WSR 19-21-002
PERMANENT RULES
LIQUOR AND CANNABIS BOARD

[Filed October 2, 2019, 2:53 p.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Revisions to these rules are necessary because of a court of appeals decision, *Washington Restaurant Association, et al., v. WSLCB*, 200 Wn.App. 119, 401 P.3d 428 (2017).

Purpose: The revised rule revisions reflect that distributor license fees cannot be collected from licensed distillers or certificate of approval holders. The revisions require retailers selling spirits for resale to pay the distributor license fee when no other distributor license fee has been paid. Revisions clarify sales, fee, and reporting requirements and include additional technical and clarifying updates. The January 1, 2020, effective date reflects the beginning of the next quarterly reporting and payment period. WAC 314-23-025 is repealed because the provisions of the rule expired March 31, 2013.

Citation of Rules Affected by this Order: Repealing WAC 314-23-025 Collection of shortfall of spirits distributor license fees from spirits distributor license holders; and amending WAC 314-02-106 What is a spirits retailer license?, 314-23-001 What does a spirits distributor license allow?, 314-23-005 What are the fees for a spirits distributor license?, 314-23-021 What are the monthly reporting and payment requirements for a spirits distributor license?, 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late?, 314-23-030 What does a spirits certificate of approval license allow?, 314-23-041 What are the monthly reporting requirements for a spirits certificate of approval licensee?, 314-23-042 What if a spirits certificate of approval licensee fails to report or reports late?, and 314-28-070 Monthly reporting and payment requirements for a distiller and craft distiller.

Statutory Authority for Adoption: Chapter 66.24 RCW, RCW 66.08.030.

Other Authority: Court of Appeals Decision: *Washington Restaurant Association, et al., v. WSLCB*, 200 Wn.App. 119, 401 P.3d 428 (2017).

Adopted under notice filed as WSR 19-16-159 on August 7, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 9, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 9, Repealed 1.

Date Adopted: October 2, 2019.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

WAC 314-02-106 What is a spirits retailer license? (1) ((~~A spirits retailer licensee may not sell spirits under this license until June 1, 2012. A spirits retailer is a retail license.~~)) The holder of a spirits retailer license is allowed to:

(a) Sell spirits in original containers to consumers for off-premises consumption;

(b) Sell spirits in original containers to permit holders (see chapter 66.20 RCW);

(c) Sell spirits in original containers to on-premises liquor retailers, for resale at their licensed premises, although no single sale may exceed twenty-four liters; and

(d) Export spirits in original containers.

(2) A spirits retailer licensee that intends to sell to another retailer must possess a basic permit under the Federal Alcohol Administration Act. This permit must provide for purchasing distilled spirits for resale at wholesale. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for each location from which the spirits retailer licensee plans to sell to another retailer.

(3) A sale by a spirits retailer licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a spirits retail licensee must abide by RCW 66.24.630.

(4) A spirits retail licensee must pay to the board seventeen percent of all spirits sales. ((~~The first payment is due to the board October 1, 2012, for sales from June 1, 2012, to June 30, 2012 (see WAC 314-02-109 for quarterly reporting requirements).~~

~~Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.~~))

(5) Per RCW 66.24.055, a spirits retail licensee selling for resale must pay to the board a ten percent distributor license fee for the first twenty-seven months of licensure, and a five percent distributor license fee for month twenty-eight and each month thereafter. The fee is required on sales of spirits which the licensee selling to another licensee for resale is the first to have received:

(a) Spirits manufactured in the state, from the distiller; or

(b) Spirits manufactured outside of the state from an authorized out-of-state supplier; and

(c) No other distributor license fee has been paid.

(6) Reporting of spirits sales and payment of fees must be submitted electronically or on forms provided by the board. Reporting requirements are outlined in WAC 314-02-109.

(7) A spirits retail licensee may apply for a spirits sampling endorsement to conduct spirits sampling if they meet the following criteria:

(a) Be a participant in the responsible vendor program;

(b) Advertising:

(i) For spirits retail licensees that also hold a grocery store license, signs advertising spirits samplings may not be placed in the windows or outside of the premises that can be viewed from the public right of way;

(ii) For spirits retail licensees that also hold a beer/wine specialty store license, advertising of spirits sampling may be advertised but not state that sampling is free of charge.

(c) Spirits samplings are to be conducted in the following manner:

(i) Spirits samplings service area and facilities must be located within the licensees' fully enclosed retail area and must be of a size and design that the licensee can observe and control persons in the area.

(ii) The licensee must provide a sketch of the sampling area. Fixed or ((~~moveable~~)) movable barriers are required around the sampling area to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol. The sketch is to be included with the application for the spirits sampling endorsement.

(iii) Each sample may be no more than one-half ounce of spirits, and no more than a total of one and one-half ounces of spirits samples per person during any one visit to the premises. Spirits samples may be altered with mixers, water, and/or ice.

(iv) The licensee must have food available for the sampling participants.

(v) Customers must remain in the service area while consuming samples.

(vi) All employees serving spirits during sampling events must hold a class 12 server permit.

(vii) There must be at least two employees on duty when conducting spirits sampling events.

(viii) Spirits sampling activities are subject to RCW 66.28.305 and 66.28.040.

(d) Licensees are required to send a list of scheduled spirits samplings to their regional enforcement office at the beginning of each month. The date and time for each sampling must be included.

(((~~6~~))) (8) The annual fee for a spirits retail license is one hundred sixty-six dollars.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-23-001 What does a spirits distributor license allow? (1) ((~~A spirits distributor licensee may not commence sales until March 1, 2012.~~)) A spirits distributor licensee is allowed to:

(a) Sell spirits purchased from manufacturers, distillers, importers, or spirits certificate of approval holders;

(b) Sell spirits to any liquor licensee allowed to sell spirits;

(c) Sell spirits to other spirits distributors; ((~~and~~))

(d) Sell spirits to bona fide full-time employees per RCW 66.28.185 under the following conditions:

(i) No spirits may be sold unless they are in such condition that they cannot reasonably be sold in the normal course of business, such as damage to the label on an individual bottle;

(ii) No spirits may be sold for less than the spirits distributor licensee's cost of acquisition; and

(iii) No spirits may be sold to a person who has been employed by the spirits distributor licensee for less than ninety days at the time of the sale or who is under the age of twenty-one.

(e) Export spirits from the state of Washington.

(2) The price of spirits sold to retailers may not be below acquisition cost.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-23-005 What are the fees for a spirits distributor license? (1) The holder of a spirits distributor license must pay to the board a monthly license fee ((~~as follows~~)). The license fee is:

(a) Ten percent of the total revenue from all sales of spirits to employees and retail licensees made during the month for which the fee is due for the first ((~~two years~~)) twenty-seven months of licensure; ((~~and~~)) or

(b) Five percent of the total revenue from all sales of spirits to employees and retail licensees made during the month for which the fee is due for the ((~~third year~~)) twenty-eighth month of licensure and ((~~every year~~)) each month thereafter((~~.~~)); and

(c) ((~~The license fee is only calculated~~)) Required on sales of ((~~items~~)) spirits which the licensee was the first spirits distributor in the state to have received:

(i) ((~~In the case of~~)) Spirits manufactured in the state, from the distiller; or

(ii) ((~~In the case of~~)) Spirits manufactured outside of the state, from ((~~a spirits certificate of approval holder.~~

~~(d)~~))) an authorized out-of-state supplier.

(2) For sales to employees under RCW 66.28.185 and 66.24.630, the holder of a spirits distributor license must pay a license fee of seventeen percent of the total revenue from sales of spirits to employees made during the month for which the fee is due.

(3) Reporting of sales and payment of fees must be submitted electronically or on forms provided by the board.

(((~~2~~))) (4) The annual fee for a spirits distributor license is one thousand three hundred twenty dollars for each licensed location.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-23-021 What are the monthly reporting and payment requirements for a spirits distributor license? (1) A spirits distributor must submit monthly sales reports and payments to the board.

(2) The required monthly sales reports must be:

(a) Filed electronically or on a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with any payment due((~~,~~)) to the board on or before the twentieth day of each month((~~,~~)) for the previous month((~~.~~)) (for example, a report listing transactions for the month of January is due by February 20th((~~.~~))). When the

twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(3) Electronic payments will be considered received on the date they post in the WSLCB receiving account.

AMENDATORY SECTION (Amending WSR 14-12-101, filed 6/4/14, effective 7/5/14)

WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late? (1) Failure of a spirits distributor licensee to submit ((~~its~~)) monthly reports and payment to the board as required in WAC 314-23-021(1) will be sufficient grounds for the board to suspend or revoke the liquor license.

(2) A penalty of two percent per month will be assessed on any payments postmarked or posted in the WSLCB receiving account if paying electronically after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the ((~~filing~~)) report and payment must be postmarked ((~~by the U.S. Postal Service~~)) or posted in the WSLCB receiving account if paying electronically no later than the next postal business day.

Absent a postmark, and if not paying electronically, the date received at the ((~~Washington state liquor control board, or designee,~~)) WSLCB will be used to determine if penalties are to be assessed.

(3) Electronic payments will be considered received on the date they post in the WSLCB receiving account.

AMENDATORY SECTION (Amending WSR 13-07-009, filed 3/7/13, effective 4/7/13)

WAC 314-23-030 What does a spirits certificate of approval license allow? (1) ((~~A spirits certificate of approval licensee may not commence sales until March 1, 2012.~~)) A spirits certificate of approval license may be issued to spirits manufacturers located outside of the state of Washington but within the United States.

(2) There are three separate spirits certificate of approval licenses as follows:

(a) A holder of a spirits certificate of approval may act as a distributor of spirits they are entitled to import into the state by selling directly to spirits distributors or spirits importers licensed in Washington state. The fee for a certificate of approval is two hundred dollars per year.

(b) A holder of an authorized representative out-of-state spirits importer or brand owner for spirits produced in the United States but outside of Washington state may obtain a spirits authorized representative domestic certificate of approval license which entitles the holder to import spirits into the state by selling directly to spirits distributors, or spirits importers licensed in Washington state. The fee for an authorized representative certificate of approval for spirits is two hundred dollars per year.

(c) A holder of an authorized representative out-of-state spirits importer or brand owner for spirits produced outside of the United States obtains a spirits authorized representative foreign certificate of approval which entitles the holder to import spirits into the state by selling directly to spirits distributors, or spirits importers licensed in Washington state. The fee for an authorized representative certificate of approval for foreign spirits is two hundred dollars per year.

(3) A spirits certificate of approval holder, a spirits authorized representative domestic certificate of approval holder, and/or a spirits authorized representative foreign certificate of approval holder must obtain an endorsement to the certificate of approval that allows the shipment of spirits the holder is entitled to import into the state directly to licensed liquor retailers. The fee for this endorsement is one hundred dollars per year and is in addition to the fee for the certificate of approval license.

(4) The holder of a certificate of approval license that sells directly to licensed liquor retailers must((~~:~~

~~(a)~~)) report to the board monthly, electronically or on forms provided by the board, the amount of all sales of spirits to licensed spirits retailers((~~:~~

~~(b) Pay to the board a fee of ten percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the first two years of licensure.~~

~~(c) Pay to the board five percent of the total revenue from all sales of spirits to retail licensees made during the month for which the fee is due for the third year of licensure and every year thereafter~~)) and spirits distributors.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-23-041 What are the monthly reporting ((~~and payment~~)) requirements for a spirits certificate of approval licensee? (1) A spirits certificate of approval licensee must submit monthly reports ((~~and payments~~)) to the board.

(2) The required monthly reports must be:

(a) Filed electronically or on a form furnished by the board;

(b) Filed every month, including months with no activity ((~~or payment due~~));

(c) Submitted((~~, with payment due, to the board~~)) on or before the twentieth day of each month, for the previous month((~~.~~)) (for example, a report listing transactions for the month of January is due by February 20th((~~.~~))). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(3) Absent a postmark, the date received at the WSLCB will be used to determine timeliness.

AMENDATORY SECTION (Amending WSR 14-12-101, filed 6/4/14, effective 7/5/14)

WAC 314-23-042 What if a spirits certificate of approval licensee fails to report ((~~or pay,~~)) or reports ((~~or pays~~)) late? (((~~(1) If a spirits certificate of approval licensee does not submit its monthly reports and payment to the board as required by this subsection (1), the licensee is subject to penalties.~~

~~(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.~~

~~Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed.~~)) The board may revoke or suspend a certificate of approval license for failure to submit monthly reports or for submitting reports after the monthly due date.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-23-025	Collection of shortfall of spirits distributor license fees from spirits distributor license holders.

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-28-070 ((~~What are the~~)) Monthly reporting and payment requirements for a ((~~distillery~~)) distiller and craft ((~~distillery license?~~)) distiller. (1) A distiller or craft distiller must submit monthly production and sales reports and payment((~~s~~)) to the board.

(2) The required monthly reports must be:

(a) Filed electronically or mailed on a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted((~~,~~)) with any payment due((~~,~~)) to the board on or before the twentieth day of each month((~~,~~)) for the previous month((~~.~~)) (for example, a report listing transactions for the month of January is due by February 20th).((~~)~~)) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the ((~~filing~~)) report and payment must be submitted electronically or postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(((~~(2)~~))) (3) For reporting purposes, production is the distillation of spirits from mash, wort, wash, or any other distilling material. After the production process is ((~~completed~~)) complete, a production gauge ((~~shall~~)) must be made to establish the quantity and proof of the spirits produced. ((~~The~~)) Designation ((~~as to~~)) of the kind of spirits ((~~shall also~~)) must be made at the time of the production gauge. The distiller must maintain a record of the production gauge ((~~shall be maintained by the distiller~~)). The ((~~completion of the~~)) production process is complete when the product is packaged for distribution. Production quantities are reportable within thirty days of the completion of the production process.

(((~~(3) A distillery or craft distillery must pay ten percent of their gross spirits revenue to the board on sales to a licensee allowed to sell spirits for on- or off-premises consumption during the first twenty-seven months of licensure and five percent of their gross spirits revenues to the board in the twenty-eighth month and thereafter.~~

~~(a) A distillery~~)) (4) A distiller must pay seventeen percent of their gross spirits revenue to the board on sales to customers for off-premises consumption.

(((~~(b)~~))) (a) Payments must be submitted((~~,~~)) with the monthly reports((~~, to the board~~)) on or before the twentieth day of each month((~~,~~)) for the previous month((~~.~~)) (for example, payment for a report listing transactions for the month of January is due by February 20th).((~~)~~)) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, payment must be made or postmarked by the U.S. postal service no later than the next postal business day.

(b) Electronic payments will be considered received on the date they post in the WSLCB receiving account.

WSR 19-21-006
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed October 3, 2019, 12:54 p.m., effective November 3, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-97-4425, 388-97-4430 and 388-97-4440, to clarify that notices can be delivered and proof of service can be obtained electronically through the federal website, and to clarify the nursing home's right to appeal WAC deficiency findings under the state appeal process, regardless of the delivery method of the deficiency report.

Citation of Rules Affected by this Order: Amending WAC 388-97-4425, 388-97-4430, and 388-97-4440.

Statutory Authority for Adoption: RCW 74.42.620.

Adopted under notice filed as WSR 19-14-038 on June 26, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: October 3, 2019.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-4425 Notice—Service complete. Service of the department notices is complete when:

(1) Personal service is made;

(2) The notice is addressed to the facility or to the individual at his or her last known address, and deposited in the United States mail;

(3) The notice is faxed and the department receives evidence of transmission;

(4) Notice is delivered to a commercial delivery service with charges prepaid; ((~~or~~))

(5) Notice is delivered to a legal messenger service with charges prepaid((~~.~~)); or

(6) Notice is sent electronically, including through the federal website.

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-4430 Notice—Proof of service. The department may establish proof of service by any of the following:

(1) A declaration of personal service;

(2) An affidavit or certificate of mailing to the nursing home or to the individual to whom the notice is directed;

(3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; ((~~or~~))

(4) Proof of fax transmission((~~.~~)); or

(5) Proof of electronic transmission.

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-4440 Appeal rights. (1) The appeal rights in this section apply to any appealable action taken by the department under chapters 18.51, 74.42 and 74.39A RCW. Notice and appeal requirements for resident protection program findings are described in WAC 388-97-0720 and 388-97-0740.

(2) The following actions may be appealed:

(a) Imposition of a penalty under RCW 18.51.060 or 74.42.580;

(b) A denial of a license under RCW 18.51.054, a license suspension under RCW 18.51.067 or a condition on a license under RCW 74.39A.050; or

(c) Deficiencies cited on the state survey report and any other deficiencies cited under state law.

(3) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 18.51.065 and 74.42.580, chapter 388-02 WAC and this chapter. If there is a conflict between chapter 388-02 WAC and this chapter, this chapter will govern.

(4) The purpose of an administrative hearing will be to review actions taken by the department under chapters 18.51, 74.42 or 74.39A RCW, and under this chapter.

(5) The office of administrative hearings must receive an administrative hearing request from the applicant, licensee, or nursing home within twenty days of receipt of written notification of the department's action listed in subsection (2) of this section. Further information about administrative hearings is available in chapter 388-02 WAC and at the office of administrative hearings (OAH) web site: www.oah.wa.gov.

(6) Orders of the department imposing a stop placement, license suspension, emergency closure, emergency transfer of residents, temporary management, or conditions on a license are effective immediately upon verbal or written notice and must remain in effect until they are rescinded by the department or through the state administrative appeals process.

(7) Federal deficiencies cited on the federal survey report may not be appealed through the state administrative appeals process. If a federal remedy is imposed, the Centers for Medicare and Medicaid Services will notify the nursing facility of appeal rights under the federal administrative appeals process.

WSR 19-21-007

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed October 3, 2019, 2:51 p.m., effective November 3, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: As required by 42 U.S.C. Sec. 1369w, the agency is revising these sections and adding a new WAC section to implement an asset verification program to determine or redetermine the eligibility of an individual for Washington apple health.

Citation of Rules Affected by this Order: New WAC 182-503-0055; and amending WAC 182-503-0050 and 182-503-0080.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 42 U.S.C. Sec. 1396w.

Adopted under notice filed as WSR 19-15-142 on July 24, 2019.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/ Adopted	WAC Subsection	Reason
Original WAC 182-503-0055(2)		
Proposed	(2) This rule applies to the programs described in WAC 182-503-0510 (which includes all applications and renewals for any client and any financially responsible person for such programs), subject to:	To clarify to whom this rule applies, the agency has removed the parenthetical clause and the reference to programs described in WAC 182-503-1050.

Proposed/ Adopted	WAC Subsection	Reason
Adopted	(2) This rule applies to any client, or those financially responsible for them, who is subject to:	
Original WAC 182-503-0055 (3)(c)		
Proposed	(c) "Financially responsible person" means a person who is financially responsible as is described in WAC 182-506-0015.	To clarify to whom this rule applies, and for internal consistency, the agency revised the reference to "financially responsible person" to read "financial responsibility" and retained the cross-reference to WAC 182-506-0015.
Adopted	(c) "Financial responsibility" is described in WAC 182-506-0015.	
Original WAC 182-503-0055(4)		
Proposed	(4) You and any other financially responsible people must provide authorization for us to obtain any financial record held by a financial institution.	To clarify who may or may not provide authorization for the agency to obtain any financial record held by any financial institution.
Adopted	(4) You and any other financially responsible people must provide authorization for us to obtain any financial record held by a financial institution. The authorization may be provided by anyone described in WAC 182-503-0010 (1) and (2), except in the case of an authorized representative who must be designated by the client.	
Original WAC 182-503-0080 (2)(c)		
Proposed	(c) You are subject to asset verification and refuse to provide authorization as described in WAC 182-503-0055.	To clarify criteria for denial of application and to ensure consistency with WAC 182-503-0055.
Adopted	(c) You are subject to asset verification and do not provide authorization as described in WAC 182-503-0055.	

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: October 3, 2019.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-06-007, filed 2/17/17, effective 3/20/17)

WAC 182-503-0050 Verification of eligibility factors. ((~~For the purposes of this section, "we" refers to the medicaid agency or its designee and "you" refers to the applicant for, or recipient of, health care coverage.~~))

(1) **General rules.**

(a) We may verify the information we use to determine, redetermine, or terminate your ((~~Washington~~)) apple health eligibility.

(b) We verify the eligibility factors listed in WAC 182-503-0505(3).

(c) Before we ask you to provide records to verify an eligibility factor, we use information available from state databases, including data from the department of social and health services and the department of employment security, federal databases, or commercially available databases to verify the eligibility factor.

(d) We may require information from third parties, such as employers, landlords, and insurance companies, to verify an eligibility factor if the information we received:

(i) Cannot be verified through available data sources;

(ii) Did not verify an eligibility factor; or

(iii) Is contradictory, confusing, or outdated.

(e) We do not require you to submit a record unless it is necessary to determine or redetermine your eligibility.

(f) If you can obtain verification within three business days and we determine the verification is sufficient to confirm an eligibility factor, we base our initial eligibility decision upon that record.

(g) If we are unable to verify eligibility as described in (f) of this subsection, then we may consider third-party sources.

(h) If a fee is required to obtain a necessary record, we pay the fee directly to the holder of the record.

(i) We do not deny or delay your application if you failed to provide information to verify an eligibility factor in a particular type or form.

(j) Except for eligibility factors listed in WAC 182-503-0505 (3)(c) and (d), we accept alternative forms of verification. If you give us a reasonable explanation that confirms your eligibility, we may not require additional documentation.

(k) Once we verify an eligibility factor that will not change, we may not require additional verification. Examples include:

(i) U.S. citizenship;

(ii) Family relationships by birth;

(iii) Social Security numbers; and

(iv) Dates of birth, death, marriage, dissolution of marriage, or legal separation.

(l) If we cannot verify your immigration status and you are otherwise eligible for Washington apple health, we approve coverage and give additional time as needed to verify your immigration status.

(2) **Submission timelines.**

(a) We allow at least ten calendar days for you to submit requested information.

(b) If you request more time to provide information, we allow the time requested.

(c) If the tenth day falls on a weekend or a legal holiday as described in RCW 1.16.050, the due date is the next business day.

(d) We do not deny or terminate your eligibility when we give you more time to provide information.

(e) If we do not receive your information by the due date, we make a determination based on all the information available.

(3) **Notice requirements.**

(a) When we need more information from you to determine your eligibility for ((~~Washington~~)) apple health coverage, we send all notices according to the requirements of WAC 182-518-0015.

(b) If we cannot determine you are eligible, we send you a denial or termination notice including information on when we reconsider a denied application under WAC 182-503-0080.

(4) **Equal access and limited-English proficiency services.** If you are eligible for equal access services under WAC 182-503-0120 or limited-English proficiency services under WAC 182-503-0110, we provide legally sufficient support services.

(5) **Eligibility factors for nonmodified adjusted gross income (MAGI)-based programs.** If you apply for a non-MAGI program under WAC 182-503-0510(3), we verify the factors in WAC 182-503-0505(3). In addition, we verify:

(a) Household composition, if spousal or dependent deeming under chapter 182-512 WAC or spousal or dependent allowance under chapters 182-513 and 182-515 WAC applies;

(b) Income and income deductions;

(c) Resources, including:

(i) Trusts, annuities, ((~~and~~)) life estates, and promissory notes under chapter((~~s 182-512, 182-513, and~~)) 182-516 WAC;

(ii) Real property transactions; and

(iii) Financial records, as defined in WAC 182-503-0055, held by financial institutions.

(d) Medical expenses required to meet any spenddown liability under WAC 182-519-0110;

(e) All post-eligibility deductions used to determine cost of care for clients eligible for long-term services and supports under chapters 182-513 and 182-515 WAC;

(f) Transfers of assets under chapter 182-513 WAC and WAC 182-503-0055 when the program is subject to transfer of assets limitations;

(g) Shelter costs for long-term care cases where spousal and dependent allowances apply;

(h) Blindness or disability, if you claim either; and

(i) Social Security number for a community spouse if needed when you apply for long-term care.

(6) **Verification for MAGI-based programs.**

(a) After we approve your coverage based on your self-attestation, we may conduct a post-eligibility review to verify your self-attested information.

(b) When conducting a post-eligibility review, we attempt to verify eligibility factors using your self-attested information available to us through state, federal, and commercially available data sources, or other third parties, before requiring you to provide information.

(c) You may be required to provide additional information if:

(i) We cannot verify an eligibility factor through other data sources listed in subsection (b) of this section; or

(ii) The information received from the data source is not reasonably compatible with your self-attestation.

(7) **Reapplication following post-eligibility review.** If your eligibility for MAGI-based ((~~Washington~~)) apple health terminates because of a post-eligibility review and you reapply, we may request verification of eligibility factors prior to determining eligibility.

NEW SECTION

WAC 182-503-0055 Asset verification system. (1) This rule implements the asset verification system (AVS) outlined in section 1940 of the Social Security Act.

(2) This rule applies to any client, or those financially responsible for them, who is subject to:

(a) The disclosure of resources, as defined in WAC 182-512-0200, to determine eligibility; or

(b) Provisions related to the transfer of assets, as described in WAC 182-513-1363.

(3) For the purposes of this section:

(a) "Financial institution" means the same as defined in section 1101 of the Right to Financial Privacy Act, and may include, but is not limited to:

(i) Banks; or

(ii) Credit unions.

(b) "Financial record" means any record held by a financial institution pertaining to a customer's relationship with the financial institution; and

(c) "Financial responsibility" is described in WAC 182-506-0015.

(4) You and any other financially responsible people must provide authorization for us to obtain any financial record held by a financial institution. The authorization may be provided by anyone described in WAC 182-503-0010 (1) and (2), except in the case of an authorized representative who must be designated by the client.

(5) The authorization, provided under subsection (4) of this section, will remain in effect until one of the following occurs:

(a) Your application for apple health is denied;

(b) Your eligibility for apple health is terminated; or

(c) You revoke your authorization in a written notification to us.

(6) We will:

(a) Use the authorization provided under subsection (4) of this section to electronically verify your financial records and those of any other financially responsible person to determine or renew your eligibility for apple health; or

(b) Inform you in writing at the time of application and renewal that we will obtain and use information available through AVS to determine your eligibility for apple health.

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

WAC 182-503-0080 Washington apple health—Application denials and withdrawals. (1) We follow the rules about notices and letters in chapter 182-518 WAC. We follow the rules about timelines in WAC 182-503-0060.

(2) We deny your application for ((~~Washington~~)) apple health (((~~WAH~~))) coverage when:

(a) You tell us either orally or in writing to withdraw your request for coverage; or

(b) Based on all information we have received from you and other sources within the time frames stated in WAC 182-503-0060, including any extra time given at your request or to accommodate a disability or limited-English proficiency:

(i) We are unable to determine that you are eligible; or

(ii) We determine that you are not eligible.

(c) You are subject to asset verification and do not provide authorization as described in WAC 182-503-0055.

(3) We send you a written notice explaining why we denied your application (per chapter 182-518 WAC).

(4) We reconsider our decision to deny your ((~~WAH~~)) apple health coverage without a new application from you when:

(a) We receive the information that we need to decide if you are eligible within thirty days of the date on the denial notice; ((~~or~~))

(b) You give us authorization to verify your assets as described in WAC 182-503-0055 within thirty days of the date on the denial notice;

(c) You request a hearing within ninety days of the date on the denial letter and an administrative law judge (ALJ) or HCA review judge decides our denial was wrong (per chapter 182-526 WAC).

(5) If you disagree with our decision, you can ask for a hearing. If we denied your application because we ((~~don't~~)) do not have enough information, the ALJ will consider the information we already have and ((~~anymore~~)) any more information you give us. The ALJ does not consider the previous absence of information or failure to respond in determining if you are eligible.

WSR 19-21-020
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 4, 2019, 3:03 p.m., effective November 4, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This revision to WAC 392-141-410 allows for a one-year carryover of the one-time legislative salary and benefit increase included in the transportation operations allocation for the 2018-19 school year. This stems from the state-funded increase in compensation for school district employees that came with the passage of E2SSB 6362. The purpose of this permanent rule is to give school districts time to spend the carry-over funds for allowable expenditures in the current school year and avoid unnecessary recovery of unexpended transportation funds.

Citation of Rules Affected by this Order: Amending WAC 392-141-410.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 19-17-061 on August 19, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 4, 2019.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 13-17-110, filed 8/21/13, effective 9/21/13)

WAC 392-141-410 Recovery of transportation funds. The superintendent of public instruction shall recover (take back) state pupil transportation allocations that are not expended for the allowable student transportation program costs under the accounting guidance provided by the superintendent. The amount of the recovery shall be calculated as follows:

(1) Determine the district's state allocation for student transportation operations for the school year.

(2) Determine the district's allowable student transportation costs as follows:

(a) Sum the following amounts:

(i) The district's direct expenditures for general fund program 99 pupil transportation, and for educational service district student transportation operations expenditures in program 70 transportation excluding expenditures associated with the regional coordinator and bus driver training grants;

(ii) Allowable indirect charges equal to the expenditures as calculated pursuant to (a)(i) of this subsection times the state recovery rate as calculated in the district annual financial report;

(b) Subtract the district's revenues for the school year for revenue account 7199 (transportation revenues from other districts).

(3) If the allowable program costs are less than the state allocation, OSPI shall recover the difference.

(4) Special rule for the 2019-20 school year only. School districts may carry over state pupil transportation allocations that were not expended for allowable student transportation program costs from the 2018-19 school year to the 2019-20 school year.

Funds transferred into the transportation vehicle fund shall not be included as allowable transportation program costs for recovery calculations.

WSR 19-21-022
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed October 7, 2019, 7:31 a.m., effective November 12, 2019]

Effective Date of Rule: November 12, 2019.

Purpose: This proposal will allow Washington state residents to select a nonbinary sex designation for driver licenses, instruction permits or identification cards.

Citation of Rules Affected by this Order: New WAC 308-104-0150 Changing sex designation on a driver's license, instruction permit, or identification card.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 19-14-105 on July 2, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 7, 2019.

Damon Monroe
Agency Rules Coordinator

NEW SECTION

WAC 308-104-0150 Changing sex designation on a driver's license, instruction permit, or identification card. (1) Persons may change the sex designation on a driver's license, instruction permit, or identification card by means of completing a sex designation change application signed under penalty of perjury pursuant to chapter 9A.72 RCW.

(2) For the purposes of this section, "X" means a sex that is not exclusively male or female.

WSR 19-21-034
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 19-250—Filed October 8, 2019, 10:04 a.m., effective November 8, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Clarifies regulations for the public concerning the possession of aquatic invasive species and inspection of vessels and boating equipment to check for harmful aquatic invasive species under chapter 220-640 WAC.

Citation of Rules Affected by this Order: New WAC 220-640-011 and 220-640-051; and amending WAC 220-640-030 and 220-640-050.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 19-14-125 on July 3, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 27, 2019.

Larry M. Carpenter, Chair
Fish and Wildlife Commission

NEW SECTION

WAC 220-640-011 Failure to stop at mandatory AIS check station—Infraction. Any person who fails to stop at a

mandatory check station is guilty of a gross misdemeanor under RCW 77.15.809; however, if a person has never been previously issued either a citation or warning for this violation, the violation may be issued as an infraction under RCW 77.15.160.

NEW SECTION

WAC 220-640-051 Lawful possession of dead prohibited level 3 species for personal or commercial use—Allowable forms—Records required. (1) It is lawful to possess dead prohibited level 3 species for human or animal consumption use. For purpose of this rule, "dead" is defined as the following forms:

(a) Fully cooked;

(b) Frozen solid;

(c) Canned or otherwise vacuum-sealed in a container;

(d) Preserved by drying, salting, or pickling; or

(e) Raw/fresh if the head has been removed and/or all the internal organs have been removed.

(2) The person or commercial entity must possess the following records upon receiving and while in possession of a prohibited level 3 species in a dead form:

(a) The records must be in accordance with RCW 77.15.568; and

(b) The records must identify:

(i) Taxonomic species name or subspecies name to distinguish the subspecies from another prohibited species or a regulated type A species; and

(ii) The dead form in which the species was received as listed under subsection (1) of this section.

(3) It is unlawful for any person or commercial entity to receive or possess any live prohibited level 3 species or that does not meet the requirements of subsection (1) of this section.

(4) Any person or commercial entity in possession of a prohibited level 3 species violating this regulation shall be guilty of unlawful use of invasive species in the second degree under RCW 77.15.809.

AMENDATORY SECTION (Amending WSR 18-16-042, filed 7/25/18, effective 8/25/18)

WAC 220-640-030 Prohibited level 1 species. The following species are classified as prohibited level 1 species:

(1) Molluscs: Family Dreissenidae: Zebra and quagga mussels: Dreissena polymorpha and Dreissena rostriformis bugensis.

(2) Crustaceans:

(a) Family Grapsidae: Mitten crabs: All members of the genus Erochier.

(b) Family Portunidae: European green crab, Carcinus maenas.

(3) Fish:

(a) Family Channidae: China fish, snakeheads: All members of the genus Channa.

(b) Family Clarriidae: All members of the walking catfish family.

(c) Family Cyprinidae:

(i) Carp, Bighead, Hypopthalmichthys nobilis.

(ii) Carp, Black, Mylopharyngodon piceus.

(iii) Carp, Silver, Hypopthalmichthys molitrix.

(iv) Carp, Largescale Silver, Hypopthalmichthys harmandi.

