** Any person doing business under the laws of the state of Washington or the United States and any federally insured depository institution doing business under the laws of any other state relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof.

(2) **Who is exempt from licensing as a mortgage loan originator?**

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

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

(3) **If I am licensed as an insurance agent under RCW 48.17.060, must I have a separate license to act as a loan originator or mortgage broker?** Yes. You will need a separate license as a loan originator or mortgage broker if you are a licensed insurance agent and you do any of the following:

(a) Take a residential mortgage loan application for a mortgage broker;

(b) Offer or negotiate terms of a mortgage loan for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

(c) Assist a person in obtaining or applying to obtain a residential mortgage loan, for compensation or gain; or

(d) Hold yourself out as being able to perform any of the above services.

(4) **Are insurance companies exempt from the Mortgage Broker Practices Act?** Yes. Insurance companies authorized to transact the business of insurance in this state by the Washington state office of the insurance commissioner are exempt from the Mortgage Broker Practices Act.

(5) **As an attorney, must I have a mortgage broker or loan originator license to assist a person in obtaining or applying to obtain a residential mortgage loan in the course of my practice?**

(a) If you are an attorney licensed in Washington and if the mortgage broker activities are incidental to your professional duties as an attorney, you are exempt from the Mortgage Broker Practices Act under RCW 19.146.020 (1)(c).

(b) Whether an exemption is available to you depends on the facts and circumstances of your particular situation. For example, if you hold yourself out publicly as being able to perform the services of a mortgage broker or loan originator, or if your fee structure for those services is different from the customary fee structure for your professional legal services, the department will consider you to be principally engaged in the mortgage broker business and you will need a mortgage broker or loan originator license before performing those services. A "customary" fee structure for the professional legal service does not include the receipt of compensation or gain associated with assisting a borrower in obtaining a residential mortgage loan on the property.

(6) **As a licensed real estate broker or salesperson, must I have a mortgage broker or loan originator license when I assist the purchaser in obtaining financing for a residential mortgage loan involving a bona fide sale of real estate?** You are exempt from the act under RCW 19.146.020 (1)(e) if you only receive the customary real estate commission in connection with the transaction. A "customary" real estate commission does not include receipt of compensation or gain associated with the financing of the property. A "customary" real estate commission only includes the agreed upon commission designated in the listing or purchase and sale agreement for the bona fide sale of the subject property.

(7) **Are independent contractor loan originators exempt from licensing?** No. An independent contractor working as a loan originator must hold a loan originator license.

(8) **What other persons or entities are exempt from the Mortgage Broker Practices Act?**

(a) Any person doing any act under order of any court except for a person subject to an injunction to comply with any provision of the act or any order of the director issued under the act.

(b) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of these entities in this subsection (b).

(c) Registered mortgage loan originators, or any individual required to be registered, employed by entities exempt from the act.

(d) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the transaction.

(9) **When is a CLI provider exempt from the licensing requirements of the act?** A CLI provider is exempt from the licensing requirements of the act:

(a) When the CLI provider meets the general statutory requirements under RCW 19.146.020 (1)(a), (c), (d), or (f); or

(b) When a real estate broker or salesperson licensed in Washington, acting as a CLI provider and a real estate agent, obtains financing for a real estate transaction involving a bona fide sale of real estate and does not receive either:

(i) A separate fee for the CLI service; or

(ii) A sales commission greater than that which would be otherwise customary in connection with the sales transaction; or

(c) When a person, acting as a CLI provider:

(i) Provides only information regarding rates, terms, and lenders;

(ii) Complies with all requirements of subsection (12) of this section;

(iii) Does not represent or imply to a borrower that they are able to obtain a residential mortgage loan from a mortgage broker or lender;

(iv) Does not accept a loan application, assist in the completion of a loan application, or submit a loan application to a mortgage broker or lender on behalf of a borrower;

(v) Does not accept any deposit for third-party provider services or any loan fees from a borrower in connection with a loan, regardless of when the fees are paid;

(vi) Does not negotiate interest rates or terms of a loan with a mortgage broker or lender on behalf of a borrower; and

(vii) Does not provide to the borrower a good faith estimate or loan estimate or other disclosure(s) required of mortgage brokers or lender(s) by state or federal law.

(d) If the CLI provider is not exempt under (a), (b), or (c) of this subsection, the CLI provider is not required to have a mortgage broker license if the CLI provider does not receive any fee or other compensation or gain, directly or indirectly, for performing or facilitating the CLI service.

(10) **When is a CLI provider required to have a mortgage broker license?**

(a) If a CLI provider, who is not otherwise exempt from the licensing requirements of the act, performs any act that would otherwise require that they be licensed, including accepting a loan application, or submitting a loan application to a mortgage broker or lender, the CLI provider must obtain a mortgage broker or a loan originator license.

(b) Example - License required: A CLI provider uses an internet-based CLI system in which an abbreviated application is available for online completion by borrower. Once the borrower presses "submit," the information collected in the abbreviated application is forwarded to lender. The information contains the borrower's name, Social Security number, contact information, purpose of the loan sought (e.g., purchase, refinance, home equity, second mortgage), size of loan requested, annual salary, and a self-declaration of total unsecured debt. The electronic entries made by the borrower are then used by lender to electronically populate "form fields" and to initiate lender's loan application. A loan originator for the lender then follows up with borrower to complete the loan application. On or after closing, CLI provider receives a CLI service fee.

(c) Example - License not required: A CLI provider uses an internet-based CLI system in which various interactive informational tools are present, including an online "prequalification" tool. Based upon borrower's self-declared data input, borrower receives an indication of borrower's "maximum affordable loan amount," based upon standard norms of debt-to-income ratio and loan-to-value ratio, and also subject to verification of information, availability and suitability of loan products, and independent underwriting by any lender. The borrower indicates a desire for follow-up from one or more lenders by inputting personal contact information and pressing "submit." A number of lenders receive only the personal identity information of borrower and not any financial information. However, the CLI system has been programmed (and may be continuously reprogrammed) to route personal contact information to certain lenders based upon borrower's "prequalification" data input and the lending criteria of each of the lenders for whom CLI provider has a relationship. None of borrower's self-declared financial information is actually submitted to any of the lenders whose criteria match borrower's profile. Loan originators from lender A and lender B initiate contact with borrower based solely on borrower's contact information. Lender A and lender B, through their assigned loan originators, contact borrower with the object of beginning and hopefully completing a loan application. In this example, CLI provider has not taken a loan application.

(11) **Must the CLI provider provide any disclosures?**

(a) Yes. If a borrower using or accessing the CLI services pays for the CLI service, either directly or indirectly, the CLI provider must give the following disclosure:

(i) The amount of the fee the CLI provider charges the borrower for the service;

(ii) That the use of the CLI system is not required to obtain a residential mortgage loan; and

(iii) That the full range of loans available may not be listed on the CLI system, and different terms and conditions, including lower rates, may be available from others not listed on the system.

(b) Each CLI provider must give the borrower a copy of the disclosure form when the first CLI service is provided to the borrower. The form must be signed and dated by the borrower and a copy maintained as part of the CLI provider's books and records for at least two years.

(12) **Are CLI system providers subject to enforcement under the act?** Yes. CLI system providers are responsible for any violations of the act and will be subject to any applicable fines or penalties.

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

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~~)) persons 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~~)) person performing mortgage loan modification services or to a residential mortgage loan servicer.

Any person in violation of the act while providing residential mortgage loan modification services is subject to the department's investigation and enforcement authorities including being responsible for an investigation fee when the department investigates the books and records of any person subject to the act.

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-155 Mortgage brokers—General. (1) **May I originate residential mortgage loans in Washington without a license?** No. Mortgage brokers must have a valid Washington license, or be exempt from licensing pursuant to

RCW 19.146.020, and must maintain a sponsored loan originator who is approved by the director, in order to originate residential mortgage loans or conduct residential mortgage loan modification services. 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 good faith estimate or loan estimate identifying the specific third-party provider goods and services the funds are to be used for and the cost of the goods and services. 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 or loan 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 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 NMLS.

(13) **When must I update my record in the NMLS after I terminate employment with a loan originator?** You must process the termination through the 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. Additionally, your loan originator compensation models must comply with federal law, including Regulation Z, 12 C.F.R. Part 1026 (((~~formerly 12 C.F.R. Part 226~~))).

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

WAC 208-660-163 Mortgage brokers—Licensing. (1) **How do I apply for a mortgage broker license?** Your application consists of an online filing through the NMLS and Washington specific requirements provided directly to DFI. You must pay an application fee through the 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 online application through the 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, denied, suspended, or restricted within the prior five years.

(b) Whether the applicant has ever had a license denied or 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 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 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 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) Complete a renewal request through the NMLS.

(ii) Show evidence that your designated broker completed the required annual continuing education.

(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 the last day of February 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 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).

AMENDATORY SECTION (Amending WSR 12-18-048, filed 8/29/12, effective 11/1/12)

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 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 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 or with someone in the same real estate agency 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."~~))

for required disclosure language see RCW 19.146.0201(14).

(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) **May a loan originator bring a lawsuit against a borrower for the collection of compensation?** No. Only licensed mortgage brokers, or exempt mortgage brokers, may bring collection actions against borrowers to collect compensation.

(11) **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.

(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.

(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~~)) loan originator and do not hold themselves out as able to conduct the activities of a licensed mortgage ((~~broker or~~)) loan originator. Independent contractor loan processors must be licensed as a mortgage ((~~broker, mortgage broker branch office, or~~)) loan originator.

(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 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-350 Loan originators—Licensing. (1) **How do I apply for a loan originator license? Your application consists of an online filing through the NMLS and Washington specific requirements provided directly to DFI. You must pay an application fee through the NMLS system. You also must:**

(a) **Be eighteen years or older.**

(b) **Pass a licensing test.** You must take and pass the NMLS test. See WAC 208-660-360((~~,~~)) Loan originators—Testing.

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

(d) **Pay the application fee.** You must pay an application fee for your application, as well as an administrative fee to the NMLS. See WAC 208-660-550((~~,~~)) Department fees and costs.

(e) **Complete prelicensing education.** You must complete prelicensing education before submitting the license application. 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 denied, suspended, restricted, or revoked.

(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 online application through the 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 online application through NMLS you may withdraw the application through NMLS. You will not receive a refund of the 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. 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 NMLS.

(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) **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.

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

(9) **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.

(10) **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.

(11) **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.

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

(13) **How do I activate my loan originator license?** The sponsoring company must submit a sponsorship request for your license through the NMLS. The department will notify you and all the companies you are working with of the new working relationship if approved.

(14) **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.

(15) **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.

(16) **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 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 the core twenty hours of prelicensing education. See WAC 208-660-370.

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

(17) **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 the last day of February 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 (16) 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.

(18) **If I let my loan originator license expire and then apply for a new loan originator license, 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.

(19) **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.

(20) **What happens to the loan applications I originated before my loan originator license expired?** Because loan files belong to the licensed mortgage broker, existing loan applications must be processed by the licensed mortgage broker, unless the borrower makes a written demand that the loan file be transferred to another licensed entity. See WAC 208-660-300 (5) and (6).

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

(22) **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.

(23) **Must I include my license number on any documents?** You must include your license number closely following your license name on (a) through (d) of this subsection. An example of closely following is: Your license name followed by your title (if you use one) followed by your license number.

(a) Solicitation. This includes correspondence in any form. Correspondence that ((~~this~~)) is not a solicitation does not have to include your license number.

(b) Business cards.

(c) All advertisements and marketing that contain your license name.

(d) Any state or federal form that requires your license number. See also WAC 208-660-350(25).

(24) **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) **May I conduct business and advertise under a name other than the name on my loan originator license?** You must use the name on your license when you are conducting business and in your advertisements with the following exceptions: Except, use of your middle name is not required. Except, you may use only your middle and last name; except, you may use a nickname as your first name if it is registered in NMLS on your MU4 as an "other" name.

(26) **Will I have to obtain an individual bond if the company I work for is exempt from licensing?** Reserved.

(27) **Will I have to file quarterly call reports if I have an individual bond?** Reserved.

RECORDS AND RESPONSIBILITIES

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-400 Reporting requirements and notices to the department. (1) **What are my quarterly filing requirements?** You are required to file accurate and complete call reports through the NMLS on the dates and in a form prescribed by the director or NMLS.

(2) **As a licensed mortgage broker what are my reporting responsibilities when something of significance happens to my business?**

(a) **Notification required.** You must notify the director through amendment to the NMLS to a change of:

(i) Principal place of business or any branch offices;

(ii) Sponsorship status of a mortgage loan originator;

(iii) Answers to the NMLS generated disclosure questions.

(b) **Prior notification required.** You must notify the director in writing twenty days prior to a change of:

(i) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(ii) Legal or trade name; or

(iii) A change of ownership control of 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.

(c) **Post notification within ten business days.** You must notify the director through the 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 business license;

(iii) Change in standing with the Washington secretary of state, including the resignation or change of the registered agent;

(iv) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340;

(v) Receipt of notification of cancellation of your surety bond;

(vi) Receipt of notification of license revocation proceedings against you in any state;

(vii) If you, or any officer, director, or principal is convicted of a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(viii) Name and mailing address of your registered agent if you are out-of-state.

(d) **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.

(e) **Other post notification.** Within forty-five days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-660-480.

(3) **As a licensed mortgage loan originator, what are my reporting responsibilities?** You must notify the director through amendment to the NMLS within ten business days to a change of:

(a) Answers to the NMLS generated disclosure questions;

(b) Sponsorship status with a licensed mortgage broker;

(c) Residence address; or

(d) Any change in the information supplied to the director in your original application.

(4) **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 NMLS. If the location of your books and records changes, you must provide the department, through the NMLS, with the new physical address within five business days of the change.

(5) **Must I notify the department if my designated broker leaves, or is no longer my designated broker?** Yes. You must notify the department, through NMLS, within five business days of the loss of or change of status of your designated broker. See WAC 208-660-180(3).

(6) **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.

(7) **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: Notify the department in writing and provide requested information. At the effective date of sale, update and file all required information through the 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.

(8) **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 NMLS.

(9) **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.

(10) **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.

(11) **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.

(12) **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.

(13) **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.

(14) **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.

(15) **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.

(16) **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.

(17) **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 208-660-410 Trust accounting. (1) **What are trust funds?** Trust funds are all funds received from borrowers, or on behalf of borrowers, for payments to third-party providers. The funds are considered to be held in trust immediately upon receipt. Trust funds include, but are not limited to, borrower deposits for appraisal fees, credit report fees, title report fees, and similar fees to be paid for services rendered by third-party providers in the borrower's loan transaction.

(2) **Are lock-in agreement fees paid by a borrower to the mortgage broker considered trust funds?** Yes, these fees are considered trust funds and must be deposited in the mortgage broker's trust account, unless the check is made payable to the lender. If the check is made payable to the lender, the mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the lender pursuant to any agreement with the lender, or within three business days of receiving the funds.

(3) **Must I have a trust account if I receive funds from borrowers for the payment of third-party providers?** Yes. All funds received from borrowers, or on behalf of borrowers, for payments to third-party providers are trust funds and are considered held in trust immediately upon receipt. You must deposit those funds in a trust account in your name as it appears on your license, or if exempt in the name of the exempt broker, in a federally insured financial institution's branch located in this state within three business days of receiving the funds. The funds must remain on deposit until disbursed to the third-party provider except as permitted by the act and these rules. The mortgage broker is responsible for depositing, holding, disbursing, accounting for and otherwise safeguarding the funds in accordance with the act and these rules.

(4) **Must I have a trust account if I do not receive any trust funds?** No. If you do not accept trust funds at any point before, during, or after a loan transaction, a trust account is not required.

(5) **Must I have a trust account if I am a mortgage broker exempt from licensing under the act?** Mortgage brokers exempt under RCW 19.146.020 (1)(a), (b), (c), (d), and (g) are not required to have a trust account even if they receive trust funds.

(6) **What does it mean to receive trust funds "on behalf of borrowers"?** Trust funds are identified by purpose rather than source. Funds received by the mortgage broker from the borrower for the payment of third-party provider services are trust funds. Funds received from relatives of borrowers, the seller in a real estate transaction, or an escrow company or lender reimbursing a mortgage broker for payments advanced are trust funds. Funds deposited to a borrower's subaccount by the mortgage broker as an advance are funds received on behalf of the borrower and are trust funds.

(7) **What forms of payment must trust funds take?** Trust funds may be in any form that allows deposit into the trust account, including, but not limited to, cash, check, or any electronic transmission of funds((,)) including, but not limited to, bank wires, ACH authorization, credit card or debit transactions, or online payments through a web site.

(8) **How do I receive trust funds through electronic transmission?**

(a) The trust funds must be transmitted directly from the borrower, or other person on behalf of the borrower, into your trust account, in a federally insured financial institution located in the state of Washington.

(b) Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity. Electronic transmissions must be included in the monthly trust account reconciliation.

(9) **When must I deposit trust funds?** You must deposit all funds you receive, that are required to be held in trust, before the end of the third business day following your receipt of the funds.

(10) **How must I document deposits?**

(a) You must document all deposits to the trust account(s) by having a bank deposit slip which has been validated by bank imprint, or an attached deposit receipt which bears the signature of an authorized representative of the mortgage broker indicating that the funds were actually deposited into the proper account(s).

(b) You must post the deposit of funds by wire transfer or any means other than cash, check, or money order in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the federally insured financial institution or transferring entity. You must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

(11) **May I deposit funds other than trust funds into my trust account?** You may advance your own funds into the trust account(s) to prevent a disbursement in excess of an individual borrower's subaccount, provided that the exact sum of deficiency is deposited and detailed records of the deposit and its purpose are maintained in the trust ledger and

the trust account(s) check register. Any deposits of your own funds into the trust account(s) must be held in trust in the same manner as funds paid by borrowers for the payment of third-party providers and treated accordingly in compliance with the act and these rules.

(12) **May a loan originator accept trust funds?** A loan originator may not solicit or receive fees for a third-party provider of goods or services except that a loan originator may transfer funds from a borrower to a licensed mortgage broker, exempt mortgage broker, or third-party provider, if the loan originator does not deposit, hold, retain, or use the funds for any purpose other than the payment of bona fide fees to third-party providers. The funds must be in the form of a check made payable to a licensed mortgage broker, exempt mortgage broker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

(13) **May a mortgage broker accept and hold a check from a borrower that is made payable to a third-party provider and intended to be used to pay for third-party provider services without depositing the check into a trust account?** Yes. The check must be payable to a specific third-party provider. The payee line may not be left blank. The mortgage broker has a duty to exercise ordinary care to see that the check is not used for any unauthorized purpose. The mortgage broker must deliver the check to the third-party provider within the time frames and requirements established in RCW 19.146.0201(12).

(14) **May a loan originator accept and hold a check from a borrower that is made payable to a third party and intended to be used to pay for third-party provider services?** A loan originator may only hold a borrower's check for the purpose of transferring the funds from the borrower to the licensed mortgage broker, exempt mortgage broker, or third-party provider. The loan originator must transfer the borrower's funds to the licensed mortgage broker, exempt mortgage broker, or third-party provider within one business day of receiving the check from the borrower.

(15) **Is a lender or mortgage broker, or agent or employee of a lender or mortgage broker, considered a third party?** A lender is considered a third party only when the lender provides lock-in arrangements to the mortgage broker in connection with the preparation of a borrower's loan.

(16) **If a mortgage broker receives funds from a third party, such as a closer, or a lender, as reimbursement for advancements for the payment of third-party provider services, are these funds considered trust funds?** Yes, all funds received by the mortgage broker on behalf of the borrower for the payment of third-party providers are considered trust funds.

(17) **What books and records must I keep regarding my trust account?** You must maintain as part of your books and records:

(a) A trust account deposit register and copies of all validated deposit slips or signed deposit receipts for each deposit to the trust account;

(b) A record of all invoices for payments made on behalf of a borrower including but not limited to payments for appraisals, credit reports, title cancellations, and verification of deposit;

(c) A ledger for each trust account. Each ledger must contain a separate subaccount ledger sheet for each borrower from whom funds are received for payment of third-party providers. Each receipt and disbursement pertaining to such funds must be posted to the ledger sheet at the time the receipt or disbursement occurs. Entries to each ledger sheet must show the date of deposit, identifying check or instrument number, amount and name of remitter. Offsetting entries to each ledger sheet must show the date of check or electronic transmission, check number or identifying electronic transmission number, amount of check or electronic transmission, name of payee and invoice number if any. Canceled or closed ledger sheets must be identified by time period and borrower name or loan number;

(d) A trust account check register consisting of a record of all deposits to and disbursements from the trust account whether by check or electronic transmission;

(e) Reconciled trust account bank statements;

(f) A monthly trial balance of the ledger of trust accounts, and a reconciliation of the ledger of trust accounts with the related bank statement(s) and the related check register(s). The reconciled balance of the trust account(s) must at all times equal the sum of:

(i) The outstanding amount of funds received from or on behalf of borrowers for payment of third-party providers; and

(ii) The outstanding amount of any deposits into the trust fund of the mortgage broker's own funds in accordance with subsection (11) of this section; and

(g) A printed and dated source document file to support any changes to existing accounting records.

Any alternative records you propose for use must be approved in advance by the director.

(18) **What is a "subaccount"?** A "subaccount" is a recordkeeping segregation of each borrower's funds held in the mortgage broker's single deposit trust account that holds the aggregated funds for the mortgage broker's clients. Alternatively, the mortgage broker may establish a separate bank account for each borrower. When added together, individual subaccounts must exactly equal the total of funds held in trust.

(19) **May I transfer funds between a borrower's subaccounts?** If a borrower has more than one loan application pending with a mortgage broker, the mortgage broker must maintain a separate subaccount ledger for each loan application. The borrower must consent to any transfer of trust account funds between the individual subaccounts associated with these pending loan applications. The consent must be maintained in the borrower's loan file and referenced in the borrower's subaccount ledger sheets.

(20) **May I be reimbursed for funds that I have advanced into the trust account?**

(a) If you deposit your own funds into the trust account as provided in subsection (11) of this section, you may receive reimbursement for such deposit at closing into your general business bank account provided:

(i) All third-party ((~~provider's~~)) providers' charges associated with your deposit have been paid;

(ii) The ((~~HUD-1~~)) applicable settlement statement provided to the borrower clearly reflects the line item, "deposit paid by broker," and the amount deposited;

(iii) The ((~~HUD-1~~)) applicable settlement statement provided to the borrower clearly reflects the line item, "reimbursement to broker for funds advances," and the amount reimbursed; and

(iv) Any funds disbursed by escrow at closing to you for payment of unpaid third-party providers' expenses charged or to be charged to you are deposited into the borrower's subaccount of the trust account.

(b) If you advance your own funds into the trust account as provided in subsection (11) of this section, and the loan does not close, the funds remain the property of the borrower.

(21) **May I disburse trust funds through electronic transmission?** Yes. You may disburse trust funds from the trust account by electronic transmission. Each electronic transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

Electronic transmission(s) must be included in the monthly trust account reconciliation.

(22) **How must I handle trust account disbursements?**

(a) Disbursements from trust accounts may be by electronic transmission or manual check. If a manual check is used, the check must on its face identify the specific third-party provider transaction or borrower refund, except as specified in this section. If an electronic transmission is used, each transmission must be evidenced by a record including a traceable identifying name or number supplied by the federally insured financial institution or transferring entity.

(b) Disbursements may be made from the trust account(s) for the payment of bona fide third-party providers' services rendered in the course of the borrower's loan origination, if the borrower has consented in writing to the payment. Such consent may be given at any time during the application process and in any written form, provided that it contains sufficient detail to verify the borrower's consent to the use of trust funds. No disbursement on behalf of the borrower may be made from the trust account until the borrower's or broker's deposit of sufficient funds into the trust account(s) is available for withdrawal.

(23) **What are the requirements concerning the checks I write from my trust account?** You must use checks that are prenumbered by the supplier (printer) unless you use an automated check writing system which numbers all checks in sequence. All trust account checks must have the words "trust account" on the front. If you use an automated program that writes checks, the check number must appear in the magnetic coding which also identifies the account number for readability by federally insured financial institution computers and the program may assign suffixes or subaccount codes before or after the check number for identification.

(24) **What disbursements are prohibited?** Among other prohibited disbursements, no disbursement may be made from a borrower's subaccount:

(a) In excess of the amount held in the borrower's subaccount (commonly referred to as a disbursement in excess);

(b) In payment of a fee owed to any employee of the mortgage broker or in payment of any business expense of the mortgage broker;

(c) For payment of any service charges related to the management or administration of the trust account(s);

(d) For payment of any fees owed to the mortgage broker by the borrower, or to transfer funds from the subaccount to any other account; and

(e) For the payment of fees owed to the broker under RCW 19.146.070 (2)(a).

(25) **When may a mortgage broker transfer excess funds from a borrower subaccount?**

(a) A mortgage broker may, in the case of a closed and funded transaction, transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account in full or partial payment of fees owed to the mortgage broker upon determination that all third-party providers' expenses have been accurately reported in the loan closing documents and have been paid in full, and that the borrower has received credit in the loan closing documents for all funds deposited in the trust account.

(b) Each mortgage broker must maintain a detailed audit trail for any disbursements from the borrower's subaccount(s) into the mortgage broker's general business bank account, including documentation in the form of a final ((~~HUD-1~~)) applicable settlement statement form showing that credit has been received by the borrower in the closing and funding of the transaction. The disbursements must be made by a check drawn or electronic transmission on the trust account and deposited directly into the mortgage broker's general business bank account.

(26) **What if there are funds remaining in a borrower's subaccount after all third-party providers have been satisfied?** Any remaining funds in a borrower's subaccount must be returned to the borrower within five business days of the determination that all payments to third-party providers owed by the borrower have been satisfied.

(27) **What if the mortgage broker cannot locate a borrower in order to remit excess funds in the borrower's subaccount?** The mortgage broker must follow the procedures provided by the department of revenue's unclaimed property division to handle any trust funds held for a borrower who cannot be located.

(28) **Is a mortgage broker responsible for all disbursements out of the trust account?** Yes. A mortgage broker is responsible for all disbursements from the trust account whether disbursed by personal signature, signature plate, signature of another person authorized to act on its behalf, or any authorized electronic transfer.

(29) **If a mortgage broker receives a check from closing that includes both the mortgage broker's fee and a payment or payments for third-party providers, how does the mortgage broker lawfully handle the funds?** The mortgage broker may either:

(a) Split the check at the teller window at the time of deposit and route any moneys due to third-party providers to an approved trust account, and moneys due it to its general account; or

(b) Deposit the entire check into the trust account. After paying any and all moneys due to third-party providers and

insuring that the borrower has received credit for all funds deposited in the trust account, the mortgage broker may transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account. This amount must be equal to the fee disclosed on the final ((~~HUD-1~~)) applicable settlement statement, less any amounts already received by the mortgage broker, and must be duly recorded in the trust subaccount ledger. The mortgage broker may not transfer moneys from the trust account to its general business bank account before the loan is closed.

(30) **Is the mortgage broker allowed to transfer funds out of the trust account for any reason other than for payment to a third-party provider?** The mortgage broker may transfer the borrower's funds out of the trust account by check back to the borrower or to any party so instructed in writing by the borrower. A mortgage broker, when complying with these rules, may transfer excess trust funds to itself; however, failure to comply with these rules is a serious violation punishable by imprisonment, other penalties, or both as authorized by the act.

(31) **How do I pay a third-party provider's fees if escrow disburses the funds to me and I don't have a trust account?** You must return the funds to escrow for proper disbursement, or maintain a trust account for such incidental occurrences.

(32) **If I choose not to have a trust account, and a closing agent did not follow written instructions and issued a check to me after closing that has fees in it for third-party providers, may I deposit the check into my business account and pay those third-party providers immediately?** No. You must not deposit those fees into your business account under any circumstances.

(33) **After closing, if an escrow agent, title company, or lender wires funds into my general account that are intended for third-party providers, will the department take action against me for a violation of the trust fund requirements?** Provided that the number of times funds are mistakenly wired to your general account is immaterial compared to the total number of loans you closed and you can provide proof that you took the following steps, the department will not take action against you for a violation of the trust account requirements under RCW 19.146.050:

(a) You gave the escrow agent, title company, or lender clear written instruction not to send funds intended for third-party providers to you; and you forwarded all funds mistakenly wired to your general account to the proper party on or before the end of the third business day after receipt; or

(b) You provided accurate wire instruction for the trust account and the funds transmitter caused the error by accidentally placing the funds into your general account, and within one day you transfer all trust funds to your trust account.

(34) **How does a mortgage broker disburse funds from a subaccount when there is more than one borrower due to receive those funds?** When disbursing funds back to the borrowers, a mortgage broker must make the trust account disbursement check payable to all borrowers with the term "and" written between each borrower's name. When disbursing funds to another party instructed by the borrowers, all borrowers must sign the written notice of instruction.

(35) **May mortgage brokers using an interest-bearing trust account keep the interest?** No. Mortgage brokers using an interest bearing account must refund or credit to the borrower the interest earned on the borrower's subaccount. The refund or credit to the borrower may be made either at closing or upon withdrawal or denial of the borrower's loan application.

(36) **Are there any separate requirements for a computerized accounting system?** Yes. The requirements are as follows:

(a) Your computer system must provide the capability to back up data files;

(b)(i) You must print the following documents at least once per month and retain them as part of your books and records:

(A) Trust account deposit register;

(B) Trust account check register;

(C) Trial balance ledger;

(ii) You must print each subaccount at closure and retain the closure document as part of your books and records;

(c) You must ensure that all written checks are included within your computer accounting system; and

(d) You must print your computer-generated reconciliations of the trust account at least once each month and retain the printouts as a part of your books and records.

(37) **Are there penalties for violating trust account requirements under RCW 19.146.050?** A violation of this section is a class C felony and may be punishable by imprisonment. In addition, a mortgage broker or other person violating this section may be subject to penalties as enumerated under RCW 19.146.220.

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-430 Disclosure requirements. (1) **What disclosures must I make to borrowers and when?**

(a) 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.

(b) If a lender is providing disclosures to the borrower, you must maintain copies of those disclosures; failure to do so would result in a violation.

(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 a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, if guaranteed by a company other than your company, you must provide the name of that company, 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;

(d) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within three business days of the rate lock date that includes the items from (b) of this subsection;

(e) 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~~)) on the good faith estimate or loan estimate. You must disclose the cost of or credit for the rate lock on the applicable settlement statement;

(f) See subsection (7) of this section if the borrower initially chooses to float rather than lock the interest rate;

(g) 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; and

(h) 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. If the mortgage broker does not collect trust funds of any kind, the disclosure is not required.

(4) **What is the disclosure required under RCW 19.144.020?**

(a) 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.

(b) 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 this disclosure requirement.

(5) **How do I disclose the lender's credit or charge for the interest rate?**

(a) You must disclose the credit or charge for the interest rate as a dollar amount credited to the borrower on the ((~~GFE~~)) good faith estimate or loan estimate.

(b) You must direct the settlement service provider to disclose the credit or charge for the interest rate on ((~~line 802 on the HUD-1 or equivalent~~)) the applicable settlement statement. The amount must be expressed as a dollar amount.