(d) Family Esocidae: Northern pike, Esox Lucius.

AMENDATORY SECTION (Amending WSR 18-16-042, filed 7/25/18, effective 8/25/18)

WAC 220-640-050 Prohibited level 3 species. The following species are classified as prohibited level 3 species:

(1) Amphibians:

(a) In the family Hylidae: Cricket frog, in the genus Hyla species in the group Arborea including: Hyla annectans, Hyla arborea, Hyla chinensis, Hyla hallowellii, Hyla immaculata, Hyla japonica, Hyla meridionalis, Hyla sanchiangensis, Hyla simplex, Hyla suweonensis, Hyla tsinlingensis, and Hyla zhaopingensis.

(b) In the family Pelobatidae, spadefoots, all species of the genus Pelobates including P. cultripes, P. fuscus, P. syriacus, and P. varaldii. All species of the genus Scaphiopus including: S. couchii, S. holbrookii, and S. hurterii. All species of the genus Spea including: S. bombifrons, S. hammondii, and S. multiplicata with the exception of the native species: Spea intermontana the great basin spadefoot.

(c) In the family Pipidae: African clawed frog, all members of the genera Silurana, and Xenopus.

(d) In the family Ranidae:

(i) American Bull frog, Rana (Lithobates) catesbeiana.

(ii) Holoarctic brown frogs and Palearctic green frogs of the genus Rana, including the following: Rana arvalis group (R. arvalis, R. chaochiaoensis, R. chevronta); Rana chensinensis group (R. altaica, R. chensinensis, R. dybowskii, R. kukunoris, R. kunyuensis, R. ornativentris, R. pirica); Rana graeca group (R. graeca, R. italica); Rana japonica group (R. amurensis, R. aragonensis, R. japonica, R. omeimontis, R. zhenhaiensis); the subgenus Rugosa (Rana rugosa, Rana emeljanovi, Rana tientaiensis); Rana tagoi group (R. sakuraii, R. tagoi); Rana temporaria group (R. asiatica, R. dalmatina, R. honnorate, R. huanrenensis, R. iberica, R. latastei, R. macrocnemis, R. okinavana, R. pyrenaica, R. tsushimensis, R. zhengi); and in the Rana Pelophylax section, the subgenus Pelophylax (R. bedriagae, R. bergeri, R. cerigensis, R. chosenica, R. cretensis, R. demarchii, R. epeirotica, R. fukienensis, R. grafti, R. hubeiensis, R. lateralis, R. lessonae, R. nigrolineata, R. nigromaculata, R. perezi, R. plancyi, R. porosa, R. ridibunda, R. saharica, R. shqiperica, R. shuchinae, R. terentievi, R. tenggerensis); and the Rana ridibunda-Rana lessonae hybridogenetic complex species R. esculenta and R. hispanica.

(e) In the family Ambystomatidae: Mole salamanders. In the genus Ambystomata: A. californiense, A. laterale, A. opacum, A. rosaceum, A. tigrinum, except for the native species A. tigrinum mavortium Western tiger salamander, and A. tigrinum melanostictum Tiger salamander.

(f) In the family Amphiumidae one, two, and three toed salamanders or congo eels: All members of the genus Amphiuma.

(g) In the family Cryptobranchidae: Giant salamanders and hellbenders, all members of the genera Andrias and Cryptobranchus.

(h) In the family Dicamptodontidae, American giant salamanders, all members of the genus Dicamptodon, except for the native species: Dicamptodon tenebrosus, Pacific giant salamander, and Dicamptodon copei, Cope's giant salamander.

(i) In the family Hynobiidae: Mountain salamanders, all members of the genera Batrachuperus, Hynobius, Liua, Onychodactylus, Pachyhynobius, Pseudohynobius, Ranodon, and Salamandrella.

(j) In the family Plethodontidae, subfamily Desmognathinae: All members of the genus Desmognathus, dusky salamander.

(k) In the family Plethodontidae, subfamily Plethodontinae: All members of the genera Eurycea (American brook salamanders); Gyrinophilus (cave salamanders); Hemidactylium (four-toed salamanders); Hydromantes and Pseudotriton (mud or red salamanders).

(l) In the family Proteidae, mudpuppies, all members of the genus Necturus and Proteus.

(m) In the family Salamandridae: Newts, all members of the genera Chioglossa; Eichinotriton (mountain newts); Euproctus (European mt. salamander); Neurergus (Kurdistan newts); Notophthalmus (red-spotted newts); Pachytriton (Chinese newts); Paramesotriton (warty newts); Salamandrina (speckled salamander); Taricha except for the native species Taricha granulosa granulosa the Northern rough-skin newt, and Ichthyosaura and Triturus (alpine newts).

(n) In the family Sirenidae, sirens, all species of the genera Pseudobranchus and Siren.

(2) Reptiles:

(a) In the family Chelydridae, snapping turtles, all species.

(b) In the family Emydidae:

(i) Chinese pond turtles, all members of the genus Chinemys.

(ii) Pond turtles, all members of the genus Clemmys.

(iii) European pond turtle, Emys orbicularis.

(iv) Asian pond turtle, all members of the genus Mauremys.

(c) In the family Trionychidae, American soft shell turtles, all members of the genus Apalone.

(3) Crustaceans:

(a) Family Cercopagidae:

(i) Fish hook water flea, Cercopagis pengoi.

(ii) Spiny water flea, Bythotrephes cederstroemi.

(b) Family Cambaridae: Crayfish: All genera.

(c) Family Parastacidae: Crayfish: All genera except Engaeos, and except the species Cherax quadricarinatus, Cherax papuanus, and Cherax tenuimanus.

(d) Family Spheromatidae: Burrowing isopod, Sphaeroma quoyanum.

(4) Fish:

(a) Family Amiidae: Bowfin, grinnel, or mudfish, Amia calva.

(b) Family Characidae: Piranha or caribe: All members of the genera Pygocentrus, Rooseveltiella, and Serrasalmus.

(c) Family Cyprinidae:

(i) Fathead minnow, Pimephales promelas.

(ii) Carp, Grass (in the diploid form), Ctenopharyngodon idella.

(iii) Ide, silver orfe or golden orfe, Leuciscus idus.

(iv) Rudd, Scardinius erythropthalmus.

(d) Family Gobiidae: Round goby, Neogobius melanostomus.

(e) ((~~Family Esocidae: Northern pike, Esox lucius.~~

~~(f)~~)) Family Lepisosteidae: Gar-pikes: All members of the family.

(5) Mammals: Family Myocastoridae: Nutria, Myocastor coypu.

(6) Molluscs:

(a) Family Dreissenidae: All members of the genus Dreissenid except the species zebra mussel, Dreissena polymorpha, and the quagga mussel, Dreissena rostriformis bugensis.

(b) Family Gastropoda: New Zealand mud snail, Potamopyrgus antipodarum.

WSR 19-21-045
PERMANENT RULES
BOARD OF TAX APPEALS

[Filed October 9, 2019, 12:19 p.m., effective November 9, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rename and redefine chapter 456-12 WAC.

Citation of Rules Affected by this Order: Amending WAC 456-12-015.

Statutory Authority for Adoption: RCW 82.03.170.

Adopted under notice filed as WSR 19-15-097 on July 22, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 24, 2019.

Kate Adams
Executive Director

Chapter 456-12 WAC

((~~PUBLIC RECORDS~~)) ADMINISTRATIVE PROCESSES

AMENDATORY SECTION (Amending WSR 99-13-098, filed 6/15/99, effective 7/16/99)

WAC 456-12-015 Purpose of this chapter. The purpose of this chapter is to ((~~provide~~)) set forth rules on the

organization and administration of the board ((~~of tax appeals with~~)) and rules that comply with chapter ((~~42.17~~)) 42.30 RCW, regarding open public meetings, and chapter 42.56 RCW, regarding public records.

WSR 19-21-052
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed October 10, 2019, 2:25 p.m., effective February 1, 2020]

Effective Date of Rule: February 1, 2020.

Purpose: WAC 246-919-990 Physician and surgeon fees and renewal cycle and 246-918-990 Physician assistants fees and renewal cycle, the adopted rules increase renewal fees and late renewal penalties for physicians and physician assistants. The Washington medical commission (commission) and department of health (department) project this program's fund balance to fall into a nearly -$6.7 million deficit by the end of the 2019-21 biennium. RCW 43.70.250 requires licensing programs to be self-supporting and department policy and office of financial management guidelines require professions to have a sufficient reserve to cover unexpected costs. The adopted fees are needed to generate sufficient revenue to align revenues with the costs of regulating allopathic physicians and physician assistants, correct the projected deficit, and maintain a reserve to cover unanticipated costs.

Citation of Rules Affected by this Order: Amending WAC 246-919-990 and 246-918-990.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Other Authority: RCW 43.70.250 and 43.70.280.

Adopted under notice filed as WSR 19-08-090 on April 3, 2019.

Changes Other than Editing from Proposed to Adopted Version: The adopted rule was changed from the proposed version in response to stakeholder comments and concerns. Due to significant feedback from licensees and stakeholders, the proposed fee increase for renewals was reduced from $880 to $824 for physicians and from $265 to $247 for physician assistants. Late penalties are calculated using set standards. Because of the adjustments to the renewal fees, it was necessary to adjust the late renewal fee for physician assistants from $130 to $124. The late renewal fee for the physicians did not need adjusting as the calculated amount did not change.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: October 8, 2019.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 15-20-050, filed 9/30/15, effective 1/1/16)

WAC 246-918-990 Physician assistants fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The applicant or licensee must pay the following nonrefundable fees:

Title of Fee	Fee
Physician assistants:	
Original application ((~~(annual)*~~	~~$116.00~~))
Application	$50.00
UW HEAL-WA surcharge*	16.00
Washington physician health program surcharge	50.00
Active license renewal	
Two-year renewal((~~*~~	~~202.00~~)) 247.00
UW HEAL-WA surcharge*	32.00
Washington physician health program surcharge*	100.00
Late renewal fee	((~~50.00~~)) 124.00
Expired license reissuance	50.00
Retired active license renewal	
Two-year renewal((~~**~~	~~135.00~~)) 35.00
Washington physician health program surcharge*	100.00
Late renewal fee	35.00
Duplicate license	15.00

* ((~~Includes~~)) The Washington physician health program surcharge (RCW 18.71A.020(3)) is assessed at $50.00 per year, and the University of Washington (UW) HEAL-WA web portal access fee (RCW 43.70.110) assessed at $16.00 per year.

** ((~~Includes~~)) The Washington physician health program surcharge is assessed at $50.00 per year.

AMENDATORY SECTION (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

WAC 246-919-990 Physician and surgeon fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to the program's date.

(3) A retired active physician who resides and practices in Washington and obtains or renews a retired active license is exempt from all licensing fees except for the impaired physician program surcharge authorized by RCW 18.71.310.

(4) The applicants and licensees must pay the following nonrefundable fees:

((

~~Title of Fee~~	~~Fee~~
~~Physicians and surgeons: Chapter 18.71 RCW~~	
~~Application (annual)*~~	~~$491.00~~
~~Two-year renewal*~~	~~657.00~~
~~Late renewal penalty~~	~~262.50~~
~~Expired license reissuance~~	~~262.50~~
~~Certification of license~~	~~50.00~~
~~Duplicate license~~	~~15.00~~
~~Temporary permit~~	~~50.00~~
~~Application fee for transitioning from a postgraduate training limited license (annual)*~~	~~166.00~~
~~Retired active physicians and surgeons: (Two-year cycle)~~	
~~Retired active physician who resides and practices in state per RCW 18.71.080 and 18.130.250 (Washington physician health program surcharge)~~	~~100.00~~
~~Retired active physician license renewal *(does not meet in-state exemption)~~	~~332.00~~
~~Retired active late renewal penalty~~	~~50.00~~
~~Postgraduate limited license fees: RCW 18.71.095 (One-year cycle)~~	
~~Limited license application*~~	~~391.00~~
~~Limited license renewal*~~	~~391.00~~
~~Limited duplicate license~~	~~15.00~~))

Title of Fee	Fee
Original application	
Application	$425.00
UW HEAL-WA surcharge*	16.00
Washington physician health program surcharge*	50.00
Active license renewal	
Two-year renewal	824.00
UW HEAL-WA surcharge*	32.00
Washington physician health program surcharge*	100.00
Late renewal penalty	300.00
Expired license reissuance	262.50
Retired active license renewal (resides and practices in-state per RCW 18.71.080 and 18.130.250)	
Two-year renewal (only includes Washington physician health program surcharge)**	100.00
Retired active license renewal (does not meet in-state exemption)	
Two-year renewal	200.00
UW HEAL-WA surcharge*	32.00
Washington physician health program surcharge*	100.00
Late renewal penalty	100.00
Verification of license	50.00
Duplicate license	15.00
Temporary permit	50.00
Transitioning from postgraduate training limited license	
Application fee	100.00
UW HEAL-WA surcharge*	16.00
Washington physician health program surcharge*	50.00
Postgraduate limited license: RCW 18.71.095 (One-year cycle)	
Original application	
Application	325.00
UW HEAL-WA surcharge*	16.00
Washington physician health program surcharge*	50.00
Limited license renewal (One-year cycle)	
Renewal	325.00
UW HEAL-WA surcharge*	16.00
Washington physician health program surcharge*	50.00
Limited duplicate license	15.00

* ((~~The application or renewal fee includes:~~)) The Washington physician health program surcharge (RCW 18.71.310(2)) is assessed at $50.00 per year, and the University of Washington (UW) HEAL-WA web portal access fee (RCW 43.70.110) is assessed at $16.00 per year.

WSR 19-21-056
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 11, 2019, 9:19 a.m., effective November 11, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-478-0027, to reflect increased maximum payment standards for the pregnant women assistance program, based on the 2019-2021 operating budget.

Citation of Rules Affected by this Order: Amending WAC 388-478-0027.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335.

Other Authority: ESHB 1109 (chapter 415, Laws of 2019).

Adopted under notice filed as WSR 19-17-050 on August 16, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 10, 2019.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-478-0027 What are the payment standards for pregnant women assistance (PWA)? (1) The payment standards for PWA cash assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment Standard
1	$((~~197~~)) 363

(2) The payment standards for PWA cash assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard
1	$((~~120~~)) 221

WSR 19-21-059
PERMANENT RULES
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

[Filed October 11, 2019, 11:20 a.m., effective November 11, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: For the family reconciliation services program, amend the eligibility age of adolescents from "thirteen through seventeen years of age" to "twelve through seventeen years old" to give program staff greater flexibility when determining which families are eligible to receive services; repeal sections that pertain to home support services following the program's elimination; and make technical changes necessary following the decodification of chapter 388-32 WAC and its recodification to Title 110 WAC.

Citation of Rules Affected by this Order: Repealing WAC 110-40-0101, 110-40-0102 and 110-40-0103; and amending WAC 110-40-0020 and 110-40-0030.

Statutory Authority for Adoption: RCW 74.13.031.

Adopted under notice filed as WSR 19-16-042 on July 29, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 11, 2019.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-40-0020 Who may receive FRS services? (1) ((~~CA~~)) DCYF provides FRS to adolescents((~~, thirteen~~)) twelve through seventeen years ((~~of age,~~)) old and their families, in instances where ((~~the adolescent has~~)) adolescents have runaway ((~~and/or is~~)) or are otherwise in conflict with ((~~his/her family~~)) their families. These populations are defined as follows:

"Families in conflict" means families in which personal or family situations present a serious and imminent threat to the health or stability of the child, which may include an at-risk youth, or family.

"Runaways" means youths who are absent from home for a period of time without parental permission. Services are to actual runaways and not to threatened runaways, unless the

threatened runaways meet the definition of families in conflict.

(2) FRS is not provided for any of the following situations, unless the family is seeking an at-risk youth (ARY) or a child-in-need-of-services (CHINS) family assessment:

(a) ((~~The identified youth has not reached his/her thirteenth birthday, or the youth is eighteen years of age or older;~~

~~(b)~~)) Chronic or long-term multiproblem situations requiring long-term interventions;

(((~~(c)~~))) (b) Custody and marital disputes unless the dispute creates a conflict between the child and parent with physical custody;

(((~~(d)~~))) (c) Families currently receiving counseling services related to the parent-child conflict/relationship from other agencies;

(((~~(e)~~))) (d) Child abuse and neglect cases, unless those cases meet the definition of family in conflict; or

(((~~(f)~~))) (e) Youth receiving foster care or group care services or follow up to those services.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-40-0030 What FRS does the department provide? The assigned ((~~social worker~~)) caseworker provides family reconciliation services (FRS) to develop skills and supports within families to resolve family conflicts, achieve a reconciliation between parent and child, and to avoid out-of-home placement. The services may include, but are not limited to, referral to services for suicide prevention, psychiatric or other medical care, or psychological, financial, legal, educational, or other social services, as appropriate to the needs of the child and family. Typically FRS is completed within a thirty-day period. ((~~Children's administration (CA)~~)) The department provides intake and assessment services (IAS).

(1) Youth and their families who call or self-present at a ((~~children's administration~~)) DCYF central intake or local office requesting FRS must be provided assistance in contacting the appropriate ((~~children's administration's~~)) DCYF intake services to make a formal request for FRS.

(2) The FRS ((~~social worker~~)) caseworker must contact the family within twenty-four hours of ((~~their~~)) assignment to the case to schedule an appointment to begin the family interview and assessment.

(3) FRS is intended to defuse the immediate potential for violence, assess problems, and explore options leading to problem resolution.

(4) Families who require more intensive interventions than those provided by the FRS ((~~social worker~~)) caseworker may be referred to a contracted provider for services. The family must make a commitment to participate in the contracted services.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 110-40-0101 What are home support services?

WAC 110-40-0102 What are the eligibility criteria for HSS?

WAC 110-40-0103 What are home based services and under what circumstances may the department provide the services to the child's parent or relative caregiver?

WSR 19-21-060
PERMANENT RULES
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

[Filed October 11, 2019, 11:21 a.m., effective November 11, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Clarify that an early support for infants and toddlers service provider must be an organization and cannot be an individual. Make technical changes necessary following the decodification of chapter 290-400 [170-400] WAC and its recodification to Title 110 WAC.

Citation of Rules Affected by this Order: Amending WAC 110-400-0001, 110-400-0020, 110-400-0030, 110-400-0050, 110-400-0070, 110-400-0100, 110-400-0130, 110-400-0140, 110-400-0150, 110-400-0160, and 110-400-0170.

Statutory Authority for Adoption: RCW 43.216.020 (1)(g).

Adopted under notice filed as WSR 19-16-066 on July 30, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 11, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 11, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 11, 2019.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-400-0001 Authority. RCW ((~~43.215.020~~)) 43.216.020 establishes the department of ((~~early learning~~)) children, youth, and families (DCYF) as the state lead agency((~~,~~)) for Part C of the federal Individuals with Disabilities Education Act((~~, with the responsibility and authority to set and enforce rules for the provision of early intervention~~

~~services in Washington state~~)) (IDEA). RCW 43.216.020 also requires that DCYF develop and adopt rules that establish minimum requirements for the services offered through IDEA Part C programs, including allowable allocations and expenditures for transition into IDEA Part C. Federal authority for this chapter is 20 U.S.C. Sec. 1431-1444 and the Part C regulations in 34 C.F.R. Part 303, ((~~which includes~~)) and DCYF is the state lead agency for receipt of federal funds for early intervention services. DCYF's responsibilities include, but are not limited to, coordination of all funding and oversight of state and federal funding allocated to implement early intervention services.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-400-0020 Applicability. (1) Pursuant to RCW 43.216.020 and 28A.155.065, this chapter applies to all early intervention providers, including school districts, involved in early intervention service provision for children receiving services from the early support for infants and toddlers program, whether or not the ((~~entity or individual~~)) agency receives state or federal funds.

(2) This chapter does not apply to any child with a disability receiving a free appropriate public education under chapter 392-172A WAC or 34 C.F.R. Part 300, Part B.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-400-0030 Definitions. "Administrative indirect expenses" means indirect costs such as, general management compensation, joint facility costs, contract administration, fiscal services, and general office supplies that are not allocated to direct services for infants, toddlers, and their families.

"Department" or **"DCYF"** means the department of ((~~early learning~~)) children, youth, and families, the Washington state lead agency designated by the governor to receive state and federal funds to administer the early support for infants and toddlers (ESIT) program. ((~~These responsibilities include, but are not limited to, coordination of all funding and oversight of state and federal funding allocated to implement early intervention services.~~))

"Department-approved clarification memos" means the ESIT program published guides and policy memos signed by the ESIT administrator ((~~and posted on the agency web site~~)).

"Early intervention services (((~~EIS~~)))" or **"EIS"** means developmental services that include:

(a) Assistive technology devices and services;
(b) Audiology services;
(c) Family training, counseling and home visits;
(d) Health services;
(e) Medical services;
(f) Nursing services;
(g) Nutrition services;
(h) Occupational therapy;
(i) Physical therapy;
(j) Psychological services;
(k) Service coordination;
(l) Signed language and cued language;
(m) Social work services;
(n) Special instruction;
(o) Speech-language pathology;
(p) Transportation and related costs; and
(q) Vision services.

"Early support for infants and toddlers (((~~ESIT~~))) **program"** or **"ESIT"** means the statewide program within ((~~the department of early learning~~)) DCYF that administers all components of the birth to three early intervention system for eligible infants, toddlers, and their families.

"EIS provider agency" means any ESIT-approved organization((~~,~~)) including, but not limited to, a public, private, tribal or nonprofit entity, including a school district, ((~~or an individual~~)) that provides EIS, whether or not ((~~the entity or individual~~)) it receives funding from the ESIT program.

"Local agreement" means any written agreement required to implement ESIT services.

"Natural environments" means settings that are natural or typical for a same-aged infant or toddler without a disability, including the home or community settings.

((~~**"Office of superintendent of public instruction"** means the state educational agency responsible for the supervision of public elementary schools and secondary schools, including the implementation of Part B.~~))

"Part B" means special education of children with disabilities under the Individuals with Disabilities Education Act (IDEA), Part B, as amended, 20 U.S.C. Sec. ((~~1431-1444~~)) 1411-1419.

"Part C" means early intervention services for children with disabilities under the Individuals with Disabilities Education Act (IDEA), Part C, as amended, 20 U.S.C. Sec. 1431-1444 and 34 C.F.R. Part 303.

"Policies and procedures" means ESIT's federally approved policies and procedures for implementing EIS.

"Potential eligibility" means, based on existing assessment, evaluation, and the team's clinical understanding of the child's developmental status, the child is determined to be potentially eligible for services under Part B prior to the Part B required eligibility evaluation.

"School district" means a local educational agency administering elementary and secondary schools.

"System of payments and fees" means the federally required ESIT policy on families' financial contribution to their child's services.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-400-0050 ((~~Early intervention services (EIS) providers.~~)) EIS provider agencies. EIS provider((~~s~~)) agencies must:

(1) Provide and implement EIS according to state and federal law.

(2) Deliver services at a consistent level of frequency and intensity for a continuous twelve-month period based on child and family need, and not based on ((~~the~~)) availability of providers.

(3) Provide or otherwise arrange for all EIS included in the individualized family service plan. Wait lists and capping of services are prohibited.

(4) Enhance the capacity of the family in facilitating their child's development through natural learning opportunities at home or in community settings where typically developing children live, learn, or play.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-400-0070 Child find and referral. (1) ((~~Early intervention service providers must meet the requirements of~~)) EIS provider agencies must comply with state and federal law requirements regarding child find and referral.

(2) The department and local lead agencies will lead child find efforts and referral activities for the early support for infants and toddlers program. They may consult with state and local partners.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-400-0100 Natural environments. (1) ((~~Early intervention service (EIS) providers must meet the requirements set forth in state and federal law~~)) EIS provider agencies must comply with state and federal law requirements regarding natural environments.

(2) EIS must be provided in natural environments to the maximum extent appropriate based on the needs of the child.

(3) EIS may only occur in a setting other than a natural environment if one or more of a child's individualized family services plan (IFSP) outcomes cannot be met by providing EIS in a natural setting, as determined by the parent and the IFSP team.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-400-0130 System of payments and fees. ((~~Early intervention service (EIS) providers~~)) EIS provider agencies must follow the system of payments and fees set forth in state and federal law, policies, and procedures and department-approved clarification memos.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-400-0140 Use of funds. (1) ((~~Early intervention service (EIS) providers must follow~~)) EIS provider agencies must comply with the use of funds guidance and requirements as set forth in state and federal law.

(2) State and federal funds for the ((~~early support for infants and toddlers (~~))ESIT((~~)~~)) program may only be expended for ESIT required activities as ((~~outlined~~)) described in state and federal law.

(3) Administrative indirect expenses ((~~are~~)) must be limited to no more than ten percent of the total public moneys received by an ((~~entity~~)) EIS provider agency providing Part C required components or direct services.

(4) Administrative indirect expenses ((~~are~~)) must be limited to no more than five percent of the total public moneys received by an ((~~entity~~)) EIS provider agency acting as a pass through for state or federal funding.

(5) Under the department's authority, local ESIT budgets will be monitored and subject to audit for allowable expenditures.

(6) EIS provider((~~s~~)) agencies must bill all applicable funding sources including public and private insurance and families, prior to using state and federal funds for early intervention services.

(7) Public funds for the ESIT program may not be used for transition activities required under Part B of the Individuals with Disabilities Education Act.

(8) Under Part C, ((~~these~~)) allowable transition activities may be paid for with early intervention funds. EIS provider agency participation in allowable transition activities may include the following:

(a) The ((~~decision~~)) determination of potential eligibility for Part B prior to referral to Part B((~~;~~)).

(b) Transition planning and activities in the IFSP, including:

(i) Discussions with((~~,~~)) parents and training ((~~of parents~~)), as appropriate, regarding future placements and other matters related to the child's transition; and

(ii) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting.

(c) Facilitation and participation in the transition conference((~~;~~)).

(d) Sharing of information, with parental consent((~~; and~~)).

(e) Attending the eligibility and IEP meeting, upon ((~~parent's~~)) parental request.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-400-0150 Contracting and local agreements. ((~~Early intervention services providers~~)) EIS provider agencies providing ESIT services must comply with contractual provisions from the department, and contracts and local agreements approved by ((~~early support for infants and toddler's (~~))ESIT((~~)~~)) local lead agencies((~~, in providing ESIT services~~)).

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-400-0160 Data collection and reporting. ((~~Early intervention service providers~~)) EIS provider agencies must enter required data elements in the ((~~early support for infants and toddlers (~~))ESIT((~~)~~)) data management system and report on ESIT activities as required by contract or local agreement.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-400-0170 General supervision, monitoring, and enforcement. All ((~~early intervention service pro-~~

~~viders~~)) EIS provider agencies are subject to general supervision, monitoring, and enforcement actions through ((~~the early support for infants and toddlers program (ESIT) and/or~~)) ESIT and ESIT's local lead agencies set forth in state and federal law, contracts, and local agreements.

WSR 19-21-064
PERMANENT RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed October 11, 2019, 1:50 p.m., effective November 11, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Concerning background checks for licensed early learning providers and their employees: WAC 110-06-0040 is amended to ensure that any current licensed provider who has not undergone a fingerprint-based background check for previous license applications does so at renewal. WAC 110-15-0041 is amended to ensure that all new employees undergo fingerprint-based background checks and receive preemployment clearance authorizations beginning October 2020. Rule changes comply with the reauthorized Child Care and Development Block Grant Act (CCDF) prohibiting employees from working in an early learning program until a fingerprint-based background check is conducted and the department of children, youth, and families issues clearance authorization. Compliance with CCDF is necessary for continued receipt of grant moneys.

Citation of Rules Affected by this Order: Amending WAC 110-06-0040 and 110-06-0041.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Other Authority: 42 U.S.C. 9858, et seq. and 45 C.F.R. 98.43.

Adopted under notice filed as WSR 19-18-015 on August 27, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 11, 2019.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0040 Background clearance requirements. This section applies to all subject individuals other than in-home/relative providers.

(1) Subject individuals associated with early learning services applying for a first-time background check must complete the DCYF background check application process ((~~through DCYF to include~~)) including, but not limited to:

(a) Submitting a completed background check application;

(b) Completing the required fingerprint process; and

(c) Paying all required fees as provided in WAC 110-06-0044.

(2) All subject individuals ((~~who have been previously~~)) qualified by the department to have unsupervised access to children in care ((~~and~~)) who are renewing their applications must:

(a) Submit the new background check application through DCYF;

(b) Submit payment of all required fees as provided in WAC 110-06-0044; and

(c) Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed, or has not previously completed the fingerprint process required by this section.

(3) Each subject individual completing the DCYF background check process must disclose whether they have:

(a) ((~~Whether he or she has~~)) Been convicted of any crime;

(b) ((~~Whether he or she has~~)) Any pending criminal charges; and

(c) ((~~Whether he or she has~~)) Been subject to any negative action, as defined by WAC 110-06-0020.

(4) ((~~A~~)) Subject individuals must not have unsupervised access to children in care unless ((~~he or she has~~)) they have obtained DCYF authorization under this chapter.

(5) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0041 Requirements for early learning service providers. (1) This section applies to all providers other than in-home/relative providers.

(2) Early learning services providers must require a subject individual to complete the DCYF background check application:

(a) Prior to the date of hire;

(b) By the date a subject individual age sixteen or older moves onto the premises; or

(c) By the date a subject individual who lives on the premises turns sixteen years old.

(3) Beginning October 1, 2020, a subject individual must receive from DCYF a background check clearance authorization prior to the first date of employment.

WSR 19-21-067
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed October 11, 2019, 3:04 p.m., effective November 11, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending WAC 182-502-0012(5) and 182-502-0040(2) to allow providers to request the agency to reconsider agency decisions to deny enrollment applications, and to request the agency to reconsider terminations of a provider agreement for convenience. The reconsideration process being added to WAC 182-502-0012 is a separate process from the reconsideration process in chapter 182-526 WAC and separate from the dispute resolution process in WAC 182-502-0050. The agency is amending WAC 182-502-0060 to remove subsections (1) and (2) that prohibit providers from reapplying for participation after the agency denies enrollment or removes a provider from participation. The agency has determined that the rules need to be amended to allow for due process and for reporting purposes.

Citation of Rules Affected by this Order: Amending WAC 182-502-0012, 182-502-0040, and 182-502-0060.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 19-18-100 on September 4, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: October 11, 2019.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-10-003, filed 4/22/15, effective 5/23/15)

WAC 182-502-0012 When the medicaid agency does not enroll. (1) The medicaid agency does not enroll a health care professional, health care entity, supplier, or contractor of service for reasons which include, but are not limited to, the following:

(a) The agency determines that:

(i) There is a quality of care issue with significant risk factors that may endanger client health, or safety, or both (see WAC 182-502-0030 (1)(a)); or

(ii) There are risk factors that affect the credibility, honesty, or veracity of the health care practitioner (see WAC 182-502-0030 (1)(b)).

(b) The health care professional, health care entity, supplier or contractor of service:

(i) Is excluded from participation in medicare, medicaid or any other federally funded health care program;

(ii) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;

(iii) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;

(iv) Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;

(v) Is noncompliant with the department of health or other state health care agency's stipulation of informal disposition, agreed order, final order, or similar licensure restriction;

(vi) Is suspended or terminated by any agency within the state of Washington that arranges for the provision of health care;

(vii) Fails a background check, including a fingerprint-based criminal background check, performed by the agency. See WAC 182-502-0014 and 182-502-0016; or

(viii) Does not have sufficient liability insurance according to WAC 182-502-0016 for the scope of practice, to the extent the health care professional, health care entity, supplier or contractor of service is not covered by the Federal Tort Claims Act, including related rules and regulations.

(c) A site visit under 42 C.F.R. 455.432 reveals that the provider has failed to comply with a state or federal requirement.

(2) The agency may not pay for any health care service, drug, supply or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service whose application for a core provider agreement (CPA) has been denied or terminated.

(3) The agency may not pay for any health care service, drug, supply, or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service who does not have a current CPA with the agency when the agency determines there is a potential danger to a client's health and/or safety.

(4) Nothing in this chapter precludes the agency from entering into other forms of written agreements with a health care professional, health care entity, supplier or contractor of service.

(5) If the agency denies an enrollment application under this section, the applicant ((~~does not have any dispute rights within the agency~~)) may request that the agency reconsider the denial.

(a) The agency's decision at reconsideration is the agency's final decision.

(b) The agency reconsiders the applicant according to the process and guidelines outlined in subsections (1) through (4) of this section.

(c) The reconsideration process in this section is unrelated to the reconsideration process described in chapter 182-526 WAC.

(6) Under 42 C.F.R. 455.470, the agency:

(a) Will impose a temporary moratorium on enrollment when directed by CMS; or

(b) May initiate and impose a temporary moratorium on enrollment when approved by CMS.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-502-0040 Termination of a provider agreement—For convenience. (1) Either the ((~~department~~)) medicaid agency or the provider may terminate the provider's participation with the ((~~department~~)) agency for convenience with thirty calendar days written notice served upon the other party in a manner which provides proof of receipt or proof of valid attempt to deliver.

(2) Terminations for convenience are not eligible for the dispute resolution process described in WAC ((~~388-502-0050~~)) 182-502-0050. Terminations for convenience are eligible for reconsideration as described in WAC 182-502-0012.

(3) If a provider is terminated for convenience, the ((~~department~~)) agency pays for authorized services provided up to the date of termination only.

AMENDATORY SECTION (Amending WSR 15-15-050, filed 7/9/15, effective 8/9/15)

WAC 182-502-0060 Reapplying for participation. (((~~(1) Providers who are denied enrollment or removed from participation are not eligible to reapply for participation with the medicaid agency for five years from the date of denial or termination.~~

~~(2) Providers who are denied enrollment or removed from participation more than once are not eligible to reapply for participation with the agency.~~

~~(3)~~)) A provider who is terminated solely under WAC 182-502-0030(3) is eligible for immediate reapplication with the medicaid agency if the provider is not a full or partial owner of a terminated group practice.

WSR 19-21-068
PERMANENT RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed October 11, 2019, 3:26 p.m., effective November 11, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These new rules will clarify a participating employer's responsibility to cooperate with the department of retirement systems as required by RCW 41.50.140(1).

Citation of Rules Affected by this Order: New chapter 415-117 WAC, Cooperation of employers in administration of the retirement systems.

Statutory Authority for Adoption: RCW 41.50.050, 41.50.140.

Adopted under notice filed as WSR 19-18-101 on September 4, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 11, 2019.

Tracy Guerin
Director

Chapter 415-117 WAC

COOPERATION OF EMPLOYERS IN ADMINISTRATION OF THE RETIREMENT SYSTEMS

NEW SECTION

WAC 415-117-010 Purpose. These rules relate to the implementation of RCW 41.50.140(1) which requires every employer participating in one or more of the retirement systems administered by the department of retirement systems to fully cooperate in the administration of those systems. These rules are intended to assist employers in communicating timely with the department and providing accurate member information.

NEW SECTION

WAC 415-117-020 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) "Census data testing" refers to testing of an employer's records for the purpose of validating information used by the state actuary to determine the net pension liability of the retirement systems. Census data refers to retirement system members' information, including birth date, gender, date of hire, years of service, compensation, and date of termination.

(2) "Compliance reviews" refers to examinations of employers' records related to information reported to the department of retirement systems, normally performed to ensure employees are receiving proper service credit and the benefits to which they are entitled.

(3) "Cooperate" or "cooperation" refers to the duty of every employer participating in one or more of the retirement systems to fully cooperate in the administration of the systems in which its employees participate by: (a) Distributing information to employees; (b) complying with the department's administrative instructions, requirements, requests, or

deadlines; and (c) accepting and carrying out all other duties as required by law or regulation.

(4) "Department" or "DRS" refers to the department of retirement systems established pursuant to chapter 41.50 RCW as now existing or hereafter amended.

(5) "DRS' external auditors" refers to auditors contracted by DRS to perform census data testing.

(6) "Employers" refers to all employers participating in the retirement systems administered by the department, as defined in RCW 41.50.030.

NEW SECTION

WAC 415-117-030 Audits and compliance reviews. (1) The records of an employer concerning the employment and payment of its employees and contractors are subject to examination by representatives of the department designated to conduct the audits, compliance reviews, census data testing or other similar examinations. The purpose of reviewing the records is to verify compliance with retirement rules and regulations including, but not limited to:

(a) Determining the correctness of reporting of hours and compensation;

(b) Ensuring that individuals required to be enrolled and reported as members of the retirement systems were reported;

(c) Ensuring that current members are eligible to be members of the retirement system; and

(d) Verifying that retirees who have returned to work have been correctly reported.

(2) An employer must allow the department to examine all records that relate to the administration of the retirement systems. These records include, but are not limited to, ledgers, journals, registers, vouchers, contracts, position descriptions, tax reports, time sheets, time cards, payroll and disbursement records, policies, minutes, correspondence and personnel records.

(3) Selected employers must cooperate in census data testing, audits of the retirement systems, and compliance reviews. Cooperation includes, but is not limited to, confirmation of employer data and records requested by the department within deadlines established by the department. Records provided other than electronically will need approval from the department.

NEW SECTION

WAC 415-117-040 Timely and accurate reporting and payment. (1) Employers are required to report compensation and hours as earned by calendar month, rather than when payment is made to employees.

(2) Employers must make corrections to reporting as soon as errors are identified.

(3) If an employer is required to make corrections identified as a result of a review initiated by the department, the employer must make the corrections, and certify to the department that the corrections were completed, within deadlines set by the department.

(4) Reporting must align with directions provided in state laws and rules, employer notices, and the DRS employer handbook and is not overwritten or modified by contract negotiations or settlement agreements.

(5) Employers must attend required training when notified by the department in order to remain current on reporting requirements. The department will make every effort to provide an option to attend training by electronic means whenever feasible.

(6) Payments are due to the department no later than the 15th of the month following the month of payroll. More frequent payments are permitted and allow for quicker investment in employee accounts. Electronic payments are encouraged.

(7) Employers should reconcile their account balances each month. Past due amounts are subject to twelve percent annual interest.

(8) Employers' credit balances should be reconciled timely as they may:

(a) Indicate an employer reporting error;

(b) Impact timely investing of Plan 3 employee funds; or

(c) Impact employees' service credit.

(9) Credit balances are not refundable, but may be applied to another balance upon request.

NEW SECTION

WAC 415-117-050 Responding to the department. (1) Responses to department instructions, requirements, requests, and deadlines must be completed timely to assist the department in ensuring that customers receive the correct amount of retirement benefits they earn while in public service.

(2) Hours worked by retired members must be reported timely to allow for department monitoring and limit employer liability.

(3) Employers should maintain records in alignment with the secretary of state guidelines, which can be up to sixty years.

WSR 19-21-069
PERMANENT RULES
PARAEDUCATOR BOARD

[Filed October 11, 2019, 3:39 p.m., effective November 11, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend WAC to establish rules regarding the completion of professional growth plans and the English language learner subject matter certificate.

Citation of Rules Affected by this Order: Amending WAC 179-13-030.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 19-16-117 on August 5, 2019.

A final cost-benefit analysis is available by contacting Justin Montermini, Old Capitol Building, Olympia, WA 98502, phone 360-725-6275, email rulespesb@k21.wa.us [rulespesb@k12.wa.us], website www.PESB.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 26, 2019.

Justin Montermini
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-16-109, filed 7/31/18, effective 8/31/18)

WAC 179-13-030 Process. (1) To attain the paraeducator English language learner subject matter certificate, the paraeducator must complete twenty continuing education credit hours of training that meet the learning objectives of the course outline as described in WAC 179-13-060;

(2) Training for the certificate must include the training competencies that align with WAC 179-13-050; ((~~and~~))

(3) A professional growth plan may not be completed to attain the English language learner subject matter certificate; and

(4) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the English language learner subject matter certificate.

WSR 19-21-070
PERMANENT RULES
PARAEDUCATOR BOARD

[Filed October 11, 2019, 3:40 p.m., effective November 11, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend WAC with requirements concerning the fundamental course of study unit and course completion, and update WAC with new language in RCW.

Citation of Rules Affected by this Order: Amending WAC 179-09-040.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 19-16-118 on August 5, 2019.

A final cost-benefit analysis is available by contacting Justin Montermini, Old Capitol Building, Olympia, WA 98502, phone 360-725-6275, email rulespesb@k21.wa.us [rulespesb@k12.wa.us], website www.PESB.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 26, 2019.

Justin Montermini
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-16-106, filed 7/31/18, effective 8/31/18)

WAC 179-09-040 Fundamental course of study. (1) School districts must implement this section only in school years for which state funding is appropriated specifically for the purposes of this section and only for the number of days that are funded by the appropriation.

(2) School districts must provide a fundamental course of study on the state standards of practice, as defined by the board in WAC 179-09-050 of this chapter, to paraeducators who have not completed the course, either in the district or in another district within the state. At least one day of the fundamental course of study must be provided in person. School districts must use best efforts to provide the fundamental course of study before the paraeducator begins to work with students and their families, and at a minimum by the deadlines provided in subsection (3) of this section.

(3) Except as provided in (b) of this subsection, school districts must provide the fundamental course of study required in subsection (2) of this section by the deadlines provided in (a) of this subsection:

(a)(i) For paraeducators hired on or before September 1st, the first two days of the fundamental course of study must be provided by September 30th of that year and the second two days of the fundamental course of study must be provided within six months of the date of hire, regardless of the size of the district; and

(ii) For paraeducators hired after September 1st:

(A) For districts with ten thousand or more students, the first two days of the fundamental course of study must be provided within four months of the date of hire and the second two days of the fundamental course of study must be provided within six months of the date of hire or by September 1st of the following year, whichever is sooner; and

(B) For districts with fewer than ten thousand students, no later than September 1st of the following year.

(b)(i) For paraeducators hired for the 2018-19 school year, by September 1, 2020; and

(ii) For paraeducators not hired for the 2018-19 school year, but hired for the 2019-20 school year, by September 1, 2021.

(4) School districts may collaborate with other school districts or educational service districts to meet the requirements of this section.

(5)(a) Providers of the fundamental course of study must provide to the paraeducator written documentation of each unit completed by a paraeducator. The documentation is as published by the professional educator standards board.

(b) Upon request, if such request is made within seven calendar years of unit completion, the provider shall provide the paraeducator with documentation of unit completion.

(6) The fundamental course of study must include the training competencies that align with the standards of practice in chapter 179-07 WAC.

((~~(6)~~)) (7) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the fundamental course of study.

WSR 19-21-071

PERMANENT RULES

PARAEDUCATOR BOARD

[Filed October 11, 2019, 3:41 p.m., effective November 11, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Defining paraeducator employed years to meet the general paraeducator certificate.

Citation of Rules Affected by this Order: Amending WAC 179-11-040.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 19-16-116 on August 5, 2019.

A final cost-benefit analysis is available by contacting Justin Montermini, Old Capitol Building, Olympia, WA 98502, phone 360-725-6275, email rulespesb@k21.wa.us [rulespesb@k12.wa.us], website www.PESB.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 26, 2019.

Justin Montermini
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-13-071, filed 6/17/19, effective 7/18/19)

WAC 179-11-040 Process. (1) School districts must implement this section only in school years for which state funding is appropriated specifically for the purposes of this section and only for the number of days that are funded by the appropriation.

(2) School districts are encouraged to provide at least one day of the ten days of general courses, as defined by the board, on the state paraeducator standards of practice as a professional learning day, where paraeducators collaborate with certified staff and other classified staff on applicable courses.

(3) The paraeducator must complete the general paraeducator certificate ((~~in~~)) within three employed years after completing the fundamental course of study, as follows:

(a) If the fundamental course of study is completed prior to June 30th of a calendar year, then it shall have a completion date calculated on the basis that it was completed on June 30th of the same calendar year regardless of the date of completion; and

(b) If the fundamental course of study is completed July 1st or later in the calendar year, then it shall have a completion date calculated on the basis that it was completed on June 30th of the next calendar year regardless of the date of completion.

((~~(3)~~)) (4) Beginning with the 2019-20 school year, school districts must:

(a) Provide paraeducators with general courses on the state paraeducator standards of practice; and

(b) Ensure all paraeducators employed by the district meet the general paraeducator certificate requirements of this section within three years of completing the four-day fundamental course of study.

The district is only required to ensure paraeducators meet the general certificate requirement by the end of the paraeducator's third year of employment in that district as a paraeducator.

(5) To attain the paraeducator general certificate, the paraeducator must complete training that meets in-service education approval standards as written in chapter 181-85 WAC.

((~~(4)~~)) (6) A maximum of one professional growth plan may be completed towards the attainment of the general paraeducator certificate.

((~~(5)~~)) (7) A paraeducator who ((~~holds~~)) completes continuing education credit hours to meet the English language learner subject matter certificate ((~~and/or~~)) or special education subject matter certificate may ((~~deduct twenty continuing education credit hours per subject matter certificate from the hours required to meet~~)) count these hours towards meeting the general paraeducator certificate.

((~~(6)~~)) (8) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the general paraeducator certificate.

WSR 19-21-072
PERMANENT RULES
OFFICE OF THE CODE REVISER

[Filed October 11, 2019, 3:59 p.m., effective November 11, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The office of the code reviser is adding and clarifying rules for the Washington State Register, including acceptable formatting for emphasis and font size; acceptable font types; corrections and withdrawals; electronic filing system down protocol; when to contact the office of the code reviser directly; joint administrative rules review committee requests for review; rules coordinator, public records officer, and notice of public meetings publication requirements and available templates; and interpretive/policy statements and rules development agenda publication requirements.

The office of the code reviser anticipates that agencies will benefit from the clarification of the filing and rule-making process and the public will benefit from a streamlined and consistent process and formatting.

Citation of Rules Affected by this Order: New WAC 1-21-008, 1-21-035, 1-21-072, 1-21-074, 1-21-076, 1-21-078, 1-21-079 and 1-21-125; and amending WAC 1-21-010, 1-21-015, 1-21-020, 1-21-030, 1-21-040, 1-21-060, 1-21-070, 1-21-140, 1-21-150, and 1-21-170.

Statutory Authority for Adoption: RCW 1.08.110, 34.05.210, 34.05.385, and 34.08.030.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 19-17-085 on August 21, 2019.

Changes Other than Editing from Proposed to Adopted Version: Changes are grammatical, typographical, and for clarification purposes only.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 9, Amended 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 10, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 11, 2019.

Mark L. Lally
Deputy Code Reviser
for Kathleen Buchli
Code Reviser

NEW SECTION

WAC 1-21-008 Electronic filing. Agencies are encouraged to use the office of the code reviser's electronic filing system for the filing of documents to be published in the *Washington State Register*.

(1) To participate in electronic filing, agencies must first complete and submit a physical copy of the registration letter for electronic filing, which may be found at the office of the code reviser's website in the *Washington State Register* section (http://leg.wa.gov/CodeReviser/Pages/E-Filing.aspx). The agency must designate a contact person, phone number, and the email address to receive all official stamped filings returned by the office of the code reviser. Only one registration letter per agency.

(2) To file electronically, agencies must submit only Word documents (CR forms or agency typed documents) and .pdfs of rules text prepared by a typing service (provided by our office), if applicable, to EFileWSR@leg.wa.gov. Submit only one filing per email (one filing may have multiple attachments). Documents in alternative formats will not be accepted. Required signatures must be affixed to the Word documents where applicable. After submitting an email to the electronic filing system, an automatically generated reply is sent from the electronic filing system to confirm that the agency email was received. **IMPORTANT:** If the auto-generated reply is not received within a matter of minutes, contact the office of the code reviser **immediately** by phone to ascertain if the electronic filing system is not functioning properly. **DO NOT** resend your document(s) until instructed to do so by code reviser staff.

(3) To correct or withdraw submitted document(s) before that filing has been published, the agency must contact the office of the code reviser's editor or assistant editor immediately. **IMPORTANT:** Do not send regular correspondence or questions to the electronic filing email address. For corrections to electronic filings or withdrawals from publication, contact the office of the code reviser for guidance on how to proceed.

(4) Electronic filings must be **received** by the office of the code reviser by noon on the cut-off date for inclusion in a particular issue. Filings received at 12:01 p.m. or later on the date of cutoff will appear in the next issue and hearing and adoption dates may need to be delayed so the agency is in compliance with the Administrative Procedure Act.

(5) If the official stamped copy from the office of the code reviser is not returned to the agency by 9:00 a.m. on the day after submitting the document(s), contact the office of the code reviser by phone to inquire regarding the status of the submission.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-010 Preproposal statement of inquiry. (1) To solicit comments from the public as required by RCW 34.05.310 on a subject of possible rule making, but before a formal notice is filed under RCW 34.05.320, an agency ((~~shall~~)) must complete and file with the office of the code reviser a CR-101 form (preproposal statement of inquiry). This requirement does **not** apply to all rule making. The exceptions are set forth in RCW 34.05.310(4).

(2) The text of the new rule is neither required nor recommended at this stage, but if text is submitted for filing, it

must meet the form and style requirements of WAC 1-21-110 through 1-21-130.

(3) Submit the Word version electronically to EFileWSR@leg.wa.gov or submit the original, and a minimum of three hard copies, in person or by mail.

(4) The filing will appear in the *Washington State Register* in accordance with the schedule provided in WAC 1-21-040. Note that the CR-101 must be published at least thirty days before the CR-102 form (proposed rule making) may be filed.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-015 Expedited rule making. (1) Expedited rule making filed under RCW 34.05.353 includes both the expedited adoption of rules and the expedited repeal of rules.

(2) An agency ((~~shall~~)) must file notice for the expedited rule making with the office of the code reviser on a CR-105 form (expedited rule making). The agency must file the full text of a proposed new or amendatory rule, along with the CR-105 form. The text must meet the form and style requirements of WAC 1-21-110 through 1-21-130. The filing will appear in the *Washington State Register* in accordance with the schedule provided in WAC 1-21-040. The expedited rule making must be published in the *Washington State Register* at least forty-five days before the agency may file a CR-103P form (rule-making order).

(3) WAC sections proposed for expedited repeal ((~~should~~)) must be listed by citation and caption only, either individually or by entire chapter.

(4) The agency ((~~shall~~)) must either file the expedited rule-making package (form and text) electronically and the office of the code reviser will forward a stamped electronic copy to the joint administrative rules review committee; or the agency may submit, in person or by mail, the original and six hard copies of the expedited rule-making package (form and text). The office of the code reviser will keep the original and two copies and return four stamped copies to the agency. The joint administrative rules review committee has requested that the agency submit three of these copies to the committee for purposes of legislative review. The agency should keep the remaining copy for its files.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-020 Notice—Form, contents, numbers. (1) An agency ((~~shall~~)) must file a regular notice of proposed rule making under RCW 34.05.320 with the office of the code reviser on a CR-102 form (proposed rule making). The agency must file the full text of the proposed rule along with the notice form (RCW 34.08.020). This filing must be at least thirty days after the CR-101 form, if required, was published (RCW 34.05.310).

(2) The agency ((~~shall~~)) must either file the rule-making package electronically and the office of the code reviser will forward a stamped copy to the joint administrative rules review committee; or the agency may submit, in person or by mail, the original and six hard copies of the notice package (form and text). The office of the code reviser will keep the original and two copies and return four stamped copies to the agency. The joint administrative rules review committee has requested that the agency submit three of these copies to the committee for purposes of legislative review. The agency should keep the remaining copy for its files.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-030 Notice period—*Washington State Register* distribution date. (1) Under RCW 34.05.320, notice of proposed rule making must be published in the *Washington State Register* at least twenty days before the agency may hold a hearing on the proposal. The *Washington State Register* is distributed on the first and third Wednesdays of each month. If a distribution date falls on a state holiday as determined by RCW 1.16.050, the distribution date of that *Washington State Register* will be delayed until Thursday.

(2) In counting the twenty-day notice period, consider the distribution date of the pertinent *Washington State Register* as day twenty; count down to day zero to find the first day on which a hearing may be held; cf. RCW 1.12.040 and *State ex rel. Earley v. Batchelor*, 15 Wn.2d 149 (1942).

(3) The office of the code reviser provides a schedule of closing dates online at http://leg.wa.gov/CodeReviser/Documents/basecalendar.pdf; and on page 2 of each published *Washington State Register* ((~~applies this section and WAC 1-21-040 to the current year~~)). In case of a discrepancy between the WAC rules and the schedule, the rules have priority.

NEW SECTION

WAC 1-21-035 Joint administrative rules review committee—Review rules. (1) The joint administrative rules review committee (JARRC) reviews all proposed, expedited (or withdrawals of either), and adopted (permanent and emergency) WAC rules.

(2) Electronically submitted *Washington State Register* filings are automatically forwarded to the JARRC by the office of the code reviser. Agencies that hand deliver or mail hard copy filings to the office of the code reviser must forward three copies of the stamped filing to JARRC.

AMENDATORY SECTION (Amending WSR 17-12-039, filed 6/1/17, effective 8/2/17)

WAC 1-21-040 *Washington State Register* material—Time for filing. (1) To permit sufficient lead time for the editorial, data capture, and printing process, material to be published in a particular issue of the *Washington State Register* must be received by the office of the code reviser via the electronic filing email with attachment(s) or be in the physical possession of and filed in the office of the code reviser according to the following schedule:

(((~~(1)~~))) (a) If the material has been prepared and completed by the office of the code reviser's order typing service (OTS), by 12:00 noon on the fourteenth day before the distribution date of that issue of the *Washington State Register*; or

(((~~(2)~~))) (b) If the material has been prepared by any means other than OTS and it contains:

(((~~(a)~~))) (i) No more than fourteen pages, by 12:00 noon on the fourteenth day before the distribution date of that *Washington State Register*; or

(((~~(b)~~))) (ii) More than fourteen but less than thirty-four pages, by 12:00 noon on the twenty-eighth day before the distribution date of that *Washington State Register*; or

(((~~(c)~~))) (iii) Thirty-four or more pages, by 12:00 noon on the forty-second day before the distribution date of that *Washington State Register*.

(2) The office of the code reviser's filing forms will be included in this page count.

(3) The office of the code reviser provides a schedule of closing dates online at http://leg.wa.gov/CodeReviser/Documents/basecalendar.pdf; and on page 2 of each published *Washington State Register*. In case of a discrepancy between the WAC rules and the schedule, the rules have priority.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-060 Withdrawal of proposal. (1) Under RCW 34.05.335, a proposed rule may be withdrawn any time before adoption. The agency ((~~shall~~)) must provide notice of withdrawal to the office of the code reviser by a letter or memorandum signed by the person who signed the original notice, or by that person's designee. ((~~The agency shall send a copy of the withdrawal notice to the joint administrative rules review committee.~~))

(2) The joint administrative rules review committee must receive a copy of the notice of withdrawal. If the agency provides an electronic copy of the notice of withdrawal to the office of the code reviser, then the office of the code reviser must forward an electronic copy of the notice of withdrawal to the joint administrative rules review committee. However, if the agency provides a hard copy of the notice of withdrawal to the office of the code reviser, then the agency must also submit three hard copies of the notice of withdrawal to the joint administrative rules review committee.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-070 Administrative order. (1) The ((~~administrative order by which an agency adopts a rule shall be done~~)) permanent rule making must be submitted on a CR-103P form (((~~rule-making order~~))) or an emergency rule on a CR-103E form provided by the office of the code reviser or, if required by agency practice, on an agency form that provides the information required by RCW 34.05.360.

(2) The agency ((~~shall~~)) may either file ((~~with~~)) the permanent or emergency package electronically and the office of the code reviser will forward a stamped electronic copy to the joint administrative rules review committee; or the agency may submit, in person or by mail, the original and six hard copies of the permanent or emergency package (form and text). The joint administrative rules review committee has requested that the agency submit three of these copies to the committee for purposes of legislative review. The agency should keep the remaining copy for its files.

NEW SECTION

WAC 1-21-072 Rules coordinator designation. Under RCW 34.05.312, each agency must designate a rules coordinator. The agency and mailing address of the rules coordinator must be submitted for publication in the *Washington State Register* at the time of designation and maintained thereafter on the office of the code reviser's website for the duration of the designation. To submit a new designation or make changes to an existing designation, send a Word document (preferably on the agency letterhead) to the electronic filing system or send the original and three copies to the office of the code reviser. An agency may use the template found on the office of the code reviser's website at http://leg.wa.gov/CodeReviser/Pages/Washington_State_Register.aspx.

NEW SECTION

WAC 1-21-074 Public records officer designation. Under RCW 42.56.580, each state and local agency must appoint and publicly identify a public records officer.

For state agencies, the name and contact information of the agency's public records officer must be published in the *Washington State Register* at the time of designation and maintained thereafter on the office of the code reviser's website for the duration of the designation. To submit a new designation or make changes to an existing designation, send a Word document (preferably on the agency letterhead) to the electronic filing system or send the original and three copies to the office of the code reviser. An agency may use the template found on the office of the code reviser's website at http://leg.wa.gov/CodeReviser/Pages/Washington_State_Register.aspx.

Local agencies are not required to publish their designations in the *Washington State Register*.

NEW SECTION

WAC 1-21-076 Notices of public meetings. (1)(a) Under RCW 42.30.075, state agencies that hold regular meetings must file with the office of the code reviser a schedule of the time and place of the public meetings on or before January 1st of each year for publication in the *Washington State Register*. To submit a public meetings notice, send a Word document (preferably on the agency letterhead) to the electronic filing system or send the original and three copies to the office of the code reviser. An agency may use the template found on the office of the code reviser's website at http://leg.wa.gov/CodeReviser/Pages/Washington_State_Register.aspx.

(b) Notice of any change to a public meetings schedule must be published in the *Washington State Register* for distribution at least twenty days prior to the rescheduled meeting date. To submit a change to a public meetings notice already published, send a Word document (preferably on the agency letterhead) to the electronic filing system or send the original and three copies to the office of the code reviser. An agency may use the template found on the office of the code reviser's website at http://leg.wa.gov/CodeReviser/Pages/Washington_State_Register.aspx.

(2) Agendas of public meetings are not published in the *Washington State Register*.

(3) Special meetings are not required to be published in the *Washington State Register*. For information on special meetings, see RCW 42.30.080.

(4) Local agencies are not required to publish their meetings in the *Washington State Register*.

NEW SECTION

WAC 1-21-078 Interpretive and/or policy statements. Under RCW 34.05.230(4), whenever an agency issues an interpretive or policy statement, the agency must submit to the office of the code reviser for publication in the *Washington State Register* a statement describing the subject matter of the interpretive or policy statement and listing the person at the agency from whom a copy of the interpretive or policy statement may be obtained. To submit a summary of an interpretive or policy statement, send a Word document (preferably on the agency letterhead) to the electronic filing system or send the original and three copies to the office of the code reviser.

NEW SECTION

WAC 1-21-079 Rules development agenda. Under RCW 34.05.314, each state agency must prepare a semiannual agenda for rules under development. The agency must file the agenda with the office of the code reviser for publication in the *Washington State Register* by January 31st and July 31st of each year. To submit a rules development agenda, send a Word document (preferably on the agency letterhead) to the electronic filing system or send the original and three hard copies to the office of the code reviser. The agency must also submit the agenda to the director of financial management, the joint administrative rules review committee, and any other state agency that may reasonably be expected to have an interest in the subject of rules that will be developed.

NEW SECTION

WAC 1-21-125 Style and formatting. (1) All material must be submitted in a minimum of ten point type and using recommended accessible font, such as Times New Roman, Verdana, Arial, Tahoma, Helvetica, or Calibri fonts. If needed, eight point type is acceptable for tables. Tables must not exceed regular page width and landscape tables must be published as an image.

(2) Excessive use of emphasis is not recommended. Avoid unnecessary bold, italics, and all caps. Underscore is only used to indicate the addition of new material when amending existing agency rules and may not be used for emphasis. Color may not be used for emphasis.

(3) Lower case the names of state agencies, divisions, commissions, committees, etc.

(4) Do not underscore web and email addresses. Neither of these types of addresses will appear as hyperlinks in the published products.

(5) The document(s) should be free of track changes, background images, or watermarks.

(6) For filings other than CR forms, leave the bottom right corner of the first page vacant for the placement of the office of the code reviser's stamp.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-140 Review of previously adopted rules. When an agency is required under RCW 34.05.630 to review permanent or emergency rules previously adopted, the agency ((~~shall~~)) must file notice of the review with the code reviser on a CR-104 form (review of previously adopted rules). The agency ((~~shall~~)) must file the notice of review electronically at EFileWSR@leg.wa.gov or submit the original and six hard copies of the notice of review to the office of the code reviser. Four copies will be returned to the agency, three of which ((~~shall~~)) must be delivered to the joint administrative rules review committee. The notice is subject to the twenty-day requirement of RCW 34.05.320. The text of the rule under review is not needed with this notice.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-150 Exemptions from publication. Agency rules that are likely to be omitted from WAC publication by the office of the code reviser under the authority of RCW 34.05.210((~~,~~)) may, upon application by the agency to the office of the code reviser for an exemption, be exempted by the office of the code reviser from the form and style requirements of this chapter, other than requirements that are imposed by statute. An application for exemption must be made by the agency and approved by the office of the code reviser before filing the rules.

AMENDATORY SECTION (Amending WSR 06-16-019, filed 7/24/06, effective 8/24/06)

WAC 1-21-170 Official forms. Agencies may obtain the following official forms from the office of the code reviser upon request:

(1) Form CR-101 Preproposal statement of inquiry;

(2) Form CR-102 Proposed rule making;

(3) Form CR-103P Rule-making order (permanent);

(4) Form CR-103E Rule-making order (emergency);

(5) Form CR-104 Review of previously adopted rules; and

((~~(5)~~)) (6) Form CR-105 Expedited rule making.

WSR 19-21-079
PERMANENT RULES
BIG BEND COMMUNITY COLLEGE

[Filed October 14, 2019, 12:00 p.m., effective November 14, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Updates to process.

Citation of Rules Affected by this Order: Amending WAC 132R-02-050 Brief adjudicative procedures.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 19-15-065 on July 15, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 10, 2019.

Melinda Dourte
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 90-02-016, filed 12/26/89, effective 1/26/90)

WAC 132R-02-050 Brief adjudicative procedures. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

(1) Residency determinations made pursuant to RCW 28B.15.013, conducted by the admissions office;

(2) Challenges to contents of education records;

(3) Student conduct proceedings. The procedural rules in chapter 132R-04 WAC apply to these proceedings;

(4) Parking violations. The procedural rules in chapters 132R-116 and 132R-118 WAC apply to these proceedings;

(5) Outstanding debts owed by students or employees;

(6) Loss of eligibility for participation in institution-sponsored athletic events, pursuant to chapter 132R-05 WAC;

(7) Appeals to trespass orders. The procedural rules in chapter 132R-117 WAC apply to these proceedings;

(8) Appeals pursuant to any other formal rule adopted by Big Bend Community College which specifically provides for a brief adjudicative procedure.

WSR 19-21-080
PERMANENT RULES
BIG BEND COMMUNITY COLLEGE

[Filed October 14, 2019, 12:23 p.m., effective November 14, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Updates to process.

Citation of Rules Affected by this Order: Amending WAC 132R-04-063 Disciplinary actions.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 19-15-039 on July 11, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 10, 2019.

Melinda Dourte
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 17-22-054, filed 10/25/17, effective 11/25/17)

WAC 132R-04-063 Disciplinary actions. Disciplinary actions include, but are not limited to, the following sanctions that may be imposed alone or in conjunction upon students found to have committed the violations in WAC 132R-04-057. The college may impose additional sanctions on a student who fails to comply with any imposed sanctions including, but not limited to, preventing that student from registering for classes.

(1) Warning: A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) Reprimand: Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) Disciplinary probation: Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college. Other conditions and restrictions may include, but not be limited to, restrictions from being present on certain parts of the campus or in certain college buildings; restriction from attending certain col-

lege activities or participation in extra-curricular activities; orders of no contact between the student under probation and other students, college employees, or other persons.

(4) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(5) **Education.** The college may require the student to complete an educational project or attend sessions, at the student's expense, which address the student's behavior such as anger management or counseling.

(6) **Loss of privileges.** Denial of specified privileges for a designated period of time.

(7) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

(8) Restitution: Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(9) Suspension: Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(10) Professional evaluation: Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(11) Expulsion: ((~~The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return.~~)) Permanent separation of the student from the college with no promise (implied or otherwise) that the student may return at any future time. There will be no refund of tuition or fees for the quarter in which the action is taken. The student will also be barred from college premises. Expulsion actions will be accomplished by issuing both an order of expulsion and a notice of trespass pursuant to WAC 132R-117-020(2). The notice of trespass may be given by any manner specified in chapter 9A.52 RCW.

WSR 19-21-081
PERMANENT RULES
BIG BEND COMMUNITY COLLEGE

[Filed October 14, 2019, 12:35 p.m., effective November 14, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Updates to process.

Citation of Rules Affected by this Order: Amending WAC 132R-117-020 Trespass.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 19-15-040 on July 11, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 10, 2019.

Melinda Dourte
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-117-020 Trespass. (1) The president of the college, or ((~~his/her designee is authorized in the instance of any event that is deemed to be unreasonably disruptive of order or which impedes the movement of persons or vehicles or which seems to disrupt the ingress and/or egress of persons from facilities owned and/or operated by the college, then the president or his/her designee shall have the power and authority subject to the students' right of demonstration as guaranteed pursuant to WAC 132R-04-040 to:~~

~~(a) Prohibit the entry of, or withdraw the license or privilege of any person or persons or any group of persons to enter onto or remain upon all or any portion of a college facility which is owned and/or operated by the college; or~~

~~(b) Give notice against trespass by any manner specified in chapter 9A.52 RCW to any person, persons, or group of persons against whom the license or privilege has been withdrawn or who have been prohibited from entering onto or remaining upon all or any portion of a college facility, which college facility is owned and/or operated by the college; or~~

~~(c) Order any person, persons or group of persons to leave or vacate all or any portion of a college facility which is owned and/or operated by the college.~~

~~(2) Any student who shall disobey a lawful order given by the president or his/her designee pursuant to the requirements of this rule, may be subject to criminal prosecution and may be subject to disciplinary action~~)) the president's designee, has the authority to grant, deny, or withdraw permission for people to be on college property. Any individual who is on college property must comply with college rules. Access to college property may be limited to certain times, certain uses, or certain groups of people. People who are on college property or within a college building without permission may be ordered to leave by any college official.