(c) Failure to properly disclose the credit or charge for the interest rate 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. You must provide the borrower a new rate lock agreement within three business days of a change in the locked interest rate. The new rate lock agreement must include all the terms required under subsection (3)(c) of this section. Changes to a locked interest rate can only occur for valid reasons such as changes in loan to value, credit scores or other loan factors directly affecting pricing. Lock extensions and relocks are also valid reasons for changes to a previously locked interest rate.

(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 or loan estimate required by ((~~RESPA~~)) TILA 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?** In a table funded transaction, 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~~)) on the good faith estimate or loan estimate. The cost of or credit for the

rate lock must be recorded on the applicable settlement statement.

(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~~)) loan estimate 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~~)) loan estimate 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 or loan estimate disclosure form provided under the ((~~Real Estate Settlement Procedures~~)) Truth in Lending Act and Regulation ((~~X~~)) Z, as now or hereafter amended. However, the federal good faith estimate or loan 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 or loan 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 applicable settlement statement do not exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate or loan 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~~)) or loan estimate and applicable settlement 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~~)) applicable settlement statement 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 or loan estimate, and have instructed the independent escrow agent, title company, or lender to disclose the fees correctly on the ((~~HUD-1/1A~~)) applicable settlement statement, 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 or loan 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 or loan 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? Was the change due to a valid change of circumstance as allowed under RESPA?

(c) How were the costs disclosed in each good faith estimate or loan estimate (e.g., dollar amount, percentage, or both)?

(d) Did the total costs, excluding prepaid escrowed costs of ownership, on the final applicable settlement statement exceed the total closing costs, excluding prepaid escrowed costs of ownership, in the most recent good faith estimate or loan 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~~)) loan estimate 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~~)) loan estimate 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 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-440 Advertising. (1) **Am I responsible for ensuring that my advertising material is accurate, reliable, and in compliance with the act?** Yes. Each mortgage broker is responsible for ensuring the accuracy and reliability of the advertising material.

(2) **A licensee is prohibited from advertising with envelopes, stationery, or ((~~internet pages~~)) images in an electronic format that ((~~contain an official-looking emblem~~)) are designed to resemble a government agency mailing or that suggest an affiliation that does not exist. What are some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws?** Some examples include, but are not limited to:

(a) 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.

(b) ((~~Envelopes or internet pages~~)) Images, including those in electronic format, designed to resemble official government ((~~mailings or internet locations~~)) communications, such as IRS or U.S. Treasury, or other government agencies.

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

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

(e) Any suggestion or representation that the solicitor is affiliated with any agency, bank, or other entity that it does not actually represent.

(3) **Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the

purportedly "free" item through the negotiation process. This is a violation of RCW 19.146.0201 (2), (7), and (11). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations* (16 C.F.R. §251.1(g) (2003)) available at http://www.ftc.gov/bcp/guides/free.htm.

(4) **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 advertisements must be reasonably understandable. Consumers must be able to 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. The disclosure of the APR must be as prominent or more prominent than any other rates disclosed in the advertisement, regardless of the form of the advertisement.

(5) **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 mortgage broker must retain a copy of the lender's "rate sheet," or other supporting rate information, and the APR calculation for the advertised interest rate.

(6) **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~~)) 1026.26 provides guidance for using the annual percentage rate in oral disclosures.

(7) **May a mortgage broker or loan originator advertise rates or fees as the "lowest" or "best"?** No. Rates or fees described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 19.146.0201(7).

(8) **When I present a business card to a potential borrower, must I make the disclosures required under RCW 19.146.030?** No. You are not required to make those disclosures until you accept a residential mortgage loan application, or until you assist a borrower in preparing an application.

(9) **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.

(10) **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:

(a) The name of the source of the information;

(b) A statement that you are not affiliated with the borrower's lender; and

(c) The information disclosed in (a) and (b) of this subsection must be in the same size type font as the rest of the information in the advertisement.

(11) **How must I identify my business when I advertise?** You must identify the business using your Washington mortgage broker license name. You may use an approved trade name or "DBA" if you include the main office license name and number. For use of URL addresses and internet advertisements, see WAC 208-660-445 and 208-660-446.

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-446 When I advertise using the internet or any electronic form (including, but not limited to, text messages), is there specific content advertisements must contain? Yes. You must provide the following language, in addition to any other, on your web pages, social media pages, or in any medium where you hold yourself out as being able to provide the services:

(1) Main ((~~or~~)) office's home web page.

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

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

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

(d) If the company uses a DBA on a home web page, the page must also contain the company's license name and license number.

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

(((~~(b) Main office, or branch office web page - DBA. If the company uses a DBA on a web page the web page must contain the main office license name, and the information in 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.~~)))

(3) Loan originator web page. If a loan originator maintains a separate ((~~home or main~~)) web page, the sponsoring licensee's name and license number must appear on the web page. The web page must also contain the loan originator's license name and license number closely following their name and a link to the NMLS consumer access web page for the company. An example of closely following is: Your license name followed by your title (if you use one) followed by your license number. See the definition of license number for examples of ways to display your license number. See WAC 208-660-350(25).

(4) Social media pages or other online advertisements.

(a) The company's license name and license number must be displayed on the page.

(b) If the company uses a DBA, the company license name and license number must be displayed on the page along with the DBA name.

(c) If a page is created by a loan originator, the company license name and license number, along with the loan originator's license number must be displayed on the page.

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

((~~(5)~~)) (6) Oversight. The company is responsible for ((~~web site~~)) content displayed on all ((~~web pages~~)) electronic advertisements used to solicit Washington consumers ((~~including main, branch, and loan originators' web pages~~)).

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

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

(iii) Correspondence with third parties requesting documents necessary to the transaction (and copies of the documents received as a result of that correspondence) including, but not limited to, credit, appraisal, title, verifications of employment and deposits, automated underwriting results, and any other notes or documents used to collect borrower and loan information to originate the loan;

(iv) All written disclosures required by the act and federal laws and regulations, including those provided to consumers by the lender. Some examples of federal law disclosures are: The good faith estimate((~~, truth in lending disclosures~~)) or loan estimate, 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~~)) initial and final ((~~HUD-1 or HUD-1A~~)), if applicable);

(ix) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, credit or charge for the interest rate, loan type and terms;

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

(xi) All file correspondence and logs;

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

(xiii) The clear written explanation required under WAC 208-660-430 (11)(b).

(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.

(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 three years.

(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 subsec-

tion (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.

(7) **Records disposal.** You must have written policies and procedures for the destruction of records, including electronic records, when the retention period ends. The destruction of records must be accomplished so that the information cannot be reconstructed or read. The destruction of consumer credit report information must also comply with the federal Disposal Rule at 16 C.F.R. 682.

NEW SECTION

WAC 208-660-460 Information security program required by the federal Safeguards Rule implementing the Gramm-Leach-Bliley Act. (1) Generally, applicants and licensees must have a written program appropriate to the company's size and complexity, the activity conducted, and the sensitivity of information at issue. The program must ensure the information's security and confidentiality, protect against anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of the information.

(2) Specifically, at a minimum the plan described in subsection (1) of this section must:

(a) Designate an employee or employees to coordinate the information security program;

(b) Identify and assess the risks to customer information;

(c) Design and implement information safeguards to control the risks identified in the risk assessment and regularly monitor and test the safeguards;

(d) Select service providers that can maintain appropriate safeguards and oversee their handling of customer information; and

(e) At least annually evaluate and adjust the program in light of relevant circumstances, including changes in business or operations, or the results of testing and monitoring the effectiveness of the implemented safeguards.

(3) The information security plan must be maintained as part of your books and records.

(4) For more information access the FTC web site on the Safeguard Rules at: https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying and see 16 C.F.R. 314.

NEW SECTION

WAC 208-660-470 Consumer financial information privacy under the Gramm-Leach-Bliley Act (Regulation P). Licensees must comply with Regulation P.

(1) At a minimum, licensees must:

(a) Provide customers with initial and annual notices regarding their privacy policies. These notices describe whether and how the licensee shares consumers' nonpublic personal information, including personally identifiable financial information, with other entities; and

(b) If licensees share certain customer information with particular types of third parties, the institutions are also required to provide notice to their customers and an opportunity to opt out of the sharing. If a licensee limits its types of sharing to those which do not trigger opt-out rights, it may provide a "simplified" annual privacy notice to its customers that does not include opt-out information. If a licensee's privacy policy has not changed, additional notices may not be required.

(2) See regulation P at 12 C.F.R. 1016 for the required details.

NEW SECTION

WAC 208-660-480 Notice to consumers of data breach. If the licensee's data is compromised, the licensee may be subject to chapter 19.255 RCW and may have to provide notices to consumers whose information was acquired. Under certain circumstances notice of the breach may also be required by the attorney general's office.

NEW SECTION

WAC 208-660-490 Business resumption plan. Licensees must have a written plan that details the company's response and recovery to any event that results in damage to or destruction of books and records. The plan must be maintained as part of the licensee's books and records.

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

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 prop-

erty. 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, loan estimate, or settlement statement payable to the mortgage broker or any party that is not the actual lender on the resident mortgage loan.

(ii) Charging loan fees or mortgage broker fees that are represented to the borrower as discount points when such fees do not actually reduce the rate on the loan, or reflecting loan origination fees or mortgage broker fees as discount points.

(iii) Charging discount points that are not mathematically determinable as the same direct reduction of the rate available to any two borrowers with the same program and underwriting characteristics on the same date of disclosure.

(f) Failing to clearly and conspicuously disclose whether a payment advertised or offered for a residential mortgage loan includes amounts for taxes, insurance, or other products sold to the borrower. This prohibition includes the practice of misrepresenting, either orally, in writing, or in any advertising materials, a loan payment that includes only principal and interest as a loan payment that includes principal, interest, tax, and insurance.

(g) Making or funding a loan by any means other than table funding.

(h) 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. This includes leaving blanks on a document and instructing the borrower to sign the document with the blanks or providing the borrower with documents with blanks. You are not prohibited from marking some information blanks with "N/A" if the information is not applicable to the transaction.

(i) Willfully filing a lien on property without a legal basis to do so.

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

(k) 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.

(l) 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.

(m) 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).

(n) 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.

(o) 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.

(p) 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.

(q) Advertising a rate of interest without clearly and conspicuously disclosing the annual percentage rate implied by the rate of interest.

(r) Failing to comply with the federal statutes and regulations in RCW 19.146.0201(11).

(s) Failing to pay third-party providers within the applicable timelines.

(t) 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.

(u) 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).

(v) Failing to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections.

(w) Intentionally delay closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(x) Steering a borrower to less favorable terms in order to increase the compensation paid to the company or mortgage loan originator.

(y) 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.

(z) 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;

(b) 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;

(c) Failing to provide a written fee agreement as prescribed by the director when providing residential mortgage modification services. See also WAC 208-660-430(23);

(d) 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

(e) Entering into any contract or agreement to purchase a borrower's property;

(f) 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;

(g) 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;

(h) 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.** 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.

(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~~)) 1024, 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~~)), loan estimate, 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 or loan estimate and settlement statement?** You must disclose or direct the disclosure of your fees on the good faith estimate or loan estimate and ((~~HUD-1/1A~~)) settlement statement or similar document as required by the act and Regulations X or Z.

(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 there is a valid change of circumstance as allowed under RESPA and:

(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 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-520 Director and department powers—Investigation authority. (1) **What is an investigation?** An investigation is an inquiry to determine compliance with the act and rules, to assess allegations of wrongdoing, or to evaluate the licensing qualifications of persons subject to the act. The inquiry may involve extensive research, fact gathering, the issuance of directives and subpoenas, witness interviews, and financial and legal analysis. Depending on the results of these efforts, an investigation may result in the pursuit of an enforcement action. An investigation may proceed at the same time as other matters and may continue during an enforcement action.

(2) **How often may the department investigate my mortgage broker or loan originator operations?** For the purpose of investigating violations or complaints, the department may investigate your business as often as necessary to carry out the purpose of the act.

(3) **Will the department give advance notice before requiring me to make my books and records available for its investigation?** The department is not required to give you advance notice before an investigation. However, the department may provide advance notice before an investigation if doing so would be in the best interests of all parties involved, including the department.

(4) **From whom may the department obtain information in an investigation?** The department may obtain information from any person whose ((~~testimony~~)) information may be pertinent to the loans, business, or subject matter of an investigation.

(5) **How may the department obtain information during an investigation?** The department may direct, subpoena, or order a person to submit to a deposition, or produce written information.

(6) **What information may the department obtain during an investigation?** The department may obtain books, accounts, records, files, and any other documents the department deems relevant to the investigation.

(7) **What businesses may the department investigate?** The department may investigate the business of any person who is engaged in the business of mortgage brokering, whether the person is a licensee or whether the person acts or claims to act under, or without the authority of, the act.

(8) **May the director retain professionals or specialists to assist in an investigation, and if so, will I have to pay for those services?** Yes. The department may hire attorneys, accountants or other professionals as needed to conduct or assist in an investigation. The cost for these services will be assessed in accordance with WAC 208-660-550(5), Investigations.

(9) **When may the department charge an investigation fee?** The department may charge an investigation fee when it investigates the books and records of any licensee.

(10) **Are there circumstances in which the department will investigate a licensee but will not charge an investigation fee?** Yes. The department will not charge an investigation fee in a complaint investigation if it is determined that no violation occurred, or when the licensee implements a remedy satisfactory to the complainant and the department, and no department order has been issued.

(11) **How is the amount of the investigation fee determined?** The amount of the investigation fee is the number of hours expended by the ((~~department~~)) examiner related to the investigation multiplied by an hourly rate established by the

department. See WAC 208-660-550((,)) Department fees and costs.

February 15, 2015 [2016]
Charles Clark, Director
Division of Consumer Services

WSR 16-05-067
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Consumer Services Division)
[Filed February 15, 2016, 2:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-025.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-700 WAC) under the Mortgage Lending Fraud Prosecution Account, RCW 43.320.140.

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700, on March 22, 2016, at 11 a.m. to 12 noon.

Date of Intended Adoption: March 30, 2016.

Submit Written Comments to: Sara Rietcheck, 150 Israel Road S.W., P.O. Box 41200, Olympia, WA 98504-1200, e-mail sara.rietcheck@dfi.wa.gov, fax (360) 586-5068, by March 14, 2016.

Assistance for Persons with Disabilities: Contact Sara Rietcheck by March 14, 2016, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules must be amended to be consistent with the definition of mortgage lending process in chapter 229, Laws of 2015 (amending RCW 19.144.010). Having consistent definitions in the rules will better inform industry about the activities constituting mortgage fraud. Other technical amendments must be made to the rules.

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 Guidelines 3.a. and e. dated October 12, 2011.

Statutory Authority for Adoption: Chapter 43.320 RCW.

Statute Being Implemented: Chapter 19.144 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: Charles Clark, 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.

AMENDATORY SECTION (Amending WSR 04-02-008, filed 12/29/03, effective 1/29/04)

WAC 208-700-010 Definitions. The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

(1) "Department" means the department of financial institutions.

(2) "Director" means the director of the department.

(3) "Mortgage lending fraud prosecution account" or "account" means the account established under RCW 36.22.181, ((~~40.320.140,~~)) and ((~~43.320.1401~~)) 43.32.140 (chapter 289, Laws of 2003).

(4) "Mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan or residential mortgage loan modification including, but not limited to, solicitation, application, or origination((,)); negotiation of terms((,)); third-party provider services((,)); underwriting((,)); signing and closing((,)); and funding of the loan. Documents involved in the mortgage lending process include, but are not limited to, uniform residential loan applications or other loan applications, appraisal reports, settlement statements, supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, bank statements, tax returns, payroll stubs, and any required disclosures.

(5) "Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

(6) "Prosecutorial agency" means the office of the Washington attorney general, the office of the United States Attorney, or the office of any county prosecutor in the state of Washington.

(7) "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 fewer units.

(8) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services in connection with the preparation of a borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

WSR 16-05-068
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Consumer Services Division)
[Filed February 15, 2016, 2:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-026.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-690 WAC) under the Uniform Money Services Act, chapter 19.230 RCW.

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700, on March 29, 2016, at 10:00 a.m. - 12:00 p.m.

Date of Intended Adoption: March 30, 2016.

Submit Written Comments to: Sara Rietcheck, 150 Israel Road S.W., P.O. Box 41200, Olympia, WA 98504-1200, e-mail sara.rietcheck@dfi.wa.gov, fax (360) 586-5068, by March 21, 2016.

Assistance for Persons with Disabilities: Contact Sara Rietcheck by March 21, 2016, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules must be amended to benefit the regulated industries by having clear and consistent rules including taking into account innovations in the industry, informing the industry of obligations under state and federal law, and providing a tiered net worth structure based on volume and business type to better accommodate differently sized businesses and business models.

Reasons Supporting Proposal: These amendments will help the industry understand their compliance requirements. This will in turn enhance consumer protection.

The rules are being amended under the authority of OFM Guidelines 3.a. and e. dated October 12, 2011.

Statutory Authority for Adoption: Chapter 43.320 RCW, RCW 19.230.310.

Statute Being Implemented: Chapter 19.230 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: Charles Clark, 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.

February 15, 2015 [2016]
Charles Clark, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-010 Definitions. What definitions are applicable to these rules? The definitions in RCW 19.230.010 and this section apply throughout this chapter unless the context clearly requires otherwise.

"Act" means the Uniform Money Services Act, chapter 19.230 RCW.

"Advertise, advertising, or advertising material" means any form of sales or promotional materials used in connection with the 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; internet pages, social media pages, instant messages, or electronic bulletin boards.

"AML compliance officer" means the individual(s) employed by the licensee designated to implement the anti-money laundering (AML) program.

"Audited financial statement" means a statement prepared by an independent accountant according to generally accepted accounting principles.

"Authorized delegate" means a person a licensee designates to provide money services on behalf of the licensee. A person that is exempt from licensing under this chapter cannot have an authorized delegate. An authorized delegate must only perform the contractual duties as authorized by the licensee in the contract between the licensee and the authorized delegate.

"Bill payment" service means a type of money transmission when an intermediary accepts funds from a consumer for transmission to a merchant for payment on a consumer's account. The intermediary may or may not charge a fee for this service.

"Corporate foreign exchange services" means a type of money transmission where an intermediary accepts money or its equivalent value from a business, by way of contract, to transmit, deliver, or instruct to be delivered the money or its equivalent value to another location. The intermediary may or may not charge a fee for this service.

"Department" means the department of financial institutions.

"Executive officer" means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

"Funds" means money or its equivalent value.

"Material litigation" means the same as in RCW 19.230.-010.

"Money transmission" means receiving money or its equivalent value to transmit, deliver, or instruct to be delivered the money or its equivalent value to another location, inside or outside the United States, by any means including, but not limited to, by wire, facsimile, or electronic transfer. Money transmission does not include the provision solely of connection services to the internet, telecommunications services, or network access. Money transmission includes selling, issuing, or acting as an intermediary for open-loop stored value devices and payment instruments, but not closed-loop stored value devices.

"NMLS" means a multistate licensing system developed and maintained by the Conference of State Bank Supervisors for licensing and registration.

"Payment instrument" means a check, draft, money order, or traveler's check for the transmission or payment of money or its equivalent value, whether or not negotiable. Payment instrument does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

"Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership, company, corporation, or association, or the owner of a sole proprietorship.

"Quarterly report" means a report that provides a current list of all licensed locations and authorized delegates providing money services to persons in Washington and their information including, the name, address, and e-mail address, if available.

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

"Stored value" means the recognition of value or credit stored on a device. Stored value is either open loop, meaning the value is redeemable at multiple, unaffiliated merchants or service providers, or closed loop meaning the value is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the stored value, its affiliates, or others involved in transactions functionally related to the issuer or its affiliates.

"Stored value device" means a card or other device that electronically stores or provides access to funds and is available for transferring the funds or value to others.

"Subdelegate" means a person that provides money services on behalf of an authorized delegate without having a direct contractual relationship with a licensee.

"Tangible net worth" means the physical worth of a licensee, calculated by taking a licensee's assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property, and goodwill.

"Unsafe or unsound practice" means a practice or conduct by a person licensed or required to be licensed by the act to provide money services, or an authorized delegate of such a person, which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the financial condition of the licensee or the interests of its customers.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-014 How does the department interpret the definitions in RCW 19.230.010? (1) "Currency exchange." For purposes of RCW 19.230.010 (8)(b), "investment" means an investment ((~~in the~~)) that is not money of a government ((~~is not exempt because the currency exchange is not incidental to the transaction~~)).

(2) "Responsible individual." The responsible individual must:

(a) Be a citizen of the United States or have legal immigration status to work in the United States;

(b) Hold W-2 employee status with the licensee;

(c) Be knowledgeable of the laws and rules implementing the act; and

(d) Be responsible for the company's compliance with applicable state and federal laws, rules and regulations.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-015 What are some activities that are exempt from the act? (1) The issuance, sale, use, redemption, or exchange of closed-loop stored value devices.

(2) ((~~The issuance, sale, use, redemption, or exchange of payment instruments by a person licensed under the Check Cashers and Sellers Act, chapter 31.45 RCW.~~

~~(3)~~)) The issuance or sale of open-loop stored value devices when the value on the devices are covered by federal deposit insurance immediately upon sale or issue. See the Federal Deposit Insurance Corporation (FDIC) Financial Institution Letter 129-2008 dated November 13, 2008, to determine if the underlying funds of stored value devices are covered by FDIC insurance immediately upon sale or issue.

(((~~4~~))) (3) See also RCW 19.230.020.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-020 Voluntary license application. ((~~May I apply for and receive a license under this chapter even though I am exempt from licensing?~~)) (1) Any person otherwise exempt from licensing under the provisions of the act may voluntarily submit an application to the director for a money transmitter or currency exchange license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and subject to payment of the same fees as are applicable to persons required to be licensed.

(2) Upon receipt of a license under this section, the licensee is required to maintain a valid license and is subject to all the provisions of the act and these rules until the license is surrendered or revoked.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-030 License application. What must I do to apply for a license? You must file:

(1) A completed application in a form and in a medium prescribed by the director through the NMLS. The application must contain:

(a) The legal name, business address, and residential address, if applicable, of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(b) The legal name, residential and business address, date of birth, Social Security number, employment history for the five-year period preceding the submission of the application of the applicant's proposed responsible individual, and documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States. In addition, the applicant must provide the fingerprints of the proposed responsible individual and a personal credit report from a recognized independent credit reporting agency on the proposed responsible individual;

(c) For the ten-year period preceding submission of the application, a list of any criminal convictions of the proposed responsible individual of the applicant, any material litigation

in which the applicant has been involved, and any litigation involving the proposed responsible individual relating to the provision of money services;

(d) A description of any money services previously provided by the applicant and the money services the applicant seeks to provide in this state;

(e) A list of the applicant's proposed authorized delegates including the business name and any additional names by which the business may be known, the business address and name of the primary contact person for each authorized delegate, and the locations in this state where the applicant and its authorized delegates propose to engage in the provision of money services;

(f) A list of other states in which the applicant is licensed to engage in money transmission, or provide other money services, and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state;

(g) A list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the proposed responsible individual;

(h) Information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the proposed responsible individual;

(i) A sample form of the contract for authorized delegates, if applicable;

(j) A description of the source of money and credit to be used by the applicant to provide money services;

(k) A full description of the screening process used by the applicant in selecting authorized delegates, including a sample of any forms used, and the method used to screen for criminal history; and

(l) Identification of the bank account established for the business including, but not limited to, the bank name, address, account number, and account type.

(2) If the applicant is a corporation, limited liability company, partnership, or other entity, the applicant must also provide:

(a) The date of the applicant's incorporation or formation and the state or country of incorporation or formation;

(b) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(c) A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(d) The legal name, any fictitious or trade name, all business and residential addresses, date of birth, Social Security number, and employment history in the ten-year period preceding the submission of the application for each executive officer, board director, AML compliance officer or other person that has control of the applicant;

(e) If the applicant or its corporate parent is not a publicly traded entity, the fingerprints of each executive officer, board director, AML compliance officer or other person that has control of the applicant;

(f) A list of any criminal convictions, material litigation, and any litigation related to the provision of money services, in the ten-year period preceding the submission of the application in which any executive officer, board director, AML compliance officer or other person in control of the applicant has been involved;

(g) A copy of the applicant's audited financial statements for the most recent fiscal year or, if the applicant is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the applicant's most recent audited consolidated annual financial statement, and in each case, if available, for the two-year period preceding the submission of the application;

(h) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period preceding the submission of the application;

(i) If the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m);

(j) If the applicant is a wholly owned subsidiary of:

(i) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m); or

(ii) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(k) If the applicant has a registered agent in this state, the name and address of the applicant's registered agent in this state.

(3) If the application is for money transmission, a surety bond as required by WAC 208-690-040 or an assignment of a certificate of deposit, as required by WAC 208-690-045.

(4) An application fee as prescribed by WAC 208-690-130(1). The application fee is not refundable.

(5) An ((~~initial~~)) additional license fee as prescribed by WAC 208-690-130(2). ((~~The initial license fee will be refunded if the license application is denied.~~))

(6) If the application is for money transmission, a certification that the applicant's investment portfolio, if maintained as permissible investments for outstanding transmission liabilities, includes only the permissible investments under RCW 19.230.200 and 19.230.210.

The director may waive one or more requirements ((~~of subsection (1) or (2)~~)) of this section or permit an applicant to submit other information in lieu of the required information.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-035 Authorized delegates. What are the rules I must comply with when I have authorized delegates?

(1) Only a licensee may designate an authorized delegate. ((~~A person that is exempt or excluded from licensing under RCW 19.230.020 cannot have an authorized delegate.~~))

(2) A person accepting consumers' funds for transmission through an exempt or excluded entity under RCW 19.230.020 is a money transmitter and must be licensed under the act.

(((~~(2)~~))) (3) An authorized delegate, or any other person exempt or excluded from the licensing requirements of chapter 19.230 RCW, cannot have an authorized delegate.

(((~~(3)~~))) (4) Any person you designate to provide money services on your behalf is an authorized delegate, regardless of whether that person would be exempt or excluded from the application of chapter 19.230 RCW if they provided money services on their own behalf.

(((~~(4)~~))) (5) Your authorized delegates must be physically located in the state of Washington unless you have received prior approval from the director to designate an authorized delegate physically located outside of the state of Washington.

(((~~(5) An authorized delegate must not advertise or provide money services under its own name without an equally prominent display of the licensee's name, in close proximity, on all advertising, including web sites. An authorized delegate must not use its name alone when advertising money services provided on behalf of the licensee.~~)))

(6) The licensee has supervisory authority over the actions of the authorized delegate when providing services on behalf of the licensee. The department may take action against a licensee for any actions by the authorized delegate in violation of the act or rules.

(7) A written contract between you and an authorized delegate must contain, among all the other contract provisions, provisions with language substantially similar to the following:

(a) The authorized delegate must operate in full compliance with chapter 19.230 RCW and the rules adopted under this chapter.

(b) The authorized delegate is prohibited from using subdelegates or conducting business from locations not authorized by the department.

(c) A description of the specific money services you authorize the delegate to perform on your behalf.

(((~~(7)~~))) (8) The authorized delegate may only conduct activities authorized by you in the written agreement, unless the authorized delegate is also a licensee.

(((~~(8)~~))) (9) You may contract with another licensee to use that other licensee's existing authorized delegates to load funds onto your existing open-loop stored value cards. If the shared authorized delegate sells new open-loop stored value cards for you, you must add the authorized delegate to your authorized delegate roster.

(((~~(9) You must maintain your authorized delegate agreements and contracts with other licensees to share existing authorized delegates as part of your books and records pursuant to RCW 19.230.170 and make them available to the department upon request.~~))) (10) The authorized delegate must include the licensee's name along with the other applicable requirements of RCW 19.230.330(2) on any disclosures or receipts for business services.

(11) The licensee's bond covers the actions of the authorized delegate.

(12) You must maintain your authorized delegate agreements and contracts with other licensees to share existing authorized delegates as part of your books and records pursuant to RCW 19.230.170 and make them available to the department upon request.

NEW SECTION

WAC 208-690-036 Authorized delegate advertising. An authorized delegate must not advertise or provide money services under its own name without an equally prominent display of the licensee's name, in close proximity, on all advertising, including web sites. An authorized delegate must not use its name alone when advertising money services provided on behalf of the licensee.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-040 Surety bond. What are the bonding requirements?

(1) You must continuously maintain a surety bond as required by RCW 19.230.050, issued by a company authorized to do surety business in this state, as a surety. The surety may not be a wholly owned subsidiary or affiliate of the applicant or licensee.

(2) The penal sum of the bond must be calculated quarterly during the first year of licensing and thereafter annually. The calculation must be based on the previous twelve months' money transmission and payment instrument dollar volume. The bond amount must be calculated at ten thousand dollars for every one million dollars of money transmission and payment instrument dollar volume. The minimum surety bond amount is ten thousand dollars. The maximum surety bond amount is five hundred fifty thousand dollars.

(3) The initial bond amount will be ten thousand dollars and must be reevaluated based on the schedule set forth in subsection (2) of this section.

(4) The bond must be held for at least five years after the date the licensee violates the chapter or the licensee ceases to provide money services in this state, whichever is longer.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-045 Alternatives to the surety bond. May I hold a certificate of deposit instead of the bond? In lieu of the surety bond required under WAC 208-690-040, an applicant or licensee may substitute an assignment of a certificate of deposit in favor of the director in a form provided by the director. The certificate of deposit must be issued by a financial institution in the state of Washington whose shares or deposits are insured by an agency of the government of the United States. The depositor is entitled to receive all interest and dividends on the certificate of deposit. The assignment of a certificate of deposit will be held for at least five years after the date when a replacement security instrument is filed with the director, or at least five years after the date the licensee violates the chapter or the ((~~money transmitter~~)) licensee ceases to provide money services in this state, whichever is longer.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-050 Increase of ((~~security~~)) surety bond or alternative. Will ((~~DFI~~)) the department ever require ((~~me to~~)) an increase in the amount of ((~~security I hold~~)) the surety bond or alternative? The director may increase the amount of ((~~security required~~)) the surety bond or alternative, to a maximum of one million dollars, if the financial condition of a money transmitter licensee so requires. The director may consider, without limitation, the following criteria:

(1) Significant reduction of net worth.

(2) Financial losses.

(3) Potential losses resulting from violations of chapter 19.230 RCW, or these rules.

(4) Licensee filing for bankruptcy.

(5) The initiation of any proceedings against the licensee in any state, by any federal agency, or in any foreign country. This includes the filing of material litigation.

(6) The filing of a state or federal criminal charge against the licensee, person in control, responsible individual, executive officer, board director, AML compliance officer, employee, authorized delegate or principal, based on conduct related to providing money services or money laundering.

(7) A licensee, executive officer, board director, AML compliance officer, other person in control, responsible individual, principal or authorized delegate being convicted of a crime.

(8) Any unsafe or unsound practice.

(9) A judicial or administrative finding against a money transmitter licensee under chapter 19.86 RCW, or an examination report finding that the money transmitter licensee engaged in an unfair or deceptive act or practice in the conduct of its business.

(10) The nature and volume of the projected or established business activities.