(2) People who remain on college property without permission, who disrupt college activities, interfere with people's ability to access buildings, or whose conduct threatens the health, safety, or security of anyone on campus may be removed from college property and given a twenty-four-hour trespass notice by the president, the president's designee, or a member of campus security.

(3) In the event a person's conduct continues to threaten the health, safety, or security of anyone on campus, the president or president's designee may trespass the person from college property for up to one year, except expelled students may permanently be trespassed from campus. Any prior license or privilege to be on college property is revoked by the notice of trespass.

(4) A person who is trespassed from college property shall be given a written notice of trespass identifying:

(a) The reason why the person is being trespassed;

(b) The duration and scope of the trespass;

(c) The method for appealing the notice; and

(d) A warning that failing to comply with the notice may result in the person's arrest and criminal charges under chapter 9A.52 RCW.

(5) Appeals.

(a) If a current student is trespassed from campus, the initial trespass notice is considered a summary suspension under WAC 132R-04-064 and the student will receive an emergency appeal hearing under WAC 132R-04-064 with the conduct review officer as defined in WAC 132R-04-015(2). The authority to bar students from college property in this regulation is separate from and in addition to the authority of the student conduct officer as defined in WAC 132R-04-015(1). At the conclusion of the entire student conduct process, a student who is expelled may be permanently trespassed from college property in accordance with WAC 132R-04-063(11).

(b) If a current employee is trespassed from a particular portion of campus that the employee does not need to access to perform his or her job (e.g., ejected from DeVries Activity Center during a basketball game), the employee can appeal the decision under (c) of this subsection. If an employee is trespassed from all college property because his or her conduct threatens the health, safety, or security of anyone on campus, the employee will be considered to have been placed on paid administrative leave by issuance of the trespass notice and the college will follow its normal employment processes for investigating the alleged behavior and determining what level of discipline, if any, is appropriate.

(c) All other persons who have been removed or trespassed from university property may appeal the decision by submitting to the president or president's designee, by certified mail, a letter stating the reasons the person should not be barred from college property within twenty-one days of issuance of the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The president or president's designee shall review all relevant information and issue a written order affirming, modifying, or revoking the trespass within twenty days after the request for review is received. This decision is the college's final decision.

WSR 19-21-084
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed October 14, 2019, 2:57 p.m., effective November 14, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule is being amended to clarify that property essential to self-support (PESS) does not include intangible personal property other than cash or cash equivalents used in a trade or business.

Citation of Rules Affected by this Order: Amending WAC 182-512-0350.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 19-08-088 on April 3, 2019.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/ Adopted	WAC Subsection	Reason
WAC 182-512-0350 (1)(b) SSI-related medical—Property and contracts excluded as resources		
Proposed	(1)(b) One home (which can be any shelter), including the land on which the dwelling is located, and all contiguous property and related out-buildings in which the ((~~person has ownership interest (for WAH long-term care programs, see WAC 182-513-1350 for home equity limits~~)) client has a fee simple interest, life estate interest, or equitable interest (subject to state law), when:	The agency has decided not to pursue the proposed changes to the home exclusion rule under WAC 182-512-0350 (1)(b) or the hardship considerations for the sale of real property under (1)(c).

Proposed/ Adopted	WAC Subsection	Reason
Adopted	(b) One home (which can be any shelter), including the land on which the dwelling is located, and all contiguous property and related out-buildings in which the ((~~person~~)) client has ownership interest (((~~(~~))for ((~~WAH~~)) long-term care programs, see WAC 182-513-1350 for home equity limits((~~)~~)), when:	
WAC 182-512-0350 (1)(c) SSI-related medical—Property and contracts excluded as resources		
Proposed	(c) ((~~The value of ownership interest in jointly owned real property is an excluded resource for as long as sale of the property would cause undue hardship to a co-owner due to loss of housing. Undue hardship would result if the co-owner:~~ ~~(i) Uses the property as his or her principal place of residence;~~ ~~(ii) Would have to move if the property were sold; and~~ ~~(iii) Has no other readily available housing.~~)) The client's interest in jointly owned real property when the sale of the jointly owned interest would cause undue hardship to a joint owner. (i) For the purposes of this section, jointly owned interest means: (A) The client and one or more people own a fee simple interest; (B) The client and one or more people own a life estate interest; (C) The client and one or more people own an equitable interest (subject to state law); or (D) One or more people have a fee simple or life estate interest, and the client has an equitable interest (subject to state law) in that interest. (ii) For the purposes of this section, undue hardship means: (A) One or more joint owners use the real property as his or her principal place of residence; (B) A joint owner would have to move if the jointly owned interest were sold; and (C) A joint owner has no other readily available housing.	The agency has decided not to pursue the proposed changes to the home exclusion rule under WAC 182-512-0350 (1)(b) or the hardship considerations for the sale of real property under (1)(c).
Adopted	(c) The value of ownership interest in jointly owned real property is an excluded resource for as long as sale of the property would cause undue hardship to a co-owner due to loss of housing. Undue hardship would result if the co-owner: (i) Uses the property as ((~~his or her~~)) the client's principal place of residence; (ii) Would have to move if the property were sold; and (iii) Has no other readily available housing.	
WAC 182-512-0350(15) SSI-related medical—Property and contracts excluded as resources		
Proposed	(15) Personal property used by a ((~~person~~)) client for work is not counted toward the resource limit, regardless of value, while in current use (as described under POMS SI 01130.504), or if the required use for work is reasonably expected to resume.	Added "as an employee" to further clarify that this refers to when a person uses personal property as an employee for work.
Adopted	(15) Personal property used by a ((~~person~~)) client as an employee for work is not counted toward the resource limit, regardless of value, while in current use (as described under POMS SI 01130.504), or if the required use for work is reasonably expected to resume.	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 14, 2019.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources. (1) The agency ((~~does not count~~)) excludes the following resources when determining eligibility for SSI-related medical assistance:

(a) A ((~~person's~~)) client's household goods and personal effects;

(b) One home (which can be any shelter), including the land on which the dwelling is located, and all contiguous property and related out-buildings in which the ((~~person~~)) client has ownership interest (((~~(~~))for ((~~WAH~~)) long-term care programs, see WAC 182-513-1350 for home equity limits((~~)~~)), when:

(i) The ((~~person~~)) client uses the home as ((~~his or her~~)) a primary residence; ((~~or~~))

(ii) The ((~~person's~~)) client's spouse lives in the home; ((~~or~~))

(iii) The ((~~person~~)) client does not currently live in the home, but the ((~~person or his/her~~)) client or the client's representative has stated ((~~he or she~~)) the client intends to return to the home; or

(iv) A relative, who is financially or medically dependent on the ((~~person~~)) client, lives in the home and either the dependency is documented or a written statement of dependency is provided by the ((~~person, or his or her~~)) client, the client's authorized representative, or by the client's dependent relative.

(c) The value of ownership interest in jointly owned real property is an excluded resource for as long as sale of the property would cause undue hardship to a co-owner due to loss of housing. Undue hardship would result if the co-owner:

(i) Uses the property as ((~~his or her~~)) the client's principal place of residence;

(ii) Would have to move if the property were sold; and

(iii) Has no other readily available housing.

(2) ((~~Cash~~)) Proceeds from the sale of ((~~the home~~)) an interest described in subsection (1)(b) of this section, are ((~~not considered~~)) excluded as a resource if the ((~~person~~)) client uses ((~~them~~)) the proceeds to purchase another home by the end of the third month after receiving the proceeds from the sale.

(3) An installment contract from the sale of the home described in subsection (1)(b) above is not a resource as long as the ((~~person~~)) client plans to use the entire down payment and the entire principal portion of a given installment payment to buy another excluded home, and does so within three ((~~full calendar~~)) months after the month of receiving such down payment or installment payment.

(4) The value of sales contracts is excluded when the:

(a) Current market value of the contract is zero((~~,~~));

(b) Contract cannot be sold; or

(c) Current market value of the sales contract combined with other resources does not exceed the resource limits.

(5) Sales contracts executed before December 1, 1993, are ((~~exempt~~)) excluded resources as long as they are not transferred to someone other than a spouse.

(6) A sales contract for the sale of the ((~~person's~~)) client's principal place of residence executed between December 1, 1993, and May 31, 2004, is ((~~considered an exempt~~)) an excluded resource unless it has been transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property; and

(c) The term of the contract does not exceed thirty years.

(7) A sales contract executed on or after June 1, 2004, on a home that was the principal place of residence for the ((~~person~~)) client at the time of institutionalization is ((~~considered exempt~~)) an excluded resource as long as it is not transferred to someone other than a spouse and it:

(a) Provides interest income within the prevailing interest rate at the time of the sale;

(b) Requires the repayment of a principal amount equal to the fair market value of the property within the anticipated life expectancy of the ((~~person~~)) client; and

(c) The term of the contract does not exceed thirty years.

(8) Payments received on sales contracts of the home described in subsection (1)(b) of this section are treated as follows:

(a) The interest portion of the payment is treated as unearned income in the month of receipt of the payment;

(b) The principal portion of the payment is treated as an excluded resource if reinvested in the purchase of a new home within three months after the month of receipt;

(c) If the principal portion of the payment is not reinvested in the purchase of a new home within three months after the month of receipt, that portion of the payment is ((~~considered~~)) a liquid resource as of the date of receipt.

(9) Payments received on sales contracts described in subsection (4) of this section are treated as follows:

(a) The principal portion of the payment on the contract is treated as a resource and counted toward the resource limit to the extent retained at the first moment of the month following the month of receipt of the payment; and

(b) The interest portion is treated as unearned income the month of receipt of the payment.

(10) For sales contracts that meet the criteria in subsection((~~s~~)) (5), (6), or (7) of this section but do not meet the criteria in subsection((~~s~~)) (3) or (4) of this section, both the principal and interest portions of the payment are treated as unearned income in the month of receipt.

(11) Property essential to self-support (PESS) is ((~~not considered~~)) excluded as a resource within certain limits. ((~~The agency places property essential to self-support in several categories~~)) There are three categories of PESS:

(a) Real and personal property used in a trade or business (((~~(income-producing property), such as:~~

~~(i) Land;~~

~~(ii) Buildings;~~

~~(iii) Equipment;~~

~~(iv) Supplies;~~

~~(v) Motor vehicles; and~~

~~(vi) Tools~~)):

(i) That is a resource defined under WAC 182-512-0200;

(ii) That is in current use as described under the Social Security Administration's Program Operations Manual System (POMS) SI 01130.504; and

(iii) Where the trade or business is a sole proprietorship or simple partnership.

(b) Nonbusiness income-producing property (i.e., property not used in a trade or business), such as:

(i) Houses or apartments for rent; and

(ii) Land, other than home property.

(c) Property used to produce goods or services essential to a ((~~person's~~)) client's daily activities, such as land used to produce vegetables or livestock, which is ((~~only~~)) used only for personal consumption in the ((~~person's~~)) client's household. This includes personal property necessary to perform daily functions including vehicles such as boats for subsistence fishing and garden tractors for subsistence farming, but does not include other vehicles such as those that qualify as automobiles (e.g., cars, trucks).

(12) The agency excludes a ((~~person's equity in~~)) client's real and personal property used in a trade or business (((~~income-producing property listed in~~)), described under subsection (11)(a) of this section((~~,~~)), regardless of value as long as it is ((~~currently in use~~)) in current use (as described under POMS SI 01130.504) in the trade or business and remains used in the trade or business.

(13) The agency excludes up to ((~~six thousand dollars~~)) $6,000 of a ((~~person's~~)) client's equity in nonbusiness income-producing property ((~~listed in~~)), described under subsection (11)(b) of this section, if it produces a net annual income to the ((~~person~~)) client of at least six percent of the excluded equity.

(a) If a ((~~person's~~)) client's equity in the property is over ((~~six thousand dollars~~)) $6,000, only the amount over ((~~six thousand dollars~~)) $6,000 is counted toward the resource limit, as long as the net annual income requirement of six percent is met on the excluded equity.

(b) If the six percent requirement is not met due to circumstances beyond the ((~~person's~~)) client's control (e.g., illness), and there is a reasonable expectation that the activities will again meet the six percent rule, the same exclusions as in subsection (13)(a) of this section apply.

(c) If a ((~~person~~)) client has more than one piece of real property in this category, each is ((~~looked at~~)) independently evaluated to see if it meets the six percent return, and the total equities of all those properties are added to see if the total is over ((~~six thousand dollars~~)) $6,000. If the total is over the ((~~six thousand dollars~~)) $6,000 limit, the amount exceeding the limit is counted toward the resource limit.

(d) The equity in each property that does not meet the six percent annual net income limit is counted toward the resource limit, with the exception of property that represents the authority granted by a governmental agency to engage in an income-producing activity if it is:

(i) Used in a trade or business or nonbusiness income-producing activity; or

(ii) Not used due to circumstances beyond the ((~~person's~~)) client's control((~~,~~)) (e.g., illness), and there is a reasonable expectation that the use will resume.

(14) Property used to produce goods or services essential to a ((~~person's~~)) client's daily activities is excluded if the ((~~person's~~)) client's equity in the property does not exceed ((~~six thousand dollars~~)) $6,000.

(15) Personal property used by a ((~~person~~)) client as an employee for work is not counted toward the resource limit, regardless of value, while in current use (as described under POMS SI 01130.504), or if the required use for work is reasonably expected to resume.

(16) Interests in trust or in restricted Indian land owned by a ((~~person~~)) client who is of Indian descent from a federally recognized Indian tribe or held by the spouse or widow/er of that ((~~person~~)) client, is not counted toward the resource limit if permission of the other ((~~persons~~)) people, the tribe, or an agency of the federal government must be received in order to dispose of the land.

(17) Receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of ((~~exempt~~)) excluded resources, such as fishing, shell-fishing, or selling timber from protected land, is considered conversion of an ((~~exempt~~)) excluded resource during the month of receipt. Any amount remaining from the conversion of this ((~~exempt~~)) excluded resource on the first of the month after the month of receipt will remain ((~~exempt~~)) excluded if it is used to purchase another ((~~exempt~~)) excluded resource. Any amount remaining in the form of a countable resource (such as in a checking or savings account) on the first of the month after receipt, will be added to other countable resources for eligibility determinations.

WSR 19-21-087

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed October 14, 2019, 3:15 p.m., effective November 14, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending these rules to align with section 503 of the Consolidated Appropriations Act, 2016 and section 5002 of the 21st Century Cures Act of 2016, which added section 1903 (i)(27) to the Social Security Act.

Citation of Rules Affected by this Order: Amending WAC 182-552-0001, 182-552-1400, and 182-552-1600.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 42 C.F.R. 431.16 Section 1903 (i)(27) of the Social Security Act.

Adopted under notice filed as WSR 19-14-061 on June 28, 2019.

Changes Other than Editing from Proposed to Adopted Version:

WAC 182-552-1400(2)		
Proposed	(2) The medicaid agency may adopt policies, procedure codes, ((~~and/or~~)) and rates that are inconsistent with those set by medicare if the agency determines that such actions are necessary.	The agency added: "to: (i) Assure that payments are sufficient to enlist providers and maintain access to care and services; or (ii) Comply with legislative budget directives."
Adopted	(2) The medicaid agency may adopt policies, procedure codes, ((~~and/or~~)) and rates that are inconsistent with those set by medicare if the agency determines that such actions are necessary to: (i) Assure that payments are sufficient to enlist providers and maintain access to care and services; or (ii) Comply with legislative budget directives.	
WAC 182-552-1600(3)		
Proposed	(3) When there is only a rental rate on the DMEPOS fee schedule, the agency sets the maximum allowable purchase rate at either the DMEPOS rate divided by 0.15 or multiplied by ten. The agency sets the maximum allowable fee for daily rental at one three-hundredth of the new purchase price or one-thirtieth of the monthly rental rate on the DMEPOS fee schedule.	The agency removed "divided by 0.15" from the purchase rate methodology.
Adopted	(3) When there is only a rental rate on the DMEPOS fee schedule, the agency sets the maximum allowable purchase rate at the DMEPOS rate multiplied by ten. The agency sets the maximum allowable fee for daily rental at one three-hundredth of the new purchase price or one-thirtieth of the monthly rental rate on the DMEPOS fee schedule.	
WAC 182-552-1600(5)		
Proposed	(5) The agency evaluates a by-report (BR) item, procedure, or service for its medical necessity, appropriateness, and payment value on a case-by-case basis. The agency's payment rate is eighty percent of the manufacturer's list price or manufacturer's suggested retail price (MSRP), or one hundred percent of the wholesale acquisition cost (AC).	The agency added the following to the payment rate methodology: "… or one hundred percent (oxygen only) or one hundred twenty-five percent (all other respiratory items) of the wholesale acquisition cost (AC)."
Adopted	(5) The agency evaluates a by-report (BR) item, procedure, or service for its medical necessity, appropriateness, and payment value on a case-by-case basis. The agency's payment rate is eighty percent of the manufacturer's list price or manufacturer's suggested retail price (MSRP), or one hundred percent (oxygen only) or one hundred twenty-five percent (all other respiratory items) of the wholesale acquisition cost (AC).	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: October 14, 2019.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-14-022, filed 6/25/12, effective 8/1/12)

WAC 182-552-0001 Respiratory care—General. (1) The respiratory care, equipment, and supplies described in this chapter ((~~is considered part of the agency's durable medical equipment (DME) benefit. This chapter~~)) applies to:

(a) Medicaid clients who require respiratory care in their homes, community residential settings, and skilled nursing facilities;

(b) Providers who supply respiratory care to medicaid clients; and

(c) Licensed health care professionals whose scope of practice allows for the provision of respiratory care.

(2) The ((~~medicaid~~)) agency covers the respiratory care listed in this chapter according to the limitations and requirements in this chapter.

(3) The ((~~medicaid~~)) agency pays for respiratory care for medicaid clients when it is:

(a) Covered;

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

(c) Medically necessary, as defined under chapter 182-500 WAC;

(d) Prescribed by a physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PAC) within the scope of his or her licensure;

(e) Authorized, as required within this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid ((~~provider~~)) billing guides and provider ((~~notices~~)) alerts;

(f) Billed according to this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid ((~~provider~~)) billing guides and provider ((~~notices~~)) alerts; and

(g) Provided and used within accepted medical or respiratory care community standards of practice.

(4) The agency does not require prior authorization for requests for covered respiratory care for medicaid clients that meets the clinical criteria set forth in this chapter.

(5) The agency requires prior authorization for covered respiratory care for medicaid clients when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process.

(a) The ((~~medicaid~~)) agency evaluates requests requiring prior authorization on a case-by-case basis to determine whether they are medically necessary, according to the process found in WAC 182-501-0165.

(b) Refer to WAC 182-552-1300, 182-552-1325, 182-552-1350, and 182-552-1375 for specific details regarding authorization.

(6) The agency evaluates on a case-by-case basis for medical necessity and appropriateness items, procedures, and services that do not have an established procedure code available and which are billed using miscellaneous procedure codes.

AMENDATORY SECTION (Amending WSR 12-14-022, filed 6/25/12, effective 8/1/12)

WAC 182-552-1400 Respiratory care—Reimbursement—General. (1) The medicaid agency pays qualified providers who meet all of the conditions in WAC 182-502-0100, for covered respiratory care provided on a fee-for-service (FFS) basis as follows:

(a) To medicaid agency-enrolled ((~~durable~~)) medical equipment ((~~(DME)~~)) and supplies providers, pharmacies, and home health agencies under their national provider identifier (NPI) numbers, subject to the limitations of this chapter, and according to the procedures and codes in the agency's current respiratory care medicaid ((~~provider~~)) billing guide; and

(b) In accordance with the health care common procedure coding system (HCPCS) guidelines for product classification and code assignment.

(2) ((~~The medicaid agency updates the maximum allowable fees for respiratory care at least once per year, unless otherwise directed by the legislature or unless deemed necessary by the agency.~~

~~(3) The medicaid agency sets, evaluates, and updates the maximum allowable fees for respiratory care using available published information including, but not limited to:~~

~~(a) Commercial databases;~~

~~(b) Manufacturer's catalogs;~~

~~(c) Medicare fee schedules; and~~

~~(d) Wholesale prices.~~

~~(4)~~)) The medicaid agency may adopt policies, procedure codes, ((~~and/or~~)) and rates that are inconsistent with those set by medicare if the agency determines that such actions are necessary to:

(i) Assure that payments are sufficient to enlist providers and maintain access to care and services; or

(ii) Comply with legislative budget directives.

(((~~(5)~~))) (3) The medicaid agency's maximum payment for respiratory care is the lesser of either of the following:

(a) Provider's usual and customary charges; or

(b) Established rates, except as provided in WAC 182-502-0110(3).

(((~~(6)~~))) (4) The medicaid agency is the payer of last resort for clients with medicare or third-party insurance.

(((~~(7)~~))) (5) The medicaid agency does not pay for respiratory care provided to a client who is enrolled in an agency-contracted managed care organization (MCO), but who did not use one of the MCO's participating providers.

(((~~(8)~~))) (6) The medicaid agency's ((~~reimbursement~~)) payment rate for covered oxygen and respiratory equipment and supplies includes all of the following:

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

(b) Any pick-up ((~~and/or~~)) and delivery fees or associated costs (e.g., mileage, travel time, gas, etc.);

(c) Telephone calls;

(d) Shipping, handling, ((~~and/or~~)) and postage;

(e) Maintenance for rented equipment including, but not limited to, testing, cleaning, regulating, and assessing the client's equipment;

(f) Fitting ((~~and/or~~)) or setup, or both; and

(g) Instruction to the client or client's caregiver in the appropriate use of the respiratory care.

(((~~(9)~~))) (7) Respiratory care equipment, supplies, and related repairs and labor charges that are supplied to eligible clients under the following ((~~reimbursement~~)) payment methodologies are included in those methodologies and are not reimbursed under fee-for-service (FFS):

(a) Hospice provider's per diem reimbursement;

(b) Hospital's diagnosis-related group (DRG) reimbursement;

(c) Managed care organization's capitation rate;

(d) Skilled nursing facilities per diem rate; and

(e) Professional service's resource-based relative value system reimbursement (RBRVS) rate.

(((~~(10)~~))) (8) The provider must make warranty information, including date of purchase, applicable serial number, model number or other unique identifier of the respiratory care equipment, and warranty period, available to the medicaid agency upon request.

(((~~(11)~~))) (9) The dispensing provider who furnishes respiratory care equipment or supplies to a client is responsible for any costs incurred to have a different provider repair the equipment when:

(a) Any equipment or supply that the medicaid agency considers purchased requires repair during the applicable warranty period;

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

(c) The respiratory care equipment or supply continues to be medically necessary.

(((~~(12)~~))) (10) If rental respiratory equipment or supplies must be replaced during the warranty period, the medicaid agency recoups fifty percent of the total amount previously paid toward rental and eventual purchase of the respiratory equipment or supply provided to the client if:

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

(b) The respiratory care equipment or supply continues to be medically necessary.

(((~~(13)~~))) (11) The medicaid agency does not ((~~reimburse~~)) pay for respiratory care equipment and supplies, or related repairs and labor charges under FFS when the client is any of the following:

(a) An inpatient hospital client;

(b) Terminally ill and receiving hospice care; or

(c) Enrolled in a risk-based MCO that includes coverage for such items ((~~and/or~~)) or services, or both.

(((~~(14)~~))) (12) The medicaid agency rescinds any purchase order for a prescribed item if the equipment or supply was not supplied to the client before the client:

(a) Dies;

(b) Loses medical eligibility;

(c) Becomes covered by a hospice agency; or

(d) Becomes covered by an MCO.

(((~~(15)~~))) (13) See also WAC ((~~182-543-9100, 182-543-9200, 182-543-9300, and 182-543-9400~~)) 182-543-9000 for ((~~other~~)) general reimbursement ((~~methodologies~~)).

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.

AMENDATORY SECTION (Amending WSR 12-14-022, filed 6/25/12, effective 8/1/12)

WAC 182-552-1600 Respiratory care equipment and supplies—Reimbursement—Methodology for purchase, rental, and repair. (1) The medicaid agency sets, evaluates, and updates the maximum allowable fees for ((~~purchased~~)) respiratory care equipment and supplies at least once yearly ((~~using one or more of the following:~~

~~(a) The current medicare rate, as established by the federal Centers for Medicare and Medicaid Services (CMS), for a new purchase if a medicare rate is available;~~

~~(b) A pricing cluster; or~~

~~(c) On a by-report basis.~~

~~(2)~~)), unless otherwise directed by the legislature or determined necessary by the agency.

(2) The agency sets the rates for medical equipment codes subject to the federal financial participation (FFP) limitation at the lesser of medicare's prevailing payment rates in the durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) fee schedule or competitive bid area (CBA) rate. For all other procedure codes, the agency sets rates using one of the following:

(a) Medicare fee schedules;

(b) Legislative direction;

(c) Input from stakeholders or relevant sources that the agency determines to be reliable and appropriate;

(d) Pricing clusters; or

(e) A by-report (BR) basis.

(3) When there is only a rental rate on the DMEPOS fee schedule, the agency sets the maximum allowable purchase rate at the DMEPOS rate multiplied by ten. The agency sets the maximum allowable fee for daily rental at one three-hundredth of the new purchase price or one-thirtieth of the monthly rental rate on the DMEPOS fee schedule.

(4) When establishing ((~~reimbursement~~)) payment rates for ((~~purchased~~)) respiratory care equipment and supplies based on pricing clusters((~~.~~

~~(a) A pricing cluster is based on~~)) for a specific health care common procedure coding system (HCPCS) code((~~.~~

~~(b) The medicaid agency's~~)), the maximum allowable fee is the median or average amount of all items in the cluster. The pricing cluster is made up of all the brands/models for which the agency obtains pricing information. However, the ((~~medicaid~~)) agency may limit the number of brands/models included in the pricing cluster((~~. The medicaid agency considers all of the following when establishing the pricing cluster:~~

~~(i)~~)) due to any one or more of the following:

(a) A client's medical needs;

(((~~(ii)~~))) (b) Product quality;

(((~~(iii)~~))) (c) Introduction, substitution, or discontinuation of certain brands/models; ((~~(iv) Cost; and/or~~

~~(v) Available alternatives.~~

~~(c) When establishing the fee for purchased respiratory care equipment and supplies in a pricing cluster, the maximum allowable fee is the median amount of available manufacturer's list or suggested retail prices for all brands/models as noted in (b) of this subsection.~~

~~(3) The medicaid agency evaluates items, procedures, and services billed using miscellaneous procedure codes, when an established code is not available, on a case-by-case basis for medical necessity, appropriateness, and reimbursement value. The medicaid agency calculates the purchase reimbursement rate for these items at eighty percent of the manufacturer's list or suggested retail price as of October~~

~~thirty-first of the base year or the cost from the manufacturer's invoice.~~

~~(4) The medicaid agency's maximum allowable fees for monthly rental are updated at least once yearly and are established using one of the following:~~

~~(a) For items with a monthly rental rate on the current medicare fee schedule, as established by CMS, the medicaid agency equates its maximum allowable fee for monthly rental to the current medicare monthly rental rate;~~

~~(b) For items that have a new purchase rate but no monthly rental rate on the current medicare fee schedule, as established by CMS, the medicaid agency sets the maximum allowable fee for monthly rental at one-tenth of the new purchase price of the current medicare rate; or~~

~~(c) For items not included in the current medicare fee schedule, as established by CMS, the medicaid agency considers the maximum allowable monthly reimbursement rate as by-report. The medicaid agency calculates the monthly reimbursement rate for these items at one-tenth of eighty percent of the manufacturer's list or suggested retail price as of October thirty-first of the base year or one-tenth the cost from the manufacturer's invoice.~~

~~(5) The medicaid agency's maximum allowable fees for daily rental are updated at least once yearly and are established using one of the following:~~

~~(a) For items with a daily rental rate on the current medicare fee schedule, as established by CMS, the medicaid agency equates its maximum allowable fee for daily rental to the current medicare daily rental rate;~~

~~(b) For items that have a new purchase rate but no daily rental rate on the current medicare fee schedule, as established by CMS, the medicaid agency sets the maximum allowable fee for daily rental at one three-hundredth of the new purchase price of the current medicare rate; or~~

~~(c) For items not included in the current medicare fee schedule, as established by CMS, the medicaid agency considers the maximum allowable daily reimbursement rate as by-report. The medicaid agency calculates the daily reimbursement rate for these items at one three-hundredth of eighty percent of the manufacturer's list or suggested retail price as of October thirty-first of the base year or one three-hundredth of the cost from the manufacturer's invoice~~)) or

(d) Cost.

(5) The agency evaluates a by-report (BR) item, procedure, or service for its medical necessity, appropriateness, and payment value on a case-by-case basis. The agency's payment rate is eighty percent of the manufacturer's list price or manufacturer's suggested retail price (MSRP), or one hundred percent (oxygen only) or one hundred twenty-five percent (all other respiratory items) of the wholesale acquisition cost (AC).

(6) The ((~~medicaid~~)) agency((~~, with prior authorization, will~~)) pay for repairs of client-owned equipment only, with prior authorization (PA). In addition to agency-specific forms identified in the agency's respiratory care ((~~medicaid provider~~)) billing guide, providers must meet all of the following requirements ((~~must be met in order~~)) to receive ((~~authorization~~)) PA and ((~~reimbursement~~)) payment for a repair of client-owned equipment:

(a) The provider must submit a manufacturer pricing sheet showing the manufacturer's list ((~~or suggested retail price (~~)) price, MSRP((~~)~~)), or manufacturer invoice showing the cost of the repair, identifying and itemizing the parts. The invoice must indicate the wholesale ((~~acquisition cost~~)) AC, the manufacturer's list price, or ((~~suggested retail price (~~))MSRP((~~)~~)) for all parts used in the repair for which ((~~reimbursement~~)) payment is being sought. ((~~Reimbursement for parts used in a repair will be:~~

~~(i) Eighty percent of the manufacturer's list or suggested retail price as of October thirty-first of the base year; or~~

~~(ii) The cost from the manufacturer's invoice.~~))

(b) ((~~Reimbursement for actual labor charges will be made according to the medicaid agency's current fee schedule.~~)) The provider must follow HCPCS coding guidelines and submit ((~~an authorization~~)) a PA request accordingly with actual labor units identified and supported by documentation.

(7) The agency pays for actual labor charges according to the agency's current fee schedule. The agency does not pay for base labor charges or other administrative-like fees ((~~will not be reimbursed~~)).

WSR 19-21-103
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed October 16, 2019, 10:59 a.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Purpose: Added a new subsection (2)(d) to the list of who is not eligible for Washington apple health with premiums. With the availability of the school employees' benefits board (SEBB) health insurance, effective January 1, 2020, a child who is eligible for SEBB insurance coverage based on family member's employment with a Washington school district, charter school, or education services [educational service] district is not eligible for Washington apple health with premiums.

Citation of Rules Affected by this Order: Amending WAC 182-505-0215.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 41.05.050, 41.05.065, 34.05.010, 74.09.500; 42 C.F.R. 457.310.

Adopted under notice filed as WSR 19-18-066 on September 3, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 16, 2019.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-12-018, filed 5/30/17, effective 6/30/17)

WAC 182-505-0215 Children's Washington apple health with premiums. (1) A child is eligible for Washington apple health with premiums if the child:

(a) Meets the requirements in WAC 182-505-0210(1);

(b) Has countable income below the standard in WAC 182-505-0100 (6)(b); and

(c) Pays the required premium under WAC 182-505-0225, unless the child is exempt under WAC 182-505-0225 (2)(c).

(2) A child is not eligible for Washington apple health with premiums if the child:

(a) Is eligible for no-cost Washington apple health;

(b) Has creditable health insurance coverage as defined in WAC 182-500-0020; ((~~or~~))

(c) Is eligible for public employees benefits board (PEBB) health insurance coverage based on a family member's employment with a Washington state agency, or a Washington state university, community college, or technical college; or

(d) Is eligible for school employees benefits board (SEBB) health insurance coverage based on a family member's employment with a Washington school district, charter school, or educational service district.

WSR 19-21-142
PERMANENT RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Division of Consumer Services)

[Filed October 22, 2019, 9:04 a.m., effective November 24, 2019]

Effective Date of Rule: November 24, 2019.

Purpose: The rules are being amended to implement amendments (Sec. 106 of S. 2155, Public Law No. 115-174) to the federal SAFE Act, the federal law requiring the licensure of individual mortgage loan originators. Other amendments include changes to the rules regulating trust accounts to reduce conflict with other state laws, and technical changes for clarity and consistency.

Citation of Rules Affected by this Order: New WAC 208-660-107, 208-660-108, 208-660-109, 208-660-143 and 208-660-352; and amending WAC 208-660-006, 208-660-008, 208-660-106, 208-660-163, 208-660-175, 208-660-195, 208-660-350, 208-660-400, 208-660-410, 208-660-430, 208-660-440, 208-660-445, 208-660-446, and 208-660-500.

Statutory Authority for Adoption: RCW 43.320.040, 19.146.225.

Adopted under notice filed as WSR 19-17-090 on August 21, 2019.

Changes Other than Editing from Proposed to Adopted Version:

1. WAC 208-660-006, definition of discount points, clarification that "fees paid" includes fees paid at both upfront and closing. Also clarifying that the disclosure of discount points must be as both a point, and a dollar amount.

2. WAC 208-660-006, definition of federal statutes and regulations, clarification that the list is not meant to be exhaustive.

3. WAC 208-660-006, definition of MAP, adding this identification of a federal statute will aid licensees in being compliant with applicable federal laws.

4. WAC 208-660-106, the amended citation corrects a scrivener's error.

5. WAC 208-660-350, loan originator licensing, subsection (1) is reordered, without changes to the language.

6. WAC 208-660-352, temporary authority, subsection (1) is amended for accuracy and a citation is added.

7. WAC 208-660-355, subsection (4) is deleted as functionality to implement this section is not yet available in the nationwide mortgage licensing system (NMLS); because that was the only change to the existing rule, the existing rule is no longer being amended.

8. WAC 208-660-400, subsection (2)(a)(iv) is added to clarify that any change to a business from that that existed at the time of original application requires notification through NMLS.

9. WAC 208-660-400, subsection (2)(b)(iv) is added to give licensees notice that certain changes in ownership require additional background checks, this is not a new requirement but is rather being codified to give licensees advance notice.

10. WAC 208-660-400, subsection (2)(d)(iv) is added to give licensees notice that closure or surrendering a license requires notice to the department within twenty business days.

11. WAC 208-660-410, subsection (1) is amended for clarification.

12. WAC 208-660-440, subsection (3) is amended for word choice.

13. WAC 208-660-446, subsection (1) is amended for clarification.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 14, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 4, Amended 14, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 22, 2019.

Richard St. Onge
Acting Division Director

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

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

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

"Advertising material" means any form of sales or promotional materials used in connection with the mortgage broker business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; or internet pages 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 mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210 (1)(e).~~

~~"Director" means the director of financial institutions.~~))

"Discount points" or "points" means a fee paid by a borrower, upfront or at closing, 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 points and 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~~)) includes, among others, the following:

• "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 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.

• "MAP" means the Mortgage Acts and Practices - Advertising, Regulation N, 12 C.F.R. Part 1014.

• "Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sec. 2601 et seq., Regulation X, 12 C.F.R. Part 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, codified at 12 U.S.C. 5101; Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

• "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, 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 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; or~~

~~• Offers or negotiates terms of a mortgage loan, including short sale transactions. An individual "offers or negotiates terms of a residential mortgage loan" if the individual:~~

~~(a) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms; or~~

~~(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.~~

~~"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, 12 C.F.R. Part 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 the Nationwide Multistate Licensing System and Registry, Nationwide Mortgage Licensing System, NMLSR, or such other name or acronym as may be assigned to the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the mortgage and other financial services industries.

((~~"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 16-08-027, filed 3/30/16, effective 4/30/16)

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.~~)) See WAC 208-660-143.

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-106 How does the department interpret the definition of loan processor in RCW 19.146.-

010(12)? "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. The job responsibilities may include the receipt, collection and distribution of information common for the processing of a loan. The loan processor may also communicate with a borrower to obtain the information necessary for the processing of a loan, provided that such communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms. A loan processor or underwriter engaged as an independent contractor by a licensee must hold a mortgage loan originator license. See WAC 208-660-300(13).

NEW SECTION

WAC 208-660-107 How does the department interpret the definition of "licensee" in RCW 19.146.010(10)? "Licensee" means:

• A mortgage broker licensed by the director;

• The principal(s) or designated broker of a mortgage broker;

• A loan originator licensed by the director;

• 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.

NEW SECTION

WAC 208-660-108 How does the department interpret the definition of "loan originator" in RCW 19.146.010(11)? "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; or

• Offers or negotiates terms of a mortgage loan, including short sale transactions. An individual "offers or negotiates terms of a residential mortgage loan" if the individual:

(a) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms; or

(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.

"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 paragraph, "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 Sec. 101(53D) of Title 11, U.S.C.

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.

NEW SECTION

WAC 208-660-109 How does the department interpret the definition of "mortgage broker" in RCW 19.146.010(14)? "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 apply-

ing 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, 12 C.F.R. Part 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.

NEW SECTION

WAC 208-660-143 Computer loan information (CLI) providers. (1) **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 (4) 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.

(2) **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.

(3) **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.

(4) **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 16-08-027, filed 3/30/16, effective 4/30/16)

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 license application ((~~for a~~)), or denies, suspends, or revokes my mortgage broker license?** 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.

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~~))) (10) **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~~))) (11) **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~~))) (12) **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~~))) (13) **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~~))) (14) **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~~))) (15) **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~~))) (14) 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~~)) the last day of February each year, you must apply for a new license.

(((~~17~~))) (16) **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~~))) (17) **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~~))) (18) **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 208-660-175 Mortgage brokers—Surety bond. (1) **What are the surety bond requirements for licensed mortgage brokers?**

(a) Mortgage brokers must at all times have a valid surety bond on file with the director. The surety bond must be provided on a form prescribed by the department.

(b) The surety bond amount must be based upon the annual loan origination volume of the licensee in the state of Washington.

(c) When the mortgage broker initially applies for a license, the dollar amount of the surety bond must be a minimum of twenty thousand dollars. Thereafter, by March 31st of each year, you must determine your required bond amount based on loan origination volume and provide DFI with proof of having an adequate bond.

(d) The surety bond must list the mortgage broker's ((~~full~~)) corporate name((~~, unified business identifier (UBI),~~)) and NMLS unique identifier.

(e) ((~~The surety bond must be signed by a principal of the mortgage broker as well as an authorized representative of the insurance company listed as surety. The power-of-attorney must identify the signing representative as authorized by the insurance company. The insurance company must include their surety bond number and seal on the surety bond form.~~)) The following chart shows the surety bond amount required for the annual loan origination volume of the licensee in the state of Washington:

Loan Volume in Millions	Bond Amount
$40+	$60,000
$20 to $40	$40,000
$0 to $20	$20,000

(f) If you only offer residential mortgage loan modification services, your bond amount is twenty thousand dollars, initially and thereafter.

(2) **Who provides mortgage broker surety bonds?** To purchase a surety bond, contact your insurance broker. A list of insurance companies that underwrite Washington surety bonds in Washington is available from the Washington state office of the insurance commissioner's website.

(3) ((**~~What do I do with the surety bond once I receive it from my insurance company?~~** ~~You must sign the original surety bond and include the surety bond and the attached power-of-attorney with your license application package.~~

~~(4)~~)) **What happens to my mortgage broker license if my surety bond is canceled?** Failure to maintain a surety bond is a violation of the act and may result in an enforcement action against you.

(((~~5~~))) (4) **May I change surety bond companies?** Yes. You may change your insurance provider at any time. Your current insurance company will issue a cancellation notice for your existing surety bond. The cancellation notice may be effective no less than thirty days following the director's receipt of the cancellation notice.

Prior to the cancellation date of the existing surety bond, you must have on file with the department a replacement surety bond. The replacement surety bond must be in effect on or before the cancellation date of the prior surety bond.

(((~~6~~))) (5) **Why must I carry a surety bond to have a mortgage broker license?** The surety bond protects the state and any persons who suffer loss by reason of violations of any provision of the act or these rules by you or your employees or independent contractors.

(((~~7~~))) (6) **Who may make a claim against a licensed mortgage broker's surety bond?** The director, or any person, including a third-party provider, who has been injured by a violation of the act, may make a claim against a bond.

(((~~8) **How may I~~**)) (7) **How does a person make a claim against a licensed mortgage broker's surety bond?** The department can provide ((~~you with~~)) the name of a licensed mortgage broker's surety bond provider. Contact the surety bond company and follow its required procedures to make your claim.

(((~~9~~))) (8) **How long does the bond claim procedure take?** The time to complete a bond claim may vary among bonding companies. If the claimant is not a borrower, final judgment will not be entered prior to one hundred eighty days after the claim is filed.

AMENDATORY SECTION (Amending WSR 13-24-023, filed 11/22/13, effective 1/1/14)

WAC 208-660-195 Mortgage brokers—Branch offices. (1) **May I open branch offices under my mortgage broker license?** Yes. A licensed mortgage broker may submit license application(s) to the department through the NMLS to establish branch office(s) under the existing mortgage broker license. Each branch office must be licensed and must pay an annual license fee. See WAC 208-660-550, Department fees and costs.

(2) **If my branch offices are under separate ownership, does that limit my liability for their activities?** No. Licensed mortgage brokers are responsible for the activity and violations at their branch offices regardless of the structure or label given the branch offices. Licensure of a branch office creates a direct line of responsibility from the main office to the branch.

(3) **If my branch offices are under separate ownership, what level of supervision must I maintain?** Because branch offices, regardless of their business structure, are not independent from your license and surety bond, you are responsible for the conduct of anyone conducting business under your license. You must have a written supervisory plan. The details of the plan, and how you implement the plan for your branch offices, must take into account the number of branch offices, their location, and the number of individuals working at the branch offices. You must maintain your written supervisory plan as part of your business books and records.

(4) **How do I apply for a mortgage broker branch office license?** As the licensed mortgage broker, you must apply for a branch office license through the NMLS and receive approval from the department before operating from any location other than your licensed location. You must be in good standing. You will have to pay application and annual assessment fees for the branch office(s). See WAC 208-660-550, Department fees and costs.

(5) **What does the department consider when reviewing an application for a branch office license?** The department considers:

(a) Whether the mortgage broker is in good standing. See WAC 208-660-007.

(b) Whether the physical address listed in the application can be verified as a branch office location.

(6) **If I am an internet company, how do I display my license?** You must display your license information, as it appears on your license, including any or all business names, and the license number, on your website. The information must also include a list of the states in which you are licensed.

(7) **How do I change information on my mortgage broker branch office license?** You must file a license amendment through the NMLS.

(8) **Does my branch office license expire?** The license expires annually. The expiration date is shown on the license. If the license is an interim license, it may expire in less than one year.

(9) **How do I renew my mortgage broker branch office license?**

(a) Before the expiration date, the licensed mortgage broker must submit an online renewal and pay the branch office annual assessment fee through the NMLS.

(b) The renewed mortgage broker branch office license is valid for the term listed on the license or until surrendered, suspended, or revoked.

(10) **If my mortgage broker branch office license expires, must I apply for a new license?** If you complete all the requirements for renewal by 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 branch office license, you must pay an additional fifty percent of your annual assessment for that branch. See subsection (9) of this section for the license renewal requirements.

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

If you fail to comply with the renewal request requirements by the last day of February ((~~28th~~)), each year, you must apply for a new license.

(11) **If my mortgage broker branch office license has expired, may I still conduct my mortgage broker business from that location?** No. Once the mortgage broker branch office license has expired, you must not conduct any business under the act that requires a license until you renew your license.

(12) **If my mortgage broker main office license expires, may I still conduct my mortgage broker business from a branch office?** No. Once the mortgage broker main office license expires, you must not conduct any business under the act that requires a license from any location until you renew the main office license.

(13) **May I add a trade name (or "DBA") to my mortgage broker branch office license?** Yes. You may add a trade name, or "DBA" name, to the mortgage broker branch office license if you first apply to the department, in a form prescribed by the director, and receive department approval. Branch trade names must also be listed on the main office record in the NMLS. The branch office trade name must at all times be identified as connected with the mortgage broker's license name as it appears on the mortgage broker license. When the department has approved the trade name, you must conduct business under that trade name in at least one of the two following ways:

(a) Use your license name together with the branch office trade name; or

(b) Use the branch office trade name and mortgage broker main office license number together.

(c) See WAC 208-660-180(10).

(14) **How must I identify my mortgage broker branch office(s)?** The branch office must be prominently identified as a branch or division of the licensed mortgage broker so as not to appear to be an independent enterprise.

(15) **Does my branch office have to be a physical location?** Yes. The physical location may be at a commercial or residential address but does not have to be in Washington. See WAC 208-660-420, Out-of-state mortgage brokers and loan originators.

(16) **Must I have a branch manager?** No. Although you may appoint one, the act does not require a branch manager. You and the designated broker are responsible for the business conducted at all locations.

(17) **If I appoint a branch manager, must he or she be licensed?** If the branch manager performs any of the functions of a mortgage broker or loan originator, he or she must be licensed. If they do not perform those functions, they must not be paid a commission or salary based upon the number of transactions closed.

(18) **Must I have a designated broker at each branch?** No. You may have only one designated broker who is responsible for the mortgage broker business at all locations.

(19) **If I want ((~~to move~~)) my licensed company ((~~under the sponsorship~~)) to become a branch of another mortgage broker, what must be completed before the licensed loan originators can start transacting business under the sponsorship of the other mortgage broker?** The loan originators may begin doing business when the other mortgage broker has filed ((~~for~~)) and received department approval of a new branch office ((~~with the NMLS~~)), if necessary, and has sponsored and received departmental approval for each of the licensed loan originators ((~~through the NMLS and you have filed the trust account paperwork with the department, you may transact business under the new mortgage broker for up to thirty days without a new license~~)).

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

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. See also WAC 208-660-352 Temporary authority to originate loans. 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)~~)) (c) **Complete prelicensing education.** You must complete prelicensing education before submitting the license application. See WAC 208-660-355.

(d) **Pass a licensing test.** You must take and pass the NMLS test before submitting the license application. See WAC 208-660-360 Loan originators—Testing.

(e) **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.

(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 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 website 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~~)) by the last day of February each year, 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 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.

NEW SECTION

WAC 208-660-352 Temporary authority to originate loans. (1) **What is temporary authority to originate loans?** Temporary authority to act as a loan originator permits qualified MLOs who are changing employment from a depository institution to a state-licensed mortgage company and qualified state-licensed MLOs seeking licensure in another state, to originate loans while completing any state-specific requirements for licensure. See WAC 208-660-355.

(2) **Who is eligible for temporary authority?** An MLO that is: (a) Employed and sponsored through NMLS by a state-licensed mortgage company; and (b) either: (i) Registered in NMLS as an MLO during the one year preceding the application submission; or (ii) licensed as an MLO during the thirty-day period preceding the date of application.

(3) **How do I receive temporary authority?**

(a) You must be employed and sponsored by a company licensed in Washington;

(b) You must file a license application pursuant to WAC 208-660-350 (1)(a) through (d); and

(c) You must not have any disqualifying criminal history, been subject to or served with a cease and desist order, or had an MLO license denied, revoked, or suspended in any jurisdiction.

(4) **How long can I operate under temporary authority?** Temporary authority begins on the date an eligible MLO submits a license application. It ends when the earliest of the following occurs: (a) The MLO withdraws the application; (b) the state denies or issues a notice of intent to deny the application; (c) the state grants the license; or (d) one hundred twenty days after the application submission if the application is listed on NMLS as incomplete.

(5) **Can my license application be denied during the period of temporary authority?** Yes. Your application can be denied at any time during the application review process.

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-400 Reporting requirements and notices to the department. (1) **What are my ((~~quarterly~~)) NMLS mortgage call report filing requirements?** You are required to file accurate and complete mortgage call reports, including residential mortgage loan activity reports and financial condition 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 and upload supporting documents, if applicable, 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 or if your answer does not change but another event has occurred that requires disclosure and uploading of explanatory documentation.

(iv) Any change in the information supplied to the director in your original application.

(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.~~)) A criminal background check through NMLS will be required.

(iv) The addition of a control person. A criminal background check through NMLS will be required.

(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 email 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)~~))) (v) Receipt of notification of license revocation proceedings against you in any state;

(((~~(vii)~~))) (vi) 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)~~))) (vii) Name and mailing address of your registered agent if you are out-of-state.

(d) **Post notification within twenty business days.** You must notify the director in writing within twenty business 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; or

(iv) The closure or surrender of a main or branch license location.

(e) **Other post notification.** Within ((~~forty-five~~)) thirty 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 and upload supporting documents, if applicable, within ten business days to a change of:

(a) Answers to the NMLS generated disclosure questions or if your answer does not change but another event has occurred that requires disclosure and uploading of explanatory documentation;

(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 16-08-027, filed 3/30/16, effective 4/30/16)

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. Funds received by a broker from a settlement agent or lender, on or after closing, for payments the broker made, or will make, to third-party service providers are not trust funds and therefore can be deposited directly into the broker's general account.

(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((~~,~~)) or 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 website.

(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~~)) and maintain a record indicating that the funds were actually deposited into the proper account(s).

(b) You must ((~~post~~)) document and maintain a record for the deposit of electronic 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~~)), including 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 on or after closing from a ((~~third party, such as a closer~~)) settlement agent, 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.~~)) No.

(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 providers' charges associated with your deposit have been paid; and

(ii) 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.

(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. 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?** Because these funds are not trust 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~~)) the broker to the broker's general account; ((~~or~~))

(b) Deposit the entire check into the trust account. After paying any and all moneys due to third-party service 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 applicable settlement statement or final HUD-1, 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; or

(c) Deposit the entire check into the broker's general account and pay any third-party service providers.

(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 pun-

ishable 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~~)) If a settlement agent did not follow written instructions and issued a check or wired funds to me after closing that ((~~has~~)) includes fees ((~~in it~~)) for third-party service providers, may I deposit the check into my ((~~business~~)) general 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)~~)) Yes.

(32) **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~~))) (33) **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~~))) (34) **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~~))) (35) **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 16-08-027, filed 3/30/16, effective 4/30/16)

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 and a copy of your agreement with the lender about the provision of 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. An estimate made in good faith 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 in compliance with the requirements of Regulation Z, Truth-in-Lending Act and Regulation X, RESPA 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)~~)) The date the rate lock agreement was provided to the borrower; and

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

(d) You may rely on a lender's rate lock agreement if it is in compliance with (c) of this subsection.

(e) 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~~))) (f) Prior to closing, you must disclose payment of a rate lock as a cost in Block 2 of the federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose the payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure;

(((~~f~~))) (g) See subsection (7) of this section if the borrower initially chooses to float rather than lock the interest rate;

(((~~g~~))) (h) 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~~))) (i) 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 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 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 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 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, prior to closing, you must disclose payment of a rate lock as a cost in Block 2 of the federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose the payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(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 loan estimate form for mortgage loan transactions provided under the Truth-in-Lending Act and Regulation Z, as now or hereafter amended. How-

ever, the federal 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 Act and Regulation X or the Truth in Lending Act and Regulation 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 website.

(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 applicable settlement statement or final HUD-1 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 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 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 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 applicable settlement statement or final HUD-1 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 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 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 16-08-027, filed 3/30/16, effective 4/30/16)

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 images in an electronic format that 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) Images, including those in electronic format, designed to resemble official government 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~~)) items or services are "free" when the licensee has paid for the items or 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" items or services 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~~)) https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/guide-concerning-use-word-free-similar.

(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 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.

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

WAC 208-660-445 May I advertise over the internet using a URL address that is not my licensed business name? Yes, provided that ((~~any~~)) the 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 in addition to any other names or words in the URL address~~)) does not misrepresent the identity of your company or contain any misleading, deceptive, or otherwise prohibited language. URL addresses may be used as DBA names upon request to and approval from DFI.

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-446 When ((~~I advertise~~)) advertising using the internet or any electronic form (including, but not limited to, text messages), is there specific content the advertisements must contain? Yes. ((~~You~~)) Companies, including branches, and loan originators must provide the following language, in addition to any other, on ((~~your~~)) web pages, social media pages the licensee controls, or in any medium where ((~~you hold yourself~~)) the licensee holds themselves out as being able to provide the services:

(1) ((~~Main office's home web page.~~

~~(a)~~)) The company's ((~~license~~)) name ((~~and~~)) as entered in the NMLS, the company's license number, and a link to the company's NMLS consumer access website page must be displayed on the ((~~licensee's home web~~)) company's and any loan originator's primary landing page.

(((~~(b)~~))) (2) If loan originators are named, their license numbers must closely follow the names. 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).

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

~~(d)~~))) (3) If the company uses a DBA ((~~on a home web page~~)), the page must also contain the company's ((~~license~~)) name ((~~and~~)) as entered in the NMLS or license number.

(((~~(2) Branch office web page. Comply with subsection (1) of this section.~~

~~(3) Loan originator web page. If a loan originator maintains a separate 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)~~)) (4) Compliance with other laws. Website content used to solicit Washington consumers must comply with all relevant Washington state and federal statutes for specific services and products advertised on the website.

(((~~(6)~~))) (5) Oversight. The company is responsible for content displayed on all electronic advertisements used to solicit Washington consumers.

AMENDATORY SECTION (Amending WSR 16-08-027, filed 3/30/16, effective 4/30/16)

WAC 208-660-500 Prohibited practices. (1) **What may I request of an appraiser?** You may request an area or market survey. While there are no strict definitions of these terms, generally they refer to general information regarding a region, area, or plat. The information usually includes the high, low and average sales price, numbers of properties available for sale or that have been sold within a set period, marketing times, days on market, absorption rate or the mixture of different property types in the specified area, among other possible components. An area survey does not contain sufficient information or is not so defining as to allow an appraiser or reader to determine the value of a specified property or property type.

(2) **How may I discuss property values with an appraiser, prior to the appraisal, without the discussion constituting improperly influencing the appraiser?** You may inform the appraiser of your opinion of value, the borrower's opinion of value, or the list or sales price of the property. You are prohibited from telling the appraiser the value you need or that is required for your loan to be successful.

(3) **What business practices are prohibited?** The following business practices are prohibited:

(a) Directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.

(b) Engaging in any unfair or deceptive practice toward any person.

(c) Obtaining property by fraud or misrepresentation.

(d) Soliciting or entering into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower.

(e) Charging discount points on a loan which does not result in a reduction of the interest rate. Some examples of discount point misrepresentations are:

(i) A mortgage broker or lender charging discount points on the good faith estimate, 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~~)) 208-660-440, 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 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, 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 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).

WSR 19-21-144
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed October 22, 2019, 9:48 a.m., effective February 1, 2020]

Effective Date of Rule: February 1, 2020.

Purpose: WAC 246-825-990 License fees for genetic counselors, the department of health (department) has amended its rule to decrease both annual licensing application fees and active renewal fees from $200 to $50 each, and decrease the late renewal penalty from $100 to $50. The department has also lowered its fees for a duplicate license and verification of licensure to $10 and $25 respectively to bring these amounts into line with a department standard for all licensed health professions.

Citation of Rules Affected by this Order: Amending WAC 246-825-990.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Adopted under notice filed as WSR 19-15-096 on July 22, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 21, 2019.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 14-08-084, filed 4/1/14, effective 7/1/14)

WAC 246-825-990 License fees. (1) Licenses must be renewed every year on the practitioner's birthday as provided under chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title	Fee
Application	((~~200.00~~)) 50.00
Renewal	((~~200.00~~)) 50.00
Late renewal penalty	((~~100.00~~)) 50.00
Expired license reissuance	100.00
Duplicate license	((~~30.00~~)) 10.00
((~~Certification~~)) Verification of licensure	((~~30.00~~)) 25.00

(3) The following nonrefundable fees will be charged for a provisional license:

Title	Fee
Application	30.00
Renewal	30.00
Late renewal penalty	30.00
Duplicate provisional license	((~~30.00~~)) 10.00
Verification of provisional licensure	25.00

WSR 19-21-149
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed October 22, 2019, 11:18 a.m., effective January 1, 2020]

Effective Date of Rule: January 1, 2020.

Purpose: This rule making will support the department's vocational recovery effort by:

- Ensuring expectations of vocational providers are better aligned with the return to work language in RCW 51.32.095.
- Addressing certain requirements for vocational firms.
- Outlining when and to what degree vocational providers may be subject to corrective action or sanctions.

Citation of Rules Affected by this Order: New WAC 296-19A-262, 296-19A-264, 296-19A-266, 296-19A-268 and 296-19A-269; repealing WAC 296-19A-260; and amending WAC 296-19A-040, 296-19A-045, 296-19A-050, 296-19A-060, 296-19A-065, and 296-19A-210.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.095, 51.36.100, and 51.36.110.

Adopted under notice filed as WSR 19-17-078 on August 20, 2019.

A final cost-benefit analysis is available by contacting Laurinda Grytness, Department of Labor and Industries, Insurance Services, P.O. Box 44329, Olympia, WA 98504-4329, phone 360-902-6362, fax 360-902-6706, TTY 360-902-4252, email Laurinda.grytness@Lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 6, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 6, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 22, 2019.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 17-19-089, filed 9/19/17, effective 10/20/17)

WAC 296-19A-040 What vocational rehabilitation services require authorization? (1) All vocational rehabilitation services must be preauthorized. For state fund claims, the department may make one or more of the following type of referrals: ((~~Early intervention~~)) Vocational recovery; ability to work assessment ("AWA" or "assessment"); plan development; plan implementation; forensic services; or stand alone job analysis. Self-insurers may also make any of the listed referrals and/or provide any other services they consider appropriate to address priorities listed in RCW 51.32.095(2). Each referral is a separate authorization for vocational rehabilitation services.

(2) Option 2 vocational services are considered authorized for state fund and self-insured claims once the department accepts the worker's election of Option 2. However, the

services can only be provided upon request from the worker to the vocational provider.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-045 Which rules under "vocational rehabilitation referrals" apply only to state fund claims? WAC ((~~296-19A-050,~~)) 296-19A-060, 296-19A-080, 296-19A-098, 296-19A-118, and 296-19A-125 through 296-19A-137 pertain only to referrals for vocational rehabilitation services made by the department for state fund claims.

AMENDATORY SECTION (Amending WSR 00-18-078, filed 9/1/00, effective 6/1/01)

WAC 296-19A-050 What are ((~~early intervention~~)) vocational recovery services? ((~~Early intervention services are intended to help an industrially injured or ill worker return to work, or continue to work, for the employer of injury or the current employer. These services include, but are not limited to, the following:~~

~~(1) Discussing early return to work options with the employer, worker, and attending physician;~~

~~(2) Identifying return to work goals and barriers that may interfere with or prevent the industrially injured or ill worker from returning or continuing to work;~~

~~(3) Assisting employers with offers of employment;~~

~~(4) Planning and working with the referral source on necessary job modifications and prejob accommodations;~~

~~(5) Performing job analyses; and~~

~~(6) Assessing the industrially injured or ill worker's need for preferred worker status and educating the worker on the preferred worker benefit, if appropriate.~~)) (1) Vocational recovery services are intended to ensure appropriate support is provided to an industrially injured or ill worker so that they return to work, continue to work, or are enabled to become employable at gainful employment consistent with the priorities listed in RCW 51.32.095 (2)(a) through (g) with the highest priority given to returning a worker to employment:

(a) Return to the previous job with the same employer;

(b) Modification of the previous job with the same employer including transitional return to work;

(c) A new job with the same employer in keeping with any limitations or restrictions;

(d) Modification of a new job with the same employer including transitional return to work;

(e) Modification of the previous job with a new employer;

(f) A new job with a new employer or self-employment based upon transferable skills; and

(g) Modification of a new job with a new employer.

(2) In each case referred to a vocational provider, the vocational recovery services include work disability prevention best practices identified by the department and periodically published through policy bulletins available from the department and recorded with the office of the code reviser. These best practice services include, but are not limited to, the following which must be addressed by the vocational provider prior to consideration of when and which of the priorities listed in subsection (1) of this section may be most appropriate for the worker:

(a) Identify and, as appropriate, use their skills and professional judgment along with accessing available community resources that do not impose a cost on the department or injured worker to proactively address barriers that may interfere with or prevent the worker from returning to any work, including transitional or modified work;

(b) Assist the worker in identifying return to work goals and steps necessary to achieve those goals; and

(c) Assess the worker's potential preferred worker status, educating the worker and employer(s) on transitional and permanently modified work, the Washington stay at work program, and the preferred worker benefits, if appropriate.

(3) Vocational recovery services also include, but are not limited to, those described below specific to the priorities listed in RCW 51.32.095(2).

(a) When consistent with the worker's return to work goals (see subsection (2)(b) of this section), in evaluating the priorities listed in RCW 51.32.095 (2)(a) through (d) which involve return to work with the same employer, the vocational provider will:

(i) Except for return to work at the previous job with the same employer, assist the worker with job readiness and job placement services, if applicable;

(ii) Plan and work with the worker, the employer, the attending provider, and the department or self-insured employer to identify and pursue possible return to work opportunities and any necessary job modifications and prejob accommodations, when applicable;

(iii) Work with the worker and the employer to develop job description(s) or job analysis(es) that include the physical demands necessary to perform the work. Vocational providers must use their professional judgment when determining whether a job description or job analysis is appropriate, except during an ability to work assessment as outlined in WAC 296-19A-065 during which job analyses are required;

(iv) Based on the job description or descriptions, obtain approval from the attending provider that the job or jobs are appropriate for the worker's accepted condition(s), when applicable;

(v) Assist the employer with an offer of employment, and assist with resolution of disagreements about job offers, if needed;

(vi) Assist the employer with accessing return to work incentives such as those offered through the Washington stay at work and preferred worker programs, when applicable;

(vii) Document all offers of employment and the worker's response;

(viii) Monitor any return to work and assist in resolving barriers or concerns of the employer and/or worker, when applicable.

(b) When consistent with the worker's return to work goals (see subsection (2)(b) of this section), for the priorities listed in RCW 51.32.095 (2)(e) through (g) which involve return to work at a job with a new employer, the vocational provider will:

(i) Assist the worker with job readiness and job placement services, and in identifying opportunities through

WorkSource partners and other organizations that support return to work;

(ii) Assist the worker to develop a resume or work history as a tool to identify the worker's knowledge, skills, and interests;

(iii) Plan and work with the worker, the new employer, if applicable, the attending provider, and the department or self-insured employer on necessary job modifications and prejob accommodations;

(iv) Work with the worker and with the new employer, if applicable, to develop a job description that includes the physical demands necessary to perform the work;

(v) Based on the job description or descriptions, obtain medical approval from the worker's attending provider that the job or jobs are appropriate for the worker's accepted conditions;

(vi) Assist the new employer with an offer of employment, if needed;

(vii) Assist the new employer with accessing return to work incentives such as those offered through the preferred worker program, if applicable;

(viii) Document all offers of employment and the worker's response;

(ix) Monitor any return to work and assist in resolving barriers or concerns of the employer and/or worker, when applicable.

(4) To ensure appropriate assistance has been provided or offered to the worker so that they return to work, continue to work, or are enabled to become employable as outlined in subsections (2) and (3) of this section the vocational provider must document their efforts to provide the services outlined in subsection (3)(a)(i) through (viii) and (b)(i) through (ix) of this section, including offers of employment and the worker's response(s), prior to requesting a referral for an ability to work assessment as described in WAC 296-19A-065.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

WAC 296-19A-060 What reports does the department require when ((~~early intervention~~)) vocational recovery services are provided at its request? (1) ((~~Progress reports.~~)) The vocational ((~~rehabilitation~~)) provider must ((~~submit a written progress report~~)) engage the worker to develop a vocational recovery plan. The vocational recovery plan should include the needs and goals of the worker and steps or strategies to address these. The plan may change as appropriate for the worker's needs and goals. A copy or copies of the vocational recovery plan must be provided to the worker and to the department((~~, and upon request, to the injured worker or the injured worker's representative, every thirty calendar days from the date of the electronic referral summarizing progress during the most recent reporting period. The progress report must include the following:~~

~~(a) Summarized results of all contacts the provider had with the industrially injured or ill worker, employer of injury or current employer, and medical provider(s);~~

~~(b) Summary of all actions taken including progress on previously recommended actions;~~

~~(c) Identification and analysis of any barriers preventing completion of the referral; and~~

~~(d) Description of the specific actions the provider intends to take to overcome barriers and the expected time frame to complete those actions~~)). Every thirty days, the vocational provider must provide to the department and to the worker a brief summary of steps taken since the last update to address the worker's needs and goal(s). Examples include, but are not limited to, progress in resolving the worker's concerns and barriers to returning to work such as meetings with an employer or employers, meetings with the worker's attending provider, helping the worker understand the claim and vocational processes, and engaging the worker in community resources and/or WorkSource.

(2) Closing reports. The vocational provider must ((~~always submit an early intervention~~)) submit a vocational recovery closing report at the conclusion of services unless advised otherwise by the department. In the report the provider must include or address:

(a) ((~~A brief description of the industrially injured or ill worker's work history;~~

~~(b) Summary of the industrially injured or ill worker's education, training, licenses, and certificates;~~

~~(c) A medically reviewed job analysis for the job of injury and any other return to work options;~~

~~(d) Description of the worker's medical status and physical capacities;~~

~~(e) Indication of which return to work priority relates to the situation;~~

~~(f) Any other supporting documentation;~~

~~(g) The date the worker returned to work and the monthly salary or wage, or document attempts to obtain this information, if applicable;~~

~~(h) Documentation that no return to work options exist with the employer of injury or current employer, if applicable.~~)) Whether a return to work outcome was achieved and, if so, whether the return to work is considered temporary, permanent, modified, or transitional;

(b) If a return to work outcome was not achieved, an outline of the vocational provider's efforts as required in WAC 296-19A-050(4).

(3) The provider must notify the department orally and in writing within two working days after learning of an unsuccessful return to work by the injured worker.

(4) The provider must notify the department orally and in writing within two working days after learning of a return to work by the injured worker.

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-19A-065 What ((~~are~~)) is an ability to work assessment ((~~services~~))? ((~~Assessment services are used by~~)) (1) Workers may be referred to a vocational provider for assessment activities at the discretion of the department or self-insured employer to determine if a worker ((~~should~~)) is eligible to receive vocational rehabilitation plan development services. Assessment ((~~services~~)) activities will generally occur after all of the following:

(a) The vocational provider has applied the services outlined in WAC 296-19A-050 What are vocational recovery services?;

(b) The services did not result in a return to work or a valid job offer or offers; and

(c) The vocational provider has documented such efforts.