(11) Other events and circumstances that, in the judgment of the director, impair the ability of the licensee to meet its obligations to its money services customers.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-060 Tangible net worth. What are the rules for my tangible net worth requirements?

(1) A money transmitter applicant or licensee must demonstrate and maintain ((~~a~~)) tangible net worth ((~~calculated at ten thousand dollars for every one million dollars of total company-wide money transmission and payment instrument dollar volume over the previous twelve months~~)) as set forth in subsection (2) of this section. The minimum tangible net worth is ten thousand dollars; the maximum required amount is three million dollars.

(2) The minimum tangible net worth is:

(a) Fifty thousand dollars if the company-wide money transmission and payment instrument volume is zero to five million dollars for the previous twelve months.

(b) One percent of the total company-wide money transmission and payment instrument dollar volume over the previous twelve months, up to a maximum required amount of three million dollars, if the company-wide money transmission and payment instrument volume is over five million dollars for the previous twelve months.

(c) One hundred thousand dollars if the company transmits or holds virtual currency.

(d) The director may allow a net worth of ten thousand dollars if the director determines it is warranted under the circumstances. The applicant or licensee must provide the information required by the director to make that determination.

(3) The director may increase the amounts specified in subsection (2) of this section up to a maximum of three million dollars if the director determines that a higher net worth is necessary to achieve the purposes of this chapter based on the:

(a) Nature and volume of the projected or established business activities;

(b) Amount, nature, quality, and liquidity of the company's assets;

(c) Amount and nature of the company's liabilities;

(d) History of the company's operations and prospects for earning and retaining income;

(e) Quality of the company's operations;

(f) Quality of the company's management;

(g) Nature and quality of the company's principals, responsible individuals, and persons in control;

(h) History of the company's compliance with applicable state and federal law; and

(i) Any other factor the director considers relevant.

(4) Determinations of tangible net worth must be made according to generally accepted accounting principles.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-070 License denial. When may ((~~DFI~~)) the department deny my license application?

(1) Director may deny a money services license if the director determines that:

(a) The application is incomplete;

(b) The surety bond or net worth requirements of WAC 208-690-040 through 208-690-060 have not been met;

(c) The general fitness and character requirements of RCW 19.230.070 or 19.230.100 have not been met as demonstrated by findings including, but not limited to, the following:

(i) The applicant, an executive officer, proposed responsible individual, board director, AML compliance officer, other person in control or authorized delegate has been convicted of any felony within the past ten years;

(ii) The applicant, an executive officer, proposed responsible individual, board director, AML compliance officer, other person in control or authorized delegate has been convicted of a crime involving a financial transaction within the past ten years;

(iii) The applicant, an executive officer, proposed responsible individual, board director, AML compliance officer or other person in control has criminal, civil, or administrative charges issued against him/them in any jurisdiction for violations relating to a financial transaction(s) within the past ten years;

(iv) The applicant, an executive officer, proposed responsible individual, board director, AML compliance officer or other person in control has falsified any information supplied in connection with the application;

(v) The applicant, or any proposed authorized delegate thereof, has had an adverse action taken against any business license related to providing financial services by a jurisdiction within the United States within the past five years;

(vi) The applicant has allowed a business under its control to deteriorate to a condition of insolvency determined by the fact that its liabilities exceed its assets or it cannot meet its liabilities as they mature;

(d) The applicant, or any authorized delegate thereof, fails to respond to a request for information from the director;

(e) The description of the screening process used by the applicant in selecting authorized delegates supplied by the applicant describes a process that is ineffective in determining the fitness of proposed authorized delegates;

(f) The applicant has failed to register with the United States Department of the Treasury as required by 31 U.S.C. Section 5330;

(g) The applicant, an executive officer, proposed responsible individual, board director, AML compliance officer or other person in control is listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

(2) In lieu of denying an application as authorized by any of the findings in subsection (1) of this section, the director may issue a conditional license, return the application, or extend the review period if the director determines that the condition or circumstances that would likely lead to denial may be temporary and resolved satisfactorily within a reasonable period of time. The director may resume processing the application if the director determines that a favorable resolution of the disqualifying condition has occurred.

~~(((3) The director may revoke or suspend a license and issue an order to cease and desist operations as a money services licensee if:~~

~~(a) Another jurisdiction initiates an adverse action against the money services license of the licensee; or~~

~~(b) Upon finding the existence of any condition or fact that would have led to denial of a license if known by the director during the processing of the application.~~))

NEW SECTION

WAC 208-690-071 Other license actions. When may the department take other action against my license? The director may revoke or suspend a license and issue an order to cease and desist operations as a money services licensee if:

(1) Another jurisdiction initiates an adverse action against the money services license of the licensee;

(2) Upon finding the existence of any condition or fact that would have led to denial of a license if known by the director during the processing of the application; or

(3) The licensee violates the act.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-075 ((~~Transaction~~)) Books and records. ((~~Must I keep records compliant with federal law in addition to keeping them for Washington law? Yes.~~)) (1) In addition to the records required to be retained under RCW 19.230.170, you must keep records in compliance with federal law. You must maintain a record of money transmittals in accordance with applicable sections of Financial Recordkeeping and Reporting of Currency and Foreign Transactions, Title 31, Code of Federal Regulations, Part 103, as now appearing or hereafter amended.

(2) Abandoned records. If records are not maintained as required, the licensee is responsible for the costs of collection, storage, conversion to electronic format, or proper destruction of the records.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-080 Audited annual financial statement. When must I provide audited financial statements?

(1) You are required to have an audited financial statement prepared annually by a licensed or certified individual or firm in accordance with generally accepted accounting principles. The financials must be submitted prior to or with the annual assessment. The financials may be submitted through the NMLS.

(2) Applicants with no business operations prior to application must submit a copy of unconsolidated financial statements for the current fiscal year, whether audited or not. Audited annual financial statements are required in all future years of operation.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-085 Permissible investments. ((~~How do I structure permissible investments?~~)) (1) You must maintain permissible investment levels pursuant to RCW 19.230.200 ((~~and 19.230.210~~)).

(2) In addition to the permissible investments allowed in RCW 19.230.210(2), a permissible investment may also include receivables from banks or credit cards.

(3) Monthly reports about permissible investments must include the monthly calculation of the average outstanding daily transmission liability.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-090 Annual report and annual assessment. What are the annual report and assessment requirements? Every licensee must submit a completed annual report and annual license assessment fee prescribed by WAC 208-690-140. The completed report and the fee must be received in the department office no later than 5:00 p.m. July 1, or 5:00 p.m. the next business day if July 1 is not a business day. A form for the preparation of the annual report and license assessment will be made available by the

department by electronic transmission or mailed upon request. The report must include the following:

(1) If the licensee is a money transmitter, a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent company.

(2) A list of current authorized delegates in a form and in a medium prescribed by the director.

(3) If the licensee is a money transmitter, a certification that the licensee's investment portfolio includes only permissible investments under RCW 19.230.200 and 19.230.210 and covers average outstanding daily liability.

(4) If the licensee is a money transmitter, proof that the licensee has an adequate surety bond or assignment of a certificate of deposit and net worth as required by WAC 208-690-040 through 208-690-060.

(5) A description of each material change, as defined by WAC 208-690-110, which has not been previously reported to the director.

(6) The annual report and assessment may be submitted through the NMLS.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-100 Is there a penalty for not filing my annual report and annual assessment on time? (1) If you fail to submit the required annual report and annual assessment fee by July 1, each year, the director may suspend your license and assess a late fee. The late fee is ten percent of the annual assessment if paid thirty or fewer days late and twenty-five percent of the annual assessment if paid more than thirty days late. If your license has been suspended under this section and you submit a completed annual report, the annual assessment and the late fee to the department office no later than 5:00 p.m., thirty calendar days after the original due date, the license suspension may be removed. If the delay extends past thirty days, your license has expired effective thirty-one days after the original due date.

(2) The director may reinstate an expired license under this section if, within ((~~forty-five~~)) twenty days after the original due date, you:

(a) File the complete annual report and pay both the annual license assessment and the late fee; and

(b) You or your delegates did not engage in providing money services during the period the license was expired.

(3) If any of the deadlines in this section occur on a day that is not a business day, the deadline shall be the next business day.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-110 Report of material change. What must I report to ((~~DFI~~)) the department if something about my business changes? Material changes described in this section must be reported to the director through the NMLS within thirty business days of the occurrence of the change. "Material change" means any change that is not trivial, and that, if not reported, would cause an investigation or examination to be misled or delayed. Such changes include, but are not limited to:

(1) A change of the physical and/or mailing address;

(2) A change of the responsible individual, AML compliance officer, executive officers or board members, or other person in control;

(3) A change of the licensee's name or DBA (doing business as);

(4) A change in the location where the records of the licensee that are required to be retained under RCW 19.230.170 are kept;

(5) The obtaining, revocation or surrender of a money services license in any other jurisdiction;

(6) The conviction of the licensee, an executive officer, responsible individual, board director, AML compliance officer, principal, or other person in control of a misdemeanor or gross misdemeanor involving a financial transaction;

(7) A change in your business bank account including its closure or a change in the location or identity of the bank holding the account; ((~~and~~))

(8) Any change in the business plan from that submitted at application; and

(9) Other similar activities or events affecting the business or executive officers or other persons in control.

(10) Other. Within forty-five days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-690-270.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-112 Other reports. What events about my business must I report to ((~~DFI~~)) the department? You must file a report with the director within one business day after you have reason to know of the occurrence of any of the following events:

(1) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, under the United States Bankruptcy Code (11 U.S.C. 101-110) for bankruptcy or reorganization;

(2) The filing of a petition by or against the licensee, or any authorized delegate of the licensee, for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of creditors;

(3) The commencement of a proceeding to revoke, suspend, restrict, or condition its license, or otherwise discipline or sanction the licensee, in a state or country in which the licensee engages in business or is licensed;

(4) The filing of any material litigation against the licensee or any authorized delegate of the licensee;

(5) The cancellation or other impairment of the licensee's bond or other security;

(6) A charge or conviction of the licensee or of an executive officer, responsible individual, board director, principal, AML compliance officer or other person in control of the licensee, for a felony; or

(7) A charge or conviction of an authorized delegate for a felony.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-120 Quarterly reports—((~~Deletion of authorized delegates, locations—Address or name change~~)) Changes to business information. When must I ((~~notify DFI of certain changes to information about~~)) file a quarterly report to notify the department of changes in my business?

(1) Within forty-five days after the end of each fiscal quarter you must file with the director a quarterly report, in a form prescribed by the director:

(a) Any change in the e-mail address or business address of locations where you provide money services, including mobile locations;

(b) Any addition or deletion of locations where you provide money services, including mobile locations;

(((~~b~~))) (c) Any change in the name or trade name (DBA or doing business as), e-mail address, or business address of an existing authorized delegate;

(((~~c~~))) (d) Any additions or deletions from your roster of authorized delegates; and

(((~~d~~))) (e) The fee required by WAC 208-690-150.

(2) If there is no change in your roster of authorized delegates or locations where money services are provided, or no changes in the name or trade name (DBA or doing business as) or business address of any authorized delegate during a fiscal quarter, no report is required.

NEW SECTION

WAC 208-690-125 Records disposal. Licensees must have written policies and procedures for the destruction of records, including electronic records, when the retention period ends. The destruction of records must be accomplished so that the information cannot be reconstructed or read. The destruction of consumer credit report information must also comply with the federal disposal rule at 16 C.F.R. 682.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-130 License fees. What are the fees I must pay to get a license? You must pay the following fees:

(1) A ((~~license~~)) application fee of one thousand dollars.

(2) An additional ((~~license~~)) fee of one hundred dollars for each additional location where you or an authorized delegate will provide money services, up to a maximum of five thousand dollars.

(3) The license fee in subsection (1) of this section may be partially refundable if the application is withdrawn or denied.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-140 How is the annual assessment calculated and when is the annual assessment due? (1) The annual assessment is calculated by multiplying 0.0004 by the previous year's adjusted Washington volume of money transmission, currency exchange, stored value sales, and payment instrument sales, with a minimum assessment of one thousand dollars and a maximum assessment of one hundred thousand dollars.

(((~~a~~))) For purposes of this section, "adjusted Washington volume" means:

(((~~i~~))) (a) For money transmission, ninety-five percent of all funds transmitted;

(((~~ii~~))) (b) For currency exchange, five percent of all currency exchanged;

(((~~iii~~))) (c) For stored value sales, ninety-five percent of all funds loaded onto open-loop stored value devices; ((~~and~~

(~~iv~~))) (d) For payment instrument sales, seventy percent of the first ten million dollars of payment instrument sales, twenty percent of the volume over ten million through five hundred million dollars, and one percent of any amount over five hundred million dollars((~~.~~

~~(b) For the assessment paid on the adjusted Washington volume for 2009 and 2010, any examination fees (excluding actual travel expenses) paid to the department during those years will be subtracted from the total amount owed~~)); and

(e) For corporate foreign exchange services, twenty-five percent of all funds transmitted.

(2) The annual assessment is due no later than 5:00 p.m. July 1st each year or the next business day if July 1st is not a business day.

AMENDATORY SECTION (Amending WSR 10-20-123, filed 10/5/10, effective 11/5/10)

WAC 208-690-170 Investigation and examination fees. What fees will I be charged if ((~~DFI~~)) the department investigates or examines my business?

(1) The director will collect fees of seventy-five dollars per hour for investigations((~~, including, but not limited to, the following services:~~

~~(a) The review and attendant investigation of:~~

~~(i) Changes in control changes in the responsible individual;~~

~~(ii) Changes in the identity or location of authorized delegates; and~~

~~(iii) Other material changes.~~

~~(b) The review and attendant investigation of permissible investments~~)) and examinations.

(2) The licensee, applicant or person subject to licensing under this chapter who is the subject of an examination or investigation must pay the actual expenses of required out-of-state travel including, but not limited to, travel, lodging and per diem expense.

(3) Investigation and examination fees are separate, distinct from, and in addition to transaction fees imposed by WAC 208-690-150.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-180 Authority to conduct examinations and investigations. (1) **When may ((~~DFI~~)) the department examine or investigate my business?** For the purposes of discovering violations of chapter 19.230 RCW or these rules, discovering unsafe and unsound practices, or

securing information lawfully required under chapter 19.230 RCW, the director may at any time, either personally or by designee, investigate or examine your business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in your business or authorized delegates, and of every person who is engaged in the business of providing money services, whether the person acts or claims to act under or without the authority of chapter 19.230 RCW. For these purposes, the director or designated representative must have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons. The director may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, documents, records, files and any other information the director or designated person declares is relevant to the inquiry. The director may require the production of original books, accounts, papers, documents, records, files, and other information; may require that such original books, accounts, papers, documents, records, files, and other information be copied; or make copies himself or herself or by designee of such original books, accounts, papers, documents, records, files, or other information. If the director determines that there is a danger that original records may be destroyed, altered, or removed to deny access, or hinder an examination or investigation, or that original documents are necessary for the preparation of a criminal referral, the director may take possession of originals of any items described in this section, regardless of the source of such items. Originals and copies taken by the director may be held, returned, or forwarded to other regulatory or law enforcement officials as determined necessary by the director. The director or designated person may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, documents, records, files, or other information.

(2) The licensee, applicant, or person subject to licensing under this chapter must pay the cost of examinations and investigations as specified in RCW 19.230.320 and WAC 208-690-170.

(3) Information obtained during an examination or investigation under these rules may be disclosed only as provided in RCW 19.230.190.

(4) The director may retain attorneys, accountants, or other professionals and specialists as examiners, auditors or investigators, to conduct or assist in the conduct or examinations or investigations. The cost of these services must be borne by the person who is the subject of the examination or investigation.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

WAC 208-690-200 What documentation must I provide to consumers to be in compliance with RCW 19.230.-330(2)? (1) For general money transmission transactions, the receipt must include your name, physical or mailing address, and phone number in addition to the fee and exchange rate disclosure information as required by RCW 19.230.330(2). A web site address may be used in lieu of a physical or mailing address for transactions conducted solely over the internet.

(2) For stored value transactions the receipt may include the name, address, and telephone number of the authorized delegate, provided that your contact information is provided in or on the stored value device packaging or on the stored value device itself.

(3) For bill payment transactions, the receipt may include the name, address, and telephone number of the authorized delegate; provided your name accompanies the authorized delegate's information on the receipt.

(4) For electronic funds transfers at an electronic terminal, the receipt must include the amount of the transfer, date the transfer is initiated, the type of transfer, a number or code that identifies the consumer's account, the terminal location, and the name of any third party to or from whom funds are transferred.

PART H

LICENSEE REQUIREMENTS AND RESTRICTIONS

NEW SECTION

WAC 208-690-210 In addition to the Uniform Money Services Act, what other laws do I have to comply with? You must ensure you are in compliance with all applicable state and federal laws, rules, and regulations.

NEW SECTION

WAC 208-690-220 Restrictions on business name. The director may deny a request for a proposed business name or trade name if the name is similar to a currently existing licensee name, contains the word bank or any derivative of the word bank, or is otherwise deceptive.

NEW SECTION

WAC 208-690-230 May I advertise using a name other than that named on my license? Yes. You may use a trade name or other name under which you will do business if it has been previously approved by the department. You may not advertise or provide money services under the trade name or other name without an equally prominent display of the name on your license. You must also use the NMLS number.

NEW SECTION

WAC 208-690-240 Cyber security program. Each licensee shall establish and maintain an effective cyber security program to ensure the availability and functionality of the licensee's electronic systems and to protect those systems and any sensitive data stored on those systems from unauthorized access, use, or tampering.

NEW SECTION

WAC 208-690-250 Information security program required by the federal Safeguards Rule implementing

the Gramm-Leach-Bliley Act. (1) Generally, applicants and licensees must have a written program appropriate to the company's size and complexity, the activity con-ducted, and the sensitivity of information at issue. The program must ensure the information's security and confidentiality, protect against anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of the information.

(2) The information security plan must be maintained as part of your books and records.

(3) For more information access the FTC web site on the Safeguards Rule at: https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying and see 16 C.F.R. 314.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 208-690-260 Consumer financial information privacy under the Gramm-Leach-Bliley Act (Regulation P). Licensees must comply with Regulation P.

(1) At a minimum, licensees may have to provide consumers with notices regarding their privacy policies. These notices describe whether and how the licensee shares consumers' nonpublic personal information, including personally identifiable financial information, with other entities; and

(2) See Regulation P at 12 C.F.R. 1016 for the required details.

NEW SECTION

WAC 208-690-270 Notice to consumers of data breach. If the licensee's data is compromised, the licensee may be subject to chapter 19.255 RCW and may have to provide notices to consumers whose information was acquired. Under certain circumstances notice of the breach may also be required by the attorney general's office.

NEW SECTION

WAC 208-690-280 Business resumption plan. Licensees must have a written plan that details the company's response and recovery to any event that results in damage to or destruction of books and records. The plan must be maintained as part of the licensee's books and records.

WSR 16-05-069
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Consumer Services Division)

[Filed February 15, 2016, 2:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-064.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-680 WAC) implementing the Escrow Agent Registration Act (chapter 18.44 RCW).

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700, on March 24, 2016, at 1:00-2:00 p.m.

Date of Intended Adoption: March 30, 2016.

Submit Written Comments to: Sara Rietcheck, 150 Israel Road S.W., P.O. Box 41200, Olympia, WA 98504-1200, e-mail sara.rietcheck@dfi.wa.gov, fax (360) 586-5068, by March 14, 2016.

Assistance for Persons with Disabilities: Contact Sara Rietcheck by March 14, 2016, TTY (360) 664-8126, or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules must be amended to put licensees on notice of changes to state and federal laws they must comply with, to aid the regulated industry by having consistent rules, and to make technical changes for clarity and consistency.

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 Guidelines 3.a. and e. dated October 12, 2011.

Statutory Authority for Adoption: Chapter 43.320 RCW, RCW 18.44.410.

Statute Being Implemented: Chapter 18.44 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: Charles Clark, 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.

February 15, 2015 [2016]
Charles Clark, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-265 Reporting significant events. What significant events am I required to report to the department, and how quickly must I report them? Depending on the significant event, you will have different reporting periods.

(1) **Ten-day prenotification required.** You must report to the director, in writing, changes to the following information at least ten days before they occur:

(a) Your location or mailing address. See RCW 18.44.-061 and WAC 208-680-235;

(b) The form of your business organization or its place of organization. For example, if your business is changing from a sole proprietorship to a corporation, or from a corporation to a limited liability corporation, you must notify the department and may be required to file a new escrow agent application;

(c) The name and mailing address of your registered agent if you are an out-of-state escrow agent; or

(d) Your legal or trade name.

(2) **Twenty-four hour post-notification required.**

(a) You must notify the director in writing within twenty-four hours of any change to the trust status of your trust account. For example, if you use an interest-bearing trust account because you are required to under a limited practice officer or attorney license, and the status of your interest-bearing account changes for any reason, you must notify the department in writing within twenty-four hours. This notification does not affect your responsibility to comply at all times with the trust account requirements of the act and WAC 208-680-410.

(b) You must notify the director in writing within twenty-four hours of receiving any information from a financial institution that your trust account is overdrawn. The notice to the director must contain the name of the financial institution holding the trust account and the trust account number. The notice must also contain a detailed written statement signed by the designated escrow officer explaining the insufficiency in your trust account and a copy of any information received from the financial institution, including, if applicable, a copy of any items returned for insufficient funds.

(c) You must notify the director in writing within twenty-four hours of receiving service of or within the discovery of the initiation of a civil lawsuit, criminal complaint or administrative action against you, your escrow officers or employees providing escrow services or with access to the trust account. See WAC 208-680-570.

(3) **Ten-day post-notification required.** You are required to notify the director in writing within ten days of the occurrence of any of the following:

(a) The cancellation or expiration of your Washington state master business license;

(b) For an in-state escrow agent, a change in your standing with the Washington secretary of state, including the resignation or change of your registered agent. If you are an out-of-state escrow agent, you are subject to subsection (1) of this section, which requires ten-day prenotification;

(c) The escrow agent filing for bankruptcy;

(d) The personal bankruptcy filing of one or more of your principal officers, controlling persons, licensed escrow officers, designated escrow officers, or branch designated escrow officers; or

(e) Any change in a principal officer, if no other reporting period is specified in the act or these rules. This includes changes in ownership affecting ten percent or more of the escrow agent's equity.

(4) **Other notification requirements.** In addition to the notice requirements under this section, you are required to follow any other notification requirements in the act or in these rules. These include, but are not limited to:

(a) For an escrow office closure, see WAC 208-680-245.

(b) For a transfer involving all or substantially all of its assets, the escrow agent must comply with WAC 208-680-125.

(c) For a change in principal officer or controlling person of a licensed escrow agent, the escrow agent must comply with WAC 208-680-125 and 208-680-110 and may be required to file a new application for an escrow agent license.

(d) For changes in designated escrow officer or branch designated escrow officer, see WAC 208-680-174.

(e) For termination of a licensed escrow or limited practice officer, the escrow agent must notify the department within three business days that the escrow or limited practice officer no longer represents the escrow agent. If the escrow or limited practice officer was terminated for dishonesty or financial misconduct involving the business, the escrow agent must provide the department with a detailed written statement signed by the designated escrow officer explaining the dishonesty or financial misconduct; a copy of any information provided to the police; and a copy of any claim filed under your surety bond or errors and omissions policy.

Within ten business days of the termination, the escrow agent must deliver the escrow officer's license to the department. See RCW 18.44.101. If the terminated escrow officer was the escrow agent's designated escrow officer, see WAC 208-680-176 for additional notification requirements.

(f) For the filing of quarterly reports, see WAC 208-680-425.

(g) For civil lawsuit, criminal complaint or administrative action notification see WAC 208-680-570.

(h) Within five business days of the escrow agent's license being revoked, surrendered, suspended, or the license expiring, the escrow agent shall notify the principal parties of preexisting escrows of the action. The contents of the notification must comply with RCW 18.44.465.

(i) Within forty-five days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-680-533.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-410 Administration of funds held in trust. (1) **Who is responsible for funds deposited to and disbursed from an escrow trust account?** The escrow agent must establish a trust account or accounts in a recognized Washington state depository. The escrow agent, through the designated escrow officer, is responsible for depositing, holding, disbursing, and accounting for funds in the trust account as provided in the act and the rules, regardless of how they are received or disbursed. The designated escrow officer or branch designated escrow officer must hold the funds in trust for the purposes of the transaction or agreement and must not utilize such funds for the benefit of the agent or any person not entitled to such benefit. For branch offices, the branch designated escrow officer is also responsible for depositing, holding, disbursing, and accounting for funds in the branch's trust account. The escrow agent is ultimately responsible for

all the actions of the designated escrow officer or branch designated escrow officer.

(2) **What kind of an account can I use as a trust account for my escrow services?** Your trust account or accounts must be designated as a trust account or accounts in the licensed name of the escrow agent. Your trust accounts must be noninterest bearing demand deposit accounts unless they are one of the following:

(a) An interest-bearing trust account or dividend earning investment account containing funds pertaining to an individual escrow transaction or escrow collection account, if directed to use one by a written agreement between and signed by all principal parties to the transaction. The agreement must specify the manner of distribution of accumulated interest to the parties to the transaction;

(b) An interest-bearing trust account or dividend-earning investment account containing only funds held on behalf of an owner, vendor, lessor, etc., involving escrow collections, if directed to use one by a written agreement or directive signed by the principal parties. The agreement must specify the manner of distribution of accumulated interest to the parties to the transaction;

(c) An interest-bearing trust account containing funds related to transactions in which a limited practice officer has prepared documents under authorization set forth in APR 12(h); or

(d) An interest-bearing trust account containing funds related to transactions in which a licensed attorney has prepared documents. Your trust account must not be used for any purpose other than that specified in the act or rules. You must not use the trust account for the receipt or disbursement of funds for any business other than that conducted under the act.

(3) **What information do I need to provide to the department regarding my trust account?** Each time you renew your escrow agent license, you must provide the department with an authorization to examine your trust account. This authorization must be on a form specified by the department, signed by a representative of the bank, and notarized.

(4) **Can I set up a system of records and procedures that varies from this section?** No. You must establish and maintain a system of records and procedures as provided in this section unless you receive advance approval from the department.

(5) **Who may have signatory authority over trust account disbursements?** The designated escrow officer must have signatory authority on all trust accounts, and he or she may authorize any employee that he or she supervises to sign disbursements by including them on a bank account signature card. Branch designated escrow officers must have signature authority for trust accounts at their branch, and may have signature authority for other branches if the designated escrow officer authorizes it on either a temporary or permanent basis. The signatory authority of any employee other than a designated or branch designated escrow officer is discretionary, may be conditional or temporary, and may be revoked by the designated escrow officer at any time.

(6) **When must my client's funds be deposited into a trust account?** You must deposit any funds you receive for an escrow transaction or collection account into the escrow agent's trust account on the first banking day following receipt.

This requirement does not apply to funds owned exclusively by the agent.

(7) **What do I need to do when I receive escrow funds?**

(a) When you receive funds, you must record the date, amount, source, and purpose on either a cash receipts journal or duplicate receipt. If you use a duplicate receipt, you must keep it as a permanent record.

(b) When you deposit funds into your trust account or accounts, the deposit must be documented by:

(i) For traditionally deposited funds, a duplicate bank deposit slip that is validated by bank imprint or an attached deposit receipt that bears the signature of the authorized representative of the agent indicating that the funds were actually deposited into the proper trust account;

(ii) For funds received via wire transfer, posting of the deposit in the same manner as other receipts with a traceable identifying name or number supplied by the financial institution or transferring entity. You must also make arrangements for a follow-up "hard copy" receipt for the deposit; or

(iii) For remotely deposited funds, a follow-up "hard copy" receipt for the deposit.

(c) The traceable identifying name or number supplied by the financial institution in (b) of this subsection does not need to be a name or number you use to identify the transaction, but must be enough to allow the department to track and verify the transfer.

(8) **What are my responsibilities regarding my individual client ledgers?** You must maintain an individual client ledger for each escrow transaction or collection account for which funds are received in trust. All receipts and disbursements must be posted in the individual client ledger. Your client ledgers are subject to the following requirements:

(a) Credit entries must show the date of deposit, amount, and name of remitter.

(b) Debit entries must show the date of check, check number (if funds are disbursed via check), amount of check, and name of payee.

(c) You must prepare monthly trial balances of each client ledger. You must reconcile the ledger with both the trust account bank statement and the trust account receipts and disbursement records. The reconciliation must be signed by the designated escrow officer or branch designated escrow officer, and must be maintained as permanent records.

(9) **What are my obligations regarding a reconciled trust account?** Your reconciled trust account or accounts must be equal at all times to your outstanding trust liability to clients. Your outstanding trust liability to clients must equal the trial balance of all of your escrows with undisbursed balances.

(10) **What requirements must I meet for disbursements of trust funds?**

(a) Disbursed funds must be good funds.

(b) Unless otherwise authorized by (c) of this subsection, in the escrow instructions, you must make trust fund disbursements by check or cashier's check. Checks must be drawn on your trust account or accounts, and must identify

which specific escrow transaction or collection account the disbursement relates to. Cashier's checks may be issued by the financial institution and drawn upon the trust account. The number of each check and its amount, date, payee, and the specific client's ledger sheet debited must be shown in the cash register or cash disbursement journal. All data must agree exactly with the check as written.

(c) You may make disbursements via wire transfer or ACH if both of the following are true:

(i) You have made arrangements with the financial institution that holds your trust account or accounts to provide you with a follow-up "hard copy" debit memo when funds are disbursed via wire transfer; and

(ii) You retain in the transaction file a copy of instructions signed by the owner of the funds to be wire transferred identifying the receiving entity and account number.

(d) You may make disbursements via ACH if both of the following are true:

(i) The ACH disbursements are restricted to fees payable to the escrow agent and reoccurring payments made to payees in the escrow transaction. See subsection (13) of this section for further restrictions on escrow agent fees; and

(ii) You print and retain the ACH confirmation or a copy of the confirmation screen. The retained documentation must, at a minimum, include payee, payment date, escrow trust account number debited, and confirmation number assigned to the ACH transaction.

(e) You may make appropriate transfers between escrow accounts by ledger entries alone if you use either:

(i) A transfer form containing the date of the transfer, the amount being transferred, the identity of the accounts being debited and credited, and the signature of a person authorized to approve disbursements; or

(ii) An intrabank debit memo transfer form, and all escrow accounts involved in the transaction are closed through the same bank account.

(f) If you are making recurring transfers between collection escrows, they must be authorized by standing escrow instructions on file from all appropriate parties.

(g) See also WAC 208-680-560.

(11) **I have a voided check written on the trust account. What do I need to do with it?** You must permanently deface the check and retain it as a permanent record in the individual escrow or collection account file.

(12) **What are my obligations regarding fees payable to me for my escrow services?** You must be paid via a separate check or bank transfer, drawn on the trust account and bearing the escrow or transaction number, for escrow and service fees. This payment must be provided for in the escrow instructions. All of your fees relating to a transaction may be combined in a single check, or transfer, but ((~~either~~)) the ((~~closing or~~)) settlement statement or an addendum signed by the principal parties must itemize the included charges.