(2) During an ability to work assessment, the vocational provider will maintain regular communication with the worker, addressing the worker's concerns, assisting to resolve barriers, as appropriate, and updating them on assessment activities to include information requested and/or collected.

(3) Assessment activities may include, but are not limited to, the following:

(((~~(1)~~))) (a) Documenting work restrictions;

(((~~(2)~~))) (b) Performing job analyses;

(((~~(3)~~))) (c) Evaluating the worker's ability to work at the job of injury((~~;~~

~~(4) Assessing~~)) or any other job including an assessment of the worker's transferable skills;

(((~~(5)~~))) (d) Conducting labor market surveys as defined in WAC 296-19A-140;

(((~~(6) Evaluating the worker's ability to work at any other job;~~

~~(7)~~))) (e) Evaluating the worker's ability to benefit from plan development services, including any and all vocational testing considered necessary to support a recommendation for retraining eligibility, if appropriate; ((~~and~~

~~(8)~~))) (f) Documenting a recommendation to the department or self-insured employer on whether the worker is employable at gainful employment, consistent with RCW 51.32.095 (2)(a) through (g) or whether vocational plan development is both necessary and likely to make the worker employable at gainful employment;

(g) Assessing the worker's need for preferred worker status and when appropriate educating the worker on the preferred worker benefit((~~.~~)); and

(h) If a worker indicates an interest in returning to work and, in the professional judgment of the vocational provider, the worker has the necessary skills and abilities to do so consistent with their medical restrictions, the vocational provider may provide those services listed in WAC 296-19A-050 as they deem appropriate.

AMENDATORY SECTION (Amending WSR 04-08-045, filed 3/31/04, effective 7/1/04)

WAC 296-19A-210 What are the qualifications to provide vocational rehabilitation services to industrially injured or ill workers? Provider community commentary, expert opinion and best practices suggest that there is a correlation between a higher quality level of vocational rehabilitation services and higher qualifications of vocational rehabilitation providers. To ensure the provision of the highest possible quality of vocational rehabilitation services, the department shall only issue a provider number to persons, firms, partnerships, corporations, and other legal entities that meet the following qualification requirements:

(1) Vocational rehabilitation counselor (VRC).

(a) VRCs not registered with the department and applying for a provider number with the department effective on or after December 1, 2000, must meet the following minimum qualifications:

Education Masters Degree	Experience 1 year full-time industrial insurance experience	Certification and CRC or CDMS or ABVE
OR		
Bachelors Degree	2 years full-time industrial insurance experience	and CRC or CDMS

CRC = Certified Rehabilitation Counselor

CDMS = Certified Disability Management Specialist

ABVE = American Board of Vocational Experts

(b) VRCs registered with the department as of November 30, 2000, will be required to meet the qualification criteria in (a) of this subsection no later than November 30, 2010.

(c) The VRC assigned to or directly receiving the referral from the referral source is responsible for all work performed by any vocational provider on that referral.

(2) VRC supervisor of interns (supervisor).

(a) The supervisor must meet the qualification requirements for a VRC in subsection (1)(a) and (b) of this section.

(b) The supervisor must provide proof of a total of five years full-time experience providing, evaluating, analyzing and/or assessing vocational services. For the purposes of this rule, "vocational services" are those defined in WAC 296-19A-010(2). At least three of the five years must be under Title 51 RCW.

(c) A maximum of thirty-six months in intern status may be counted toward the five years of experience needed to become a supervisor.

(d) Supervisors are expected to monitor and assist in the training and professional development of interns under their supervision, in order to ensure that interns develop the requisite knowledge and professional skills to become competent VRCs. A supervisor's responsibilities((~~,~~)) include, but are not limited to:

(i) Monitoring billing;

(ii) Monitoring work;

(iii) Monitoring professional behavior;

(iv) Promoting professional development and assisting the intern in meeting the department's requirements to become a VRC; and

(v) Communicating statute, rule and policy.

(3) Forensic services—In order to provide forensic services to the department, on or after the effective date of this rule, a VRC must provide proof of five years full-time experience providing direct vocational services to Washington state industrially injured or ill workers, and must possess a CRC or ABVE certification. Vocational providers previously approved to provide this service, under chapter 296-19A WAC, will retain that status.

(4) Intern.

(a) Interns not registered with the department and applying for a provider number with the department on or after

December 1, 2000, must meet the following minimum qualifications:

Degree	Internship Length
Masters Degree in field acceptable to CRC or CDMS or ABVE	Equal to required experience to obtain CRC or CDMS or ABVE certification including at least 1 year working with industrially injured or ill workers.
OR	
Bachelors Degree in field acceptable by CDMS	Equal to required experience to obtain CDMS certification including at least 2 years working with industrially injured or ill workers.

(b) Interns not registered with the department and applying for a provider number with the department on or after December 1, 2000, must obtain one of the required VRC certifications within one year of completing their required internship. Interns will remain in internship status during this time frame.

(c) Interns registered with the department as of November 30, 2000, will be required to apply for a provider number with the department and may work as an intern until the end of their current internship. Upon completion of the internship the intern may submit an application to the department as a VRC. These providers must obtain one of the required VRC certifications by November 30, 2010.

(d) All interns are required to conform to Title 51 RCW, department rules, and department policies. All interns granted a provider number by the department must be supervised by a VRC supervisor.

(e) No person shall serve as an intern under these rules for more than seventy-two months of full-time experience, or its equivalent, working with industrially injured or ill workers. The intern must notify the department when there is a change in the status of an internship.

(5) Interns may not receive referrals directly from the department or self-insured employers. Interns may perform aspects of vocational rehabilitation services under the supervision of a VRC supervisor.

(6) Providers who receive or are assigned referrals must comply with all electronic security requirements in place for accessing department files.

(7) Providers registered with the department as of November 30, 2000, who do not meet the above qualification requirements within the ten-year period will no longer be eligible to provide vocational rehabilitation services to industrially injured or ill workers and the department will terminate their provider number(s).

(8) Business requirements for vocational rehabilitation firms.

(a) ((~~Providers~~)) Vocational rehabilitation firms must comply with all federal and state laws, regulations and other requirements with regard to business operations. This includes, but is not limited to, a unique federal tax identification number (federal employer identification number, individual tax identification number, or Social Security number) and, if hiring employees or opting for coverage as a self-employed sole proprietor, a unified business identifier and industrial insurance account in good standing. In order to be eligible to receive referrals from the department, ((~~providers~~)) firms must satisfy the requirements set forth in this subsection in every service location in which they wish to operate.

(b) Providers must be covered by general liability insurance, automobile liability insurance, errors and omission insurance, malpractice insurance, and industrial insurance if required by Title 51 RCW.

(c) ((~~Providers~~)) Vocational rehabilitation firms may be partnerships, corporation, sole proprietors, or other legal entities. The firms must have services and facilities that provide injured workers a private and professionally suitable location in which to discuss vocational rehabilitation services issues. In order to be eligible to receive referrals from the department, ((~~providers~~)) firms must satisfy the requirements set forth in this subsection in every service location in which they wish to operate.

(d) Vocational rehabilitation firms and providers must have telephone-answering capability during regular business hours, Monday through Friday. In order to be eligible to receive referrals from the department, ((~~providers~~)) firms must satisfy the requirements set forth in (c) and (d) of this subsection in every service location in which they wish to operate.

(e) In order to receive referrals made by the department, ((~~providers~~)) firms must maintain or have access to equipment that can utilize the department's remote access system for transmitting vocational referrals.

(9) In order to receive referrals from the department, vocational rehabilitation firms must first:

(a) Complete the vocational rehabilitation firm provider agreement, attesting to and providing documentation required by the department of adherence to the requirements in subsection (8) of this section;

(b) Submit an updated firm provider agreement at least annually;

(c) Adhere to the guideline for distribution of unassigned firm vocational referrals as signed by the firm owner or manager;

(d) Submit, implement, and periodically report on a department approved quality assurance plan at intervals determined by the department. For purposes of this section, "quality assurance plans" document the process the vocational firm will use to ensure certain services or tasks are completed consistent with statutory requirements, rules, and department policies. Examples of possible quality assurance elements that would be reported on and addressed in a firm's plan include completion and submission of a vocational recovery plan, face-to-face meetings with workers and other claim parties under certain circumstances, and contacting the worker every fourteen days during a retraining plan.

(e) Results and remedial actions as outlined in the department approved quality assurance plan must be provided to the department at intervals set forth in the policy. Elements of quality assurance plans may be periodically updated by the department. Vocational rehabilitation firms

will be given at least sixty days' notice of changes in quality assurance elements, reporting frequency, or other intended updates to quality assurance expectations.

(10) The department may ((~~assign a provider number~~)) make referrals to a vocational rehabilitation firm, partnership, corporation, sole proprietor, or other legal entity so long as substantial control over the daily management of the ((~~vocational rehabilitation firm, partnership, corporation or other legal~~)) entity is performed by a VRC that satisfies the qualifications set forth in this rule.

NEW SECTION

WAC 296-19A-262 What actions related to conduct, behavior, or ethical violations by a credentialed vocational provider, intern, or firm may result in corrective action or sanctions? (1) Internal staff and parties to a claim can submit concerns or complaints to the department about a vocational provider or firm at any time. The department's program that is responsible for the conduct of vocational providers reviews all concerns and complaints. The program's intent is to resolve the issues at the lowest possible level, for example, through conversation and collaboration with the vocational provider and their firm.

(2) However, a vocational provider and/or vocational firm may be subject to corrective action or sanctions for conduct that does not comply or is inconsistent with the applicable laws and policies including, but not limited to:

(a) Title 51 RCW, Industrial insurance;

(b) Chapter 49.60 RCW, Discrimination—Human rights commission;

(c) Washington Administrative Code;

(d) Medical aid fee schedule and payment policies;

(e) Department policies.

(3) Examples that may warrant investigation and/or corrective action or sanctions include, but are not limited to:

(a) Situations involving a real or perceived conflict of interest;

(b) Misrepresentation;

(c) Situations where the vocational provider or firm has, or is perceived to have, abused the relationship between the vocational provider and the worker.

NEW SECTION

WAC 296-19A-264 What potential corrective actions or sanctions may the department order or direct, and who is responsible for administering the sanction(s)? (1) Corrective actions or sanctions can include, but are not limited to:

(a) Reprimand;

(b) Remedial education courses and/or other educational or training programs;

(c) Temporary supervision when meeting with a client; and/or

(d) Probation;

(e) Inability to receive payment or recoupment of payments, plus interest, made to the provider;

(f) Assessment of penalties;

(g) Denial or rejection of a request for payment;

(h) Temporary placement of a provider on prepayment review, requiring submission of supporting documents prior to payment;

(i) Rejection of a provider's application to provide vocational rehabilitation services;

(j) Permanent restrictions such as supervision when meeting with a client or placement on prepayment review; or

(k) Permanent revocation of the unique identifier for the vocational rehabilitation counselor or intern (VRC ID). Permanent revocation means the provider cannot obtain a provider number, bill, or receive referrals for services from the department or a self-insured employer. Termination of credentials by a credentialing body for any reason will result in immediate revocation of the VRC ID number.

(2) The department may consider its prior actions in determining the appropriate corrective actions or sanctions.

(3) The department shall communicate temporary corrective actions or sanctions against an individual vocational provider or intern by notice to the vocational firm and to the individual. The notice shall include how to request reconsideration from the department or appeal the decision to the board of industrial insurance appeals.

(4) The firm is responsible for developing an oversight plan to be provided to the department within thirty days of the notice.

(a) The department will notify the firm of its acceptance of the plan within fifteen days of receipt.

(b) If the plan is unacceptable, the department will alter the plan and submit it to the firm owner or manager for signature and implementation within thirty days.

(5) Until temporary corrective actions or sanctions are completed, the department will report them to another hiring firm when the new firm requests a provider number for the vocational provider to whom the action/sanction applies. The new firm will be responsible for completing the oversight that was originally agreed to by the department.

(6) If temporary actions/sanctions apply to a firm or to a sole proprietor, the department will develop an oversight plan and communicate it to the firm owner or manager.

(7) Permanent vocational provider sanctions or restrictions, including revocation of the VRC ID number, shall be effective fifteen days after notice is issued to the vocational provider and to the firm employing the provider. The notice shall include all of the following:

(a) The basis for the action;

(b) How to request reconsideration from the department or appeal the decision to the board of industrial insurance appeals; and

(c) How the provider and/or firm can submit a response or additional information for the department's consideration.

(8) Records of corrective actions and sanctions are available for five years to any party by submitting a request to the department's public records unit.

(9) The department may report corrective actions or sanctions to the appropriate credentialing body or bodies.

NEW SECTION

WAC 296-19A-266 How will the department handle complaints or allegations of sexual misconduct or contact? (1) Specific to allegations of sexual misconduct or contact, the department will initiate an investigation by department staff or by an external investigative agency following a complaint or an internal request for review. The department shall determine any appropriate sanctions after receiving the investigation report.

(2) Sexual misconduct or sexual contact with any party involved in a worker's compensation claim for which the provider is providing services will result in corrective actions or sanctions based on the table below. These parties include, but are not limited to: The injured worker, the worker's immediate family members, employer, medical and other service provider(s), and legal counsel.

Sexual Misconduct or Sexual Contact (including convictions of sexual misconduct)				
		Sanction Range In Consideration of Aggravating & Mitigating Circumstances		
Severity	**Tier/Conduct**	**Minimum**	**Maximum**	**Duration**
Least ↓	**A**-Any conduct, contact, or statements of a sexual or romantic nature	Conditions may include reprimand, training, short-term monitoring, and/or evaluation to be performed by the VRC's vocational firm and reported to the department.	Minimum conditions and oversight by the vocational firm and reported to the department at least every six months for three years which may include supervision when meeting with a client and/or probation.	**0-3 years**
↓	**B**-Sexual contact, romantic relationship, or sexual statements that risk or result in client harm	Oversight for two years which may include training, probation, suspension, practice restrictions, monitoring, supervision when meeting with a client, and/or evaluation to be monitored by the vocational firm and reported to the department at least every six months.	Minimum conditions for up to five years or permanent restrictions or revocation of the VRC ID number.	**2-5 years** Unless permanent revocation of VRC ID number
↓ Greatest	**C**-Sexual contact involving force and/or intimidation, and convictions of sexual offenses in RCW 9.94A.030	Permanent revocation of the VRC ID number.		**Permanent** Revocation of VRC ID number

(3) The department shall report all cases of sexual misconduct or contact that result in sanctions to the appropriate credentialing body.

NEW SECTION

WAC 296-19A-268 Are vocational providers subject to criminal background checks? Vocational providers have unsupervised access to injured workers and their personal identifiers and medical information. Because of this, they are subject to periodic criminal background checks at least once every two years, in addition to satisfying a background check before receiving a provider number. The department shall determine whether pending criminal charges or a conviction may warrant suspension or revocation of a VRC ID number.

NEW SECTION

WAC 296-19A-269 What are the provisions for independent review for permanent sanctions? (1) The department shall establish an independent review panel of at least three private sector vocational providers. The panel will act as consultants whenever the department believes misconduct or failure to pass a criminal background check may warrant permanent restrictions or revocation of the VRC ID number.

(2) At least one member of the panel must hold the same credential as that of the provider whose conduct is under review, unless the provider is an intern.

(3) The review panel shall receive:

(a) A copy of the investigative report; and

(b) The results of the background check, and/or any complaint(s) with the names of the vocational provider and their employing vocational firm redacted.

(4) The department shall consider the feedback of the review panel when making its final decision on the level of permanent restrictions or revocation of the VRC ID number.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-19A-260	What are the possible consequences for a provider that does not comply with the RCWs, WACs, or department policies?

WSR 19-21-157
PERMANENT RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Division of Consumer Services)

[Filed October 22, 2019, 12:23 p.m., effective November 24, 2019]

Effective Date of Rule: November 24, 2019.

Purpose: The rules are being amended to implement amendments (Sec. 106 of S. 2155, Public Law No. 115-174) to the federal SAFE Act, the federal law requiring the licensure of individual mortgage loan originators. Other amendments include changes to the rules for student education loan servicing, and technical changes for clarity and consistency.

Citation of Rules Affected by this Order: New WAC 208-620-554, 208-620-563 and 208-620-715; repealing WAC 208-620-240; and amending WAC 208-620-232, 208-620-301, 208-620-442, 208-620-490, 208-620-510, 208-620-520, 208-620-550, 208-620-555, 208-620-560, 208-620-620, 208-620-621, 208-620-622, 208-620-630, 208-620-700, 208-620-710, 208-620-720, 208-620-850, 208-620-950, and 208-620-960.

Statutory Authority for Adoption: RCW 43.320.040 and 31.04.165.

Adopted under notice filed as WSR 19-17-084 on August 21, 2019.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 208-620-232, the requirement to apply for and obtain a license waiver for each transaction was added to make that requirement clear.

2. WAC 208-620-301(6), added more information to clarify what must be included in a supervisory plan.

3. WAC 208-620-490, subsection (1)(e) added the requirement that disclosure of new control people must be added at least ten days prior to the change. Subsection (1)(f) adds clarification about responses to disclosure questions and the uploading of explanatory information. Subsection (1)(g) adds clarification that any change from that provided in the original application requires notification to the director. Subsection (5) changed the time period within which to provide notice to the department of data breaches and actions by employees is shortened to thirty days.

4. WAC 208-620-520, subsection (3)(l) was amended to clarify that recorded communications, if made, must be kept as part of the file correspondence or log. Subsection (4)(c) was amended to clarify that the requirement to keep recorded telephone conversations only applies if you record telephone conversations. Licensees do not need to start recording telephone conversations if they otherwise don't record them.

5. WAC 208-620-555, this section was amended to reduce confusion around the fees that are allowed to be charged for the different types of loan products (junior lien mortgage, first lien mortgage, consumer loans, etc.).

6. WAC 208-620-560, the section was also amended to reduce confusion around the types of fees that are restricted or conditional for the different types of loan products.

7. WAC 208-620-563, this section was also amended to reduce confusion about prohibited fees for the different types of loan products.

8. WAC 208-620-622, language was moved and other changes were made to clarify existing requirements.

9. WAC 208-620-630(8), this subsection was amended to make it current with federal law.

10. WAC 208-620-700(10), technical changes were made to this subsection.

11. WAC 208-620-710, subsection (3)'s subsections were reordered with no changes to the language. Subsection (19) language about date received requirements were removed because the nationwide mortgage licensing system provides this functionality.

12. WAC 208-620-715, language was amended for accuracy and citation was provided.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 3, Amended 19, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 22, 2019.

Richard St. Onge
Acting Division Director

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-232 Can I make a small number of residential mortgage loans without being licensed at the company level? Yes. 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~~)). You must apply for and obtain the license waiver for each transaction. If you are eli-

gible for and receive the license waiver, you must comply with 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 16-08-026, filed 3/30/16, effective 4/30/16)

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 any one of 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) Each licensed manager must prepare and maintain written supervisory plan((~~s must be written~~)) for the employees they supervise. 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 their physical location, how the supervisor will adequately supervise the employees if an employee is not in the same location as the supervisor, and the type and 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 18-24-013, filed 11/27/18, effective 1/1/19)

WAC 208-620-442 How do I calculate the annual assessment for my student education loan servicing activity in Washington? Pursuant to RCW 31.04.400, your annual assessment is an amount sufficient to cover the costs of the department's administration of the program, and to fund the student achievement council's student loan advocate. For purposes of this section, "portfolio" means all student education loan servicing accounts, including those held for investment.

(1) **Calculation of the annual assessment for student education loans serviced.** The amount of the annual assessment is determined by multiplying the adjusted total loan volume of the loans in the year being assessed by .0000384616.

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

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

(b) The total principal loan balance of Washington student education loans added to your portfolio during the assessment year.

(3) A licensee servicing student education loans for Washington state borrowers may apply to the director to waive or adjust the annual assessment amount.

AMENDATORY SECTION (Amending WSR 18-24-013, filed 11/27/18, effective 1/1/19)

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) Legal or trade name; ((~~or~~))

(d) Ownership control of ten percent or more; or

(e) Addition of a control person.

(2) **NMLS update within ten days.** You must amend your NMLS record and upload supporting documents, if applicable, within ten days after an occurrence of any of the following:

(a) A change in mailing address, telephone number, fax number, or email address;

(b) A change in the name and mailing address of your registered agent if you are located outside the state;

(c) A closure of surrender of your license. See WAC 208-620-499;

(d) Termination of sponsorship of a loan originator;

(e) A change in primary company contact or primary consumer complaint contact; ((~~or~~))

(f) A change in your response to a disclosure question within NMLS((~~. You must upload the document that is the basis for your changed response~~)) or if your answer does not change but another event has occurred that requires disclosure and uploading of explanatory documentation; or

(g) Any change in the information provided to the director in your original application.

(3) **Written notice to the department within ten days.** You must notify the department in writing within ten days after an occurrence of any of the following:

(a) A cancellation or expiration of your Washington state business license;

(b) A change in standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(c) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340. See WAC 208-620-360;

(d) Receipt of notification of cancellation of your surety bond;

(e) Receipt of notification of a claim against your bond;

(f) For student education loan servicers servicing for the federal government, the occurrence of any event that alters the condition of the business to the extent it would no longer qualify for a federal contract;

(g) Notification of termination from servicing student education loans for the federal government, if applicable;

(h) Notification from a GSE of a breach of contract, waiver, or nonperformance if the reason for the notification remains unresolved for more than ninety days;

(i) Notification from the federal government of a breach of contract, waiver, nonperformance if the reason for the notification remains unresolved for more than ninety days; or

(j) Your capital falling below the required government sponsored entity (GSE) minimum capital requirements, if applicable.

(4) **NMLS update 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;

(d) See WAC 208-620-499 for the requirements when you close your business.

((~~(e) Within forty-five days of~~)) (5) **Written notice to the department within thirty days**. You must notify the department in writing within thirty days after an occurrence of any of the following:

(a) 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((~~.~~

~~(5)~~)):

(b) Actions by employees discovered, known, or reasonably should have known. This includes illegal, fraudulent, or any other act that could subject the company to a violation described in RCW 31.04.027.

(6) **Student education loan servicers.** In addition to keeping records in compliance with the act, servicers of student education loans must also collect, maintain, and report to the department specific information about the student education loans in their portfolio. Such information includes, but is not limited to, and as applicable: Loan volume; default, refinance, and modification information; loan type (subsidized or unsubsidized, Stafford or Direct, PLUS, etc.) information; and collection practices.

AMENDATORY SECTION (Amending WSR 18-24-013, filed 11/27/18, effective 1/1/19)

WAC 208-620-510 What are my disclosure obligations to consumers? Some types of loans may not be covered by the integrated TILA-RESPA rule. Examples include: Reverse mortgages and HELOCS. Creditors originating these types of mortgages must continue to use, as applicable, the federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures. Creditors are not prohibited from using the integrated TILA-RESPA disclosures. However, they cannot replace the required federal Good Faith Estimate, HUD-1, and Truth in Lending disclosures.

(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 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 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) 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) Prior to closing, you must disclose payment of a rate lock as a cost in Block 2 of the federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(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 federal good faith estimate or loan estimate is considered compliance with 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~~)) 1026;

(d) 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) 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 (d) of this subsection.

(e) Prior to closing, you must disclose payment of a rate lock as a cost in Block 2 of the federal good faith estimate or in "Loan Cost" on the loan estimate. At closing, you must disclose payment of a rate lock in section 800 "Items Payable" on a HUD-1 or in "Loan Cost" on the closing disclosure.

(f) You may rely on a lender's rate lock agreement if it is in compliance with this subsection.

(5) **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)(b) of this section. Changes to a locked interest rate can occur only if the borrower requests the change or 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. You may rely on a lender's rate lock agreement if it is in compliance with this subsection.

(6) **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)~~)) (7) **Residential mortgage 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)~~)) (8) **Student education loans.**

(a) All loans. In addition to the applicable disclosures required for all consumer loans made by a licensee, the licensee making a loan to a servicer member must disclose to the service members their rights under state and federal service member laws and regulations.

(b) Refinance loans. In addition to the applicable disclosures required for all consumer loans made by a licensee, for all consumer loans made by a licensee that are a refinance of a federal student education loan, the licensee must provide to the borrower a clear and conspicuous disclosure that some repayment and forgiveness options available under federal student education loan programs, including without limitation, income-driven repayment plans, economic hardship deferments, or public service loan forgiveness, will no longer be available to the borrower if he or she chooses to refinance federal student education loans with one or more consumer loans.

((~~(8)~~)) (9) Each licensee must maintain in its files sufficient information to show compliance with state and federal law.

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.

AMENDATORY SECTION (Amending WSR 18-24-013, filed 11/27/18, effective 1/1/19)

WAC 208-620-520 What are the records I must maintain and for how long must I maintain them? Unless otherwise indicated in this section, and as applicable, you must maintain the following records for a minimum of three years after making the final entry, or the period of time required by federal law, whichever is longer:

(1) **General records.** Each licensee must maintain electronic or hard copy books, accounts, records, papers, documents, files, and other information relevant to making loans or servicing residential mortgage loans.

(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 by facsimile 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, if applicable;

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

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

(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 or loan estimate or other Truth in Lending Act disclosures, Equal Credit Opportunity Act disclosures, and affiliated business arrangement and other disclosures 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 (for example, the final HUD-1, 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, including recorded communications with borrowers if communications with borrowers are recorded;

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

(n) All documents used to support the underwriting approval, if applicable; and

(o) All documents that evidence a financial commitment made to protect a rate of interest during a rate lock period.

(4) **Residential mortgage loan servicing documents.**

(a) You must maintain servicing agreements as part of your records.

(b) You must maintain all notices from GSEs, if applicable, that relate specifically to your loan servicing activities. This includes, but is not limited to, notices of noncompliance with the servicing agreement.

(c) If you record telephone conversations, you must maintain the recorded telephone conversations with consumers for three years after the date of the call or longer if required by another law.

(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 18-24-013, filed 11/27/18, effective 1/1/19)

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 seven business days after being requested in writing to do so by a borrower of record or their authorized representative. Student education loan servicers must comply with this subsection or an applicable federal program requirement;

(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. If you are in compliance with the United States Department of Education contractual requirements, you are not subject to this subsection;

(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 knowingly and willfully making any omission of material fact in connection with any ((~~application or any information~~)) reports filed with the department by a licensee or 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 loan origination document that is signed by the borrower or providing the borrower with loan origination 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 sixty business days when the loan is paid in full;

(14) Failing to timely and completely comply with any directive, subpoena, or order issued by the department;

(15) Negligently delaying the closing of a residential mortgage loan which results in increased interest, costs, fees, or charges payable by the borrower;

(16) Negligently delaying the refinance or modification of a student education loan which results in increased interest, costs, fees, or other charges payable by the borrower or which results in the proposed refinancing or modification becoming unavailable, or both;

(17) 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;

(18) 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;

(19) 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;

(20) Receiving compensation for making the loan and for brokering the loan in the same transaction;

(21) 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;

(22) 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;

(23) Servicing a usurious loan;

(24) Misrepresenting a residential mortgage loan as a business purpose loan.

NEW SECTION

WAC 208-620-554 Conducting student education loan servicing activities in the United States or outside the United States. (1) You are prohibited from conducting the following activities from any location outside the United States or its territories:

(a) Receiving payments and maintaining the payment records;

(b) Collection activities;

(c) Any communications with consumers; or

(d) Receipt of data from or disbursement of data to borrowers.

(2) The following activities may be conducted from a location outside the United States or its territories:

(a) Data entry;

(b) Document review;

(c) Recommendation for action;

(d) Records searches; or

(e) Credit dispute analysis.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-555 ((~~What fees are allowed and when can they be collected from the borrower under the Consumer Loan Act?~~)) Allowable loan fees and timing of collection. (1) ((~~Residential mortgage loans.~~)) This subsection ((~~does not apply to~~)) applies to junior lien mortgages, and first lien ((~~residential~~)) mortgages ((~~loans~~)) originated by ((~~lenders who are creditors~~)) noncreditors, 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 fees you may collect from the borrower before a loan is closed is the actual cost of the credit report and appraisal. 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.

(d) On adjustable rate residential mortgage loans you may include a prepayment penalty or fee as long as the penalty or fee expires at least sixty days prior to the initial reset period.

(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.~~)) All loans.

(a)(i) Insurance fees. You may include the premiums for credit and noncredit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing and the borrower's confirmation is obtained by signature on the disclosure form.

(ii) You may only sell single premium credit insurance to a borrower at the inception of coverage if the sale is in compliance with chapter 48.18 RCW.

(b) Third-party fees.

(i) 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. The only third-party fees you may collect from the borrower before a loan is closed is the actual cost of the credit report and appraisal.

(((~~(b)~~))) (ii) 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)~~))) (iii) 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)~~))) (iv) You may charge a ((~~nonrefundable~~)) rate lock fee when agreed to in writing by the borrower. If the borrower breaks the rate agreement, you may keep the fee ((~~may be retained if the borrower breaks the rate lock agreement and~~)) if you are making the loan, ((~~if~~)) and you have either paid a third party for the interest rate lock((~~, or if you~~)) or can demonstrate 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).

(((~~(4)~~))) (c) Late payment penalties. If the loan terms and conditions agreed to by the borrower do not otherwise dictate, you may ((~~not charge more than~~)) charge a maximum of ten percent of ((~~any~~)) the installment payment amount on accounts that are delinquent ten days or more.

(((~~(5)~~))) (d) Attorneys' fees. You may charge reasonable attorneys' fees when a debt is referred for collection to an attorney who is not your salaried employee, 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 your salaried employee.~~

~~(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~~)).

(((~~(7)~~))) (e) Discount points.

(((~~(a)~~))) (i) You must not collect a fee from the borrower for lowering the interest rate unless the interest rate is actually reduced.

(ii) You must be able to show a definitive mathematical relationship between discount points paid and the interest rate obtained via a rate sheet or pricing engine that was in effect when the interest rate was locked.

(((~~(b)~~))) (iii) Any applicable residential mortgage loan program add-on fees must be disclosed as part of the discount points.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-560 ((~~What fees are not allowed when making loans under the Consumer Loan Act?~~)) Restricted or conditional loan fees. This section ((~~does not apply to~~)) applies to nonmortgage loans, junior lien mortgages, and first lien ((~~residential~~)) mortgages ((~~loans~~)) originated by ((~~lenders who are creditors~~)) noncreditors, as defined in the Truth in Lending Act, 15 U.S.C. 1601 and Regulation Z, 12 C.F.R. 1026.

(1) **Filing fees.** You must not charge or collect any funds from the borrower for the cost of filing, as defined in WAC 208-620-010, or for any other fees paid or to be paid to public officials, unless such charges are paid or are to be paid within one hundred eighty days by the licensee to public officials or other third parties for such filing. Any fee you collect for releasing or reconveying the security for the obligation must be paid to an unrelated third party unless you can demonstrate activities you conducted to facilitate the reconveyance.

(2) **Dishonored check fees.** You may charge or collect twenty-five dollars or the actual amount charged by the financial institution for a check, draft, ACH, or other transfer if returned unpaid or denied by the financial institution drawn upon. Only one fee may be collected with respect to a particular check, draft, ACH, or other transfer even if it has been returned or denied more than once.

(3) ((~~**Credit and noncredit insurance.**~~

~~(a) Except for the transaction described in (b) of this subsection, you may include the premiums for credit and noncredit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing and the borrower's confirmation is obtained by signature on the disclosure form.~~

~~(b) You must not sell single premium credit insurance to a borrower at the inception of coverage unless the sale is in compliance with chapter 48.18 RCW.~~

~~(4)~~)) **Fees on existing loans.** ((~~Unless otherwise preempted under the Depository Institutions Deregulatory and Monetary Control Act,~~)) If you make a new loan or increases a credit line within one hundred twenty days after originating a previous loan or credit line to the same borrower, the origination fee on the new loan or increased credit line must be limited as follows:

(a) You must only charge an origination fee on that part of the new loan not used to pay the amount due on the previous loan;

(b) You must only charge an origination fee on the difference between the amount of the existing credit line and the increased credit line;

(c) The limits in (a) and (b) of this subsection do not apply if you refund the origination fee on the existing loan or credit line;

(d) The limits in (a) and (b) of this subsection do not apply if you can demonstrate a net tangible benefit to the borrower for the new loan or credit line increase. For purposes of this subsection a net tangible benefit may be demonstrated by a lower monthly payment, or a decrease in the interest rate. Any net tangible benefit analysis must include the fees or charges for the new loan or credit line increase.

(((~~(5) **Discount points.**~~

~~(a) You must not collect a fee from the borrower for lowering the interest rate unless the interest rate is actually reduced.~~

~~(b) Any applicable program add-on fees must be disclosed as part of the discount points.~~

~~(6)~~)) (4) **Administrative fees.** ((~~On nonmortgages, junior lien and first lien mortgages by licensees who are not "creditors" under the Depository Institutions Deregulatory and Monetary Control Act,~~)) You must not collect a document preparation fee, a processing fee, an administrative fee, an application fee, or a courier fee unless paid to an unrelated third party and agreed to in writing in advance by the borrower.

(((~~(7) **Underwriting fees.** You must not collect an underwriting fee.~~

~~(8) **Prepayment penalty.** You must not collect a prepayment penalty on the following loans:~~

~~(a) Any nonmortgage loan;~~

~~(b) Any adjustable rate residential mortgage loan, except as allowed by RCW 19.144.040;~~

~~(c) Any junior lien mortgage loan; or~~

~~(d) Any loan you made if you are not a "creditor" under DIDMCA.~~))

NEW SECTION

WAC 208-620-563 Prohibited fees on certain loans. This section applies to nonmortgage loans, junior lien mortgages, and first lien mortgages originated by noncreditors, as defined in the Truth in Lending Act, 15 U.S.C. 1601 and Regulation Z, 12 C.F.R. 1026.

(1) **Underwriting fee.** You must not collect an underwriting fee.

(2) **Prepayment penalty or fee.** You must not collect a prepayment penalty unless on an adjustable rate mortgage as long as the prepayment penalty or fee expires at least sixty days prior to the initial reset period.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

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 name as entered in the NMLS. You may also use an approved DBA name if you include the main office name as entered in the NMLS ((~~and~~)) or license number. For use of URL addresses and web pages, see WAC 208-620-621 and 208-620-622.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

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~~)) the 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 name as entered in the NMLS in addition to any other names or words in the URL address~~)) does not misrepresent the identity of your company or contain any misleading, deceptive, or otherwise prohibited language. 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 16-08-026, filed 3/30/16, effective 4/30/16)

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

(1) ((~~Main or home page.~~

~~(a)~~)) The company's name as entered in the NMLS ((~~and NMLS unique identifier~~)), the company's license number, and a link to the company's NMLS consumer access website page must be displayed on the ((~~licensee's main or home web page.~~

~~(b) If mortgage~~)) company's and any loan originator's primary landing page.

(2) If loan originators are named, their license numbers must closely follow the names. 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 ways to display your license number. See WAC 208-620-710(26).

(((~~(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 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 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 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)~~)) (3) If the company uses a DBA, the page must also contain the company's name as entered in the NMLS or license number.

(4) Compliance with other laws. Website content used to solicit Washington consumers must comply with all relevant Washington state and federal ((~~statutes~~)) laws for specific services and products advertised on the website.

(((~~(6)~~))) (5) Oversight. The company is responsible for ((~~web site~~)) content displayed on all ((~~company web pages~~)) electronic advertisements used to solicit Washington consumers ((~~including main, branch, and mortgage loan originator web pages~~)).

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

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 using images in an electronic format, that 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 conspicuous. 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 solici-

tation, 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 or items are "free" when the licensee has paid for the services or items?** 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" service or 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* (16 C.F.R. Sec. 251.1(g) (2003)), available at ((~~http://www.ftc.gov/bcp/guides/free.htm, 16 C.F.R. Sec. 251.1(g) (2003)~~)) https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/guide-concerning-use-word-free-similar.

(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 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-700 Mortgage loan originator—General. (1) **May I work from any location when I am a licensed loan originator?** No. You can only work from a licensed location. The licensed location can be the main office, or any licensed branch.

(2) **May I transfer loan files to another licensed entity?** No. Loan files are the property and responsibility of the company named on the loan application. Only the borrower may submit a written request to the company to transmit the borrower's selected information to another entity. The company must transmit the information within five business days after receiving the borrower's written request.

(3) **May I act as a loan originator and a real estate agent in the same transaction or for the same borrower in different transactions?** Yes, you may be both the loan originator and real estate broker or salesperson in the same transaction, or for the same borrower in different transactions. When either of these occur, you must provide to the borrower the following written disclosure:

"THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING."

(4) **As a loan originator, may I be paid directly by the borrower for my services?** No. You may not be paid any compensation or fees directly by the borrower.

(5) **May I charge the borrower a fee, commission, or other compensation for preparing, negotiating, or brokering a loan for the borrower?** No. You may not charge the borrower a fee, commission, or compensation of any kind in connection with the preparation, negotiation, or brokering of a residential mortgage loan.

(6) **May I bring a lawsuit against a borrower for the collection of compensation?** No. Only the company may bring collection actions against borrowers to collect compensation.

(7) **May I work as a licensed loan originator for a consumer loan company located out of the state?** Yes. You may originate loans for any company you are sponsored by as long as the out-of-state company licenses a branch in Washington for you to work from. See subsection (1) of this section.

(8) **May I hire employees or independent contractors to assist me?** No. Only the consumer loan company can hire employees or independent contractors to work for the company. This prohibition against loan originators hiring employees or independent contractors includes clerical or administrative personnel and loan processors and underwriters whose work is related to the consumer loan company's activities.

(9) **Do loan processors and underwriters have to be licensed as loan originators?** W-2 employee loan processors and underwriters are not required to have a loan originator license provided they work under the supervision and instruction of an individual licensed or exempt from licensing and do not hold themselves out as able to conduct the activities of a loan originator.

(10) **May loan processors and underwriters work on files from an unlicensed location?** A loan processor or underwriter 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 or underwriter accesses the files directly from the licensee's main computer system. The loan processor or underwriter may not maintain any electronic files on any computer system other than the system belonging to the licensee;

(b) The loan processor or underwriter does not conduct any of the activities of a licensed loan originator;

(c) The licensee must have safeguards in place for the computer system that safeguards borrower information; and

(d) The loan processor or underwriter is not a licensed mortgage loan originator who supervises other loan processors or underwriters.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

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. See also WAC 208-620-715 Temporary authority to originate loans.

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

(e) **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.

(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 website 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 name as entered in the NMLS on (a) through (d) of this subsection. An example of closely following is: Your 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 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 and upload supporting documents, if applicable, within ten business days to a change of:

(a) Answers to the NMLS generated disclosure questions or if your answer does not change but another event has occurred that requires disclosure and uploading of explanatory documentation;

(b) Sponsorship status;

(c) Residence address;

(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.

NEW SECTION

WAC 208-620-715 Temporary authority to originate loans. (1) **What is temporary authority to originate loans?** Temporary authority to act as a loan originator permits qualified MLOs who are changing employment from a depository institution to a state-licensed mortgage company and qualified state-licensed MLOs seeking licensure in another state, to originate loans while completing any state-specific requirements for licensure. See WAC 208-620-730.

(2) **Who is eligible for temporary authority?** An MLO that is: (a) Employed and sponsored through NMLS by a state-licensed mortgage company; and (b) either: (i) Registered in NMLS as an MLO during the one year preceding the application submission; or (ii) licensed as an MLO during the thirty-day period preceding the date of application.

(3) **How do I receive temporary authority?**

(a) You must be employed and sponsored by a company licensed in Washington;

(b) You must file a license application pursuant to WAC 208-660-350 (1)(a) through (d); and

(c) You must not have any disqualifying criminal history, been subject to or served with a cease and desist order, or had an MLO license denied, revoked, or suspended in any jurisdiction.

(4) **How long can I operate under temporary authority?** Temporary authority begins on the date an eligible MLO submits a license application. It ends when the earliest of the following occurs: (a) The MLO withdraws the application; (b) the state denies or issues a notice of intent to deny the application; (c) the state grants the license; or (d) one hundred twenty days after the application submission if the application is listed on NMLS as incomplete.

(5) **Can my license application be denied during the period of temporary authority?** Yes. Your application can be denied at any time during the application review process.

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

WAC 208-620-850 What is the process I must follow to obtain the department's approval of my proprietary reverse mortgage product? ((~~Reserved.~~)) Contact the department for the specific process you must follow to obtain approval.

AMENDATORY SECTION (Amending WSR 18-24-013, filed 11/27/18, effective 1/1/19)

WAC 208-620-950 Servicing student education loans—General requirements. (1) Other applicable laws, regulations, and programs. A violation of an applicable state or federal law, regulation, or program is a violation of this act. In addition to complying with all other provisions of this act and rules, you must comply with the following: All applicable federal program requirements.

(2) Communications. If the student education loan borrower did not provide authorization for electronic communications during the origination process, you must provide the borrower with a specific, separate document seeking the borrower's authorization to receive all communications electronically. If the borrower responds affirmatively (agreeing), you must retain the borrower's agreement to receive electronic communications.

(3) Payment processing and fees.

(a) 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. You may also provide the information via email if the borrower has assented to receive electronic communications.

(b) You must accept and credit, or treat as credited, 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. If you are in compliance with an applicable federal program, you are deemed in compliance with this subsection.

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

rent. 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. You may also provide the information via email if the borrower has assented to receive electronic communications.

(4) You must provide, free of charge on your website, information or links to information regarding repayment and loan forgiveness options that may be available to borrowers, as well as the availability of a student loan advocate to provide assistance. The requirement to provide information on the availability of a student loan advocate may be satisfied by language referring the student education loan borrower to their state's relevant authority. This information or these links shall be prominently placed and provided via written correspondence or email with the borrower at least once per calendar year. Alternatively, you may provide a toll-free telephone number where a student education loan borrower may speak to a single point of contact about loan repayment and loan forgiveness options.

(5) You must review all borrowers against the United States Department of Defense database monthly and apply the borrower entitlements based on that matching. You must keep a written policy and procedure for this practice as part of your books and records. If you are in compliance with an applicable federal requirement, you are deemed in compliance with this subsection.

AMENDATORY SECTION (Amending WSR 18-24-013, filed 11/27/18, effective 1/1/19)

WAC 208-620-960 Servicing student education loans—Requests for information. (1) You must make a reasonable attempt to comply with a borrower's request for information about the student education loan account and to respond to any dispute initiated by the borrower about the loan account. A reasonable attempt includes, but is not limited to:

(a) Maintaining written or electronic records of each written request for information involving the borrower's account until the student education loan is paid in full, sold, or otherwise satisfied;

(b) Providing a written statement to the borrower within fifteen business days of receipt of a written request from the borrower. 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. If you are in compliance with an applicable federal requirement, you are deemed in compliance with this subsection.

(2) You must provide, at a minimum, the following information to a borrower's request described in this section:

(a) Whether the account is current or, if the account is not current, an explanation of why the account is not current and the date the account became past due;

(b) The current balance due on the student education loan, including the principal due, the amount of funds, if any, held in a suspense account, if any, and whether there are any shortages known to the servicer;

(c) The identity, address, and other relevant information about the current holder, owner, or assignee of the student education loan; and

(d) The telephone number and mailing address of the servicer's business unit where the borrower will reach an individual with the information and authority to answer questions and resolve disputes.

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

(4) If the borrower applies for or attempts to certify progress toward a discharge or refund of amounts paid on their federal student education loans with the United States Department of Education, you must provide explanations to the borrower on any decision made with respect to their application.

(5) Unless you are complying with an applicable federal requirement, in addition to the statement described in subsection (2) of this section, 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 to the servicer at the address the servicer has provided to the borrower for such requests for information. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower, this statement must also include:

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

(b) 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 student education loan including suspense account activity, if any.

(c) 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 student education 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 loan and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the loan prior to the two-year period or the period during which the servicer has serviced the student education loan, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums that are owed on the student education loan up to the date of the request for the information.

(d) 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 208-620-240	Once I am licensed, does the act apply to all loans I broker or make?

WSR 19-21-161
PERMANENT RULES
STATE BOARD OF HEALTH

[Filed October 22, 2019, 2:54 p.m., effective multiple dates]

Effective Date of Rule: Thirty-one days after filing; and August 1, 2020.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: WAC 246-105-040 and 246-105-055 will become effective thirty-one days after filing; and WAC 246-105-020, 246-105-050, 246-105-060, 246-105-070, 246-105-080, and 246-105-090 will become effective August 1, 2020.

Purpose: Chapter 246-105 WAC, Immunization of child care and school children against certain vaccine-preventable diseases, the state board of health has adopted rules regarding documentation of immunization status, the process for students who are in conditional status, updating the reference to the national immunization standards set by the advisory committee on immunization practices, and improving clarity and usability of the rule.

Citation of Rules Affected by this Order: New WAC 246-105-055; and amending WAC 246-105-020, 246-105-040, 246-105-050, 246-105-060, 246-105-070, 246-105-080, and 246-105-090.

Statutory Authority for Adoption: RCW 28A.210.140.

Other Authority: RCW 28A.210.080, 28A.210.100.

Adopted under notice filed as WSR 19-14-102 on July 2, 2019.

Changes Other than Editing from Proposed to Adopted Version: The board struck "full" from the definition of conditional status to clarify that a child in this status must provide proof of immunization status consistent with the requirements of the rule instead of proof of "full" immunization. If a child has proof of full immunization then they are not in conditional status. Next, the board revised the definition of "school nurse" based on comments from the office of superintendent of public instruction and the professional educator standards board (PESB) to align with the certification and qualification requirements for "school nurses" established by PESB. Clarifications were made in the definitions and throughout the rule to indicate that a parent, not the child, must provide proof of immunization status or an exemption. The board added the word "both" in subsection (1) of WAC 246-105-050 to reflect that parents may submit a certificate of immunization status (CIS), certificate of exemption (COE), or both because there may be circumstances where a parent chooses to immunize their child with some of the required vaccines and exempt them from others. In this case, submitting both a CIS and COE would be appropriate. Finally, the board added language in WAC 246-105-050 and following sections regarding federal statutes that allow students experiencing homelessness and foster youth clarifying that these children must be immediately enrolled even if they are lacking documentation of immunization status.

A final cost-benefit analysis is available by contacting Alexandra Montano, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-236-4106, fax 360-236-4088, TTY 360-833-6388 or 711, email alexandra.montano@sboh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 7, Repealed 0.

Date Adopted: August 14, 2019.

Michelle A. Davis
Executive Director

AMENDATORY SECTION (Amending WSR 14-06-037, filed 2/25/14, effective 3/28/14)

WAC 246-105-020 Definitions. ((~~For the purposes of this chapter, the words and phrases in this section have the following meanings~~)) The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Certificate of exemption (COE)" means a form for the purpose of documenting an exemption to the school or child care immunization requirements that is((~~:~~

(~~a~~)) approved by the department and consistent with the requirements of WAC 246-105-050(((~~(2); or~~

(~~b) An immunization form produced by the state immunization information system~~)) (4).

(2) "Certificate of immunization status (CIS)" means a form for the purpose of documenting a person's immunization status that is((~~:~~

(~~a~~)) approved by the department and consistent with the requirements of WAC 246-105-050(((~~(1); or~~

(~~b) An immunization form produced by the state immunization information system~~)) (2).

(3) "Chief administrator" means:

(a) The person with the authority and responsibility for supervising the immediate operation of a school or child care center; or

(b) A person designated in writing by the statutory or corporate board of directors of the school district or school; or

(c) If (a) and (b) of this subsection do not apply, a person or persons with the authority and responsibility for supervising the general operation of the school district or school.

(4) "Child" means any person regardless of age admitted to:

(a) Any public school district; or

(b) Any private school or private institution subject to approval by the state board of education or described in RCW 28A.305.130 and 28A.195.010 through 28A.195.060; or

(c) Any child care center.

(5) "Child care center" means any facility or center licensed by the department of ((~~early learning~~)) children, youth, and families under chapter ((~~43.215~~)) 43.216 RCW that regularly provides ((~~care for a group of thirteen or more children one month of age through twelve years of age~~)) early childhood education and early learning services for a group of children for periods of less than twenty-four hours per day.

(6) "Child care health consultant" means a licensed registered nurse meeting the qualifications established in WAC 110-300-0275 or their designee.

(7) "Conditional" means a type of temporary immunization status where a child is not fully immunized against one or more of the vaccine-preventable diseases required by this chapter ((~~for full immunization~~)). A child in this status is allowed to attend a school or child care center ((~~provided~~)) only if the ((~~child makes satisfactory progress toward full immunization~~)) parent provides proof of immunization consistent with the schedule established in WAC 246-105-060 (2)(a).

(((~~7~~))) (8) "Department" means the Washington state department of health.

(((~~8~~))) (9) "Exempt" or "exemption" means a type of immunization status where a child has not been fully immunized against one or more of the vaccine-preventable diseases required by this chapter ((~~for full immunization~~)) due to medical, religious, philosophical or personal reasons. A child in this status is allowed to attend a school or child care center only by providing the required COE form.

(((~~9~~))) (10) "Full immunization" or "fully immunized" means an immunization status where a child has ((~~provided~~)) proof of acquired immunity or has been vaccinated with immunizing agents against each of the vaccine-preventable diseases listed in WAC 246-105-030 according to the national immunization guidelines described in WAC 246-105-040.

(((~~10~~))) (11) "Health care practitioner" means a physician licensed under chapter 18.71 or 18.57 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A or 18.57A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(((~~11~~))) (12) "Health care provider" means a person licensed, certified or registered in a profession listed in RCW 18.130.040(2), if administering vaccinations is within the profession's scope of practice.

(((~~12~~))) (13) "Immunizing agent" means any vaccine or other immunologic drug licensed and approved by the United States Food and Drug Administration (FDA), or meeting World Health Organization (WHO) requirements, for immunization of persons against vaccine-preventable diseases.

(((~~13~~))) (14) "Local health officer" means the individual appointed under chapter 70.05 RCW as the health officer for the local health department, or appointed under chapter 70.08 RCW as the director of public health of a combined city-county or combined county health district.

(((~~14~~))) (15) "Medically verified immunization record" means a valid record that is:

(a) An electronic or written medical health record from a health care provider or facility at which the provider practices; or

(b) A document from a secure, web-based application that records and tracks immunization dates such as an immunization registry.

(16) "National immunization guidelines" means guidelines that are:

(a) Approved by the Advisory Committee on Immunization Practices (ACIP); and

(b) Published in the *Morbidity and Mortality Weekly Report (MMWR)*; and

(c) Consistent with the terms and conditions set forth in WAC 246-105-040.

(((~~15~~))) (17) "Out of compliance" means a type of immunization status where a child:

(a) Is not fully immunized for their age and grade against any of the vaccine-preventable diseases listed in WAC 246-105-030 according to the national immunization guidelines described in WAC 246-105-040; and

(b) Is not in conditional status for the missing required immunization; and

(c) Does not have a COE for the missing required immunization.

(18) "Parent" means, for the purposes of signature requirements in this rule:

(a) The mother, father, legal guardian, or any adult *in loco parentis* of a child less than eighteen years of age; or

(b) A person who is eighteen years of age or older and signing for themselves; or

(c) An emancipated minor.

(((~~16~~))) (19) "Religious membership" means membership in a religious body or church whose teachings or beliefs preclude a health care practitioner from providing medical treatment to the child.

(((~~17) "Satisfactory progress" for purposes of conditional status or an expired temporary medical exemption means the start or continuance towards full immunization status through the receipt of missing immunizations in a manner consistent with the national immunization guidelines described in WAC 246-105-040 and within the following time frames:~~

~~(a) Any missing immunizations must be received within thirty days after the first day of attendance or after a temporary medical exemption is no longer valid, unless receipt within such time is inconsistent with the guidelines.~~

~~(b) When the immunizations are part of a series with recommended intervals between doses, each additional missing immunization must be received no later than thirty days past the recommended date of administration of the next dose as established by the guidelines.~~

~~(18)~~))) (20) "School" means a facility, site, or campus for programs of education as defined in RCW 28A.210.070 to include preschool and kindergarten through grade twelve.

(21) "School nurse" means person credentialed under chapter 18.79 RCW, meeting the qualifications for a school

nurse established under chapter 181-79A WAC, or their designee.

(22) "Washington state immunization information system (WAIIS)" means a statewide, secure, web-based lifetime immunization registry that tracks medically verified immunization records for people of all ages in Washington state.

(23) "WAIIS school module" means a feature of the WAIIS that allows users to track and manage medically verified student and school-level immunization information.

AMENDATORY SECTION (Amending WSR 17-16-124, filed 7/31/17, effective 8/31/17)

WAC 246-105-040 Requirements based on national immunization guidelines. The department shall develop and distribute implementation guidelines for schools and child care centers that are consistent with the national immunization guidelines described in this section and the requirements in WAC 246-105-090.

(1) Unless otherwise stated in this section, a child must be vaccinated against, or provide documentation of immunity against, each vaccine-preventable disease listed in WAC 246-105-030 at ages and intervals according to the national immunization guidelines in the "*Advisory Committee on Immunization Practices (ACIP) Recommended Immunization Schedule for Children and Adolescents Aged 18 Years or Younger—United States, ((2017)) 2019*"; as published in the *Morbidity and Mortality Weekly Report* (MMWR) ((2017;66(5):134-135)) 2019; 68(5):112-114.

(2) As part of the implementation guidelines, the department shall align the ages and intervals specified in the national immunization guidelines and this chapter with a corresponding grade level.

(3) In addition to the ages and intervals required by subsections (1) and (2) of this section, the following vaccine administration guidelines shall apply.

(a) Schools shall accept proof of immunization status by grade level as required by subsection (2) of this section.

(b) Schools and child care centers may accept one of the following as proof of a child's immunization status against varicella:

(((~~a~~))) (i) Documentation on the CIS form that the child received age appropriate varicella vaccine; or

(((~~b~~))) (ii) Diagnosis or verification of a history of varicella disease by a health care provider acting within ((~~his or her~~)) their scope of practice; or

(((~~c~~))) (iii) Diagnosis or verification of a history of herpes zoster by a health care provider acting within ((~~his or her~~)) their scope of practice; or

(((~~d~~))) (iv) Serologic proof of immunity against varicella; or

(((~~e~~))) (v) Documentation by the parent that a child has a history of varicella. This type of proof will be accepted only for certain grade levels described in the department's implementation guidelines according to WAC 246-105-090(2).

AMENDATORY SECTION (Amending WSR 14-06-037, filed 2/25/14, effective 3/28/14)

WAC 246-105-050 Required documentation of immunization status. (1)(a) Before a child may attend a school or child care center, a parent must provide proof of immunization status using ((~~the following documentation:~~

~~(a) A department-approved CIS form signed by the parent. The CIS form must include:~~

~~(i)~~))) either a CIS or a COE form, or both. Information provided on these forms is to be used by a school nurse, child care health consultant, or the chief administrator to determine the immunization status of a child as: Fully immunized, out of compliance, conditional, or exempt.

(b) Any child identified as experiencing homelessness under the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11431 et seq., or in foster care under 20 U.S.C. 6311 (g)(1)(E) lacking documentation of immunization status on or before the first day of attendance must be immediately enrolled and allowed to fully participate in all school activities.

(2) The CIS form must be either produced from the WAIIS or a department-approved hardcopy CIS form. A hardcopy CIS form not produced from the WAIIS must include completion of the following fields:

(a) Name of child;

(((~~ii~~))) (b) Birth date;

(((~~iii~~))) (c) Type of vaccine(s) administered;

(((~~iv~~))) (d) Month, day, and year of each dose of vaccine received;

(((~~v~~))) (e) A section to indicate whether a COE form accompanies the CIS form;

(((~~vi~~))) (f) If applicable, a statement signed and dated by a parent acknowledging the requirements for their child's attendance under conditional status, which includes progress towards full immunization consistent with the schedule established in WAC 246-105-060 (2)(a);

(g) A section to document serologic proof of immunity signed by a health care provider acting within ((~~his or her~~)) their scope of practice ((~~and including a copy of a lab report~~)); and

(((~~(vii) Parent signature and date.~~

~~(b) If applicable,~~)) (h) A statement signed and dated by a health care provider stating that the information on the CIS is accurate; or

(i) A statement signed and dated by a school nurse, child care health consultant, or the chief administrator stating that they have confirmed the accuracy of the CIS by review of the child's medically verified immunization record, and have attached the medically verified record to the CIS. For the verification to be valid the immunization record must contain:

(i) Name of child;

(ii) Birth date;

(iii) Type(s) of vaccines administered;

(iv) Month, day, and year of each vaccine administration or if applicable serologic proof of immunity verified by a health care provider acting within their scope of practice; and

(v) The name and signature of the health care provider responsible for administering or reviewing each immunization; or

(vi) A unique stamp, logo, or other information identifying the health care provider or facility at which the provider practices.

(3) Alternately, in lieu of a CIS, a school or child care center using the WAIIS school module may accept verifica-

tion by school staff that the child is fully immunized as recorded in the WAIIS.

(4) A parent who seeks an exemption to the immunization requirement must provide a department-approved COE form signed by a parent. A COE form must include:

(((~~(i)~~))) (a) Name of child;

(((~~(ii)~~))) (b) Birth date;

(((~~(iii) A place~~))) (c) A field to indicate whether the parent is claiming a medical, religious, personal, or philosophical exemption. Philosophical and personal objections may not be used to exempt a child from measles, mumps, and rubella vaccine as described in WAC 246-105-055. This field must include:

(((~~(A)~~))) (i) A statement ((~~signed and dated by a health care practitioner~~)) from a health care practitioner that includes the practitioner's printed name, signature, and date of signature stating that ((~~he or she has~~)) they have provided the parent information about the benefits and risks of immunization to the child as a condition of obtaining a medical, religious, personal, or philosophical exemption;

(((~~(B)~~))) (ii) The requirement in (((~~(b)(iii)(A)~~))) (4)(c)(i) of this subsection does not apply to a parent who demonstrates a religious membership under subsection (((~~(b)(iii)(F)~~))) (4)(c)(vi) of this subsection;

(((~~(C) A place~~))) (iii) A field to indicate any permanent or temporary medical exemption, and if temporary, the exemption expiration date for one or more vaccines which must be signed and dated by a health care practitioner;

(((~~(D) A place~~))) (iv) A field to indicate any personal or philosophical exemption for one or more vaccines, except for the measles, mumps, and rubella vaccine as described in WAC 246-105-055;

(((~~(E) A place~~))) (v) A field to indicate any religious exemption for one or more vaccines; and

(((~~(F) A place~~))) (vi) A field to demonstrate religious membership. This must include a statement signed and dated by the parent ((~~identifying the name of the church or religious body,~~)) affirming membership in ((~~it, and affirming that the religious beliefs or~~)) a church or religious body where the teachings of the church or religious body preclude a health care practitioner from providing medical treatment to the child;

(((~~(iv)~~))) (d) Notice to parents that if an outbreak of vaccine-preventable disease for which the child is exempted occurs, the child may be excluded from the school or child care center for the duration of the outbreak; and

(((~~(v)~~))) (e) Parent signature and date.

(((~~(2)~~))) (5) Parents who must include a signed statement from a health care practitioner under subsection (((~~(1)(b)(iii)~~))) (4)(c)(i) of this section may submit:

(a) A photocopy of the signed COE in place of the original; or

(b) Along with the COE form, a letter from the health care practitioner in ((~~place~~)) lieu of the signed statement under subsection (((~~(1)(b)(iii)~~))) (4)(c)(i) of this section. The letter must:

(i) Indicate that the health care practitioner has provided the parent information about the benefits and risks of immunization to the child;

(ii) Reference the child's name; and

(iii) Be signed and dated by the health care practitioner.

(((~~(3)~~))) (6) If immunizations are deferred on a temporary basis for medical reasons under subsection (((~~(1)(b)(iii)(C)~~))) (4)(c)(iii) of this section, the child must ((~~make satisfactory progress toward~~)) provide proof of full immunization consistent with the schedule established in WAC 246-105-060 (2)(a) once the medical exemption has expired.

NEW SECTION

WAC 246-105-055 Philosophical and personal exemption for measles, mumps, and rubella vaccine prohibited. A philosophical or personal exemption may not be used to exempt a child from the measles, mumps, and rubella immunization requirement.

AMENDATORY SECTION (Amending WSR 14-06-037, filed 2/25/14, effective 3/28/14)

WAC 246-105-060 Duties of schools and child care centers. (1) Schools and child care centers shall require((~~:~~

(~~a~~))) on or before the first day of attendance either a CIS or COE form ((~~conforming to~~)) that documents a child's immunization status as required by WAC 246-105-050 (((~~(1)~~))):

(a) For new enrollees registering for admission into preschool and kindergarten through grade twelve or a child care center as a requirement of admission((~~. Information on the CIS is used to determine if a child is fully immunized, conditional or exempt.~~

~~(b) For enrollees attending under conditional status or an expired temporary medical exemption, documentation of satisfactory progress toward full immunization.~~

~~(c) For enrollees claiming exempt status, a signed COE form indicating a medical, religious, philosophical, or personal exemption conforming to WAC 246-105-050 (1)(b)(iii) or, if applicable, WAC 246-105-050(2).~~

~~(2)~~)):

(b) Annually for continued enrollment in a child care center; and

(c) Any child identified as experiencing homelessness under the McKinney-Vento Homeless Assistance Act 42 U.S.C. 11431 et seq., or in foster care under 20 U.S.C. 6311 (g)(1)(E) lacking documentation of immunization status on or before the first day of attendance must be immediately enrolled and allowed to fully participate in all school activities.

(2) A school nurse, child care health consultant, or chief administrator shall use information from the CIS or COE form to determine the immunization status of a child as: Fully immunized, out of compliance, conditional, or exempt.

(a) For enrollees attending under conditional status or an enrollee with an expired temporary medical exemption, except those identified under subsection (1)(c) of this section, the following schedule for documenting proof of full immunization applies:

(i) Any doses the child is eligible to receive based on the requirements established in WAC 246-105-040 must be administered on or before the first day of attendance. Any additional missing immunizations must be received within thirty calendar days after the first day of attendance or after a

temporary medical exemption is no longer valid, unless receipt within such time is inconsistent with the national immunization guidelines; or

(ii) When the immunizations are part of a series with recommended intervals between doses, each additional missing immunization must be received no later than thirty calendar days past the recommended date of administration of the next dose as established by the national immunization guidelines.

(b) Failure to document proof of full immunization consistent with the schedule established in (a) of this subsection shall result in exclusion of a child from a school or a child care center as described in WAC 246-105-080.

(3) In maintaining child immunization records, schools and child care centers shall:

(a) Keep all department-approved forms described in WAC 246-105-050 for each enrolled child attending their school or child care ((~~center~~)).

(b) Keep ((~~a~~)) or be able to produce within twenty-four hours a current list of children ((~~currently with medical, religious, philosophical, or personal exemptions~~)) who are not fully immunized. This list must be transmitted to the local health department upon request.

(c) Return the applicable department-approved CIS or ((~~applicable~~)) COE or a legible copy of such documents to the parent if the child is withdrawn from a school or child care center or transferred from the school. A school or child care center may not withhold from the parent a child's department-approved CIS or COE for any reasons, including nonpayment of school or child care center fees.

(d) Provide access to immunization records to agents of the state or local health department of each child enrolled.

(((~~3~~))) (4) In maintaining child immunization records, the chief administrator shall:

(a) Retain records for at least three years on a child who is excluded from school under this chapter. The record must include the child's name, address, and date of exclusion.

(b) Submit an immunization status report under ((~~chapter 28A.210 RCW either electronically on the internet or on a form provided~~)) RCW 28A.210.110 in a manner approved by the department. The report must be submitted to the department by November 1 of each year. If a school opens after October 1, the report is due thirty calendar days from the first day of school.

AMENDATORY SECTION (Amending WSR 14-06-037, filed 2/25/14, effective 3/28/14)

WAC 246-105-070 Duties of health care providers or organizations. A health care provider administering immunizations, or the organizations he or she works for, either public or private, shall furnish each person immunized, or ((~~his or her~~)) their parent, with a ((~~written~~)) medically verified immunization record ((~~of immunization~~)) containing information required by this chapter.

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

WAC 246-105-080 Criteria for excluding children from schools or child care centers. For any child excluded under subsection (1), (2), or (3) of this section, schools must use procedures consistent with chapters 180-38 and 392-380 WAC. A school or child care center shall exclude a child if one or more of the following applies:

(1) Parent(s) fail to provide ((~~a completed CIS form~~)) documentation of immunization status as required in WAC 246-105-050 on or before the child's first day of attendance.

(2) A child attending under conditional status fails to make ((~~satisfactory~~)) progress toward full immunization as required in WAC 246-105-060 (2)(a).

(3) A child has been admitted under a temporary medical exemption and the particular vaccine for which the exemption was granted is no longer contraindicated and the child fails to make ((~~satisfactory~~)) progress toward full immunization as required in WAC 246-105-060 (2)(a).

(4) A local health officer excludes a child from school or a child care center under chapter 246-110 WAC during an outbreak of a vaccine-preventable disease if the child has not been fully immunized against that disease due to:

(a) Conditional status;

(b) Out of compliance status;

(c) Medical exemption;

(((~~c~~))) (d) Religious exemption;

(((~~d~~))) (e) Philosophical exemption; or

(((~~e~~))) (f) Personal exemption.

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

WAC 246-105-090 Implementation. (1) The department shall develop and distribute implementation guidelines for schools and child care centers that:

(a) ((~~Interpret immunization requirements by grade level consistent with the ages specified in the national immunization guidelines and this chapter~~)) Meet the requirement of WAC 246-105-040(2); and

(b) Reflect national immunization guidelines for children who did not receive required immunizations prior to entry into kindergarten or first grade, and for whom a full series of immunizations is not recommended.

(2) The department may develop school implementation guidelines that waive or modify immunization requirements when a phasing-in period is warranted for a new immunization mandate, when there is limited availability of a required immunizing agent, or when new information about the safety or efficacy of an immunizing agent prompts a reevaluation of an existing vaccination requirement. Any waiver or modification must:

(a) Reflect the best available medical research as indicated by the ACIP or the state health officer recommendation;

(b) Identify a specific vaccine-preventable disease or immunizing agent;

(c) Identify a specific cohort of children by age or grade level;

(d) Be limited in duration; and

(e) Be approved by the board.