(13) **What are my obligations regarding fees payable to me for my collection account services?** Your collection account fees may be paid with a single check for each collection period as long as such a check is supported by a schedule of fees and identified to each individual account. Your fees must be paid monthly unless the collection contract agreement provides a longer collection period.

(14) **May I have funds in my Washington trust account that are not related to a Washington escrow transaction or collection account?** No. Only funds related to the services you provide under the authority of your Washington license may be placed in your trust account. No other funds may be in the trust account for any reason.

(15) **What kinds of disbursements am I not allowed to make from my trust account?** You may only make disbursements from your trust account for authorized purposes. Specifically, you may not make disbursements:

(a) For items not related to a specific escrow transaction or escrow collection account((~~, including aggregate disbursements to the department of revenue of unclaimed funds from multiple transactions. Such disbursements must be made for each specific account with unclaimed funds~~));

(b) To any person or for any reason before the closing of an escrow transaction, or before the happening of a triggering condition set forth in the escrow instructions. You may make a disbursement before the closing of a transaction or before a triggering condition if you receive a written release from all principal parties of the escrow transaction or collection account. Unless the disbursement is disputed under WAC 208-680-560, you are permitted to disburse earnest money funds without a written release if the earnest money agreement terminates according to its own terms prior to closing and provides for such disbursement;

(c) Relating to a specific escrow transaction or collection account in excess of the actual amount held in your trust account in connection with such transaction or collection account;

(d) To pay any fee owed to you, your employees or for your own business expenses. Such fees or expenses must be paid from your own general business operating account and not from your trust account or accounts;

(e) For bank charges of any nature. You must make arrangements with your bank to have any bank charges applicable to the trust accounts charged to your regular business bank account, or to provide a separate statement of bank charges so they may be paid from your regular business bank account. However, you may pay bank charges from the interest you receive on trust accounts allowed under subsection (2)(c) or (d) of this section;

(f) If the Washington financial institution's trust account does not have the ability to automatically charge fees to another account, or does not provide a separate statement for the service fees as required by (e) of this subsection, and the account is debited for service fees, you must deposit funds from your general business or other nontrust account to cover the service fee charged within one banking day after receipt of notice of the charge;

(g) On lease or rental contract collection account for preauthorization of payments by the financial institution for recurring expenses such as mortgage payments on behalf of the owner if the account contains tenant security deposits or funds belonging to more than one client;

(h) On lease or rental contract collection accounts, of funds received as a damage or security deposit involving a lease or rental contract, to the property owner or any other person or persons, without the written authority of the lessee. You must hold these funds until the end of the tenancy, at

which point you must disburse them to the person or persons entitled to the funds under the terms of the rental or lease agreement, and as consistent with the provisions of RCW 59.18.270, Residential Landlord-Tenant Act, or other appropriate statute.

(16) **If I choose to use a computer accounting system, what additional requirements do I need to meet?** The provisions of this section apply to both manual and computerized accounting systems. However, there are some additional requirements if you choose to use a computer accounting system.

(a) Your computer accounting system must provide a capability to back-up all data files;

(b) You must print receipt and check registers at least once monthly. You must retain printed records as permanent records. Reconciliations and trial balances must be conducted at least once monthly, and then printed and retained as a permanent record;

(c) You must maintain a printed, dated source document file to support any changes to existing accounting records;

(d) If your computer accounting system has the ability to write checks by filling in fields on existing checks, the check number must be preprinted on the check or a voucher copy retained by the supplier. Your computer accounting system may assign suffixes or subaccount codes before or after the check number for identification purposes;

(e) If your computer accounting system has the ability to print entire checks on blank check stock using MICR toner or a similar system, it must track all checks that are printed. Those checks must be verifiable against your check register to ensure no duplication or skipping of check numbers;

(f) The check number must appear in the magnetic coding which also identifies the account number for readability by the financial institution's computer; and

(g) All checks you write must be included within the computer accounting system.

(17) **I have unclaimed funds in my trust account. What do I need to do with them?** Unclaimed funds are governed by and defined in the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW. If you have unclaimed funds in your trust account, your designated escrow officer or branch designated escrow officer must contact the department of revenue for disposition instructions. You must maintain a record of the correspondence relating to unclaimed funds for at least six years.

You must dispose of unclaimed funds in accordance with this section on a rolling basis ((~~to ensure that you do not have unclaimed funds in your trust account~~)). You must examine your books at least once a ((~~quarter~~)) year to determine if you have unclaimed funds. If you have unclaimed funds in your trust account, they must be disposed of pursuant to chapter 63.29 RCW. See also WAC 208-680-425.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-425 What are the requirements for my quarterly reports? (1) In order to determine compliance with chapter 18.44 RCW and chapter 208-680 WAC, each escrow agent must file with the director, within thirty days following the end of each fiscal quarter, the following ((~~reports~~)) documents in a form prescribed by the director:

(a) A report concerning its operations, including the number of escrow transactions conducted and the total dollar volume of those transactions;

(b) A report concerning the trust account administration;

(c) A one page summary report of the completed three way reconciliation from the last month of the quarter; and

(d) Such other reports or documents in support of the reports as requested by the department. At a minimum, you must provide copies of your bank statements in support of (c) of this subsection.

(2) A complete three way reconciliation that demonstrates:

(a) ((~~You have no~~)) Any unclaimed funds in your trust account are in compliance with WAC 208-680-410(17);

(b) You have no overdue negotiable instruments as defined in RCW 62A.3-304;

(c) You have no overdrawn individual escrow transaction accounts; and

(d) You have no outstanding balances more than nine months old, unless:

(i) The outstanding balance is authorized by valid instructions from the principal parties stating a finite period the funds should be held; or

(ii) You certify to the department that you have conducted a quarterly examination of your records to ensure compliance with the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW.

(3) ((~~For nontrust account matters,~~)) Your designated escrow officer or ((~~any other~~)) principal officer of the escrow agent ((~~may~~)) must certify ((~~the information on the reports~~)) that he or she has reviewed the quarterly reports and any documents filed with it, and that the information contained in the quarterly report and documents is true and correct. This certification must be made under penalty of perjury in a manner consistent with RCW 9A.72.085. In the event the designated escrow officer or a principal officer is not available, a knowledgeable person acceptable to the director may certify the information on the quarterly report.

(4) ((~~For trust account matters, your designated escrow officer must certify that he or she has reviewed the trust account report and any exhibits filed with it and that the information contained in the report and any exhibits is true and correct. This certification must be under penalty of perjury in a manner consistent with RCW 9A.72.085. In the event the designated escrow officer is no longer available or employed by the escrow agent, any other principal officer or other knowledgeable person acceptable to the director, may certify the information on the trust account report(s).~~

~~(5)~~)) Failure to file ((~~these~~)) the quarterly reports within the time period specified in this rule is a violation of RCW 18.44.301 and provides grounds under RCW 18.44.430 for legal action against the escrow agent by the department. False certifications of the quarterly report may result in revocation of your license and referral to a prosecuting attorney.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-530 Records. What are the additional records requirements? (1) In addition to trust account records, you are required to keep additional records, including:

(a) Transaction files containing all agreements, contracts, documents, leases, escrow instructions, ((~~closing~~)) settlement statements and correspondence for each transaction;

(b) Reconciled bank statements and canceled checks for all bank accounts of the escrow agent including, but not limited to, the trust accounts, individual trust accounts, and general business operating accounts of the agent;

(c) All checks and receipts produced by any computer accounting system. These checks and receipts must be sequentially numbered. You must retain the original of any voided or incomplete sequentially numbered check or receipt which was not issued.

(2) All records other than the reconciled bank statements must identify the transaction they relate to, either by escrow number or some other clear identifying information.

(3) All of your records must be accurate, posted, and kept current to the date of the most recent activity.

(4) **How long must I retain my records?** You must keep required records and make them available for inspection by the department for a minimum of six years from completion of a transaction. Records must be retained in their original format until the related transaction is completed and the client's trust account balance is zero after which time they may be converted to electronic format pursuant to subsection (6) of this section.

(5) **Where must I retain my records?** You must at all times maintain your records in a location that is reasonably likely to preserve them. For the first year after completion, records of a transaction must be maintained at an address where you are licensed to maintain an escrow office. Records of transactions that have been completed for more than one year may be stored at another location within the state of Washington. Records stored at a remote location must be available during business hours upon demand of the department and must be maintained in a manner that is readily retrievable. You must not store records at a remote location if funds related to the transaction remain in the trust account.

(6) **When can I convert my records to an electronic format?** Once a transaction is completed and a client's trust account balance is zero, you may convert that client's file into a permanent storage format and destroy the originals. You must not store records electronically if funds related to the transaction remain the trust account.

(7) **How can I store my records electronically?** Records stored electronically must be electronically imaged and stored on permanent storage media like optical disks or microfilm. The storage media must meet the following requirements:

(a) The retrieval process must provide the ability to view and print the records on-site in their original form, including any signatures or other writings placed on the records prior to imaging;

(b) The equipment must be made available on- and off-site to the department for the purposes of an examination or investigation;

(c) The records must be stored exclusively in a nonrewritable and nonerasable format;

(d) The hardware and software necessary to display and print the records must be maintained by the escrow agent during the required retention period under subsection (4) of this section.

Permanent storage does not affect your duties under subsection (5) of this section to maintain files in your licensed location for the first year.

(8) **I am closing my escrow agent business. What are my obligations regarding my records?** You must ensure that all records retention requirements are met and that records are properly destroyed when appropriate. You also have an ongoing duty to ensure the department is informed about who has your records and where they are being maintained.

(9) **Records disposal.** You must have written policies and procedures for the destruction of records, including electronic records, when the retention period ends. The destruction of records must be accomplished so that the information cannot be reconstructed or read. The destruction of consumer credit report information must also comply with the federal Disposal Rule at 16 C.F.R. 682.

NEW SECTION

WAC 208-680-532 Information security program required by the federal Safeguards Rule implementing the Gramm-Leach-Bliley Act. (1) Generally, applicants and licensees must have a written program appropriate to the company's size and complexity, the activity conducted, and the sensitivity of information at issue. The program must ensure the information's security and confidentiality, protect against anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of the information.

(2) Specifically, at a minimum the program described in subsection (1) of this section must:

(a) Designate an employee or employees to coordinate the information security program;

(b) Identify and assess the risks to customer information;

(c) Design and implement information safeguards to control the risks identified in the risk assessment and regularly monitor and test the safeguards;

(d) Select service providers that can maintain appropriate safeguards and oversee their handling of customer information; and

(e) At least annually evaluate and adjust the program in light of relevant circumstances, including changes in business or operations, or the results of testing and monitoring the effectiveness of the implemented safeguards.

(3) The information security program must be maintained as part of your books and records.

(4) For more information access the FTC web site on the Safeguard Rules at: https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying and see 16 C.F.R. 314.

NEW SECTION

WAC 208-680-534 Consumer financial information privacy under the Gramm-Leach-Bliley Act (Regulation P). Licensees must comply with Regulation P.

(1) At a minimum, licensees must:

(a) Provide customers with initial and annual notices regarding their privacy policies. These notices describe whether and how the licensee shares consumers' nonpublic personal information, including personally identifiable financial information, with other entities; and

(b) If licensees share certain customer information with particular types of third parties, the institutions are also required to provide notice to their customers and an opportunity to opt out of the sharing. If a licensee limits its types of sharing to those which do not trigger opt-out rights, it may provide a "simplified" annual privacy notice to its customers that does not include opt-out information.

(2) See Regulation P at 12 C.F.R. 1016 for the required details.

NEW SECTION

WAC 208-680-536 Notice to consumers of data breach. If the licensee's data is compromised, the licensee may be subject to chapter 19.255 RCW and may have to provide notices to consumers whose information was acquired. Under certain circumstances notice of the breach may also be required by the attorney general's office.

NEW SECTION

WAC 208-680-538 Business resumption plan. Licensees must have a written plan that details the company's response and recovery to any event that results in damage to or destruction of books and records. The plan must be maintained as part of the licensee's books and records.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-540 What are my obligations regarding escrow transactions? The escrow agent is responsible for providing escrow services between the principal parties. In addition to complying with the act and these rules, an escrow agent must at a minimum:

(1) **Escrow instructions.**

(a) Prepare or accept an instrument of escrow instructions from and agreed to by the principal parties and the escrow agent. The escrow instructions must be signed by the principal parties. Escrow instructions must contain any and all agreements between the principal parties and the escrow agent or incorporate other written agreements by reference. The escrow instructions must not be modified except by written agreement signed by all principal parties and accepted by the escrow agent.

(b) Comply with the escrow instructions for completing the ((~~closing~~)) settlement statement. All funds disbursed on the ((~~closing~~)) settlement statement should be bona fide and supported with adequate documents.

(c) Provide the services and perform all acts pursuant to the escrow instructions.

(2) **Fee disclosures.** Disclose in writing to the principal parties when fees for services provided may be earned by the escrow agent. The disclosure must specifically identify the fees using the same terminology as that provided on the ((~~closing~~)) settlement statement (both the estimated and final ((~~HUD-1 or HUD-1A~~))) provided for any transaction subject to the act, and reflect the dollar amount associated with each item identified as a fee payable to the escrow agent. For purposes of this section, fees payable to the escrow agent mean any item payable directly to the escrow agent whether accounted for by the escrow agent as profit, potential for profit, or the offset of justifiable costs.

(3) **Justifiable fees.** Ensure that all fees are for bona fide services and bear a reasonable relationship in value to the services performed, regardless of whether the services are performed by the escrow agent or by a third party under contract with the escrow agent. No charges known at the time of closing for services performed by a third party to the transaction may exceed the actual cost of the third-party service. When the cost of a third-party service cannot be known with certainty at the time of closing, an escrow agent may:

(a) Provide an estimate of the charge for the third-party service on the preliminary ((~~closing~~)) settlement statement, disclose the actual charge for the third-party service on the final disclosure statement, and refund any amounts collected in excess of the actual charge for the third-party service to the principal parties;

(b) Assume responsibility for performing the service and charge the principal parties a one-time fee for performing the service. The one-time fee must be reasonably related to the value of the service provided. The escrow agent may contract with a third party to perform the service. The escrow agent must disclose to the principal parties in the preliminary and final settlement statement that the fee is being paid to the escrow agent. The escrow agent may transfer such fees earned into the general account in compliance with WAC 208-680-410; or

(c) If conducting a subescrow transaction, charge the principal parties the average charges as determined by the master escrow agent or title insurance company.

(4) **Recordkeeping.** Maintain copies of the escrow instructions and ((~~closing~~)) settlement statement (((~~for example, HUD-1 or HUD-1A~~))) in the escrow transaction file.

(5) **Addendums.** Require an addendum to the purchase agreement for any and all material changes in the terms of the escrow transaction((~~,~~)) including, but not limited to, changes in the financing of the transaction.

(6) **((~~Closing~~)) Settlement statements.**

(a) Provide a complete detailed ((~~closing~~)) settlement statement (((~~for example HUD-1 or HUD-1A~~))) as it applies to each principal at the time the transaction is closed.

(b) Provide copies of the final ((~~closing~~)) settlement statement to each real estate broker or agent involved with the transaction.

(c) The escrow agent must retain a copy of all ((~~closing~~)) settlement statements in the transaction file, even if funds are not handled by the agent. The ((~~closing~~)) settlement statements must show, at a minimum:

(i) The date of closing;

(ii) The total purchase price;

(iii) An itemization of all adjustments, moneys or things of value received or paid in compliance with requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2601, and Regulation X, 24 C.F.R. Section 3500, and all other applicable rules and regulations. Such itemization must include the name of the person or company to whom each individual amount is paid, or from whom each individual amount is received. If there is not enough room on the ((~~closing~~)) settlement statement for a full itemization, itemization may be provided on an addendum as long as a copy of the addendum was also provided to the principal parties and is included in the transaction file;

(iv) A detail of debits and credits identified to each principal party; and

(v) Names of payees, makers and assignees of all notes paid, made or assumed.

(7) **Payment of proceeds.** Pay the net proceeds of sale directly to the seller unless otherwise provided in writing by the seller or a court of competent jurisdiction.

(8) **Obtain signatures.** Obtain original signatures of the principal parties on either the preliminary or final ((~~closing~~)) settlement statement and maintain a copy of the signed ((~~closing~~)) settlement statement in the escrow transaction file, unless the escrow instructions authorize use of faxed or electronic signatures. If an escrow agent completes a transaction based on faxed signatures in accordance with the escrow instructions, it must obtain original signatures for the file only if the escrow instructions so require.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-560 What requirements must I follow when disbursing funds or other things of value? (1) The escrow agent must disburse funds as set forth in the escrow instructions or collection agreement. Not doing so is a violation of RCW 18.44.430 (1)(e). Funds and other items or documents must be paid and/or disbursed immediately upon closing of the transaction or as specifically agreed to in writing by the principal parties, and all funds must be disbursed in compliance with RCW 18.44.400(3) and these rules.

(2)(a) Upon written notice from any principal party that the ownership of the funds is in dispute or is unclear based on the written agreements of the parties, the escrow agent must hold such funds until it receives written notice from all principal parties that the dispute has been resolved. In lieu of holding such funds, the escrow agent may interplead the funds into a court of competent jurisdiction pursuant to chapter 4.08 RCW.

(b) For purposes of complying with (a) of this subsection, escrow agents should construe "written notice from any principal party that the ownership of the funds is in dispute" broadly so that many various written forms evidencing one party's or the other's belief in ownership of the subject funds is included.

(c) So too should the escrow agent construe "written demand" in RCW 64.04.220(2) broadly to include various forms of written correspondence and documents.

(d) Upon notification of a dispute between the principal parties, the department may, at its discretion, order the escrow agent to interplead the funds into a court of competent jurisdiction. If the department orders an escrow agent to interplead funds, the escrow agent may deduct only the actual costs of interpleading from the escrow funds.

(3) Except as provided otherwise in this section, at no time may an escrow agent disburse or delay the disbursement of funds without the written consent of the principal parties unless the delay is necessary to ensure the funds being disbursed are good funds.

(4) See also WAC 208-680-410 (1), (7), (11), and (16).

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-610 What are the department's examination powers under the act? (1) For the purposes of determining compliance with chapter 18.44 RCW and chapter 208-680 WAC, the department may examine, wherever located, the records used in the business of every licensee and any person ((~~who must be licensed under~~)) subject to the act.

(2) The department may make necessary inquiry of the business or personal affairs of each person identified in subsection (1) of this section for the purposes of determining compliance with the act and these rules. In conducting examinations, the department may:

(a) Access, during reasonable business hours, the offices and places of business, books, accounts, papers, files, records, including electronic records, computers, safes, and vaults of all such persons. Access must be given to both the trust account records and general business operating account records;

(b) Interview or take sworn testimony of any person subject to RCW 18.44.021, or any employee or independent contractor of any person subject to RCW 18.44.021;

(c) Interview or take sworn testimony of any principal party or agent to the transaction;

(d) Require the filing of statements in writing by any person, under oath or otherwise, as to all facts and circumstances concerning the matters under examination;

(e) Copy, or request to be copied, any items described in this section;

(f) Analyze and review any items described in this section;

(g) Require assistance, as necessary, from any employee or person subject to the act;

(h) Conduct meetings and exit reviews with owners, management, officers, or employees of any person subject to the act;

(i) Prepare and deliver, as necessary, a report of examination requiring a response from the recipient; and

(j) Retain attorneys, appraisers, independent certified public accountants, or other professionals and specialists as examiners, auditors, or investigators. The cost of the services provided must be paid by the person who is the subject of the examination or investigation.

(3) The department may make examinations as frequently as it deems necessary or appropriate; and

(4) The department may charge an hourly fee for an examination. See RCW 18.44.121 (1)(e).

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-620 What are the department's investigatory powers under the act? (1) The department may conduct ((~~private or public~~)) investigations at any time to determine whether any person has violated or is about to violate chapter 18.44 RCW, or any rule, regulation, or order under chapter 18.44 RCW, or to aid in the enforcement of chapter 18.44 RCW. For that purpose, the department may conduct inquiries, interviews, and examinations of any person deemed relevant to the investigation.

(2) The department may investigate the escrow business or other business or personal financial records of any person subject to investigation under subsection (1) of this section. In conducting investigations, the department may:

(a) Access, during reasonable business hours, any location where any escrow business records are or may be located, including offices, places of business, personal residences, storage facilities, computers, safes, and vaults, for the purposes of obtaining, reviewing, or copying books, accounts, papers, files, or records, including electronic records, or records stored in any format;

(b) Administer oaths or affirmations;

(c) Subpoena witnesses and compel their attendance at a time and place determined by the director or designated person;

(d) Subpoena the production of any evidence or matter which is relevant to the investigation, including the taking of such evidence;

(e) Subpoena any person to determine the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence;

(f) Interview, publicly or privately, under administration of oath or otherwise, or take the sworn testimony of: Any principal party, escrow agent, employee, or independent contractor, of any person subject to the act, or any other person whose testimony is deemed relevant to the department's investigation;

(g) Require the filing of statements, affidavits, or declarations in writing by any person, under administration of oath, notary or otherwise, as to all facts and circumstances concerning the matters under investigation;

(h) Copy, or request to be copied, any items described in this section, or if the department makes a determination that there is a danger that original records may be destroyed, altered, or removed to deny the director access, or that original documents are necessary for the preparation of a criminal referral, the department may take originals of any items described in this section, regardless of the source of such items. Originals and copies taken by the department may be held, returned, or forwarded to other regulatory or law enforcement officials as deemed necessary;

(i) Analyze and review any items described in this section;

(j) Receive assistance, as necessary, from any employee or other person subject to RCW 18.44.021;

(k) Conduct meetings with owners, management, officers, or employees of any person subject to RCW 18.44.021;

(l) Conduct meetings and share information with other regulatory or law enforcement agencies;

(m) Prepare and deliver, as necessary, a report of investigation requiring a response from the recipient.

(3) For purposes of this section and RCW 18.44.420(1), "public" means open to the public as determined by the department.

(4) For purposes of this section and RCW 18.44.420(1), "private" means closed to the public or any person, including attorneys for witnesses, as determined by the department.

AMENDATORY SECTION (Amending WSR 13-24-022, filed 11/22/13, effective 1/1/14)

WAC 208-680-645 Possession of escrow agent property and business. (1) **When may the department take control of my escrow agent property and business?** The department may take control of a licensed escrow agent if, as a result of an examination, report, investigation, or complaint, it appears to the department that the licensed escrow agent:

(a) Is conducting business in an unsafe and unsound manner that poses a risk to the public;

(b) Has suspended payment of its trust obligations;

(c) Has refused to comply with a lawfully issued order of the department ((~~and one or more consumers are likely to be harmed by noncompliance~~)).

(2) **What actions can the department take once it has taken possession of an escrow agent's property and business?** The department may take any action to protect consumers. At a minimum, the department may:

(a) Work with other licensees to complete pending escrow transactions;

(b) Discontinue unsafe or unsound practices and violations of laws or regulations;

(c) Recover and distribute funds to cure any deficiencies;

(d) Make claims against the licensee's fidelity or surety bonds or errors and omissions insurance to make whole consumers who have been harmed by employee activities;

(e) Make restitution to injured parties;

(f) Renew the licensee's license;

(g) Renew or make premium payments to maintain the licensee's bonds and insurance; and

(h) Where it is clear that the escrow agent's business cannot be safely operated, take the necessary steps to wind down the business of the escrow agent including seizing the operating and escrow trust accounts; hiring and firing employees; changing locks and passwords; taking control of the escrow agent's internet web site; and turning over operations to a court-appointed receiver.

(3) **How long may the department keep control of a business?** The department may maintain control over a business until the licensee is able to resume business or the busi-

ness is liquidated by a receiver appointed pursuant to RCW 18.44.470.

(4) **I also conduct nonescrow business through my licensed escrow agent business. If the department seizes my escrow business, will it also seize these other areas of business?** When possible, the department will only take control of the portion of a business related to escrow. If the portions of a business are not clearly divisible, the department will determine its actions on a case-by-case basis, based in part on the relationship between and degree of commingling of the business lines.

(5) **I am an attorney whose law practice is licensed as an escrow agent. Will the department seize my law practice under this section?** Where an attorney's law practice is excepted from licensure, the law practice is not subject to seizure under the act. For attorneys with a business entity licensed under the act, the department will generally not exercise its seizure authority against a business entity or portion of a business entity supervised by the Washington state bar association. In any event, the department will only take control of the portion of a business related to escrow as set forth in subsection (4) of the section.

WSR 16-05-074
WITHDRAWL OF PROPOSED RULES
BUILDING CODE COUNCIL
(By the Code Reviser's Office)
[Filed February 16, 2016, 8:39 a.m.]

WAC 51-50-0408 and 51-50-1708, proposed by the building code council in WSR 15-16-107, appearing in issue 15-16 of the Washington State Register, which was distributed on August 19, 2015, is withdrawn by the office of the code reviser 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 16-05-075
WITHDRAWL OF PROPOSED RULES
BUILDING CODE COUNCIL
(By the Code Reviser's Office)
[Filed February 16, 2016, 8:40 a.m.]

WAC 51-54A-3800 and 51-54A-5307, proposed by the building code council in WSR 15-16-109, appearing in issue 15-16 of the Washington State Register, which was distributed on August 19, 2015, is withdrawn by the office of the code reviser 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 16-05-079
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed February 16, 2016, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-20-081.

Title of Rule and Other Identifying Information: Chapter 246-70 WAC, Marijuana product compliance, proposing a new chapter regarding rules for marijuana products beneficial for medical use including product categories, quality assurance testing (pesticide, mycotoxin, heavy metal, terpenes), product labeling, safe handling, and employee training standards.

Hearing Location(s): The department of health (department) will conduct two public hearings for this rule proposal. Written comments may be submitted to the department at any time up until the second public hearing on March 25, 2016. Further information regarding how and where to send written public comments or make hearing arrangements for those with disabilities may be found below.

Public Hearing #1: On March 22, 2016, at 10:00 a.m., at the Red Lion Hotel at the Park (Ballroom A), 303 West North River Drive, Spokane, WA 99201. *Assistance for persons with disabilities must be arranged with the department by March 15, 2016.*

Public Hearing #2: On March 25, 2016, at 9:00 a.m., at the Capital Event Center at ESD 113 (Pacific/Grays Harbor Room), 6005 Tyee Drive S.W., Tumwater, WA 98512. *Assistance for persons with disabilities must be arranged with the department by March 18, 2016.*

Date of Intended Adoption: April 1, 2016.

Submit Written Comments to: Susan Reynolds, P.O. Box 47852, Olympia, WA 98504-7852, e-mail https://fortress.wa.gov/doh/policyreview/, fax (360) 236-2901, by March 25, 2016.

Assistance for Persons with Disabilities: Contact Susan Reynolds by dates under hearing locations, TTY (800) 833-6388, or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To establish requirements for marijuana products beneficial for medical use by qualifying patients, quality assurance testing (pesticide, mycotoxin, heavy metal, terpenes), product labeling, safe handling, and employee training standards.

Reasons Supporting Proposal: Rule making by the department of health is mandated by statute to establish standards for products that are beneficial for medical use. Such rules will be key to the process to produce, process, and make available an adequate supply of regulated marijuana products by July 1, 2016.

Statutory Authority for Adoption: RCW 69.50.375.

Statute Being Implemented: RCW 69.50.375 and 82.08.9998.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Kristi Weeks, 101 Israel Road S.E., Tumwater, WA 98501,

(360) 236-4066; Implementation and Enforcement: Chris Baumgartner, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4819.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Describe the Proposed Rule, Including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

The Washington state department of health (department) is proposing a new chapter in rule that would create standards for marijuana products that any consumer can rely upon to be reasonably safe and meet quality assurance measures.

The proposed rule is one piece of the overall implementation of medical marijuana and is required by 2SSB 5052 (chapter 70, Laws of 2015 regular session) and 2E2SHB 2136 (chapter 4, laws of 2015 2nd sp. sess.). The purpose of the product compliance standards is to establish requirements for products that may be beneficial for medical use by qualifying patients, quality assurance testing (pesticides, mycotoxins, heavy metals), product labeling, and safe handling standards.

On April 24, 2015, Governor Inslee signed 2SSB 5052, the Cannabis Patient Protection Act. This act creates licensing and regulation of all marijuana producers, processors and retail stores under the oversight of the renamed Washington state liquor and cannabis board (WSLCB). It also directs the department of health to complete tasks that include:

- Contracting with a third party to create and administer a medical marijuana authorization data base.
- Adopting rules relating to the operation of the data base.
- Adopting rules regarding products sold to patients and their designated providers.
- Consulting with WSLCB about requirements for a retail store to get a medical marijuana endorsement.
- Creating a medical marijuana consultant certification program.
- Developing and approving continuing education for health care practitioners who authorize the medical use of marijuana.
- Making recommendations to the legislature about establishing medical marijuana specialty clinics.

On June 30, 2015, Governor Inslee signed 2E2SHB 2136 which included a requirement for the department to establish in rule a tetrahydrocannabinol (THC) and cannabidiol (CBD) ratios for products that can be sold sales tax free to any adult.

The proposed rules collectively create compliance standards for marijuana products available to qualifying patients, designated providers, and other consumers.

The requirements that a small business must follow to comply with the proposed rule are found in WAC 246-70-040 Marijuana products compliant with this chapter, 246-70-050 Quality assurance testing, 246-70-060 Compliant product labeling, 246-70-070 Compliant product safe handling, and 246-70-080 Employee training.

In order to comply with the proposed rules, small business[es] such as licensed marijuana producers and processors will use the services of one or more certified third-party testing labs to provide required compliant product testing in accordance with WAC 246-70-050, in addition to the tests already required under WSLCB rule (WAC 314-55-102).

Background: The department requested stakeholders to provide feedback on the potential cost to implement the proposed changes through four public stakeholder meetings, written feedback and survey response. Through this stakeholder input, the department determined that the collective cost of the rule changes are nominal. More detailed cost estimates are included in the sections below.

Identify Which Businesses are Required to Comply with the Proposed Rule Using the North American Industry Classification System (NAICS) Codes and What the Minor Cost Thresholds Are:

There are no NAICS codes for the businesses so the minor cost threshold could not be determined. The businesses that are required to comply with the proposed rule are:

Business Description	Number of Businesses in WA	Estimated Average Annual Receipts
Licensed marijuana retail stores*	197	$259,785,729
Licensed marijuana producers and processors	160 producer only licenses, 560 producer/processor licenses, and 84 processor only licenses	$17,719,649.00
WSLCB-certified testing laboratories	12	$757,732 (based on average cost for testing and number of tests conducted in 2015)

*The WSLCB is currently accepting applications for new retail stores. This number could eventually be as high as five hundred fifty-six.

Analyze the probable cost of compliance: Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or review [revenue].

Table: Rule sections that will not likely result in cost:

#	WAC Section	Section Title
1	WAC 246-70-010	Findings.
2	WAC 246-70-020	Applicability of WSLCB rules.
3	WAC 246-70-030	Definitions.

#	WAC Section	Section Title
4	WAC 246-70-090	Marijuana product compliant logos.

The department analyzed the cost of compliance to the proposed rules: WAC 246-70-040 Marijuana products compliant with this chapter and 246-70-060 Compliant product labeling.

Description of the Proposed Rule: The proposed rules establish the requirements for a marijuana product to be classified as compliant. The proposed rule also establishes the labeling requirements for compliant marijuana products. The products must be readily identifiable to the consumer by placement on the product's label of the logo in proposed WAC 246-70-090 (rendering of the logo only). Compliant marijuana products must fall into one of the following classifications:

- General use.
- High THC.
- High CBD.

Compliant marijuana products must be labeled in accordance with this chapter, and must use the logo developed and approved by the department to indicate compliance. The proposed rule also identifies what cannot be placed on labels of compliant products.

Compliance Costs: The proposed rules state the compliance requirements for identifying three categories of marijuana products and labeling requirements for the products, using a logo in proposed WAC 246-70-090. The logo is provided free to processors, so the labeling cost is minimal. Processors may choose to add the logo as part of their existing product packaging incurring a one-time cost, or have labels preprinted by an outside vendor for an estimated cost of $44.80 per five pound lot of tested marijuana, assuming each lot is placed into one gram packages for retail sale. The total cost of labeling is indeterminate because it is unknown how many lots of product may be produced by each business and how the raw marijuana will be further processed and packaged.

WAC 246-70-050 Quality assurance testing.

Description of the Proposed Rule: The proposed rule establishes the requirements for testing performed by a third-party testing lab certified by WSLCB. Licensed marijuana producers and processors and third-party labs must follow the sampling protocols in WSLCB rules (chapter 314-55 WAC). The following tests are in addition to the tests required under WAC 314-55-102:

- Pesticide screening and heavy metal screening is required at time of harvest for all marijuana flowers, trim, leaves, or other plant matter.
- Mycotoxin screening is required whenever microbial testing for any marijuana product is required by WSLCB.
- Additional pesticide screening is required for each batch of finished concentrates and extracts.
- Additional pesticide and heavy metal screening is required for all imported cannabinoids, such as CBD oil, prior to addition to a marijuana product.

Compliance Costs: The proposed rule establishes requirements for marijuana product testing to be performed by a third-party testing lab certified by WSLCB. Equipment costs for certified third-party testing labs vary, according to the type of testing performed, and the brand and age of equipment purchased by the lab. Marijuana producers and processors would incur testing costs based on the type of testing performed, the volume of product tested, and any retesting required. Results of a survey of certified testing labs showed the range of costs per test to be:

- Pesticide screening: $100-$350
- Heavy metals screening: $85-$350
- Mycotoxin testing: $25-$350

The market for laboratory testing is highly competitive. It is likely the labs will price their testing as low as possible in order to attract business from the limited number of producers and processors. In addition, an established laboratory in Nevada, where these tests are currently required, charges $100 each for pesticide and heavy metals screening.

The total compliance test costs are estimated to be $757,732.50 or approximately four percent of producer and processor total sales.

Results of a survey of certified testing labs returned the following average one-time equipment costs:

- Pesticide screening - $325,000
- Heavy metal screening - $255,000
- Mycotoxin screening - $12,000
- Fume hood (additional) - $160,000
- The number of WSLCB-required tests performed from December 1, 2014, to November 30, 2015, was 43,300. A total of fourteen certified labs performed the tests (Note: There are currently only twelve labs operating). There are some current third-party certified testing labs that have equipment in place to perform the required product testing; new testing labs would incur one-time equipment costs at startup. The costs of additional testing equipment would be based on the useful life of the equipment, i.e., the annual costs of heavy metal screening with ten year useful life is $25,500.

WAC 246-70-070 Compliant product safe handling.

Description of the Proposed Rule: The proposed rule establishes the requirements for marijuana processors that create or handle marijuana-infused products to ensure products are constructed, kept, and maintained in a clean and sanitary condition. These requirements are in accordance with rules as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

The proposed rule also requires those marijuana processors that do not create or handle marijuana-infused product; and all marijuana producers to adopt and enforce policies and procedures to ensure that operations involving the growing, receiving, inspecting, transporting, segregating, preparing, production, packaging, and storing of marijuana or marijuana products are conducted in accordance with adequate sanitation principles.

Cost of Compliance: The proposed rule sets requirements for all marijuana processing facilities to ensure the facility operations are conducted in accordance with adequate

sanitation and safe-handling principles, based on policies and procedures created and enforced by the processor business. The cost to the businesses would be administrative work to develop and enforce policies and procedures for safe handling of marijuana products. Many of these requirements may already be in place based on requirements from other regulatory entities such as the department of labor and industries.

WAC 246-70-080 Employee training.

Description of the Proposed Rule: The proposed rule establishes requirements for marijuana producers, processors and retailers that create, handle, or sell compliant marijuana products to adopt and enforce policies and procedures to ensure employees and volunteers receive training about the requirements of this chapter. The proposed rule also establishes the activities that any retail outlet owner, employee, or volunteer is not allowed to do when assisting qualifying patients and designated providers at the retail outlet.

Compliance Costs: The proposed rule states the requirements for employee training by marijuana producers, processors and retailers on [in] this chapter. On-the-job training for employees will vary based on the duties they perform and the material presented. The average time to become trained in the requirements of this chapter is estimated to be two hours total. Based on survey results of retail stores showing the employee average wage to be $22.00 an hour, the result would be a one-time training cost of $44.00 per employee. This estimated cost is low and should not affect sales or revenue.

Analyze Whether Compliance with the Proposed Rule Will Cause Businesses to Lose Sales or Revenue: The proposed rule[s] are not anticipated to cause any business to lose sales or revenue. Compliance will help authorized retail outlets to identify for customers which marijuana products meet the growing, processing, testing and THC/CBD content specifications in the proposed rules. A retailer with a medical marijuana endorsement who carries products that comply with the proposed rules may be more likely to increase its sales to medical marijuana patients. A producer or processer that complies with the proposed rules may be more likely to increase its sales of compliant products. A testing lab that complies with the proposed rules may be more likely to increase its services (sales) to processers seeking to sell products that comply with the proposed rules.

Analyze Whether the Proposed Rule May Impose More Than Minor Costs on Businesses in the Industry: The proposed rules are anticipated to impose more than minor costs to businesses that must comply.

Licensed marijuana producers and processors would incur testing costs based on the type of testing performed, the volume of product tested, and any retesting required. Five certified testing labs were surveyed to determine the estimated average cost per test by type. The results are shown in the table below:

Heavy Metals	Mycotoxin	Pesticides
Range - $85 to $350	Range - $25 to $350	Range - $100 to $350

Certified labs tested approximately fourteen thousand four hundred thirty-three lots of marijuana from December 1, 2014, to November 30, 2015. Medically endorsed retail stores will eventually be required to have at least twenty-five percent of product inventory tested for compliance. Based on this data the result is approximately three, six hundred eight lots of marijuana will be subjected to the tests in these rules.

Producer and processor sales for the same time period totaled $17,719,649.00. Based on an estimated cost of $210.00 for all three tests, total compliance test costs are estimated to be $757,732.50 or approximately four percent of producer and processor total sales.

Current certified testing labs that have already purchased equipment and are performing testing of marijuana products would incur costs for maintenance of existing equipment, and the purchase of replacement or upgrades to equipment. New certified testing labs would incur equipment purchase costs based on the type of testing equipment purchased. The annual costs of testing equipment can be calculated as one-tenth of these one-time costs using standard ten year life of machine. Additional costs would be for extra equipment necessary for optional testing. Five certified testing labs were surveyed to determine the average cost of various types of marijuana product testing equipment. The results are shown in the table below:

Heavy Metals	Mycotoxin	Pesticides
Range - $160,000 to $350,000	Range - $12,000 to $16,000	Range - $150,000 to $500,000
Average - $253,000	Average - $14,000	Average - $325,000

Determine Whether the Proposed Rule May Have a Disproportionate Impact on Small Businesses as Compared to the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rule: The proposed rules are not anticipated to have a disproportionate impact on small versus large marijuana producers, processors and certified testing labs. Certified marijuana testing laboratories are small businesses so there are no large businesses to determine any possible impact. The impact on producers and processors is indeterminate at this time, but it is assumed that the costs previously identified will be passed on in final product sales, resulting in a market driven but minimal cost impact.

We worked with stakeholders during the development of these proposed rules to discuss alternative testing standards and their costs. The proposed rules provide appropriate product testing needed to protect public health and safety, while allowing producers and processers the ability to bring their products to market with the minimum risk of disease or damage (e.g., mold, insects).

Describe How Small Businesses Were Involved in the Development of the Proposed Rule: The department conducted four stakeholder meetings, collecting input verbally and in writing on the proposed rule. Stakeholders included marijuana producers, processors, licensed retail store owners, employees, customers and other interested parties.

Identify the Estimated Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule: Producers and processers do not have to grow

and create these products nor do retail stores have to carry these products if they do not wish to be medically endorsed. Therefore the department does not anticipate any lost jobs due to the rules.

The rule does create opportunities to expand the market and business of all three license groups as well as certified labs. This could result in increased business and lead to the hiring of additional staff.

Here you can compare compliance costs with revenues for the three groups if you have revenue data available. For example we can compare the additional costs of producers (unit costs) with the sale value of the same amount that producers sell to their clients (those who buy from them).

A copy of the statement may be obtained by contacting Susan Reynolds, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4819, fax (360) 236-2901, e-mail medicalmarijuana@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Susan Reynolds, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4819, fax (360) 236-2901, e-mail medicalmarijuana@doh.wa.gov.

February 16, 2016
John Wiesman, DrPH, MPH
Secretary

Chapter 246-70 WAC

MARIJUANA PRODUCT COMPLIANCE

NEW SECTION

WAC 246-70-010 Findings. Anecdotal and limited scientific evidence indicates that the use of marijuana may be beneficial to alleviate the symptoms of certain physical and mental conditions. However, due to the current federal classification of marijuana as a schedule 1 controlled substance, scientific research has not been performed that would allow for standardized indications of particular strains, which can vary radically in cannabinoid composition; standard, reproducible formula or dosage; or accepted standards for drug purity, potency and quality for the various conditions for which the medical use of marijuana may be authorized. At this time, the decision of what marijuana products may be beneficial is best made by patients in consultation with their health care practitioners. For this reason, the department will not limit the types of products available to qualifying patients. Instead, the department intends to create standards for products that any consumer can rely upon to be reasonably safe and meet quality assurance measures.

NEW SECTION

WAC 246-70-020 Applicability of WSLCB rules. The requirements in this chapter are in addition to all WSLCB requirements in chapter 314-55 WAC. They are intended to build upon all other requirements for licensed marijuana producers, processors and retailers, and certified third-party labs.

NEW SECTION

WAC 246-70-030 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Allowed pesticide" means a pesticide registered by the Washington state department of agriculture under chapter 15.58 RCW as allowed for use in the production, processing, and handling of marijuana.

(2) "Batch" means a quantity of marijuana-infused product containing material from one or more lots of marijuana.

(3) "CBD concentration" means the percent of cannabidiol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product.

(4) "Certified third-party testing lab" means a laboratory certified by the WSLCB or its vendor under WAC 314-55-102.

(5) "Data base" means the medical marijuana authorization data base created pursuant to RCW 69.51A.230.

(6) "Department" means the Washington state department of health.

(7) "Designated provider" has the same meaning as RCW 69.51A.010(4).

(8) "Harvest" means the marijuana plant material derived from plants of the same strain that were brought into cultivation at the same time, grown in the same manner and physical space, and gathered at the same time.

(9) "Imported cannabinoid" means any cannabinoid derived of the plant *Cannabis* with a THC concentration 0.3 percent or less that is not produced by a licensed marijuana producer.

(10) "Lot" means either of the following:

(a) The flowers from one or more marijuana plant(s) of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more marijuana plant(s). A single lot of trim, leaves, or other plant matter cannot weigh more than fifteen pounds.

(11) "Marijuana" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(12) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent.

(13) "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana as defined in subsection (11) of this section, and have a THC concentration no greater than ten percent. The term "marijuana-infused products" does not include either usable marijuana or marijuana concentrates.

(14) "Marijuana processor" means a person licensed by the WSLCB under RCW 69.50.325 to process marijuana into marijuana concentrates, usable marijuana and marijuana-infused products, package and label marijuana concentrates, usable marijuana and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, usable marijuana and marijuana-infused products at wholesale to marijuana retailers.

(15) "Marijuana producer" means a person licensed by the WSLCB under RCW 69.50.325 to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(16) "Marijuana product" means marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products as defined in this section.

(17) "Medical use of marijuana" has the same meaning as RCW 69.51A.010(16).

(18) "Plant" means a marijuana plant.

(19) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of marijuana.

(20) "Qualifying patient" or "patient" has the same meaning as RCW 69.51A.010(19).

(21) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.

(22) "Recognition card" means a card issued to qualifying patients and designated providers by a marijuana retailer with a medical marijuana endorsement that has entered them into the medical marijuana data base.

(23) "Retail outlet" means a location licensed by the WSLCB under RCW 69.50.325 for the retail sale of usable marijuana and marijuana-infused products.

(24) "Retail outlet with a medical marijuana endorsement" means a location licensed by the WSLCB under RCW 69.50.325 for the retail sale of marijuana products to the public and, under RCW 69.50.375, to qualifying patients and designated providers for medical use.

(25) "Secretary" means the secretary of the department of health or the secretary's designee.

(26) "THC concentration" means the percent of Delta 9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of Delta 9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

(27) "Tincture" means a solution containing marijuana extract. A single unit of tincture cannot exceed two fluid ounces.

(28) "Topical product" means a product intended for use only as an application to human body surfaces, does not cross the blood-brain barrier, and is not meant to be ingested by humans or animals.

(29) "Unit" means an individually packaged marijuana product containing up to ten servings or applications.

(30) "Usable marijuana" means dried marijuana flowers. The term "usable marijuana" does not include either marijuana-infused products or marijuana concentrates.

(31) "WSLCB" means the Washington state liquor and cannabis board.

NEW SECTION

WAC 246-70-040 Marijuana products compliant with this chapter. To be classified as a compliant marijuana product, the product must meet all requirements of this chapter. Compliant marijuana products must fall into one of the following classifications:

(1) General use.

(a) "General use compliant product" means any marijuana product approved by the WSLCB, including edibles, and meeting the requirements of this chapter.

(b) General use marijuana-infused compliant products may be packaged in servings or applications containing up to ten milligrams of active THC. A unit must not contain more than ten servings or applications and must not exceed one hundred total milligrams of active THC.

(c) General use compliant products must be labeled "Chapter 246-70 WAC, Compliant - General Use" and must use the logo found in WAC 246-70-090 to indicate compliance with this chapter.

(d) General use compliant products may be purchased by any adult age twenty-one or older, and qualifying patients between the ages of eighteen and twenty who are entered into the data base and hold a valid recognition card.

(e) General use compliant products may be sold at retail outlets and retail outlets with a medical marijuana endorsement.

(2) High THC.

(a) "High THC compliant product" means a marijuana product containing more than ten but no more than fifty milligrams of THC per serving or application and meeting the requirements of this chapter.

(b) The following is an exclusive list of marijuana products that may qualify for classification as a high THC compliant product:

(i) Capsules;

(ii) Tinctures;

(iii) Transdermal patches; and

(iv) Suppositories.

(c) No other marijuana products can be classified as a high THC compliant product or contain more than ten milligrams of active THC per serving or application.

(d) High THC compliant products may be packaged in servings or applications containing up to fifty milligrams of active THC. A unit must not contain more than ten servings or applications and must not exceed five hundred total milligrams of active THC.

(e) High THC compliant products must be labeled "Chapter 246-70 WAC Compliant - High THC" and must use the logo found in WAC 246-70-090 to indicate compliance with this chapter.

(f) High THC compliant products may be purchased only by qualifying patients age eighteen and older and designated providers who are entered into the data base and hold a valid recognition card.

(g) High THC compliant products may be sold only at retail outlets with a medical marijuana endorsement.

(3) High CBD.

(a) "High CBD compliant product" means any marijuana product, except usable marijuana or other plant material intended for smoking, approved by the WSLCB, including edibles, meeting the requirements of this chapter and containing the following ratios:

(i) Marijuana extracts containing not more than two percent THC concentration and at least twenty-five times more CBD concentration by weight.

(ii) Marijuana-infused edible products containing not more than two milligrams of active THC and at least five times more CBD per serving by weight for solids or volume for liquids.

(iii) Marijuana-infused topical products containing at least five times more CBD concentration than THC concentration.

(b) High CBD compliant products must be labeled "Chapter 246-70 WAC Compliant - High CBD" and must use the logo found in WAC 246-70-090 to indicate compliance with this chapter.

(c) High CBD compliant products may be purchased by any adult age twenty-one or older, and qualifying patients between the ages of eighteen and twenty who are entered into the data base and hold a valid recognition card.

(d) High CBD compliant products may be sold at retail outlets and retail outlets with a medical marijuana endorsement.

NEW SECTION

WAC 246-70-050 Quality assurance testing. (1) Testing. In addition to the tests required under WAC 314-55-102, the following tests shall be performed at the intervals indicated by a third-party testing lab certified by the WSLCB:

(a) Pesticide screening and heavy metal screening are required at the time of harvest for all marijuana flowers, trim, leaves, or other plant matter.

(i) Minimum sample size is three grams for every three pounds of harvested product.

(ii) Harvest amounts will be rounded up to the next three-pound interval. For example, a harvest of less than three pounds requires at least three grams for testing; a harvest of three or more pounds but less than six pounds requires at least six grams for testing.

(b) Mycotoxin screening is required whenever microbial testing for any marijuana product is required by the WSLCB.

(c) In addition to the pesticide screening required in subsection (1)(a) of this section, additional pesticide screening is required for:

(i) Each batch of finished concentrates and extracts; and

(ii) Any imported cannabinoid intended for use in a marijuana product.

The minimum sample size for each batch of finished concentrates and extracts is two grams. The sample size for imported cannabinoids is one percent of the product as packaged by the manufacturer of the imported cannabinoid but in no case shall the sample be less than two grams.

(d) In addition to the heavy metal screening required in (a) of this subsection, additional heavy metal screening is required for any imported cannabinoid intended for use in a marijuana product. The sample size for imported cannabinoids is one percent of the product as packaged by the manufacturer of the imported cannabinoid but in no case shall the sample be less than two grams.

(e) Licensed marijuana producers, licensed marijuana processors, and certified third-party labs must follow the sampling protocols in chapter 314-55 WAC.

(2) Pesticide screening.

(a) Only allowed pesticides shall be used in the production, processing, and handling of marijuana. Pesticide use must be consistent with the manufacturer's label requirements.

(b) Certified third-party labs must screen for any pesticides that are not allowed and are designated as having the potential for misuse on a list created, maintained, and periodically updated by the department in consultation with the Washington state department of agriculture and the WSLCB. Certified third-party labs must also screen for pyrethrins and piperonyl butoxide (PBO) in samples of finished concentrates and extracts.

(c) For purposes of the pesticide screening:

(i) A sample of any marijuana product shall be deemed to have failed if a pesticide that is not allowed is detected in any measurable and positively verified amount.

(ii) A sample of finished concentrate or extract shall be deemed to have failed if more than 1.0 ppm of allowed pyrethrins or 2.0 ppm of piperonyl butoxide (PBO) is detected.

(d) A harvest or batch deemed to have failed pesticide screening must be destroyed. Marijuana flowers, trim, leaves, or other plant matter deemed to have failed pesticide screening must not be used to create extracts or concentrates. Imported cannabinoids deemed to have failed pesticide screening must not be added to any marijuana product.

(e) Pesticides containing allowed pyrethrins or piperonyl butoxide (PBO) may not be applied less than seven days prior to harvest.

(f) All individuals applying pesticides shall adhere to the agricultural use requirements on the label. Pesticide applications that do not follow the pesticide product label may pose risks to public health and safety and are a violation of chapter 15.58 RCW.

(3) Heavy metal screening.

(a) For the purposes of heavy metal screening, a sample shall be deemed to have passed if it meets the following standards:

Metal	Limit, µg/daily dose (5 grams)
Inorganic arsenic	10.0
Cadmium	4.1
Lead	6.0
Mercury	2.0

(b) A harvest deemed to have failed heavy metal screening must be destroyed. Marijuana flowers, trim, leaves, or other plant matter deemed to have failed heavy metal screening must not be used to create extracts or concentrates. Imported cannabinoids deemed to have failed heavy metal screening must not be added to any marijuana product.

(4) For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	Specification
The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2	<20 μG/kg of substance
Ochratoxin A	<20 μG/kg of substance

(5) Terpenes.

(a) Terpene analysis is not required. If terpene content is listed on product packaging or label, a terpene analysis from a certified third-party lab must be available for review by the consumer upon request.

(b) The addition of any terpene to useable marijuana is prohibited. Only the following terpenes may be added to a marijuana product other than useable marijuana.

(i) Terpenes naturally occurring in marijuana; or

(ii) Terpenes permitted or generally recognized as safe by, and used in accordance with, 21 C.F.R., Chapter I, subchapter B.

NEW SECTION

WAC 246-70-060 Compliant product labeling. (1) Products meeting the requirements of this chapter must be readily identifiable to the consumer by placement on the product's label of the appropriate logo found in WAC 246-70-090. A logo must be used in compliance with this chapter and any guidance for use developed by the department. A logo may not be used on any object or merchandise other than a compliant marijuana product. A logo used in accordance with this chapter must be printed in either black or dark blue.

(2) Labels for compliant products must not:

(a) Use any word(s), symbol, or image commonly used in or by medical or pharmaceutical professions including, but not limited to: Depiction of a caduceus, staff of Asclepius, bowl of Hygieia, or mortar and pestle; or use of the word "prescription" or letters "RX";

(b) State or imply any specific medical or therapeutic benefit; or

(c) Mimic a brand of over-the-counter or legend drug.

(3) The label must prominently display the following statement: "This product is not approved by the FDA to treat, cure, or prevent any disease."

(4) Only marijuana products complying with this chapter may use a logo found in WAC 246-70-090. Marijuana products that use a logo but do not meet the requirements in this chapter will be reported to the WSLCB.

NEW SECTION

WAC 246-70-070 Compliant product safe handling. (1) Marijuana processors shall ensure all processing facilities that create or handle marijuana-infused products are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(2) Marijuana processors that do not create or handle marijuana-infused products and all marijuana producers shall adopt and enforce policies and procedures to ensure that operations involving the growing, receiving, inspecting, transporting, segregating, preparing, production, packaging, and storing of marijuana or marijuana products are conducted in accordance with adequate sanitation principles including:

(a) Any person who, by medical examination or supervisory observation, is shown to have, or appears to have, an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination for whom there is a reasonable possibility of contact with marijuana, marijuana plants, or marijuana products shall be excluded from any operations that may be expected to result in microbial contamination until the condition is corrected.

(b) Hand-washing facilities must be available and furnished with running water. Hand-washing facilities shall be located in the permitted premises and where good sanitary practices require employees to wash or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices.

(c) All persons working in direct contact with marijuana, marijuana plants, or marijuana products must conform to hygienic practices while on duty including, but not limited to:

(i) Maintaining personal cleanliness;

(ii) Washing hands thoroughly in hand-washing areas before starting work and at any other time when the hands may have become soiled or contaminated;

(iii) Refraining from having direct contact with marijuana, marijuana plants, or marijuana products if the person has or may have an illness, open lesion, including boils, sores or infected wounds, or any other abnormal source of microbial contamination, until the condition is corrected.

(d) Litter and waste are properly removed and the operating systems for waste disposal are maintained in a manner so that they do not constitute a source of contamination in areas where marijuana, marijuana plants, or marijuana products may be exposed.

(e) Floors, walls and ceilings are constructed in such a manner that they may be adequately cleaned and kept clean and in good repair.

(f) There is adequate lighting in all areas where marijuana, marijuana plants, or marijuana products are stored and where equipment or utensils are cleaned.

(g) There is adequate screening or other protection against the entry of pests. Rubbish must be disposed of so as to minimize the development of odor and minimize the potential for the waste becoming an attractant, harborage, or breeding place for pests.

(h) Any buildings, fixtures, and other facilities are maintained in a sanitary condition.

(i) Toxic cleaning compounds, sanitizing agents, and solvents used in the production of marijuana concentrates must be identified, held and stored in a manner that protects against contamination of marijuana, marijuana plants, and

marijuana products, and in a manner that is in accordance with any applicable local, state, or federal law, rule, regulation, or ordinance.

(j) All contact surfaces, including utensils and equipment used for the preparation of marijuana, marijuana plants, or marijuana products must be cleaned and sanitized regularly to protect against contamination. Equipment and utensils must be designed and be of such material and workmanship as to be adequately cleanable, and must be properly maintained. Sanitizing agents must be used in accordance with labeled instructions.

(k) The water supply must be sufficient for the operations and capable of providing a safe, potable, and adequate supply of water to meet the facility's needs. Each facility must provide its employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair.

NEW SECTION

WAC 246-70-080 Employee training. (1) Marijuana producers, processors and retailers that create, handle, or sell compliant marijuana products shall adopt and enforce policies and procedures to ensure employees and volunteers receive training about the requirements of this chapter.

(2) Marijuana retailers holding a medical marijuana endorsement shall also adopt and enforce policies and procedures to ensure employees and volunteers receive training about:

(a) Procedures regarding the recognition of valid authorizations and the use of equipment to enter qualifying patients and designated providers into the medical marijuana authorization data base;

(b) Identification of valid recognition cards;

(c) Adherence to confidentiality requirements; and

(d) Science-based information about cannabinoids, strains, varieties, THC concentration, CBD concentration, and THC to CBD ratios of marijuana concentrates, usable marijuana, and marijuana-infused products available for sale when assisting qualifying patients and designated providers at the retail outlet.

(3) Nothing in subsection (2) of this section allows any owner, employee, or volunteer to:

(a) Perform the duties of a medical marijuana consultant or represent themselves as a medical marijuana consultant unless the person holds a valid certificate issued by the secretary under chapter 246-72 WAC;

(b) Offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by use of marijuana products or any other means or instrumentality; or

(c) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of marijuana or marijuana products.

NEW SECTION

WAC 246-70-090 Marijuana product compliant logos.

WSR 16-05-084
PROPOSED RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed February 16, 2016, 11:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-13-133.

Title of Rule and Other Identifying Information: WAC 246-817-120 Examination content, the dental quality assurance commission (commission) is proposing rule modification to clarify and add acceptable examinations for dentist licensure.

Hearing Location(s): Courtyard Marriott Hotel, 480 Columbia Point Drive, Richland, WA 99352, on April 22, 2016, at 8:05 a.m.

Date of Intended Adoption: April 22, 2016.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by April 18, 2016.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by April 18, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule reflects the new name of an organization that has changed its name. Additionally, the proposed rule details the examination subject content required to obtain a dentist license and indicates other states and Canada clinical examinations are acceptable.

Reasons Supporting Proposal: The rule modification is needed to update the name of an organization that has changed its name. The commission also wants to be certain that examination subject content are identified and has proposed accepting clinical examinations from other states and Canada. The proposed rule modifications will clearly identify acceptable clinical examinations and what the examinations must contain.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.

Statute Being Implemented: RCW 18.32.040.

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

Name of Proponent: Washington state dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4893.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

February 16, 2016
Charles Hall, D.D.S., Chair
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 08-23-019, filed 11/6/08, effective 12/7/08)

WAC 246-817-120 Examination content. (1) An applicant seeking licensure in Washington by examination, must successfully complete a written and practical examination approved by the ((~~DQAC~~)) Dental Quality Assurance Commission (commission).

(((~~1~~))) The examination will consist of:

(a) A written examination. Only the National Board ((~~exam~~)) Dental Examination Parts I and II, or the Canadian National Dental Examining Board examination will be accepted, except as provided in (((~~c~~))) subsection (4) of this ((~~subsection~~)) section.

(b) A practical/practice examination((~~:~~

~~(i) The DQAC will accept~~)) containing at least the following sections:

(i) Restorative;

(ii) Endodontic;

(iii) Periodontal;

(iv) Prosthodontic; and

(v) Comprehensive treatment planning or diagnostic skills.

(2)(a) The commission accepts the following practical/practice examinations provided the testing agency offers at least the sections listed in subsection (1)(b) of this section and the candidate tests in those same sections:

(i) The Western Regional Examining Board's (WREB) clinical examination ((~~as meeting its examination standard after January 1, 1995. The results of the WREB examination will be accepted for five years immediately preceding application for state licensure; or~~

~~(ii) The DQAC accepts~~));

(ii) The Central Regional Dental Testing Services (CRDTS) clinical examination ((~~as meeting its examination standard as of November 2001. The results of the CRDTS examination will be accepted for five years immediately preceding application for state licensure; or~~

~~(iii) The DQAC accepts the results of the~~));

(iii) The Commission on Dental Competency Assessments (CDCA) formally known as Northeast Regional Board (NERB) ((~~and the Southern Regional Testing Agency (SRTA)~~)) clinical examination((~~s as meeting its examination standard as of January 2006. The results of the NERB and SRTA examinations will be accepted for five years immediately preceding application for state licensure; or~~

~~(iv) The DQAC will consider acceptance of the examination results from candidates who pass the final portions of~~));

(iv) The Southern Regional Testing Agency (SRTA) clinical examination;

(v) The Council of Interstate Testing Agency's (CITA) clinical examination ((~~after January 1, 2006; or~~

~~(v) The DQAC will consider acceptance of the~~));

(vi) Examination results of ((~~those states~~)) a U.S. state or territory with an individual state board clinical examination((~~s after September 30, 2006.~~

~~(c) The DQAC~~)); or

(b) The commission will consider acceptance of the complete National Dental Examining Board (NDEB) of Canada clinical examination as meeting its standards if the applicant is a graduate of an approved dental school defined in WAC 246-817-110 (2)(a).

(3) The commission will only accept results of approved practical/practice examinations taken within the preceeding five years from the date of an application for licensure.

(4) The commission may, at its discretion, give or require an examination in any other subject under ((~~(a) and (b) of this~~)) subsection (1)(a) and (b) of this section, whether in written or practical form or both written and practical.

(((~~(2) An applicant for the practical/practice examination may obtain an application directly from the relevant regional testing agency, or individual state board.~~)))

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 16-05-085
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Consumer Services Division)

[Filed February 16, 2016, 12:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-029.

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 March 22, 2016, at 9-11 a.m.

Date of Intended Adoption: March 30, 2016.

Submit Written Comments to: Sara Rietcheck, 150 Israel Road S.W., P.O. Box 41200, Olympia, WA 98504-1200, e-mail sara.rietcheck@dfi.wa.gov, fax (360) 586-5068, by March 14, 2016.

Assistance for Persons with Disabilities: Contact Sara Rietcheck by March 14, 2016, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules must be amended to implement changes to the law, to aid the regulated industries by having consistent rules within the mortgage marketplace, and to make technical changes for clarity and consistency.

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 Guidelines 3.a. and e. dated 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: Charles Clark, 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.

February 16, 2016
Charles Clark, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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 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, social media, instant messages, or electronic bulletin boards.

"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. Part 1026 (((~~formerly 12 C.F.R. Section 226) et seq.~~))), implementing the Truth in Lending Act.

"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~~)) Part 103.

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

"Borrower." See WAC 208-620-011.

"Business day" means Monday through Friday excluding federally recognized bank holidays.

"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. Part 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. ((~~§~~)) Sec. 1735f-7a.

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

"Dwelling" means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. Sec. 1026.2.

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

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

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. ((~~section~~)) Sec. 1692, 12 C.F.R. Part 1006.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, National Credit Union Administration, Federal Deposit Insurance Corporation, and Consumer Financial Protection Bureau.

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. ((~~section~~)) Sec. 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~~)) Secs. 2801 through 2810 and 12 C.F.R. 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 or exempt 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 NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID

12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

"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." See WAC 208-620-011.

"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. 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. An individual "offers or negotiates terms of a residential mortgage loan for compensation or gain" if the individual:

(a) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms;

(b) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or

(c) Recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower; and

(d) Receives or expects to receive payment of money or anything of value in connection with the activities described under the definitions of "mortage loan originator" or "loan originator" of this section or as a result of any residential mortgage loan terms entered into as a result of such activities.

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 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.

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

"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 prop-

erty; (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~~)) Secs. 2601 et seq., and Regulation X, 12 C.F.R. Part 1024 (((~~formerly 24 C.F.R. Part 3500~~))).

"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 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." See WAC ((~~208-620-045~~)) 208-620-011.

"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." See WAC 208-620-011.

"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 loan documents~~)) See WAC 208-620-011.

"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. ((~~§~~)) Sec. 6101 to 6108.

"((~~Telephone~~)) Telemarketing 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~~)) Secs. 1601 et seq., and Regulation Z, 12 C.F.R. Part 1026 (((~~formerly 12 C.F.R. Part 226~~))).

"Unique identifier" means a number or other identifier assigned by protocols established by the NMLS.

"Underwriter." See WAC 208-620-011.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-011 How does the department interpret certain definitions in RCW 31.04.015((~~(28)~~))? "Borrower" means an individual 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 or a residential mortgage loan modification, regardless of whether the individual actually obtains a loan or residential mortgage loan modification.

"Loan processor" or **"underwriter"** means an individual who performs clerical or support duties as an employee (not as an independent contractor) of a person licensed or exempt from licensing and at the direction of and subject to

the supervision and instruction of an individual licensed, or exempt from licensing, under this chapter. A residential mortgage loan processor or underwriter engaged as an independent contractor by a licensee must hold a mortgage loan originator license.

"Residential mortgage loan modification services" means activities conducted for compensation or gain by ((~~individuals or entities~~)) persons 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~~)) person performing mortgage loan modification services or to a residential mortgage loan servicer.

"Service" or **"servicing a loan"** means, with respect to residential mortgage loans:

(a) 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;

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

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

(d) Otherwise finalizing collection through the foreclosure process.

"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. Interest may not be compounded or payable in advance.

(a) ((~~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. Interest must not be payable in advance.~~

~~(b) For residential mortgage loans,~~)) Each payment must be applied as directed in the loan documents. No more than forty-five days of prepaid interest may be collected at the time of the loan closing.

(((~~(c)~~))) (b) The prohibition on compounding interest does not apply to reverse mortgage loans made in compliance with the Washington State Reverse Mortgage Act within this chapter.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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

(2) Under RCW 31.04.025 (2)(c), entities conducting transactions under chapter 63.14 RCW (Retail installment sales of goods and services); however, the entity is not exempt if the transactions are an extension of credit to purchase merchandise certificates, coupons, open or closed loop stored value, or any other item issued and redeemable by a retail seller other than the entity extending the credit.

(3) 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~~)) dwelling.

(4) Under RCW 31.04.025 (2)(f), a person selling property they own, that does not contain a dwelling, when the property serves as security for the financing. The exemption is not available to individuals subject to the federal S.A.F.E. Act or any person in the business of constructing or acting as a contractor for the construction of residential dwellings. See also WAC 208-620-232.

(5) Under RCW 31.04.025 (2)(((~~i~~))) (j), 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.

(6) Under RCW 31.04.025(3), individuals who make loans or extend credit, secured or unsecured, to immediate family members.

(7) Under RCW 31.04.025(3), individuals who extend credit on the sale of their primary dwelling.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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 or any individual required to be registered while employed by a covered financial institution as defined in regulation G, 12 C.F.R. Sec. 1007.102;

(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;

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

(7) Individuals employed by a licensed residential mortgage loan servicing company engaging in activities related to servicing, unless licensing is required by federal law or regulation.

(8) See also WAC 208-620-232.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-231 ((~~Which companies~~)) Who must have a consumer loan license to service residential mortgage loans secured by Washington residential real estate or obligating Washington residents? (1) ((~~Companies~~)) Persons servicing loans they originated.

(2) ((~~Companies~~)) Persons servicing loans purchased post closing.

(3) ((~~Companies~~)) Persons servicing loans owned by other ((~~companies~~)) persons.

(4) You must comply with the annual assessment requirements for your residential mortgage loan servicing activity. See WAC 208-620-440.

(5) See also WAC ((~~208-620-106~~)) 208-620-104.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-232 Can I make a small number of residential mortgage loans without being licensed at the company level? Pursuant to RCW 31.04.025(3) you may be eligible to make five or fewer residential mortgage loans during a calendar year without holding a company level license if you are not subject to licensing as a mortgage loan originator. See WAC 208-620-105. If you are eligible for the license waiver you must comply with ((~~the following~~)) certain conditions including the following:

(1) If you do not provide the borrower with a compliant federal disclosure of the loan terms and conditions and cost of financing you must provide the buyer with a disclosure prescribed by the director.

(2) You must comply with the state's usury rate limit. See chapter 19.52 RCW.

(3) You must follow Washington law if you pursue a foreclosure.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-234 Must a company that provides loan processing or underwriting services on residential mortgage loans be licensed under the Consumer Loan Act? Yes. (1) The company must license at the company level and must employ at least one licensed mortgage loan originator. Loan processors and underwriters are subject to the individual licensing requirements of the S.A.F.E. Act, 12 C.F.R. Part 1008 (Regulation H) if not supervised by an individual licensed as a mortgage loan originator under S.A.F.E. A company level license is required to provide the sponsorship for the supervising licensed mortgage loan originator.

(2) Alternatively, the company may license under the Mortgage Broker Practices Act, chapter 19.146 RCW.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-240 Once I am licensed, does the act apply to all loans I broker or make? Yes. All loans you broker or make to Washington residents, secured and unsecured, are subject to the authority and restrictions of the act including the provisions relating to the calculation of the annual assessment.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-271 Do I need a license to assist a ((~~borrower~~)) homeowner 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~~)) 208-620-552 and 208-620-568.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-300 If I want to operate my business from more than one office, do I have to license each location? Yes. You must submit a branch office application through the NMLS for each branch office, residential mortgage loan servicing location, or direct solicitation location. You must provide evidence of surety bond coverage for each branch and meet all other license requirements. ((~~See also WAC 208-620-252~~)) You may not operate until a license is granted for that location.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-301 If I make residential mortgage loans and employ managers, must they license individually as mortgage loan originators? Your managers, including branch managers, must license individually as mortgage loan originators if they conduct the following activities:

(1) Take residential mortgage loan applications, negotiate the terms or conditions of residential mortgage loans, or hold themselves out as being able to conduct these activities;

(2) Supervise your loan processor or underwriting employees; or

(3) Supervise your licensed mortgage loan originators.

(4) Specifically:

(a) Any manager or any person who takes a residential mortgage loan application in Washington, negotiates the terms or conditions of a residential mortgage loan on Washington property, or holds themselves out as being able to conduct those activities, must have a Washington mortgage loan originator license. Washington licensed loan originators must work from a licensed location.

(b) Any manager who directly supervises loan processor or underwriting employees must hold a mortgage loan originator license. The loan originator license can be from any state. Washington licensed loan originators must work from a licensed location.

(c) Any manager who directly supervises Washington licensed mortgage loan originators must themselves hold a Washington loan originator license. Washington licensed loan originators must work from a licensed location.

(5) As to subsections (2) and (3) of this section licensure is for the day-to-day operational supervisors.

(6) Supervisory plans must be written. The details of the plan and how it is implemented must include consideration of the location of the supervisor and employees supervised, the number of employees supervised, and the volume of work performed by the supervised employees. Supervisory plans must be maintained as part of the business books and records.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-310 Is it necessary to license an office that is only providing underwriting and other back-office services? A location that is solely providing loan processing or underwriting or other back-office services on Washington loans and has only incidental contact with the borrower after an application has been taken, is not required to be licensed. Back office services do not include loan servicing. However, any location where a licensed mortgage loan originator works must be licensed. Also, your company's main office (headquarters), wherever located, must be licensed.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

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 and on the form prescribed ((~~each year during the annual assessment period~~)) by the director.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-371 May I employ someone to work with Washington residents or Washington property who has been convicted of a gross misdemeanor or felony, or who has had a lending-related license revoked or suspended? No. (1) Pursuant to RCW 31.04.093(6), the director may prohibit any officer, principal, or employee from participating in the affairs of any licensee if that officer, principal, or employee has been convicted of or pled guilty or nolo ((~~contendre [contendere]~~)) contendere to:

(a) A gross misdemeanor involving dishonesty or financial misconduct; or

(b) A felony in a domestic, foreign, or military court:

(((~~(a)~~))) (i) During the seven-year period preceding the date of the proposed employment; or

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

(2) For purposes of this section, "((~~participation~~)) participating in the affairs of any licensee" means an officer, principal, or employee or independent contractor who will or does originate loans, supervise employees or independent contractors, or manage the loan production or other activities of the licensee.

(3) Additionally, the director may prohibit participation in the affairs of the licensee by any officer, principal, or employee or independent contractor, or person subject to the act, who has had a license to engage in lending, or performance of a settlement service related to lending, including loan modifications, revoked or suspended in this state or any state.

(4) The department considers it to be a deceptive practice in violation of RCW 31.04.027(2) for any licensee to employ an officer, principal, or employee or independent contractor to conduct any of the activities described in subsection (3) of this section without first conducting a background check.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

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

(2) If you originate residential mortgage loans, you must comply with RESPA ((~~(~~)), 12 C.F.R. Sec. 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 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-420 May I transact my company business in a name other than the name on my company license? (1) You may only transact business using the name on the license or as further described in this section.

(2) You may apply to the department to add a trade or doing business as (DBA) name to your main office license but you may not use the DBA alone to transact business. DBA names will only be attached to the main office license. Branch offices cannot have DBAs attached to the branch office license. The director may deny an application for a proposed DBA name if the proposed DBA name is similar to a currently existing licensee name.

(3) If you transact business using a DBA you must use either the main office license number or main office ((~~license~~)) name as entered in the NMLS with the DBA. See also WAC 208-620-620, 208-620-621 and 208-620-622.

(4) Reserved.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-490 What are my reporting responsibilities when something of significance happens to my business? (1) **Prior notification required.** You must amend your NMLS record at least ten days prior to a change of your:

(a) Principal place of business or any of branch offices;

(b) Name or legal status (e.g., from sole proprietor to corporation, etc.);

(c) Name and mailing address of your registered agent if you are located outside the state;

(d) Legal or trade name; or

(e) ((~~A change of~~)) Ownership control of ten percent or more; or

(f) A closure or surrender of the license. See WAC 208-620-499.

(2) **Post notification within ten days.** You must amend your NMLS record within ten days after an occurrence of any of the following:

(a) A change in mailing address, telephone number, fax number, or e-mail address;

(b) A cancellation or expiration of your Washington state business license;

(c) A change in standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(d) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340. See WAC 208-620-360;

(e) Receipt of notification of cancellation of your surety bond;

(f) Termination of sponsorship of loan originator; ((~~or~~))

(g) Receipt of notification of a claim against your bond;

(h) A change in primary company contact or primary consumer complaint contact; or

(i) A change in your response to a disclosure question within NMLS. You must upload the document that is the basis for your changed response.

(3) **Post notification within twenty days.** You must amend your NMLS record within twenty days after the occurrence of any of the following developments:

(a) Receipt of notification of license revocation procedures against your license in any state;

(b) 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;

(c) Conviction of you or any officer, director, or principal for a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(d) The filing of any material litigation against the company.

(4) See WAC 208-620-499 for the requirements when you close your business.

(5) Within forty-five days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-620-573.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

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 and programs that apply to lending or brokering loans ((~~when applicable to the transaction~~)), or servicing residential mortgage loans, including applicable reverse mortgage 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 Telemarketing Sales Rule, and the Mortgage Acts and Practices - Advertising statute, Regulation N, 12 C.F.R. Part 1014.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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~~)) federal good faith estimate or loan estimate is considered compliance.

(b) If a rate lock agreement has been entered into, you must disclose to the borrower whether the rate lock agreement is guaranteed and if so, if guaranteed by a company other than your company, you must provide the name of that company, 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 date of the rate lock and 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 and conditions of the rate lock agreement; and

(v) The date the rate lock agreement was provided to the borrower.

(c) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within three business days of the rate lock date that includes the items from (b) of this subsection.

(d) You must disclose payment of a rate lock fee as a cost ((~~in Block~~)) on page 2 of the federal GFE or loan estimate under origination charges. On the federal HUD-1 or closing disclosure, the cost ((~~of~~)) or credit for the rate lock must be recorded on ((~~Line 802 and the credit must be recorded in section 204-209~~)) page 2 under origination charges either in the borrower-paid or paid by others column.

(e) You may rely on a broker's rate lock agreement if it complies with this subsection.

(4) **Residential mortgage loans—Loans brokered to other creditors.** Within three business days following receipt of a residential mortgage loan application you must provide to each borrower or potential 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~~)) federal good faith estimate ((~~is in~~)) or loan estimate is considered compliance with ((~~subsection (3)(a) of~~)) this subsection;

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

(c) A good faith estimate or loan estimate that conforms with RESPA, Regulation X, 12 C.F.R. Part 1024 and TILA, Regulation Z, 12 C.F.R. Part 1016;

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

~~(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 if so, the name of the company providing the guarantee, 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 date of the rate lock and 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~~)) The date the rate lock was provided to the borrower; and

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

(ii) If the borrower wants to lock the rate after the initial disclosure, you must provide a rate lock agreement within three business days of the rate lock date. The rate lock agreement must include the items from ((~~(e)~~)) (d) of this subsection.

((~~(f)~~)) (e) You must disclose payment of a rate lock fee as a cost ((~~in Block~~)) on page 2 of the federal GFE or loan estimate under origination charges. On the federal HUD-1 or closing disclosure, the cost ((~~of~~)) or credit for the rate lock must be recorded on ((~~Line 802 and the credit must be recorded in section 204-209~~)) page 2 under origination charges either in the borrower-paid or paid by others column.

(f) You may rely on a lender's rate lock agreement if it is in compliance with this subsection.

(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 12-18-047, filed 8/29/12, effective 11/1/12)

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~~)) 1026, 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)~~)) Part 1024 and Truth in Lending Act, Regulation Z, 12 C.F.R. Part 1026 model forms is considered compliance with the disclosure requirements of this section.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-515 What authority do I have ((~~as a licensee~~)) after my license has been issued? ((~~As a licensee~~)) Once your license has been issued 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 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-520 How long must I maintain my records under the Consumer Loan Act? What are the records I must maintain? Licensees must maintain the following records for a minimum of three years, or the period of time required by federal law whichever is longer, after making the final entry on a loan at a licensed location.

(1) **General records.** Each licensee must maintain ((~~the~~)) electronic or hard copy books, accounts, records, papers, documents, files, and other information relevant to ((~~a~~)) making loans or servicing ((~~of a~~)) residential mortgage loans ((~~for a minimum of three years, or the period of time required by federal law, whichever is longer, after making the final entry on that loan at a licensed location~~)).

(2) **Advertising records.** These records include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any electronic advertising distributed ((~~directly by delivery,~~)) by facsimile ((~~or~~)) computer, or other electronic or wireless 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~~)) or loan estimate or other Truth in Lending Act disclosures, Equal Credit Opportunity Act disclosures, and affiliated business arrangement and other disclosures((~~, and RESPA servicing disclosure statement~~)) under RESPA;

(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 or federal closing disclosure);

(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;

(n) All documents used to support the underwriting approval; and

(o) All documents that evidence a financial commitment made to protect a rate of interest during a rate lock period.

(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 208-620-531 Must I have a ((~~records disaster recovery and information security~~)) business resumption plan? Yes. You must have written policies and procedures in place that detail your response to any event that results in damage to or destruction ((~~to~~)) of your records. You must maintain the policies and procedures as part of your books and records.

NEW SECTION

WAC 208-620-532 Records disposal. Licensees must have written policies and procedures for the destruction of records, including electronic records, when the retention period ends. The destruction of records must be accomplished so that the information cannot be reconstructed or read. The destruction of consumer credit report information must also comply with the federal disposal rule at 16 C.F.R. Part 682.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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~~)) seven 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) Collecting more than forty-five days of prepaid interest at the time of loan closing;

(4) 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;

(5) **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;

(6) 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;

(7) 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;

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

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

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

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

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

(13) 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;

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

(15) 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;

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

(17) 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;

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

(19) Charging a fee in a residential mortgage loan transaction that is more than the fees allowed by the state or federal agency overseeing the specific type of loan transaction. Examples include, but are not limited to, loans insured or guaranteed by the Veterans Administration, Home Equity Conversion Mortgages insured by HUD, and loans offered through the United States Department of Agriculture Rural Development.

(20) 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.

(21) Servicing a usurious loan.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-555 What fees are allowed and when can they be collected from the borrower under the Consumer Loan Act? (1) Residential mortgage loans. This subsection does not apply to first lien residential mortgage loans originated by lenders who are creditors as defined in the Truth in Lending Act, 15 U.S.C. 1601 and Regulation Z, 12 C.F.R. 1026.

(a) Origination fees. You may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(b) Brokering fees. When agreed to in writing by the borrower, a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee.

(c) Third-party fees. The only third-party fee you may collect from the borrower before a loan is closed is the appraisal fee. You may collect from the borrower reimbursement for fees you actually and properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender. You must provide a copy of the appraisal to the borrower even if you do not receive reimbursement for the cost of the appraisal.

(2) Nonmortgage loans. You may charge a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan.

(3) Third-party fees. This subsection applies to residential and nonresidential lending.

(a) When agreed to in writing by the borrower, you may collect from the borrower at closing reimbursement for fees you paid to third-party service providers who provided goods or services in connection with the preparation of the borrower's loan. Such third-party service providers include, but are not limited to, credit reporting agencies, title companies, ((~~appraisers,~~)) structural and pest inspectors, and escrow companies. The actual cost of such fees may be included in the amount of the loan.

(b) You must not charge or collect any fee to be paid to a third-party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid.

(c) You may use a borrower's credit card information for payment of the credit report or appraisal when paid directly to the third-party service provider.

(d) You may charge a nonrefundable rate lock fee when agreed to in writing by the borrower. The fee may be retained if the borrower breaks the rate lock agreement and you are making the loan, if you have paid a third party for the interest rate lock, or if you have otherwise made a financial commitment to protect the rate during the lock period. The fee may not be retained if the borrower rescinds the loan under Regulation Z, if the borrower does not qualify for a loan, or if the loan is denied based on the property appraisal. See also WAC 208-620-510(3).

((~~(e)~~)) (4) Late payment penalties. ((~~Not~~)) You may not charge more than ten percent of any installment payment delinquent ten days or more.

((~~(f)~~)) (5) Attorneys' fees. You may charge reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not ((~~a~~)) your salaried employee ((~~of the licensee.~~

~~(4)~~)).

(6) The fees allowed in subsection (3)(d) of this section must be included in the loan origination fee calculations described in subsections (1) and (2) of this section.

INFORMATION SECURITY

NEW SECTION

WAC 208-620-571 Information security program required by the federal Safeguards Rule implementing the Gramm-Leach-Bliley Act. (1) Generally, applicants and licensees must have a written program appropriate to the company's size and complexity, the activity conducted, and the sensitivity of information at issue. The program must ensure the information's security and confidentiality, protect against anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of the information.

(2) Specifically, at a minimum the plan described in subsection (1) of this section must:

(a) Designate an employee or employees to coordinate the information security program;

(b) Identify and assess the risks to customer information;

(c) Design and implement information safeguards to control the risks identified in the risk assessment and regularly monitor and test the safeguards;

(d) Select service providers that can maintain appropriate safeguards and oversee their handling of customer information; and

(e) At least annually evaluate and adjust the program in light of relevant circumstances, including changes in business or operations, or the results of testing and monitoring the effectiveness of the implemented safeguards.

(3) The information security plan must be maintained as part of your books and records.

(4) For more information access the FTC web site on the Safeguards Rule at: https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying and see 16 C.F.R. 314.

NEW SECTION

WAC 208-620-572 Consumer financial information privacy under the Gramm-Leach-Bliley Act (Regulation P). (1) Licensees must comply with Regulation P. At a minimum, licensees must:

(a) Provide customers with initial and annual notices regarding their privacy policies. These notices describe whether and how the licensee shares consumers' nonpublic personal information, including personally identifiable financial information, with other entities; and

(b) If licensees share certain customer information with particular types of third parties, the institutions are also required to provide notice to their customers and an opportunity to opt out of the sharing. If a licensee limits its types of sharing to those which do not trigger opt-out rights, it may provide a "simplified" annual privacy notice to its customers that does not include opt-out information. If a licensee's privacy policy has not changed, additional notices may not be required.

(2) See Regulation P at 12 C.F.R. Part 1016 for the required details.

NEW SECTION

WAC 208-620-573 Notice to consumers of data breach. If the licensee's data is compromised, the licensee may be subject to chapter 19.255 RCW and may have to provide notices to consumers whose information was acquired. Under certain circumstances notice of the breach may also be required to the attorney general's office.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-580 As a licensee, will my business be subject to periodic examinations? (1) ((~~You~~)) Licensees can expect to be visited periodically by the department's examiners. The director or designee may examine, wherever located, the records used in the business of every licensee and of every person who is engaged in the consumer loan business, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For that purpose the director or designee shall have free access, at reasonable times during business hours, to the offices and places of business and all books and records of the business.

(2) When directed to do so during an examination ((~~you~~)) licensees must provide information on the characteristics of loan originations in a format prescribed by the director.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-590 How much will I be charged for my ((~~periodic~~)) examinations and when will the payment be due? (1) You will be charged $69.01 per hour for ((~~regular and special~~)) examinations of your records.

(2) If the examination occurs outside of Washington, you will be charged the hourly rate plus travel costs.

(3) You must pay examination costs within thirty days after receiving the invoice to avoid having to pay accrued interest.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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, per violation, 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.

(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.

(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.

(7) The director may collect an investigation fee. Licensees will be charged sixty-nine dollars and one cent per hour for the investigation.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-621 May I advertise over the internet using a URL address that is not my licensed business name? Yes, provided that any URL address you advertise takes the user directly to your main or home web page. If you want the user to be directed to a different main or home web page, the URL address must contain your ((~~license~~)) name as entered in the NMLS in addition to any other names or words in the URL address. URL addresses may be used as DBA names upon request to and approval from DFI. See also WAC 208-620-620 and 208-620-622.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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 as entered in the NMLS and NMLS unique identifier must be displayed on the licensee's main or home web page.

(b) If mortgage loan originators are named, their license numbers must closely 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 as entered in the NMLS, 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 sponsoring licensee's name and license number must also appear on the web page. The web page must also contain the loan originator's ((~~license~~)) name as entered in the NMLS and license number closely following their name and a link to the NMLS consumer access web page for the company. An example of closely following is: Your ((~~license~~)) name as entered in the NMLS followed by your title (if you use one) followed by your license number. See the definition of license number for examples of ways to display your license number. See also WAC 208-620-710(26).

(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 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-630 What are some of the advertising restrictions I must comply with? (1) **Licensees are prohibited from advertising with envelopes or stationery, or ((~~by~~)) using images in an electronic format, that ((~~contain an official-looking emblem~~)) are designed to resemble a government mailing or other method of communication 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 or electronic communications designed to resemble official government communications, such as IRS or U.S. Treasury envelopes, or other government mailers or electronic communications.

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

(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 con-

spicuous. This requirement applies to all mandatory disclosures. The presentation of the disclosure of the APR must be at least equivalent to the presentation of 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 (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. ((§)) Sec. 251.1(g) (2003).

(9) **How can I advertise a discounted rate?** You must clearly and conspicuously disclose in the advertisement at a minimum, the cost of the discount to the borrower and that the rate is discounted. Not including that information is a violation of RCW 31.04.027(7).

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

WAC 208-620-640 What are some of the federal laws I must comply with when I advertise any loan subject to the Consumer Loan Act? You must comply with all the applicable advertising requirements under the federal statutes and regulations including, but not limited to, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Trade Commission Act, the Telemarketing and Consumer Fraud and Abuse Act, Mortgage Acts and Practices - Advertising statute, Regulation N, 12 C.F.R. Part 1014, and the Equal Credit Opportunity Act.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

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 NMLS.

(2) **How do I apply for a mortgage loan originator license?** Your application consists of filing an online application through the NMLS and providing Washington specific requirements directly to DFI. You must pay an application fee and filing fee through the NMLS. In addition to supplying the application information, both you and the company intending to sponsor you must be in good standing with the department.

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

(a) Be eighteen years or older.

(b) **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 application.

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

(d) **Complete prelicensing education.** You must complete prelicensing education before submitting an application. See WAC 208-620-720.

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

(f) **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

(g) **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 mortgage 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 a gross misdemeanor involving dishonesty or financial misconduct or has not 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 online application through the NMLS and filing the required information and documentation with the department, the department will notify you of any application deficiencies.

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

(a) Once you have submitted the online application through NMLS you may withdraw the application through NMLS. You will not receive a refund of the 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 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 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 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 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 the core twenty hours of 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 on or before the last day of February 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 (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 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 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. However, evidence that you are licensed as a loan originator must be made available to anyone who requests it.

(24) **Must I include my loan originator license number on any documents?** You must include your license number closely following your ((~~license~~)) name as entered in the NMLS on (a) through (d) of this subsection. An example of closely following is: Your ((~~license~~)) name as entered in the NMLS followed by your title (if you use one) followed by your license number.

(a) Solicitations. This includes correspondence in any form. Correspondence that this not a solicitation does not have to include your license number.

(b) Business cards.

(c) All advertisements and marketing that contain your ((~~license~~)) name as entered in the NMLS.

(d) Any state or federal form that requires your license number. See WAC 208-620-710(26).

(25) **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.

(26) **May I conduct business and advertise under a name other than the name on my loan originator license?** You must use the name on your license when you are conducting business and in your advertisements with the following exceptions:

Except, use of your middle name is not required. Except, you may use only your middle and last name. Except, you may use a nickname as your first name if it is registered in NMLS on your MU4 as an "other" name.

(27) **As a licensed mortgage loan originator, what are my reporting responsibilities?** You must notify the director through amendment to the NMLS within ten business days to a change of:

(a) Answers to the NMLS generated disclosure questions;

(b) Sponsorship status;

(c) Residence address; ((~~or~~))

(d) Any change in the information supplied to the director in your original application; or

(e) A change to your response to a disclosure question within NMLS. You must upload any document that is the basis for your changed response.

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

WAC 208-620-800 What definitions are applicable to ((~~this section~~)) proprietary reverse mortgage products under the act? (1) Advance. A payment from the lender to the borrower.

(2) "FHA-approved reverse mortgage" means a "home equity conversion mortgage" or other reverse mortgage prod-

uct guaranteed or insured by the federal department of Housing and Urban Development.

(3) "Owner-occupied residence" is the borrower's residence and includes a life estate property the legal title for which is held in the name of the borrower in a reverse mortgage transaction or in the name of a trust, provided the occupant of the property is the beneficiary of that trust.

(4) "Proprietary reverse mortgage loan" is any reverse mortgage loan product that is not a home equity conversion mortgage loan or other federally guaranteed or insured loan.

(5) "Reverse mortgage broker or lender" means a licensee under the Washington state Consumer Loan Act, chapter 31.04 RCW, or a person exempt from licensing pursuant to federal law.

(6) "Reverse mortgage loan" means a nonrecourse consumer credit obligation in which:

(a) A mortgage, deed of trust, or equivalent consensual security interest is created in the borrower's dwelling securing one or more advances;

(b) Any principal, interest, or shared appreciation or equity is due and payable, other than in the case of default, only after:

(i) The consumer dies;

(ii) The dwelling is transferred; or

(iii) The consumer ceases to occupy the dwelling as a dwelling; and

(c) The broker or lender is licensed under Washington state law or exempt from licensing under federal law.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

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 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~~)) Part 1026.

(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 13-24-024, filed 11/22/13, effective 1/1/14)

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

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

(a) ((~~Chapters~~)) Chapter 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 the federal Servicemembers Civil Relief Act.

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

(2) Servicing and ownership transfers or sales.

(a) ((~~As to~~)) When acquiring servicing rights from another servicer you must:

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

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

(b) ((~~As to~~)) When transferring or selling the servicing of loans with pending modification requests or trial or permanent modifications you must:

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

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

(iii) Designate the homeowner as a third-party intended beneficiary in any contract for transfer or sale, unless doing so would violate state law or federal 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 as 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. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement. In the event of a conflict between this subsection (3)(c) or (d) of this section immediately following or both, and the requirements of an applicable bankruptcy court order, compliance with the bankruptcy court requirements are considered compliance with the subsections.

(d) When the suspense account contains enough money to make a full 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 any incurred 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. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement.

(f) If you provide monthly or more frequent statements that include the information required under this subsection, you have until January 1, 2013, to program these changes. On and after January 1, 2013, you must be in compliance with this subsection.

(4) Maintenance of the escrow account.

(a)(i) 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.

(ii) At least annually, or upon the borrower's request, 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. You must comply with (a)(ii) of this subsection beginning on January 1, 2013.

(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.

(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, that will change the borrower's escrow payment amount. Examples of changes requiring notification include, but are not limited to, hazard insurance premiums, a reduction in the required reserve amount for the account, or a change in the property's tax assessment.

(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:

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

(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.

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

(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;

(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;

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

(iv) The telephone number and mailing address of 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 during loss mitigation. 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.~~

~~You must comply with (b)(iv) of this subsection beginning on January 1, 2013~~)).

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

(d) 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 (c) of this subsection.

(e) In addition to the statement described in (a) of this 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:

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

(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.

(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.

(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.

(6) Loss mitigation.

(a) The obligation to assign 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 during loss mitigation attaches when the borrower requests loss mitigation. This individual servicer representative must have the authority and ability to perform the following duties:

(i) Explain loss mitigation options and requirements;

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

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

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

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

(b) You must comply with all timelines and requirements for the federal HAMP or GSE modification programs if applicable, 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. You have until April 1, 2013, to develop the system described in (a)(i) of this subsection. On and after April 1, 2013, you must be in compliance with (a)(i) of this subsection.

(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 within thirty days of the denial determination or the mailing of the notice of denial to the borrower, whichever occurs earlier. See (b) of this subsection for additional requirements 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 if 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)~~)) (c) As to borrower appeals of loan modification denials you must:

(i) Give the borrower thirty days from your written notice of denial 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) Respond 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)~~)) (d) When a loan modification is granted, you must provide the borrower with a copy of the fully executed loan modification agreement within thirty days of receipt of the signed agreement from the borrower. A loan modification granted orally must be reduced to a written document with a summary of all of the terms and must be provided to the borrower within thirty days of approval of the loan modification.

((~~(d)~~)) (e) If a loan payment forbearance is granted, you must provide the borrower with, at a minimum, a confirming letter of approval. The letter must contain the essential terms of the forbearance and must contain the name and contact information of specialist who is the borrower's primary or contact with the company.

(f) 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.

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

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

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

(7) 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.

(8) 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.

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

WSR 16-05-086
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 16, 2016, 3:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-01-165.

Title of Rule and Other Identifying Information: Medical aid rules, conversion factors and maximum daily fees, WAC 296-20-135, 296-23-220, and 296-23-230.

Hearing Location(s): Department of Labor and Industries, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on March 23, 2016, at 1:00 p.m.

Date of Intended Adoption: May 3, 2016.

Submit Written Comments to: Emily Stinson, P.O. Box 44322, Olympia, WA 98504-4322, e-mail Emily.Stinson@LNI.wa.gov, fax (360) 902-4249, by 5 p.m. on March 29, 2016.

Assistance for Persons with Disabilities: Contact Emily Stinson by March 16, 2016, TTY (360) 902-6687 or fax (360) 902-4249.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) Changing the conversion factor used to calculate payment levels for services payable through the resource based relative value scale (RBRVS) fee schedule; (2) changing the conversion factor used to calculate payment for anesthesia services; and (3)

increasing the maximum daily payment for physical and occupational therapy.

WAC 296-20-135(3), increase the RBRVS conversion factor from$59.98 to $60.91. Increase the anesthesia conversion factor from $3.38 to $3.41.

WAC 296-23-220 and 296-23-230, increase the maximum daily rate for physical and occupational therapy services from $124.44 to $125.68.

Reasons Supporting Proposal: This rule will provide medical aid updates regarding rate setting for most professional health care services for injured workers.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

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: (1) Increasing the conversion factor used to calculate maximum payment for RBRVS and anesthesia services; and (2) increasing the maximum daily payment for physical and occupational therapy services.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Emily Stinson, Tumwater, Washington, (360) 902-5974; Implementation and Enforcement: Vickie Kennedy, Assistant Director, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule adoption is exempt under RCW 34.05.328 (5)(b)(vi) and 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply because the content of this rule is explicitly dictated by statute and fits within the exceptions listed in RCW 34.05.328 (5)(b)(vi).

February 16, 2016
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 15-09-120, filed 4/21/15, effective 7/1/15)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of $((~~59.98~~)) 61.52. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of $((~~3.38~~)) 3.41 per minute, which is equivalent to $((~~50.70~~)) 51.15 per 15 minutes. The base units and payment policies can be found in the fee schedules.

AMENDATORY SECTION (Amending WSR 15-09-120, filed 4/21/15, effective 7/1/15)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist, a physical therapist assistant serving under the direction of a licensed physical therapist as required in RCW 18.74.180 (3)(a), or a licensed athletic trainer serving under the direction of a licensed physical therapist as required in RCW 18.250.010 (4)(a)(v). In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or $((~~124.44~~)) 125.68 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following twelve treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment

received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 15-09-120, filed 4/21/15, effective 7/1/15)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following twelve treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or $((~~124.44~~)) 125.68 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

WSR 16-05-091
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed February 16, 2016, 4:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-01-154.

Title of Rule and Other Identifying Information: The department is proposing to create WAC 388-493-0010 Working family support.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2), on March 22, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 23, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., March 22, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by March 8, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is needed to implement the working family support program that will provide additional food assistance to qualifying low-income families.

Reasons Supporting Proposal: Implementing this rule will help the department meet the WorkFirst participation rate.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Leslie Kozak, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4589.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses. It only impacts DSHS clients.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

February 11, 2016
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-493-0010 Working family support. (1) What is the working family support (WFS) program?

The working family support program is administered by the department of social and health services (Department) and provides an additional monthly food benefit from May 2016 through September 2016 to low income families who meet specific criteria. Continuance of the program beyond September 30, 2016 is contingent on specific legislative funding for the working family support program.

(2) The following definitions apply to this program:

(a) "Co-parent" means another adult in your home that is related to your qualifying child through birth or adoption.

(b) "Qualifying child" means a child under the age of eighteen who is:

(i) Your child through birth or adoption; or

(ii) Your step child.

(c) "Work" means subsidized or unsubsidized employment or self-employment. To determine self-employment hours, we divide your net self-employment income by the federal minimum wage.

(3) Who is eligible for the working family support program?

You are eligible for working family support food assistance if you meet all of the following:

(a) You receive food assistance through basic food, food assistance program for legal immigrants (FAP), or transitional food assistance (TFA);

(b) Receipt of working family support food assistance would not cause your countable food assistance income to exceed the two hundred percent federal poverty level (FPL);

(c) No one in your food assistance unit receives temporary assistance for needy families (TANF) or state family assistance (SFA);

(d) A qualifying child lives in your home;

(e) You, your spouse, or co-parent, work a minimum of thirty five hours a week;

(i) If you live with your spouse or co-parent, you must be in the same assistance unit;

(f) You provide proof of the number of hours worked; and

(g) You reside in Washington state per WAC 388-468-0005.

(3) How can I apply for working family support?

(a) The department will review your eligibility for the working family support program:

(i) When you apply for food assistance, or

(ii) At the time of your food assistance eligibility review.

(b) You may request the working family support benefit in person, in writing, or by phone at any time.

(4) How long can I receive working family support?

(a) You may recertify up to an additional six months for working family support if you meet the criteria listed above and provide current proof that you, your spouse, or co-parent works a minimum of thirty five hours a week.

(b) Working family support certification ends when:

(i) You complete either a certification or mid-certification review for food assistance under WAC 388-434-0010 or WAC 388-418-0011, and you do not provide proof of the number of hours that you, your spouse, or your co-parent work;

(ii) You no longer receive basic food, FAP, or TFA;

(iii) You receive TANF or SFA;

(iv) You do not have a qualifying child in your home;

(v) You, your spouse, or co-parent, no longer work a minimum of thirty five hours a week; or

(vi) You are no longer a resident of Washington state.

(5) What benefits will I receive if I am eligible for the working family support program?

(a) The assistance unit will receive a separate ten dollars monthly food assistance benefit each month. Working family support benefits are not prorated.

(b) The adults in your assistance unit, who work a minimum of thirty five hours a week, may also be eligible for support services as defined in WAC 388-310-0800(3).

(c) Support services are limited to three thousand dollars per program year, including workfirst support services already received in the same program year.

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

WSR 16-05-092
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Consumer Services Division)

[Filed February 16, 2016, 4:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-062.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-630 WAC) under the Check Cashers and Sellers Act, chapter 31.45 RCW.

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700, on March 28, 2016, at 1:00 - 3:00 p.m.

Date of Intended Adoption: March 30, 2016.

Submit Written Comments to: Sara Rietcheck, 150 Israel Road S.W., P.O. Box 41200, Olympia, WA 98504-1200, e-mail sara.rietcheck@dfi.wa.gov, fax (360) 586-5068, by March 21, 2016.

Assistance for Persons with Disabilities: Contact Sara Rietcheck by March 21, 2016, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules must be amended to aid the regulated industry by putting them on notice of federal laws they must comply with, having consistent rules, and to make technical changes for clarity and consistency.

Reasons Supporting Proposal: These amendments will help the industry understand their compliance requirements. This will in turn enhance consumer protection.

The rules are being amended under the authority of OFM Guidelines 3.a. and e. dated October 12, 2011.

Statutory Authority for Adoption: Chapter 43.320 RCW, RCW 31.45.200.

Statute Being Implemented: Chapter 31.45 RCW.

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

Name of Proponent: Department of financial institutions, 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: Charles Clark, 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.

February 16, 2016
Charles Clark, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 14-24-048, filed 11/25/14, effective 1/1/15)

WAC 208-630-110 What definitions are required to understand these rules? The definitions in RCW 31.45.010 and this section apply throughout this chapter unless the context clearly requires otherwise.

"ACH" means automated clearing house, an electronic network for financial transactions that processes credit and debit transactions.

"Act" means chapter 31.45 RCW.

"Advertise, advertising, and advertising material" means any form of sales or promotional materials used in connection with the 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; internet pages, social media, instant messages, or electronic bulletin boards.

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

"Agent" for purposes of RCW 31.45.079 means a person who engages in the business of making small loans by performing small loan agent services.

"Annual percentage rate" or "APR" means the cost of credit expressed as a yearly rate, determined in accordance with the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.), and Regulation Z (12 C.F.R. Part 1026 et seq.), as amended.

The Office of the Comptroller of the Currency (OCC) has developed an APR calculator (APRWIN) that licensees may download and use without charge. APRWIN is available on the OCC's web site at http://www.occ.treas.gov/aprwin.htm.

"Board director" means a director of a corporation or a person occupying a similar status and performing a similar function with respect to an organization, whether incorporated or unincorporated.

"Check" means the same as defined in RCW 62A.3-104(f) and, for purposes of conducting the business of making small loans, includes other electronic forms of payment, including stored value cards, internet transfers, and automated clearing house transactions.

"Check casher" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other commercial paper serving the same purpose.

"Check seller" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of selling checks, drafts, money orders, or other commercial paper serving the same purpose.

"Close of business" for the purposes of RCW 31.45.86 and these regulations means the actual time a licensee closes for business at the location from which a small loan was originated or 11:59 p.m. Pacific Time, whichever is earlier.

"Default" means:

(a) The borrower's failure to repay a small loan in compliance with the terms contained in the small loan agreement or note; or

(b) Failure to pay any installment plan payment within ten days after the date upon which the installment was scheduled to be paid. See WAC 208-630-556 (12)(b).

"Department" means the department of financial institutions.

"Exempt entity" means a person described in RCW 31.45.020 that is engaged in the business of making small loans.

"Gross monthly income" means an individual's total personal income earned during a month prior to any taxes or deductions.

"Installment plan" is a contract between a licensee and borrower that provides that the loaned amount will be repaid in substantially equal installments scheduled on or after a borrower's pay dates and no less than fourteen days apart.

"Investigation" means an examination undertaken for the purpose of detecting violations of chapter 31.45 RCW or these rules or obtaining information lawfully required under chapter 31.45 RCW or these rules.

"License" means a license issued by the director to engage in the business of check cashing or check selling under the provision of chapter 31.45 RCW.

"Loaned amount" means the outstanding principal balance and any fees authorized under RCW 31.45.073 that have not been paid by the borrower.

"Monetary instrument" means a check, draft, money order or other commercial paper serving the same purpose.

"Paid" means that moment in time when the licensee deposits the borrower's check, accepts cash, or initiates an ACH withdrawal from the borrower's account for the full amount owed on a valid small loan. If the borrower's check is dishonored and returned unpaid by the borrower's bank, the loan is not paid. If an ACH authorization is denied, the loan is not paid.

"Payday advance lender" or "payday lender" means a licensee under this chapter who has obtained a small loan endorsement under RCW 31.45.073.

"Payday advance loan," "payday loan" or "deferred deposit loan" means the same as a small loan.

"Postdated check" means a check delivered prior to its date, generally payable at sight or on presentation on or after the day of its date. "Postdated check" does not include any promise or order made or submitted electronically by a borrower to a licensee.

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

"Small loan" or "loan" means a loan of up to the maximum amount and for a period of time up to the maximum term specified in RCW 31.45.073.

"Small loan agent services" include, but are not limited to:

(a) Marketing and advertising small loans;

(b) Collecting nonpublic personal information from consumers in anticipation of selling the information to potential licensed lenders or other entities providing small loan agent services;

(c) Assisting consumers in completing small loan documentation;

(d) Providing required applicable state and federal disclosures in connection with small loans; and

(e) Collecting on small loans.

Small loan agent services do not include (a) services performed by any person holding a small loan endorsement or (b) collection of small loans by a person licensed under chapter 19.16 RCW or exempt from that chapter or otherwise authorized under Washington law to act as a collection agent.

"State" means the state of Washington.

"Unsafe or unsound financial practice" means any action, or lack of action, the likely consequences of which, if continued, would materially impair the net worth of a licensee or create an abnormal risk of loss to its customers.

AMENDATORY SECTION (Amending WSR 07-23-094, filed 11/20/07, effective 12/21/07)

WAC 208-630-130 How does a business apply for a check casher's or seller's license or a small loan endorsement to a check casher's or seller's license? Each applicant for a check casher license, or check seller license, or a small loan endorsement to a check casher's or seller's license must apply to the director by filing the following:

(1) An application in a form prescribed by the director including at least the following information:

(a) The legal name, residence, and business address of the applicant if the applicant is an individual or sole proprietorship, and in addition, if the applicant is a partnership, corporation, limited liability company, limited liability partnership, trust, company, or association, the name and address of every member, partner, officer, controlling person, and board director;

(b) The trade name or name under which the applicant will do business under the act;

The director or the director's designated representative may deny an application for a proposed license or trade name if the proposed license or trade name is similar to a currently existing licensee name, including trade names.

(c) The street and mailing address of the company headquarters and each location in which the applicant will engage in business under the act;

(d) The location at which the applicant's records will be kept; and

(e) Financial statements and any other pertinent information the director may require with respect to the applicant and its board directors, officers, trustees, members, or employees, including information regarding any civil litigation filed within the preceding ten years against the applicant or controlling person of the applicant;

(2) A surety bond and related power of attorney, or other security acceptable to the director in an amount equal to the penal sum of the required bond as set forth in this rule. In lieu of the bond, the applicant may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond in accordance with RCW 31.45.030 (5)(b) and (e) and this rule;

(3) A current financial statement as of the most recent quarter end prepared in accordance with generally accepted

accounting principles which includes a statement of assets and liabilities and a profit and loss statement;

(4) Information on the applicant's or any affiliate's current or previous small loan or related type business in this state or any other state, including, but not limited to, name, address, city, state, licensing authority, and whether any enforcement action is pending or has been taken against the applicant in any state;

(5) Upon request, a complete set of fingerprints and a recent photograph of each sole proprietor, owner, director, officer, partner, member, and controlling person; and

(6) An application fee.

Any information in the application regarding a personal residential address or telephone number, and any trade secret as defined in RCW 19.108.010 including any financial statement that is a trade secret is exempt from the public disclosure requirements of chapter 42.17 RCW.

AMENDATORY SECTION (Amending WSR 14-24-048, filed 11/25/14, effective 1/1/15)

WAC 208-630-135 What must I do to be authorized to offer small loan agent services? (1) Persons providing small loan agent services must license with the department. To license you must provide the following information:

(a) The legal name, residence, and business address if an individual or sole proprietorship, and in addition, if a partnership, corporation, limited liability company, limited liability partnership, trust, company, or association, the name and address of every member, partner, officer, controlling person, and board director.

(b) The trade or business name under which you will do business. Please note, your request may be denied if the proposed trade or business name is similar to a currently existing licensee name, including trade names.

(c) The street and mailing address of each location where you will engage in business.

(d) The location at which your records will be kept.

(e) Whether the applicant 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 rules or any state or federal law applicable to the business activity.

(f) Whether the applicant or other person subject to the act has been charged or found through an administrative, civil, or criminal proceeding to have violated the provisions of the act or rules, or any state or federal law applicable to the business activity.

(g) Whether the applicant or other person subject to the act has been convicted of, or pled guilty or nolo contendere, 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.

(h) Any other pertinent information the director may require.

(2) You must also provide to the department a declaration that the company will not sell consumers' nonpublic personal information to unlicensed entities making loans or to unlicensed small loan agents.

(3) The small loan agent license expires December 31st of each year. You must pay the renewal fee prescribed by the director to renew the license.

(4) If any information about the company changes from that provided to the department at the time of licensure, you must notify the director in writing of the change within a reasonable amount of time from the change.

NEW SECTION

WAC 208-630-155 May I conduct my business from more than one location? Yes. You may establish one or more branch offices under your license.

AMENDATORY SECTION (Amending WSR 09-24-089, filed 12/1/09, effective 1/1/10)

WAC 208-630-501 How must I determine the due date on the loan? (1) The earliest due date for repayment is on or after the borrower's next pay date unless the pay date is within seven days of the date of the small loan. If the pay date falls within the seven days, you must set the repayment date on or after the borrower's second pay date after the date of the small loan. With the small loan origination date being day zero, count seven days out to determine the first available due date. A borrower with pay dates on the 5th and 20th of each month has a small loan with a loan origination date of February 1st. February 1st is day zero. February 8th is day seven. The borrower's pay date of February 5th is "within" seven days from loan's origination date. So the first due date will have to be on or after the borrower's next occurring pay date, February 20th.

(2) A loan's due date must be forty-five days or fewer from the origination date on the loan unless the term of the loan is extended by written agreement between you and the borrower at no additional cost to the borrower.

(3) If a small loan's due date falls on a date your business is not open, you must automatically extend the due date to your next business day.

(4) For purposes of this section, "pay date" means the borrower's scheduled pay date or the date the borrower's account is credited with any direct deposit or other electronic transfer of funds into their bank account, whichever is later.

(5) The borrower can make earlier payments or pay off the loan entirely at no additional charge or fee.

AMENDATORY SECTION (Amending WSR 09-24-089, filed 12/1/09, effective 1/1/10)

WAC 208-630-520 If a borrower and licensee enter into an installment plan, what are the terms of the installment plan? An installment plan under RCW 31.45.084 must contain the following terms:

(1) The plan must be in writing;

(2) If the small loan is four hundred dollars or less the term must be for a period of at least ninety days;

(3) If the small loan is over four hundred dollars the term must be for a period of at least one hundred eighty days;

(4)(a) Installment payments must be both substantially equal in payment amount and substantially equally distributed over the installment plan payment period.

(b) An installment plan for ninety to one hundred eighty days is in compliance if there is at least one payment in each thirty day period, payments are evenly spread throughout the installment plan period, and no two payments are within fourteen days of each other.

(c) The borrower and licensee may mutually agree to fewer payments as long as they are substantially equal in amount and substantially equally distributed over the installment plan payment period.

(d) If a borrower is paid less often than once a month, equal payments must be scheduled after each of the borrower's pay dates during the installment plan period.

(e) For the purposes of installment plans "pay date" includes days when the borrower receives compensation from employment, government benefits, or any other regular or predictable source of income or the date the borrower's bank account is credited with any direct deposit or other electronic transfer of funds into the bank account, whichever is later.

(5) The borrower may pay off the total amount due at any time without additional penalty, fee, or charge for prepayment; and

((~~(5)~~)) (6) You may enter into a written installment plan with a borrower on terms other than these as long as the terms are not less favorable to the borrower and there is no charge to the borrower.

AMENDATORY SECTION (Amending WSR 09-24-089, filed 12/1/09, effective 1/1/10)

WAC 208-630-532 May I make a small loan to a borrower who is in default on another small loan? No. You are prohibited from making a small loan to a borrower who is in default on another small loan ((~~originated on or after January 1, 2010~~)). This prohibition expires if the small loan is paid in full or two years have passed from the origination date of the small loan, whichever occurs first.

AMENDATORY SECTION (Amending WSR 09-24-089, filed 12/1/09, effective 1/1/10)

WAC 208-630-545 ((~~May I use a name or place of business other than that named on the license or small loan endorsement?~~)) How do I use a trade name when conducting business? ((~~No. You may not make any loan under authority granted by chapter 31.45 RCW under any name or at any place of business other than that named on the license and small loan endorsement.~~)) (1) You may add a trade or "DBA" name to your 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 license number together with the trade name.

(2) The director may deny an application for a proposed DBA name if the proposed DBA name is similar to a currently existing licensee name.

AMENDATORY SECTION (Amending WSR 09-24-089, filed 12/1/09, effective 1/1/10)

WAC 208-630-555 What is the purpose of the data base? The purpose of this data base system is to:

(1) Prevent the practice of refinancing a small loan with another small loan;

(2) Prevent multiple licensees from making simultaneous small loans to an individual borrower so that the loans' total principal balance ((~~is~~)) exceeds the lesser of seven hundred dollars or thirty percent of the borrower's gross monthly income;

(3) Prevent licensees from making more than eight loans to any one borrower in any twelve-month period;

(4) Prevent a licensee from making a loan to a borrower who already has an outstanding small loan principal balance of the lesser of seven hundred dollars or thirty percent of their gross monthly income;

(5) Prevent licensees from making a loan to a borrower who is in default on a small loan or is in an installment plan; and

(6) Ensure that licensees set the small loan due date no earlier than the borrower's next pay date that is more than seven days from the origination date.

AMENDATORY SECTION (Amending WSR 09-24-089, filed 12/1/09, effective 1/1/10)

WAC 208-630-556 How do I use the data base system for small loan transactions? (1) Beginning January 1, 2010, each small loan transaction must be registered with the data base system and receive a data base system-generated transaction authorization number. The transaction authorization number demonstrates that the transaction has been recorded in the data base prior to you making the small loan to the borrower.

(2) **Do I have to buy any equipment, hardware, or software to use the data base system?** You must have a computer with access to the internet and Microsoft Internet Explorer 6 or higher. Dial-up capacity of at least 56 kps is sufficient. DSL or broadband access will provide faster access and response. It is also possible to interface directly with the data base system; the data base vendor can provide you with information about that process.

(3) **How and when may I access the data base system?**

(a) The data base system is the means by which real-time access to the data is made available to you through your internet connection.

(b) You must use a computer and the internet to access the data base system.

(c) The data base system will be accessible twenty-four hours a day every day of the year, except for routine scheduled system maintenance and upgrades performed by the data base vendor.

(4) **What must I do to maintain confidentiality of the borrower's information provided to the data base?** In order to maintain the confidentiality and security of the bor-

rower's information, you must not transmit information to the data base system using publicly accessible computers, computers that are not under your control, unsecured wireless connections, or other connections that are not secure. Maintaining a secure connection includes, but is not limited to, installing and regularly updating antivirus and antispyware software and a firewall.

(5) **How do I use the data base system to determine a borrower's eligibility for a small loan?** You must:

(a) Access the data base system using the assigned user identification and password provided by the security administrator of your company;

(b) Enter the borrower's Social Security number, individual tax identification number (ITIN), or alien identification number, and the borrower's gross monthly income into the system.

(6) **What information will the data base system give me when an eligibility search is conducted?** The data base system will state a borrower's eligibility or ineligibility for a small loan and will give a reason for the eligibility determination. If the borrower is eligible for a small loan, the data base system will provide the dollar amount the borrower is eligible to receive.

(7) **What must I do once the initial search determines that the borrower is eligible for a small loan?**

(a) If you receive an initial indication from the data base vendor that the borrower is eligible for a small loan, you must then submit all of the required borrower information necessary to register the transaction in the data base, as prescribed by the date base vendor.

(b) When the required information has been submitted to the data base, the data base system will confirm the initial borrower search. If the borrower's eligibility is confirmed, the small loan transaction will be recorded as open and assigned a transaction authorization number evidencing that the transaction has been authorized by the data base system. You must place the transaction authorization number on the small loan agreement.

(8) **What must I do if the borrower is determined to be ineligible for a small loan?** If the borrower is deemed ineligible you will be provided with a printable message with a reason for the determination. The message will also include the name, address, and toll-free support number of the data base vendor. You must provide a copy of the printable message to the borrower.

(9) **If I make a mistake entering data and must void the transaction, what do I do?** Follow the data base vendor's instructions to administratively void the transaction.

(10) **If the data base system is inaccessible via the internet, how do I access the data base?**

(a) You will be given at least twenty-four hours notice for scheduled maintenance or system upgrades. The notice will be by electronic mail to the designated security administrator, or by a broadcast message on the data base vendor's web site.

(b) In the event the data base system is unavailable, you must adhere to the following procedures:

(i) Confirm that the data base system remains unavailable by attempting to access the data base system with every borrower seeking a new small loan transaction. You need not comply with this procedure if you have been notified via electronic mail by the data base vendor of an expected period of time necessary to correct whatever problem is causing the data base system to remain unavailable;

(ii) Contact the data base vendor's toll-free help desk or voice response system to obtain a temporary transaction authorization number directly from the data base vendor; and

(iii) Enter the remaining transactional data into the data base system within twenty-four hours of obtaining the temporary transaction authorization number from the data base vendor.

(c) In the event that either the department of financial institutions or the data base vendor notifies you that the data base system is unavailable and that all alternative methods for registering a transaction and receiving a transaction authorization number are also unavailable:

(i) You are authorized to conduct transactions during the specific period of unavailability, after receiving written authorization, via electronic mail or facsimile from either the department of financial institutions or the data base vendor with the department of financial institutions' consent.

(ii) Copies of the written authorization for any transactions conducted during an unavailability period must be attached to the small loan agreement for those transactions. One copy of the authorization must be provided to the borrower and another copy must be kept as an audit record.

(d) Transactions created during a period of authorized unavailability must be registered with the data base within twenty-four hours of notification that the data base system is available; provided, however, that if the data base system is unavailable for more than twenty-four hours, then the period for registration shall be extended by twenty-four hours for each additional twenty-four-hour period of unavailability.

(e) Once the transaction has been registered with the data base, the transaction number assigned to that transaction must be placed on the licensee's record copy of the small loan agreement signed by the borrower for that transaction. If the borrower requests that transaction number at any time, the licensee must provide it to the borrower.

(11) **Once a loan is made, how can it be canceled or rescinded as authorized under RCW 31.45.086?** A borrower may rescind a small loan agreement before the close of business on the next day of business after the date of the transaction without incurring a transaction fee. If a borrower elects to cancel a small loan agreement you must close the transaction on the data base as soon as practicable after the borrower rescinds the small loan transaction. A loan that has been rescinded does not count toward the eight loan limit; nor will you incur a one dollar transaction fee on that loan. For the purpose of rescinding a loan, the date of the transaction is the date the borrower actually receives the proceeds either in person or by direct deposit into the borrower's bank account.

(12) **When must I update information on the data base system?**

(a) When a borrower's small loan is paid (date of cash received, check deposited, or ACH authorization initiated), you must update open transactions on the data base system as soon as practicable to ensure that all identifying information regarding both the borrower and the transaction are accurate, including any comments on the transaction which you deem

relevant. You must input the date and time a transaction closes, as well as the payment method, unless you previously entered the payment method.

(b) When a small loan that was in default is paid, it is considered paid when the loaned amount and default fee is paid.

(c) When a loan is in default, you must mark the loan in the data base as in default as soon as practicable after the default as follow:

(i) A small loan is in default if not paid on the date and by the time indicated in the small loan agreement. If no time is indicated the small loan is in default the first day after the due date.

(ii) A small loan in an installment plan is in default if unpaid on the 11th day after the due date, with the due date being day zero. If the due date for an installment plan payment is January 1st and is not paid, the loan is considered in default and the data base must be updated on January 11th.

(d) When a borrower notifies you that their small loan has been discharged in bankruptcy you must close the loan as having been paid, leaving a comment in the comment box about the bankruptcy. Do not administratively close the loan. The loan must continue to count toward the borrower's eight loan limit.

(13) **How much will each data base transaction cost me?** The data base vendor's transaction fee is one dollar per loan registered. The data base vendor will assess this fee for each transaction that has been registered on the data base.

(14) **What happens if I do not pay the data base fees to the data base vendor?** The data base vendor will lock you out of the data base system.

(15) **What happens if I do not receive training and become certified in using the data base?** If you or another designated person in the company do not receive training and certification to use the data base, you will not be given an access number for the data base.

NEW SECTION

WAC 208-630-605 Must I maintain a business resumption plan? Yes. Licensees must have a written plan that details the company's response and recovery to any event that results in damage to or destruction of books and records. The plan must be maintained as part of the licensee's books and records.

NEW SECTION

WAC 208-630-606 Must I have a policy that deals with records disposal? Yes. Licensees must have written policies and procedures for the destruction of records, including electronic records, when the retention period ends. The destruction of records must be accomplished so that the information cannot be reconstructed or read. The destruction of consumer credit report information must also comply with the Federal Disposal Rule at 16 C.F.R. 682.

NEW SECTION

WAC 208-630-715 What are the minimum requirements of an information security program required by the Federal Safeguards Rule implementing the Gramm-Leach-Bliley Act? (1) Generally, applicants and licensees must have a written program appropriate to the company's size and complexity, the activity conducted, and the sensitivity of information at issue. The program must ensure the information's security and confidentiality, protect against anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of the information.

(2) Specifically, at a minimum the plan described in subsection (1) of this section must:

(a) Designate an employee or employees to coordinate the information security program;

(b) Identify and assess the risks to customer information;

(c) Design and implement safeguards to control the risks identified in the risk assessment and regularly monitor and test the safeguards;

(d) Select service providers that can maintain appropriate safeguards and oversee their handling of customer information; and

(e) At least annually evaluate and adjust the program in light of relevant circumstances, including changes in business operations, or the results of testing and monitoring the effectiveness of the implemented safeguards.

(3) The information security plan must be maintained as part of your books and records.

(4) For more information access the FTC web site on the Safeguards Rule at: https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying and see 16 C.F.R. 314.

NEW SECTION

WAC 208-630-716 What are the minimum requirements for Consumer Financial Information Privacy under the Gramm-Leach-Bliley Act (Regulation P)? Licensees must comply with Regulation P.

(1) At a minimum, licensees must:

(a) Provide customers with initial and annual notices regarding their privacy policies. These notices describe whether and how the licensee shares consumers' nonpublic personal information, including personally identifiable financial information, with other entities; and

(b) If licensees share certain customer information with particular types of third parties, the institutions are also required to provide notice to their customers and an opportunity to opt out of the sharing. If a licensee limits its types of sharing to those which do not trigger opt-out rights, it may provide a "simplified" annual privacy notice to its customers that does not include opt-out information. If a licensee's privacy policy has not changed, additional notices may not be required.

(2) See Regulation P at 12 C.F.R. 1016 for the required details.

NEW SECTION

WAC 208-630-717 Must a licensee provide notice to consumers if its data is compromised? Maybe. If the licensee's data is compromised the licensee may be subject to chapter 19.255 RCW and may have to provide notices to con-

sumers whose information was acquired. Under certain circumstances notice of the breach may also be required by the attorney general's office.

AMENDATORY SECTION (Amending WSR 09-24-089, filed 12/1/09, effective 1/1/10)

WAC 208-630-835 When must I inform the director of significant changes in my business? (1) You must notify the director in writing within five days of the occurrence of any of the following significant developments:

(a) Your company filing for a chapter 7 or 11 bankruptcy;

(b) Your company receiving notification of a license revocation procedure against it in any state;

(c) You, or a director, officer, partner, member or controlling person of the company being convicted of a crime;

(d) You, or a director, officer, partner, member or controlling person of the company receiving notification of the filing of criminal charges or a criminal indictment or information, in any way related to check cashing, check selling or small loan activities.

(2) You must notify the director in writing at least fifteen days prior to a change of control. In the case of a corporation, control is defined as a change of ownership by a person or group acting in concert to acquire fifty percent of the stock, or the ability of a person or group acting in concert to elect a majority of the board directors or otherwise effect a change in policy of the corporation. The director may require such information as deemed necessary to determine whether a new application is required. In the case of entities other than corporations, change in control means any change in controlling persons of the organization, either active or passive. Change of control investigation fees are billed to the persons or group at the rate billed for applications.

(3) Other. Post notification. Within forty-five days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-630-717.

AMENDATORY SECTION (Amending WSR 09-24-089, filed 12/1/09, effective 1/1/10)

WAC 208-630-836 When ceasing my small loan business, what information must I file before I close the business? (1) You must notify the department at least thirty days before ceasing operations. The notice must be in writing, signed by a principal of the small loan licensee, and include the following:

(a) The date you will cease small loan activity;

(b) A list of all open and pending transactions;

(c) Your contact address and e-mail address; and

(d) Your plan for the orderly closure of open loans on the data base system.

(2) For purposes of this section, the term "ceasing operations" means that you have closed the offices to the public or have removed public access to the web site, if such access is the sole means of communication with customers. This provision does not apply if you have given customers a reasonable alternative for communications and payments.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 208-630-711	What are the minimum requirements of a policy that protects borrowers' nonpublic personal information (NPI) under the Gramm-Leach-Bliley Act?

WSR 16-05-100
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 15-09—Filed February 17, 2016, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-17-083.

Title of Rule and Other Identifying Information: The department of ecology (ecology) proposes to amend to certain portions of State Environmental Policy Act (SEPA), chapter 197-11 WAC. This rule provides uniform requirements for compliance with SEPA.

Hearing Location(s): Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, on March 23, 2016, at 1:30 p.m. Ecology will have a brief presentation, followed by a question and answer session followed by the formal hearing.

Ecology will accept testimony in person and by phone. Call-in number to participate and provide comments by phone 1-800-704-9804, pin number 8386377#.

Date of Intended Adoption: June 1, 2016.

Submit Written Comments to: Department of Ecology, SEPA Unit, Attn: Fran Sant, P.O. Box 47703, Olympia, WA 98504-7600, e-mail separulemaking@ecy.wa.gov, fax (360) 407-6904, by April 1, 2016.

Assistance for Persons with Disabilities: Contact shorelands and environmental assistance program by March 16, 2016, at (360) 407-6600.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology proposes to amend chapter 197-11 WAC, SEPA rules. The rule changes include:

- Creating a categorical exemption for the replacement of a city, town or county owned structurally deficient bridge.
- Minor updates and clarifications on other transportation related categorical exemptions.
- Updates, clarifications and technical corrections.

Reasons Supporting Proposal:

- Chapter 197-11 WAC, amend as directed by chapter 144, Laws of 2015 regular session (SHB 1851).
- Updated other transportation related exemptions to provide clarifications and provide additional examples of minor street improvement projects with the intent of eliminating confusion.
- Make technical clarifications, corrections, and reword to improve readability.

Statutory Authority for Adoption: SEPA, RCW 43.21C.-110.

Statute Being Implemented: Chapter 43.21C RCW.

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 and Implementation: Fran Sant, Department of Ecology, Lacey, Washington, (360) 407-6004.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendments meet the criteria of exemption from analysis under RCW 19.85.030 which requires an agency to prepare a small business economic impact state [statement] (SBEIS) "if the proposed rule will impose more than minor cost on business or any industry." The proposed amendments to ecology's SEPA rules do not impose any costs on business. Therefore, an SBEIS is not required for the proposed rule amendments.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Fran Sant, Department of Ecology, P.O. Box 47703, Olympia, WA 98504-7600, phone (360) 407-6004, fax (360) 407-6904, e-mail separulemaking@ecy.wa.gov.

February 16, 2016
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

WAC 197-11-030 Policy. (1) The policies and goals set forth in SEPA are supplementary to existing agency authority.

(2) Agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and laws of the state of Washington in accordance with the policies set forth in SEPA and these rules.

(b) Find ways to make the SEPA process more useful to ((~~decisionmakers~~)) decision makers and the public; promote certainty regarding the requirements of the act; reduce paperwork and the accumulation of extraneous background data; and emphasize important environmental impacts and alternatives.

(c) Prepare environmental documents that are concise, clear, and to the point, and are supported by evidence that the necessary environmental analyses have been made.

(d) Initiate the SEPA process early in conjunction with other agency operations to avoid delay and duplication.

(e) Integrate the requirements of SEPA with existing agency planning and licensing procedures and practices, so that such procedures run concurrently rather than consecutively.

(f) Encourage public involvement in decisions that significantly affect environmental quality.

(g) Identify, evaluate, and require or implement, where required by the act and these rules, reasonable alternatives that would mitigate adverse effects of proposed actions on the environment.

AMENDATORY SECTION (Amending WSR 97-21-030, filed 10/10/97, effective 11/10/97)

WAC 197-11-172 Planned actions—Project review. (1) Review of a project proposed as a planned action is intended to be simpler and more focused than for other projects. A project proposed as a planned action must qualify as the planned action designated in the planned action ordinance or resolution, and must meet the statutory criteria for a planned action in RCW ((~~43.21C.031~~)) 43.21C.440. Planned action project review shall include:

(a) Verification that the project meets the description in, and will implement any applicable conditions or mitigation measures identified in, the designating ordinance or resolution; and

(b) Verification that the probable significant adverse environmental impacts of the project have been adequately addressed in the EIS prepared under WAC 197-11-164 (1)(b) through review of an environmental checklist or other project review form as specified in WAC 197-11-315, filed with the project application.

(2)(a) If the project meets the requirements of subsection (1) of this section, the project shall qualify as the planned action designated by the GMA county/city, and a project threshold determination or EIS is not required. Nothing in this section limits a GMA county/city from using this chapter or other applicable law to place conditions on the project in order to mitigate nonsignificant impacts through the normal local project review and permitting process.

(b) If the project does not meet the requirements of subsection (1) of this section, the project is not a planned action and a threshold determination is required. In conducting the additional environmental review under this chapter, the lead agency may use information in existing environmental documents, including the EIS used to designate the planned action (refer to WAC 197-11-330 (2)(a) and 197-11-600 through 197-11-635). If an EIS or SEIS is prepared on the proposed project, its scope is limited to those probable significant adverse environmental impacts that were not adequately addressed in the EIS used to designate the planned action.

(3) Public notice for projects that qualify as planned actions shall be tied to the underlying permit. If notice is otherwise required for the underlying permit, the notice shall state that the project has qualified as a planned action. If notice is not otherwise required for the underlying permit, no special notice is required. However, the GMA county/city is encouraged to provide some form of public notice as deemed appropriate.

AMENDATORY SECTION (Amending WSR 14-09-026, filed 4/9/14, effective 5/10/14)

WAC 197-11-610 Use of NEPA documents. (1) An agency may adopt any environmental analysis prepared under the National Environmental Policy Act (NEPA) by following WAC 197-11-600 and 197-11-630.

(2) A NEPA environmental assessment (EA) or documented categorical exclusion may be adopted to support a determination of nonsignificance instead of preparing an environmental checklist, if the requirements of WAC 197-11-340, 197-11-600, and 197-11-630 (and WAC 197-11-350

and 197-11-355 as applicable), are met and elements of the environment in WAC 197-11-444 are adequately addressed.

(3) An agency may adopt a NEPA EIS as a substitute for preparing a SEPA EIS if:

(a) The requirements of WAC 197-11-360, 197-11-600, and 197-11-630 are met (in which case the procedures in Parts Three, Four, and Five of these rules for preparing an EIS shall not apply); and

(b) The federal ((~~EA or~~)) EIS is not found inadequate: (i) By a court; (ii) by the council on environmental quality (CEQ) (or is at issue in a predecision referral to CEQ) under the NEPA regulations; or (iii) by the administrator of the United States Environmental Protection Agency under section 309 of the Clean Air Act, 42 U.S.C. 1857.

(4) Subsequent use by another agency of a federal EIS, adopted under subsection (3) of this section, for the same (or substantially the same) proposal does not require adoption, unless the criteria in WAC 197-11-600(3) are met.

(5) If the lead agency has not held a public hearing within its jurisdiction to obtain comments on the adequacy of adopting a federal environmental document as a substitute for preparing a SEPA EIS, a public hearing for such comments shall be held if, within thirty days of circulating its statement of adoption, a written request is received from at least fifty persons who reside within the agency's jurisdiction or are adversely affected by the environmental impact of the proposal. The agency shall reconsider its adoption of the federal document in light of public hearing comments.

AMENDATORY SECTION (Amending WSR 14-09-026, filed 4/9/14, effective 5/10/14)

WAC 197-11-800 Categorical exemptions. The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305.

Note: The statutory exemptions contained in chapter 43.21C RCW are not included in Part Nine. Chapter 43.21C RCW should be reviewed in determining whether a proposed action not listed as categorically exempt in Part Nine is exempt by statute from threshold determination and EIS requirements.

(1) **Minor new construction - Flexible thresholds.**

(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question. To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency. The exemptions in this subsection apply except when the project:

(i) Is undertaken wholly or partly on lands covered by water;

(ii) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383;

(iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8); or

(iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The following types of construction shall be exempt:

(i) The construction or location of four detached single family residential units.

(ii) The construction or location of four multifamily residential units.

(iii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.

(iv) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles. This exemption includes parking lots for twenty or fewer automobiles not associated with a structure.

(v) Any fill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation and any excavation, fill or grading necessary for an exempt project in (i), (ii), (iii), or (iv) of this subsection shall be exempt.

(c) Cities, towns or counties may raise the exempt levels up to the maximum specified in (d) of this subsection by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC 197-11-904). Separate maximum optional thresholds are established in (d) of this subsection applying to both incorporated areas and unincorporated urban growth areas in fully planning jurisdictions under RCW 36.70A.040; other unincorporated areas in fully planning counties; and jurisdictions in all other counties. Agencies may adopt the maximum level or a level between the minimum and maximum level. An agency may adopt a system of several exempt levels, such as different levels for different geographic areas, and mixed use projects.

At a minimum, the following process shall be met in order to raise the exempt levels.

(i) Documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the development exempted. The requirements may be addressed in specific adopted development regulations, and applicable state and federal regulations.

(ii) Description in the findings or other appropriate section of the adopting ordinance or resolution of the locally established notice and comment opportunities for the public, affected tribes, and agencies regarding permitting of development projects included in these increased exemption levels.

(iii) Before adopting the ordinance or resolution containing the proposed new exemption levels, the agency shall provide a minimum of sixty days notice to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public and provide an opportunity for comment.

(iv) The city, town, or county must document how specific adopted development regulations and applicable state and federal laws provide adequate protections for cultural and historic resources when exemption levels are raised. The requirements for notice and opportunity to comment for the public, affected tribes, and agencies in (c)(i) and (ii) of this subsection and the requirements for protection and mitigation in (c)(i) of this subsection must be specifically documented. The local ordinance or resolution shall include, but not be limited to, the following:

• Use of available data and other project review tools regarding known and likely cultural and historic resources, such as inventories and predictive models provided by the Washington department of archaeology and historic preservation, other agencies, and tribal governments.

• Planning and permitting processes that ensure compliance with applicable laws including chapters 27.44, 27.53, 68.50, and 68.60 RCW.

• Local development regulations that include at minimum preproject cultural resource review where warranted, and standard inadvertent discovery language (SIDL) for all projects.

(d) The maximum exemption levels applicable to (c) of this subsection are:

	Fully planning GMA counties		All other counties
Project types	Incorporated and unincorporated UGA	Other unincorporated areas	Incorporated and unincorporated areas
Single family residential	30 units	20 units	20 units
Multifamily residential	60 units	25 units	25 units
Barn, loafing shed, farm equipment storage, produce storage or packing structure	40,000 square feet	40,000 square feet	40,000 square feet
Office, school, commercial, recreational, service, storage building, parking facilities	30,000 square feet and 90 parking spaces	12,000 square feet and 40 parking spaces	12,000 square feet and 40 parking spaces
Fill or excavation	1,000 cubic yards	1,000 cubic yards	1,000 cubic yards

(2) **Other minor new construction.**

(a) The exemptions in this subsection apply to all licenses required to undertake the following types of proposals except when the project:

(i) Is undertaken wholly or partly on lands covered by water;

(ii) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383;

(iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8); or

(iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The construction or designation of bus stops, loading zones, shelters, access facilities ((~~and~~)), pull-out lanes for taxicabs, transit and school vehicles, and designation of transit only lanes.

(c) The construction ((~~and/or~~)) or installation of commercial on-premise signs, and public signs and signals, including those for traffic control and wayfinding.

(d) The construction or installation of minor road and street improvements by any agency or private party that include the following:

(i) Safety structures and equipment: Such as pavement marking, adding or removing turn restrictions, speed limit designation, physical measures to reduce motor vehicle traffic speed or volume, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators;

(ii) Transportation corridor landscaping (including the application of state of Washington approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality ((~~in accordance with WAC 248-54-660~~));

(iii) Temporary traffic controls and detours;

(iv) Correction of substandard curves and intersections within existing rights of way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right of way is required;

(v) Adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required;

(vi) Channelization ((~~and~~)), rechannelization, elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation;

(vii) Installation of catch basins and culverts for the purposes of road and street improvements;

(viii) Reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders where capacity is not increased and no new right of way is required;

(ix) Addition of bicycle lanes, paths and facilities, and pedestrian walks and paths including sidewalk extensions, but not including additional automobile lanes.

(e) Grading, excavating, filling, septic tank installations, and landscaping necessary for any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of small structures and minor facilities accessory thereto.

(f) Additions or modifications to or replacement of any building or facility exempted by subsections (1) and (2) of this section when such addition, modification or replacement

will not change the character of the building or facility in a way that would remove it from an exempt class.

(g) The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance such as listing in a historic register.

(h) The installation or removal of impervious underground or above-ground tanks, having a total capacity of 10,000 gallons or less except on agricultural and industrial lands. On agricultural and industrial lands, the installation or removal of impervious underground or above-ground tanks, having a total capacity of 60,000 gallons or less.

(i) The vacation of streets or roads, converting public right of way, and other changes in motor vehicle access.

(j) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.

(k) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

(l) The installation of accessory solar energy generation equipment on or attached to existing structures and facilities whereby the existing footprint and size of the building is not increased.

(3) **Repair, remodeling and maintenance activities.** The following activities shall be categorically exempt: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, recreation, and transportation facilities involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:

(a) Dredging of over fifty cubic yards of material;

(b) Reconstruction or maintenance of groins and similar shoreline protection structures;

(c) Replacement of utility cables that must be buried under the surface of the bedlands; or

(d) Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.

(4) **Water rights.** Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of groundwater, for any purpose. The exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pumphouse reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation.

(5) **Purchase or sale of real property.** The following real property transactions by an agency shall be exempt:

(a) The purchase or acquisition of any right to real property.

(b) The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to a specifically designated and authorized public use established by the public landowner and used by the public for that purpose.

(c) Leasing, granting an easement for, or otherwise authorizing the use of real property when the property use will remain essentially the same as the existing use for the term of the agreement, or when the use under the lease, easement or other authorization is otherwise exempted by this chapter.

(6) **Land use decisions.** The following land use decisions shall be exempt:

(a) Land use decisions for exempt projects, except that rezones must comply with (c) of this subsection.

(b) Other land use decisions not qualified for exemption under subsection (a) (such as a home occupation or change of use) are exempt provided:

(i) The authorized activities will be conducted within an existing building or facility qualifying for exemption under WAC 197-11-800 (1) and (2); and

(ii) The activities will not change the character of the building or facility in a way that would remove it from an exempt class.

(c) Where an exempt project requires a rezone, the rezone is exempt only if:

(i) The project is in an urban growth area in a city or county planning under RCW 36.70A.040;

(ii) The proposed rezone is consistent with and does not require an amendment to the comprehensive plan; and

(iii) The applicable comprehensive plan was previously subjected to environmental review and analysis through an EIS under the requirements of this chapter prior to adoption; and the EIS adequately addressed the environmental impacts of the rezone.

(d) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060, and short plats or short subdivisions within the original short subdivision boundaries provided the cumulative divisions do not exceed the total lots allowed to be created under RCW 58.17.020. This exemption includes binding site plans authorized by RCW 58.17.035 up to the same number of lots allowed by the jurisdiction as a short subdivision.

(e) Granting of variance based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.

(f) Alteration of property lines as authorized by RCW 58.17.040(6).

(7) **Open burning.** Opening burning and the issuance of any license for open burning shall be exempt. The adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting open burning shall not be exempt.

(8) **Clean Air Act.** The granting of variances under RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.

(9) **Water quality certifications.** The granting or denial of water quality certifications under the Federal Clean Water

Act (Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1341) shall be exempt.

(10) **Activities of the state legislature.** All actions of the state legislature are exempted.

(11) **Judicial activity.** The following shall be exempt:

(a) All adjudicatory actions of the judicial branch.

(b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal or upon any application for a rezone, conditional use permit or other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.

(12) **Enforcement and inspections.** The following enforcement and inspection activities shall be exempt:

(a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.

(b) All inspections conducted by an agency of either private or public property for any purpose.

(c) All activities of fire departments and law enforcement agencies except physical construction activity.

(d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety. The application of pesticides and chemicals is not exempted by this subsection but may be exempted elsewhere in these guidelines. No license or adoption of any ordinance, regulation or resolution shall be considered exempt by virtue of this subsection.

(e) Any suspension or revocation of a license for any purpose.

(13) **Business and other regulatory licenses.** The following business and other regulatory licenses are exempt:

(a) All licenses to undertake an occupation, trade or profession.

(b) All licenses required under electrical, fire, plumbing, heating, mechanical, and safety codes and regulations, but not including building permits.

(c) All licenses to operate or engage in amusement devices and rides and entertainment activities including, but not limited to, cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of the use of public facilities for temporary civic celebrations, but not including licenses or permits required for permanent construction of any of the above.

(d) All licenses to operate or engage in charitable or retail sales and service activities including, but not limited to, peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies, tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.

(e) All licenses for private security services including, but not limited to, detective agencies, merchant and/or residential patrol agencies, burglar and/or fire alarm dealers, guard dogs, locksmiths, and bail bond services.

(f) All licenses for vehicles for-hire and other vehicle related activities including, but not limited to, taxicabs, ambulances, and tow trucks: Provided, That regulation of common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.

(g) All licenses for food or drink services, sales, and distribution including, but not limited to, restaurants, liquor, and meat.

(h) All animal control licenses including, but not limited to, pets, kennels, and pet shops. Establishment or construction of such a facility shall not be considered exempt by this subsection.

(i) The renewal or reissuance of a license regulating any present activity or structure so long as no material changes are involved.

(14) **Activities of agencies.** The following administrative, fiscal and personnel activities of agencies shall be exempt:

(a) The procurement and distribution of general supplies, equipment and services authorized or necessitated by previously approved functions or programs.

(b) The assessment and collection of taxes.

(c) The adoption of all budgets and agency requests for appropriation: Provided, That if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.

(d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.

(e) The review and payment of vouchers and claims.

(f) The establishment and collection of liens and service billings.

(g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.

(h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.

(i) Adoptions or approvals of utility, transportation and solid waste disposal rates.

(j) The activities of school districts pursuant to desegregation plans or programs; however, construction of real property transactions or the adoption of any policy, plan or program for such construction of real property transaction shall not be considered exempt under this subsection.

(k) Classification of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW.

(15) **Financial assistance grants.** The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or construction of a project. This exemption includes agencies taking nonproject actions that are necessary to apply for federal or other financial assistance.

(16) **Local improvement districts and special purpose districts.** The formation of local improvement districts and special purpose districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under WAC 197-11-800 and 197-11-880. A special district or special purpose district is a local

government entity designated by the Revised Code of Washington (RCW) and is not a city, town, township, or county.

(17) **Information collection and research.** Basic data collection, research, resource evaluation, requests for proposals (RFPs), and the conceptual planning of proposals shall be exempt. These may be strictly for information-gathering, or as part of a study leading to a proposal that has not yet been approved, adopted or funded; this exemption does not include any agency action that commits the agency to proceed with such a proposal. (Also see WAC 197-11-070.)

(18) **Acceptance of filings.** The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.

(19) **Procedural actions.** The proposal, amendment or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program shall be exempt if they are:

(a) Relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment.

(b) Text amendments resulting in no substantive changes respecting use or modification of the environment.

(c) Agency SEPA procedures.

(20) **Reserved**.

(21) **Adoption of noise ordinances.** The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under chapter 70.107 RCW. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations, SEPA compliance may be limited to those items which differ from state regulations.

(22) **Review and comment actions.** Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.

(23) **Utilities.** The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.

(a) All communications lines, including cable TV, but not including communication towers or relay stations.

(b) All storm water, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines twelve inches or less in diameter.

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (up to and including 115,000 volts); within existing rights of way or developed utility corridors, all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 115,000 volts or less; and the undergrounding of all electric facilities, lines, equipment or appurtenances.

(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.

(e) All developments within the confines of any existing electric substation, reservoir, pump station vault, pipe, or well: Additional appropriations of water are not exempted by this subsection.

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: Provided, the chemicals used are approved by Washington state and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality ((~~in accordance with WAC 248-54-660~~)).

(g) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.

(h) All grants of franchises by agencies to utilities.

(i) All disposals of rights of way by utilities.

(24) **Natural resources management.** In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

(a) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been subject to a grazing lease within the previous ten years.

(b) Licenses or approvals to remove firewood.

(c) Issuance of agricultural leases covering one hundred sixty contiguous acres or less.

(d) Issuance of leases for Christmas tree harvesting or brush picking.

(e) Issuance of leases for school sites.

(f) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.

(g) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than twelve campsites.

(h) Periodic use of chemical or mechanical means to maintain public park and recreational land: Provided, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality ((~~in accordance with WAC 248-54-660~~)).

(i) Issuance of rights of way, easements and use permits to use existing roads in nonresidential areas.

(j) Establishment of natural area preserves to be used for scientific research and education and for the protection of rare flora and fauna, under the procedures of chapter 79.70 RCW.

(25) **Wireless service facilities.**

(a) The siting of wireless service facilities are exempt if:

(i) The collocation of new equipment, removal of equipment, or replacement of existing equipment on existing or replacement structures that does not substantially change the physical dimensions of such structures; or

(ii) The siting project involves constructing a wireless service tower less than sixty feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone.

(b) For the purposes of this subsection:

(i) " Wireless services" means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(ii) "Wireless service facilities" means facilities for the provision of wireless services.

(iii) "Collocation" means the mounting or installation of equipment on an existing tower, building, structure for the purposes of either transmitting or receiving, or both, radio frequency signals for communication purposes.

(iv) "Existing structure" means any existing tower, pole, building, or other structure capable of supporting wireless service facilities.

(v) "Substantially change the physical dimensions" means:

(A) The mounting of equipment on a structure that would increase the height of the structure by more than ten percent, or twenty feet, whichever is greater; or

(B) The mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever ((~~it~~)) is greater.

(c) This exemption does not apply to projects within a critical area designated under GMA (RCW 36.70A.060).

(26) **State transportation project.** The following Washington department of transportation projects and activities shall be exempt: The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation, as long as the action:

(a) Occurs within the existing right of way and in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements; and

(b) The action does not result in addition of automobile lanes, a change in capacity, or a change in functional use of the facility.

(27) **Structurally deficient city, town and county bridges.** The repair, reconstruction, restoration, retrofitting, or replacement of a structurally deficient city, town or county bridge shall be exempt as long as the action:

(a) Occurs within the existing right of way and in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements; and

(b) The action does not result in addition of automobile lanes, a change in capacity, or a change in functional use of the facility.

"Structurally deficient" means a bridge that is classified as in poor condition under the state bridge condition rating system and is reported by the state to the national bridge inventory as having a deck, superstructure, or substructure rating of four or below. Structurally deficient bridges are characterized by deteriorated conditions of significant bridge elements and potentially reduced load-carrying capacity. Bridges deemed structurally deficient typically require significant maintenance and repair to remain in service, and require major rehabilitation or replacement to address the underlying deficiency.

AMENDATORY SECTION (Amending WSR 14-09-026, filed 4/9/14, effective 5/10/14)

WAC 197-11-830 Department of natural resources. The following actions and licenses of the department of natural resources are exempted:

(1) Forest closures, shutdowns and permit suspensions due to extreme unusual fire hazards.

(2) Operating permits to use power equipment on forest land.

(3) Permits to use fuse on forest land.

(4) Log patrol licenses.

(5) Permits for drilling for which no public hearing is required under RCW ((~~79.76.070~~)) 78.60.070 (geothermal test drilling).

(6) Permits for the dumping of forest debris and wood waste in forested areas.

(7) Those sales of timber from public lands that the department of natural resources determines, by rules adopted pursuant to RCW 43.21C.120 do not have potential for a substantial impact on the environment.

(8) Except on aquatic lands under state control, leases for mineral prospecting under RCW ((~~79.01.616 or 79.01.652~~)) 79.14.300 or 79.14.470, but not including issuance of subsequent contracts for mining.

(9) Sales of rock from public lands involving rock pits less than three acres in size that are used for activities regulated under a forest practices application that is exempt under RCW 43.21C.037.

AMENDATORY SECTION (Amending WSR 14-09-026, filed 4/9/14, effective 5/10/14)

WAC 197-11-960 Environmental checklist.

ENVIRONMENTAL CHECKLIST

Purpose of checklist:

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring prepa-

ration of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of checklist for nonproject proposals:

For nonproject proposals complete this checklist and the supplemental sheet for nonproject actions (Part D). The lead agency may exclude any question for the environmental elements (Part B) which they determine do not contribute meaningfully to the analysis of the proposal.

For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of proposed project, if applicable:

2. Name of applicant:

3. Address and phone number of applicant and contact person:

4. Date checklist prepared:

5. Agency requesting checklist:

6. Proposed timing or schedule (including phasing, if applicable):

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

10. List any government approvals or permits that will be needed for your proposal, if known.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

B. ENVIRONMENTAL ELEMENTS

1. **Earth**

a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other.....

b. What is the steepest slope on the site (approximate percent slope)?

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

2. **Air**

a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.

b. Are there any ((~~offsite~~)) off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

3. **Water**

a. Surface:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

5) Does the proposal lie within a 100-year flood plain? If so, note location on the site plan.

6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

b. Ground:

1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well? Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals...; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

c. Water runoff (including storm water):

1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

2) Could waste materials enter ground or surface waters? If so, generally describe.

3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

d. Proposed measures to reduce or control surface, ground, runoff water, and drainage pattern impacts, if any:

4. **Plants**

a. Check the types of vegetation found on the site:
— Deciduous tree: Alder, maple, aspen, other
— Evergreen tree: Fir, cedar, pine, other
— Shrubs
— Grass
— Pasture
— Crop or grain
— Orchards, vineyards or other permanent crops.
— Wet soil plants: Cattail, buttercup, bullrush, skunk cabbage, other
— Water plants: Water lily, eelgrass, milfoil, other
— Other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

c. List threatened and endangered species known to be on or near the site.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

e. List all noxious weeds and invasive species known to be on or near the site.

5. **Animals**

a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site. Examples include:

Birds: Hawk, heron, eagle, songbirds, other:
Mammals: Deer, bear, elk, beaver, other:
Fish: Bass, salmon, trout, herring, shellfish, other:

b. List any threatened and endangered species known to be on or near the site.

c. Is the site part of a migration route? If so, explain.

d. Proposed measures to preserve or enhance wildlife, if any:

e. List any invasive animal species known to be on or near the site.

6. **Energy and natural resources**

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

7. **Environmental health**

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

1) Describe any known or possible contamination at the site from present or past uses.

2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

4) Describe special emergency services that might be required.

5) Proposed measures to reduce or control environmental health hazards, if any:

b. **Noise**

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

3) Proposed measures to reduce or control noise impacts, if any:

8. **Land and shoreline use**

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

c. Describe any structures on the site.

d. Will any structures be demolished? If so, what?

e. What is the current zoning classification of the site?

f. What is the current comprehensive plan designation of the site?

g. If applicable, what is the current shoreline master program designation of the site?

h. Has any part of the site been classified as a critical area by the city or county? If so, specify.

i. Approximately how many people would reside or work in the completed project?

j. Approximately how many people would the completed project displace?

k. Proposed measures to avoid or reduce displacement impacts, if any:

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

m. Proposed measures to ((~~ensure the proposal is compatible with nearby~~)) reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any:

9. **Housing**

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

c. Proposed measures to reduce or control housing impacts, if any:

10. **Aesthetics**

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

b. What views in the immediate vicinity would be altered or obstructed?

c. Proposed measures to reduce or control aesthetic impacts, if any:

11. **Light and glare**

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

b. Could light or glare from the finished project be a safety hazard or interfere with views?

c. What existing offsite sources of light or glare may affect your proposal?

d. Proposed measures to reduce or control light and glare impacts, if any:

12. **Recreation**

a. What designated and informal recreational opportunities are in the immediate vicinity?

b. Would the proposed project displace any existing recreational uses? If so, describe.

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

13. **Historic and cultural preservation**

a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers located on or near the site? If so, specifically describe.

b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation. This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.

c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.

d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

14. **Transportation**

a. Identify public streets and highways serving the site or affected geographic area, and describe proposed access to the existing street system. Show on site plans, if any.

b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

c. How many additional parking spaces would the completed project or nonproject proposal have? How many would the project or proposal eliminate?

d. Will the proposal require any new ((~~or~~)) improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

e. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

g. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

h. Proposed measures to reduce or control transportation impacts, if any:

15. **Public services**

a. Would the project result in an increased need for public services (for example: Fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

b. Proposed measures to reduce or control direct impacts on public services, if any.

16. **Utilities**

a. Circle utilities currently available at the site: Electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: . . . . . .

Date Submitted: . . . . . .

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

Proposed measures to avoid or reduce such increases are:

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

3. How would the proposal be likely to deplete energy or natural resources?

Proposed measures to protect or conserve energy and natural resources are:

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, flood plains, or prime farmlands?

Proposed measures to protect such resources or to avoid or reduce impacts are:

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Proposed measures to avoid or reduce shoreline and land use impacts are:

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

Proposed measures to reduce or respond to such demand(s) are:

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

WAC 197-11-965 Adoption notice.

ADOPTION OF EXISTING ENVIRONMENTAL DOCUMENT

Adoption for (check appropriate box) □ DNS □ EIS □ other . . . . . .

Description of current proposal . . . . . .

. . . . . .

Proponent . . . . . .

Location of current proposal . . . . . .

. . . . . .

. . . . . .

Title of document being adopted . . . . . .

Agency that prepared document being adopted . . . . . .

Date adopted document was prepared . . . . . .

Description of document (or portion) being adopted . . . . . .

. . . . . .

. . . . . .

If the document being adopted has been challenged (WAC 197-11-630), please describe:

. . . . . .

The document is available to be read at (place/time) . . . . . .

. . . . . .

We have identified and adopted this document as being appropriate for this proposal after independent review. The document meets our environmental review needs for the current proposal and will accompany the proposal to the ((~~decisionmaker~~)) decision maker.

Name of agency adopting document . . . . . .

Contact person, if other than responsible official . . . . . .Phone . . . . . .

Responsible official . . . . . .

Position/title . . . . . .Phone . . . . . .

Address . . . . . .

Date . . . . . .Signature . . . . . .