WSR 19-21-169
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed October 22, 2019, 4:55 p.m., effective February 3, 2020]

Effective Date of Rule: February 3, 2020.

Purpose: The division of occupational safety and health (DOSH) updated its worker protection standard (WPS), WAC 296-307-107 through 296-307-13055 of chapter 296-307 WAC, Safety standards for agriculture, Part I pesticides.

The Washington state department of labor and industries (L&I) and the department of agriculture (WSDA), as required, coordinated the adoption of the standards to protect workers from pesticides. The goal is to ensure consistency between these departments in rule implementation and enforcement and to avoid conflict in interpretation and application of the rules.

DOSH rules are identical to the federal and the WSDA WPS rules, however the following areas remain the same, as they are more protective:

- Definition of immediate family.
- Cartridge change out schedule.
- Enclosed cab respirator.
- Use of most protective personal protective equipment (PPE).
- Eyewashes must provide 0.4 gallons or 1.5 liters per minute for fifteen minutes with single point of operation.
- Heat stress requirements retained.

NEW SECTIONS:

WAC 296-307-108 General provisions.

WAC 296-307-10805 Federal worker protection standards—Washington state department of labor and industries.

- The adoption of this rule maintains current worker protections and aligns with federal Environmental Protection Agency (EPA) and WSDA rules.

WAC 296-307-10810 Scope and purpose—40 C.F.R., Sec. 170.301.

- The adoption of this rule maintains current worker protections and aligns with federal EPA and WSDA rules.

WAC 296-307-10815 Applicability—40 C.F.R., Sec. 170.303.

- Added this section to indicate when to use pesticide products in the production of agricultural plants on an agricultural establishment.
- This section does not apply where WPS provides exceptions to label required PPE and restricted-entry intervals.

WAC 296-307-10820 Definitions—40 C.F.R., Sec. 170.305.

- Added definitions for the following: Application exclusion zone (AEZ), commercial pesticide handler employer, designated representative, employ, enclosed space production, labor contractor, safety date sheet, outdoor production, worker housing area. Clarified the following definitions: Agricultural emergency, closed system, enclosed cab, hand labor, handler, handler employer, and PPE. The following definitions were removed: Animal premise, greenhouse, nursery, substantial economic loss.
- Moved "use" from current WAC 296-307-11015 to this section.
- Moved PPE from current WAC 296-307-13045 to this section.

WAC 296-307-10825 Agricultural employer duties—40 C.F.R., Sec. 170.309.

- Added this section that requires agricultural employers to provide safety information, including the labor contractors who supervise any workers or handlers, to make sure they receive protections of this part and can comply with it.
- Moved requirements from WAC 296-307-11010 to this section and added the following, as required by EPA.
  - Handlers and early entry workers must be eighteen years old.
- Moved antidote requirement from WAC 296-307-12055.

WAC 296-307-10830 Display requirements for pesticide safety information and pesticide application and hazard information—40 C.F.R., Sec. 170.311.

- Added this section to require agricultural employers to display safety information in a manner that workers and handlers can understand.
- Moved requirements from WAC 296-307-12045 to this section.
- Added a note indicating that "using a phone" could be a route of exposure.

WAC 296-307-10835 Commercial pesticide handler employer duties—40 C.F.R., Sec. 170.313.

- Added this section so that commercial pesticide handler employers ensure handlers receive protections of this part and can comply with it.
- Moved antidote requirement from WAC 296-307-12055.
- Moved requirements from WAC 296-307-12035.
- Added requirements to ensure pesticides are used consistent with pesticide product labeling and requirements of this part.
- Added a requirement indicating handlers must be at least eighteen years old.
- Added a requirement indicating commercial pesticide handler employer instructs handlers on safe operation of equipment used for mixing, loading, transferring, or applying pesticide.
- Added a requirement indicating that when the handler employed by a commercial pesticide-handling establishment will be in [the] agricultural establishment they are provided information about specific locations and descriptions of treated areas with restricted entry intervals.
- Added a requirement indicating the commercial pesticide handler employer must provide the agricultural employer all of the following information before application of any pesticide:

- Use restrictions or directions on the pesticide product labeling that must be followed for protection of workers, handlers, or other persons.
- Updates on changes of scheduled application time.

- Added a requirement indicating the commercial pesticide handler employer must provide emergency assistance after learning of possible poison.
- Added a requirement that persons do not clean or repair pesticide equipment, unless trained as a handler.
- Added a requirement to provide records when requested by an employee of EPA or any authorized representative of the WSDA or L&I.

WAC 296-307-10840 Prohibited actions—40 C.F.R., Sec. 170.315.

- Added this section that prohibits the agricultural employer from intimidating, threatening, coercing, or discriminating against any worker or handler for complying with WPS.
- Moved all requirements from WAC 296-307-11010 to this section.

WAC 296-307-10845 Violations of this part—40 C.F.R., Sec. 170.317.

- Added this section that prohibits the unlawful use of pesticides contrary to label directions.
- Moved all requirements from WAC 296-307-11015 to this section.

WAC 296-307-109 Requirements for protection of agricultural workers.

WAC 296-307-10905 Training requirements for workers—40 C.F.R., Sec. 170.401.

- Added this section that requires the agricultural employer to train workers every year as opposed to every five years. Additionally, increased the training program content.
- Moved requirements from WAC 296-307-12040 to this section. Additionally, added the following requirements:
  - Potential hazards of pesticides to children and pregnant women.
  - Keep children and family members away from pesticide-treated areas.
  - After working in pesticide-treated areas, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.
  - How to report suspected pesticide use violations.
  - Pesticide applications must be suspended if a worker or other person is in AEZ.
- Added requirements for training facilities, trainers and training materials, which must be approved by EPA.
- Added that workers must be at least eighteen before performing early-entry activities and that children and other family members be kept away from pesticide treated areas.

WAC 296-307-10910 Establishment-specific information for workers—40 C.F.R., Sec. 170.403.

- Added this section that requires the agricultural employer to inform workers of the following prior to performing activities in any treated area:
  - The location of pesticide safety information.
  - The location of pesticide application and hazard information.
  - The location of decontamination supplies.
- Moved requirements from WAC 296-307-12030 to this section.

WAC 296-307-10915 Entry restrictions associated with pesticide applications—40 C.F.R., Sec. 170.405.

- Added this section that requires that the agricultural employer not allow or direct any worker or other person, other than appropriately trained, to enter or remain in treated area or an AEZ until application is complete.
- Moved requirements from WAC 296-307-12015 to this section.
- Added a requirement about the employer not allowing or directing any worker or other person to remain or enter in the treated area or AEZ that is within the boundaries of the establishment.
- Added Table 1, which has a summary of outdoor production AEZs.
- Updated Table 2, which has a summary of enclosed space production pesticide application.

WAC 296-307-10920 Worker entry restrictions after pesticide applications—40 C.F.R., Sec. 170.407.

- Added this section that requires that the agricultural employer not allow workers to enter treated areas before a restricted-entry interval has expired or warning signs have been removed or covered.
- Moved requirements from WAC 296-307-12020 to this section.

WAC 296-307-10925 Oral and posted notification of worker entry restrictions—40 C.F.R., Sec. 170.409.

- Added this section that requires the agricultural employer to notify workers of all entry restrictions required by WAC 296-307-10915 and 296-307-10920.
- Moved requirements from WAC 296-307-12025 to this section. Provides for more specific requirements than in current WPS. Notification changes include an REI-specific notice action that does not exist in current WPS.

WAC 296-307-10930 Decontamination supplies for workers—40 C.F.R., Sec. 170.411.

- Added this section that requires the agricultural employer to provide decontamination supplies to workers performing activities where a pesticide is applied.
- Moved requirements from WAC 296-307-12050 to this section. This includes:
  - Current requirement regarding decontamination after early entry.

WAC 296-307-112 Requirements for protection of agricultural pesticide handlers.

WAC 296-307-11205 Training requirements for handlers—40 C.F.R., Sec. 170.501.

- Added this section that requires that the handler employer ensure the handler has been trained in accordance with this section and within the last twelve months.
- Moved requirements from WAC 296-307-13025 to this section. Removed training card requirement.
- Added requirements for training facilities, trainers and training materials, which must be approved by EPA.
- Added a requirement about the trainer indicating they must meet one of the following:
  - Designated as a trainer of certified applicators or pesticide handlers.
  - Have completed a pesticide safety train-the-trainer program approved by a state, federal, or tribal agency.
  - Be currently certified as an applicator of restricted use pesticide.
  - The record must include:
    - The trained handler's printed name and signature.
    - The date of training.
    - Information identifying EPA-approved materials were used.
    - The trainer's name and documentation showing that the trainer met requirements of training.
    - The handler employer's name.
- Added requirements that employers must provide the handler a copy of training information if requested, and that training records must be kept for seven years for each handler.
- Added a note from current WAC 296-307-13025 indicating employees be trained in accordance with chapter 296-901 WAC, Globally harmonized system for hazard communication.

WAC 296-307-11210 Knowledge of labeling, application-specific, and establishment-specific information for handlers—40 C.F.R., Sec. 170.503.

- Added this section that requires that the handler employer ensure the handler reads the portions of the label applicable to the safe use of the pesticides before doing handling activities.
- Moved requirements from WAC 296-307-13030 to this section

WAC 296-307-11215 Requirements during applications to protect handlers, workers, and other persons—40 C.F.R., Sec. 170.505.

- Added a section that requires that the handler employer ensure that no pesticide is applied so as to contact directly or through drift, any worker or other person.
- Moved requirements from WAC 296-307-13010 to this section.
- Added a new requirement indicating that the handler must suspend application if any worker or other person is in AEZ.

WAC 296-307-11220 Personal protective equipment—40 C.F.R., Sec. 170.507.

- Added this section that highlights the responsibilities of the employer regarding PPE.
- Moved requirements from WAC 296-307-13045 to this section. Specifically leave current WPS requirement regarding two pesticides being applied.
  - If two pesticides are being applied that have different PPE requirements, the employer must provide and ensure the handler or worker uses the most protective PPE or PPE that will protect against both pesticides.
- Added a chemical resistant category table for clarification in order to make it clearer for employers to comply.

WAC 296-307-11225 Decontamination and eye flushing supplies for handlers—40 C.F.R., Sec. 170.509.

- Added this section that requires that the handler employer provide decontamination and eye flushing supplies in accordance with this section for any handler.
- Moved requirements from WAC 296-307-13010 to this section. Keep requirement regarding cartridge replacement to take place at end of shift.
- Kept requirement indicating that when a handler is mixing or loading a pesticide product whose labeling requires protective eyewear, the handler employer must provide, at each mixing and loading station, one plummeted or portable eye was [wash] system that can deliver running water at a rate of at least .4 gallons per minute for at least fifteen minutes.

WAC 296-307-114 Exemptions, exceptions and equivalency.

WAC 296-307-11405 Exemptions—40 C.F.R., Sec. 170.601.

- Added this section that highlights exceptions for owners of agricultural establishments.
- Moved requirements from WAC 296-307-12010 to this section.
- Added a requirement that certified crop advisors may make their own determination for the appropriate PPE for entry into treated area.

WAC 296-307-11410 Exceptions for entry by workers during restricted-entry intervals—40 C.F.R., Sec. 170.603.

- Added this section that highlights exceptions to entry by workers during restricted-entry intervals.
- Moved requirements from WAC 296-307-12020 to this section.
- Consolidated agricultural emergency language to maintain current protections.

WAC 296-307-11415 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval—40 C.F.R., Sec. 170.605.

- Added this section that requires agricultural employer to provide information regarding entry during restricted entry interval.
- Moved requirements from WAC 296-307-12020 to this section. Keep heat related illness language.

WAC 296-307-11420 Exceptions to personal protective equipment requirements specified on pesticide product labeling—40 C.F.R., Sec. 170.607.

- Added this section that highlights exceptions to PPE.
- Moved requirements from WAC 296-307-13045 to this section.
- Incorporated aspects of the current enclosed cab language to allow for good hygiene practices and not lower protections.

Citation of Rules Affected by this Order: New WAC 296-307-108, 296-307-10805, 296-307-10810, 296-307-10815, 296-307-10820, 296-307-10825, 296-307-10830, 296-307-10835, 296-307-10840, 296-307-10845, 296-307-109, 296-307-10905, 296-307-10910, 296-307-10915, 296-307-10920, 296-307-10925, 296-307-10930, 296-307-112, 296-307-11205, 296-307-11210, 296-307-11215, 296-307-11220, 296-307-11225, 296-307-114, 296-307-11405, 296-307-11410, 296-307-11415 and 296-307-11420; and repealing WAC 296-307-107, 296-307-110, 296-307-11005, 296-307-11010, 296-307-11015, 296-307-120, 296-307-12005, 296-307-12010, 296-307-12015, 296-307-12020, 296-307-12025, 296-307-12030, 296-307-12035, 296-307-12040, 296-307-12045, 296-307-12050, 296-307-12055, 296-307-130, 296-307-13005, 296-307-13010, 296-307-13015, 296-307-13020, 296-307-13025, 296-307-13030, 296-307-13035, 296-307-13040, 296-307-13045, 296-307-13050, and 296-307-13055.

Statutory Authority for Adoption: RCW 49.17.040, 49.17.050, 49.17.280.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 19-13-082 on June 18, 2019.

Changes Other than Editing from Proposed to Adopted Version: **WAC 296-307-10820 Definitions—40 C.F.R., Sec. 170.305**, deleted definitions of farm and forest since its deletion has no effect on the rule.

Modified definitions of enclosed space production and outdoor production per stakeholder comments.

WAC 296-307-11420 (5)(b) Exceptions to personal protective equipment requirements specified on pesticide product labeling—40 C.F.R., Sec. 170.607, modified this section for clarity and consistency with WSDA.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 28, Amended 0, Repealed 29; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 28, Amended 0, Repealed 29.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 22, 2019.

Joel Sacks
Director

NEW SECTION

WAC 296-307-108 General provisions.

NEW SECTION

WAC 296-307-10805 Federal worker protection standards—Washington state department of labor and industries. This part contains the federal Environmental Protection Agency (EPA) worker protection standards as listed in 40 C.F.R., Part 170. Revisions to the federal language have been incorporated into this part in order to be consistent with other requirements of Washington state law. These rules are adopted in conjunction with rules adopted by the Washington state department of labor and industries in this chapter, Part I and the Washington state department of agriculture in chapter 16-233 WAC.

NEW SECTION

WAC 296-307-10810 Scope and purpose—40 C.F.R., Sec. 170.301. This part contains standards designed to reduce the risks of illness or injury resulting from workers' and handlers' occupational exposures to pesticides used in the production of agricultural plants on agricultural establishments and also to reduce the accidental exposure of workers and other persons to such pesticides. It requires handlers to wear the label specified clothing and personal protective equipment when performing handler activities, and to take measures to protect workers and other persons during pesticide applications. It also requires workplace practices designed to reduce or eliminate exposure to pesticides and establishes procedures for responding to exposure-related emergencies.

NEW SECTION

WAC 296-307-10815 Applicability—40 C.F.R., Sec. 170.303. (1) This regulation applies whenever a pesticide product bearing a label requiring compliance with this part is used in the production of agricultural plants on an agricultural establishment, except as provided in subsections (2) and (3) of this section.

(2) This regulation does not apply when a pesticide product bearing a label requiring compliance with this part is used on an agricultural establishment in any of the following circumstances:

(a) As part of government-sponsored public pest control programs over which the owner, agricultural employer and handler employer have no control, such as mosquito abatement and Mediterranean fruit fly eradication programs.

(b) On plants other than agricultural plants, which may include plants in home fruit and vegetable gardens and home greenhouses, and permanent plantings for ornamental purposes, such as plants that are in ornamental gardens, parks, public or private landscaping, lawns or other grounds that are intended only for aesthetic purposes or climatic modification.

(c) For control of vertebrate pests, unless directly related to the production of an agricultural plant.

(d) As attractants or repellents in traps.

(e) On the harvested portions of agricultural plants or on harvested timber.

(f) For research uses of unregistered pesticides.

(g) On pasture and rangeland where the forage will not be harvested for hay.

(h) In a manner not directly related to the production of agricultural plants including, but not limited to, structural pest control and control of vegetation in noncrop areas.

(3) Where a pesticide product's labeling-specific directions for use or other labeling requirements are inconsistent with requirements of this chapter, users must comply with the pesticide product labeling, except as provided for in WAC 296-307-11405, 296-307-11410, and 296-307-11420.

NEW SECTION

WAC 296-307-10820 Definitions—40 C.F.R., Sec. 170.305. Terms used in this part have the same meanings they have in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, when used in this part, shall have the following meanings:

"Agricultural emergency" for agricultural emergencies see WAC 296-307-11410 (3)(a).

"Agricultural employer" means any person who is an owner of, or is responsible for the management or condition of, an agricultural establishment, and who employs any worker or handler.

"Agricultural establishment" means any farm, forest operation, or nursery engaged in the outdoor or enclosed space production of agricultural plants. An establishment that is not primarily agricultural is an agricultural establishment if it produces agricultural plants for transplant or use (in part or their entirety) in another location instead of purchasing the agricultural plants.

"Agricultural plant" means any plant, or part thereof, grown, maintained, or otherwise produced for commercial purposes, including growing, maintaining or otherwise producing plants for sale or trade, for research or experimental purposes, or for use in part or their entirety in another location. Agricultural plant includes, but is not limited to, grains; fruits and vegetables; wood fiber or timber products; flowering and foliage plants and trees; seedlings and transplants; and turf grass produced for sod. Agricultural plant does not include pasture or rangeland used for grazing.

"Application exclusion zone" means the area surrounding the application equipment that must be free of all persons other than appropriately trained and equipped handlers during pesticide applications.

"Chemigation" means the application of pesticides through irrigation systems.

"Closed system" means an engineering control used while removing pesticide contents from its original container, preventing the pesticide from contacting handlers. It is used to protect handlers or other persons from pesticide exposure hazards when mixing and loading pesticides. When used properly and as intended, water-soluble packaging may qualify as a type of closed system.

"Commercial pesticide handler employer" means any person, other than an agricultural employer, who employs any handler to perform handler activities on an agricultural establishment. A labor contractor who does not provide pesticide application services or supervise the performance of handler activities, but merely employs laborers who perform handler activities at the direction of an agricultural or handler employer, is not a commercial pesticide handler employer.

"Commercial pesticide handling establishment" means any enterprise, other than an agricultural establishment, that provides pesticide handler or crop advising services to agricultural establishments.

"Crop advisor" means any person who is assessing pest numbers, damage, pesticide distribution, or the status or requirements of agricultural plants and who holds a current Washington state department of agriculture commercial consultant license in the agricultural areas in which they are advising. The term does not include any person who is performing hand labor tasks.

"Designated representative" means any persons designated in writing by a worker or handler to exercise a right of access on behalf of the worker or handler to request and obtain a copy of the pesticide application and hazard information required by WAC 296-307-10825(8) in accordance with WAC 296-307-10830(2).

"Early entry" means entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

"Employ" means to obtain, directly or through a labor contractor, the services of a person in exchange for any type of compensation including a salary, wages, or piece-rate wages, without regard to who may pay or who may receive the salary or wages. It includes obtaining the services of a self-employed person, an independent contractor, or a person compensated by a third party, except that it does not include an agricultural employer obtaining the services of a handler through a commercial pesticide handler employer or a commercial pesticide handling establishment.

"Enclosed cab" means a cab with a nonporous barrier that totally surrounds the occupant(s) of the cab and prevents contact with pesticides that are being applied outside of the cab. Refer to WAC 296-307-11420(5).

"Enclosed space production" means production of an agricultural plant indoors or in a structure or space that is covered in whole or in part by any nonporous covering or that is covered and enclosed in a way that would obstruct natural air flow, and that is large enough to permit a person to enter. Structures, with a covering that do not have any walls, such as shade houses made of fencing or fabric to provide shade on plants that do not obstruct airflow are not considered enclosed spaces.

"Fumigant" means any pesticide product that is a vapor or gas, or forms a vapor or gas upon application, and whose pesticidal action is achieved through the gaseous or vapor state.

"Hand labor" means any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with surfaces (such as plants, plant parts, or soil) and other surfaces that may contain pesticide

residues. These activities include, but are not limited to, harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, pruning, disbudding, roguing, and packing produce into containers in the field. Hand labor does not include performing crop advisor tasks or operating, moving, or repairing irrigation or watering equipment. For irrigation or watering equipment used during chemigation see handler activities.

"Handler" means any person, including a self-employed person, who is employed by an agricultural employer or commercial pesticide handler employer and performs any of the following activities:

• Mixing, loading, or applying pesticides.

• Disposing of pesticides.

• Handling opened containers of pesticides, emptying, triple-rinsing, or cleaning pesticide containers according to pesticide product labeling instructions, or disposing of pesticide containers that have not been cleaned. The term does not include any person who is only handling unopened pesticide containers or pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions.

• Acting as a flagger.

• Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues, including irrigation equipment used for chemigation.

• Assisting with the application of pesticides.

• Entering an enclosed space after the application of a pesticide and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established in WAC 296-307-10915 (2)(c) or the labeling has been met to operate ventilation equipment, monitor air levels, or adjust or remove coverings used in fumigation.

• Entering a treated area outdoors after application of any soil fumigant during the labeling-specified entry-restricted period to adjust or remove coverings used in fumigation.

• Performing tasks as a crop advisor during any pesticide application or restricted-entry interval, or before the inhalation exposure level listed in the pesticide product labeling has been reached or one of the ventilation criteria established in WAC 296-307-10915 (2)(c) or the pesticide product labeling has been met, and either inhalation exposure levels are below PELs in WAC 296-307-624, Part Y-6 Respiratory hazards, or respiratory protection is provided and worn according to requirements in WAC 296-307-594, Part Y-5.

"Handler employer" means any person who is self-employed as a handler or who employs any handler.

"Immediate family" includes only spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, and sisters.

"Labor contractor" means a person, other than a commercial pesticide handler employer, who employs workers or handlers to perform tasks on an agricultural establishment for an agricultural employer or a commercial pesticide handler employer.

"Outdoor production" means production of an agricultural plant in an outside area that is not enclosed or covered in any way by nonporous material. This includes shade houses without sides.

"Owner" means any person who has a present possessory interest (e.g., fee, leasehold, rental, or other) in an agricultural establishment. A person who has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this chapter.

"Personal protective equipment" means devices, appliances or apparel that are worn or used to protect the body from exposure to safety and health hazards. PPE that protects against chemical hazards such as pesticides or pesticide residues including, but not limited to: Coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

"Restricted-entry interval (REI)" means the time after the end of a pesticide application during which entry into the treated area is restricted.

"Safety data sheet (SDS)" means written or printed material concerning a hazardous chemical that is prepared in accordance with WAC 296-901-14014.

"Treated area" means any area to which a pesticide is being directed or has been directed.

"Use," as in **"to use a pesticide"** means any of the following:

• Preapplication activities including, but not limited to:

- Arranging for the application of the pesticide.

- Mixing and loading the pesticide.

- Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of workers or handlers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

Note: Additional requirements in WAC 296-307-097 Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

• Application of the pesticide.

• Postapplication activities intended to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during and after the restricted-entry interval, including responsibilities related to worker notification, training of workers or early entry workers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

• Other pesticide-related activities including, but not limited to, transporting or storing pesticides that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

"Worker" means any person, including a self-employed person, who is employed and performs activities directly relating to the production of agricultural plants on an agricultural establishment.

"Worker housing area" means any place or area of land on or near an agricultural establishment where housing

or space for housing is provided for workers or handlers by an agricultural employer, owner, labor contractor, or any other person responsible for the recruitment or employment of agricultural workers.

NEW SECTION

WAC 296-307-10825 Agricultural employer duties—40 C.F.R., Sec. 170.309. Agricultural employers must:

(1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this part, when applied on the agricultural establishment.

(2) Ensure that each worker and handler subject to this part receives the protections required by this part.

(3) Ensure that any handler and any early entry worker is at least eighteen years old.

(4) Provide to each person, including labor contractors, who supervises any workers or handlers, information and directions sufficient to ensure that each worker and handler receives the protections required by this part. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this part.

(5) Require each person, including labor contractors, who supervises any workers or handlers, to provide sufficient information and directions to each worker and handler to ensure that they can comply with the provisions of this part.

(6) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a worker or handler has experienced a potential pesticide exposure during his or her employment on the agricultural establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within seventy-two hours after his or her employment on the agricultural establishment, and needs emergency medical treatment, the agricultural employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person prompt transportation from the agricultural establishment, including any worker housing area on the establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to that person or to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s)(SDS) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide on the agricultural establishment.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(iv) Antidote, first aid and other medical information from the product labeling.

(7) Ensure that workers or other persons employed or supervised by the agricultural establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under WAC 296-307-11205. Before allowing any person not directly employed or supervised by the agricultural establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the agricultural employer shall assure that pesticide residues have been removed from the equipment if feasible and must provide all of the following information to such person:

(a) Pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(8) Display, maintain, and provide access to pesticide safety information and pesticide application and hazard information that is legible and in accordance with WAC 296-307-10830. If workers or handlers are on the establishment and within the last thirty days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on the establishment.

(9) Ensure that before a handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(10) Ensure that before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts, and any damaged equipment is repaired or replaced.

(11) The agricultural employer must notify a commercial pesticide handler employer (CPHER) of any specific locations and descriptions of those treated areas and any restrictions on entering the treated areas with restricted-entry intervals (REIs) in effect whenever:

(a) A handler employed by a CPHER will be on the agricultural establishment; and

(b) The CPHER handler may be in or walk within a quarter mile of any pesticide treated area with restricted-entry interval (REI) in effect.

(12) Ensure that workers do not enter any area on the agricultural establishment where a pesticide has been applied until the applicable pesticide application and hazard information for each pesticide product applied to that area is displayed in accordance with WAC 296-307-10830(2) and until after the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by WAC 296-307-11410.

(13) Provide any records or other information required by this section for inspection and copying upon request by an employee of EPA, or any duly authorized representatives of the Washington state department of agriculture or department of labor and industries.

(14) Pesticide safety, application, and hazard information must remain legible at all times when the information is required to be displayed. This information must be in accordance with WAC 296-307-10830.

NEW SECTION

WAC 296-307-10830 Display requirements for pesticide safety information and pesticide application and hazard information—40 C.F.R., Sec. 170.311. (1) **Display of pesticide safety information.** Whenever pesticide safety information and pesticide application and hazard information are required to be provided under WAC 296-307-10825(8), pesticide safety information must be legible and displayed in accordance with this subsection.

(a) **General.** The pesticide safety information must be conveyed in a manner that workers and handlers can understand.

(b) The pesticide safety information must include all of the following points:

(i) Avoid getting on the skin or into the body any pesticides that may be on or in plants, soil, irrigation water, tractors, and other equipment, on used personal protective equipment, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

Note: Consider including other activities that could be a route of exposure such as using a phone or cell phone, or tablet, applying makeup, and getting into a personal vehicle.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash or shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) If pesticides are spilled or sprayed on the body use decontamination supplies to wash immediately, or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

(vii) Follow directions about keeping out of treated areas and application exclusion zones.

(viii) Instructions to employees to seek medical attention as soon as possible if they believe they have been poisoned, injured or made ill by pesticides.

(ix) The name, address, and telephone number of a nearby operating medical care facility capable of providing emergency medical treatment. This information must be clearly identified as emergency medical contact information on the display.

(x) The name, address, and telephone number of the Washington state department of agriculture and Washington state department of labor and industries, 1-800-4BE-SAFE (1-800-423-7233).

(c) **Changes to pesticide safety information.** The agricultural employer must update the pesticide safety information display within twenty-four hours of notice of any changes to the information required in (b)(ix) of this subsection.

(d) **Location.** The pesticide safety information must be displayed at each of the following sites on the agricultural establishment:

(i) The site selected pursuant to subsection (2)(b) of this section for display of pesticide application and hazard information.

(ii) Anywhere that decontamination supplies must be provided on the agricultural establishment pursuant to WAC 296-307-10930, 296-307-11225 or 296-307-11415, but only when the decontamination supplies are located at permanent sites or being provided at locations and in quantities to meet the requirements of ten or more gallons of water.

(e) **Accessibility.** When pesticide safety information is required to be displayed, workers and handlers must be allowed access to the pesticide safety information at all times during normal work hours.

(2) **Keeping and displaying pesticide application and hazard information.** Whenever pesticide safety information and pesticide application and hazard information is required to be provided under WAC 296-307-10825(8), pesticide application and hazard information for any pesticides that are used on the agricultural establishment must be displayed in a legible manner, retained, and made accessible in accordance with this subsection.

(a) **Content.** The pesticide application and hazard information must include all of the following information for each pesticide product applied:

(i) A copy of the safety data sheet (SDS).

(ii) The name, EPA registration number, and active ingredient(s) of the pesticide product.

(iii) The crop or site treated and the location and description of the treated area.

(iv) The date(s) and times the application started and ended.

(v) The duration of the applicable labeling-specified restricted-entry interval for that application.

(b) **Location.** The pesticide application and hazard information must be displayed at a place on the agricultural establishment where workers and handlers are likely to pass by or congregate and where it can be readily seen and read.

(c) **Accessibility.** When the pesticide application and hazard information is required to be displayed, workers and handlers must be allowed access to the location of the information at all times during normal work hours.

(d) **Timing.** The pesticide application and hazard information for each pesticide product applied must be displayed no later than twenty-four hours after the end of the application of the pesticide. The pesticide application and hazard information must be displayed continuously from the beginning of the display period until at least thirty days after the end of the last applicable restricted-entry interval, or until workers or handlers are no longer on the establishment, whichever is earlier.

(e) **Record retention.** Whenever pesticide safety information and pesticide application and hazard information is required to be displayed in accordance with this subsection, the agricultural employer must retain the pesticide application and hazard information described in (a) of this subsection on the agricultural establishment for seven years after the date of expiration of the restricted-entry interval applicable to the pesticide application conducted.

(f) **Access to pesticide application and hazard information by a worker or handler.**

(i) If a person is or was employed as a worker or handler by an establishment during the period that particular pesticide application and hazard information was required to be displayed and retained in accordance with (e) and (f) of this subsection, and the person requests a copy of such application and/or hazard information, or requests access to such application and/or hazard information after it is no longer required to be displayed, the agricultural employer must provide the worker or handler with a copy of or access to all of the requested information within fifteen days of the receipt of any such request. The worker or handler may make the request orally or in writing.

(ii) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, nondiscriminatory administrative costs (i.e., search and copying expenses but not including overhead expenses) for a request by the worker or handler for additional copies of the record.

(g) **Access to pesticide application and hazard information by treating medical personnel.** Any treating medical personnel, or any person acting under the supervision of treating medical personnel, may request, orally or in writing, access to or a copy of any information required to be retained for seven years in (f) of this subsection in order to inform diagnosis or treatment of a worker or handler who was employed on the establishment during the period that the information was required to be displayed. The agricultural employer must promptly provide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment after receipt of the request.

(h) **Access to pesticide application and hazard information by a designated representative.**

(i) Any worker's or handler's designated representative may request access to or a copy of any information required to be retained for seven years in (f) of this subsection on behalf of a worker or handler employed on the establishment during the period that the information was required to be displayed. The agricultural employer must provide access to or a copy of the requested information applicable to the worker's or handler's time of employment on the establishment within fifteen days after receiving any such request, provided the request meets the requirements specified in (h)(ii) of this subsection.

(ii) A request by a designated representative for access to or a copy of any pesticide application and/or hazard information must be in writing and must contain all of the following:

(A) The name of the worker or handler being represented.

(B) A description of the specific information being requested. The description should include the dates of employment of the worker or handler, the date or dates for which the records are requested, type of work conducted by the worker or handler (e.g., planting, harvesting, applying pesticides, mixing or loading pesticides) during the period for which the records are requested, and the specific application and/or hazard information requested.

(C) A written statement clearly designating the representative to request pesticide application and hazard information on the worker's or handler's behalf, bearing the worker's or handler's printed name and signature, the date of the designation, and the printed name and contact information for the designated representative.

(D) If the worker or handler requests that the pesticide application and/or the hazard information be sent, direction for where to send the information (e.g., mailing address or email address).

(iii) If the written request from a designated representative contains all of the necessary information specified in (h)(i) and (ii) of this subsection, the employer must provide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment to the designated representative within fifteen days of receiving the request.

(iv) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, nondiscriminatory administrative costs (i.e., search and copying expenses but not including overhead expenses) for a request by the designated representative for additional copies of the record.

NEW SECTION

WAC 296-307-10835 Commercial pesticide handler employer duties—40 C.F.R., Sec. 170.313. Commercial pesticide handler employers must:

(1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this part, when applied on an agricultural establishment by a handler employed by the commercial pesticide handling establishment.

(2) Ensure each handler employed by the commercial pesticide handling establishment and subject to this part receives the protections required by this part.

(3) Ensure that any handler employed by the commercial pesticide handling establishment is at least eighteen years old.

(4) Provide to each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, information and directions sufficient to ensure that each handler receives the protections required by this part. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this part.

(5) Require each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, to provide sufficient information and directions to each handler to ensure that the handler can comply with the provisions of this part.

(6) Ensure that before any handler employed by the commercial pesticide handling establishment uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(7) Ensure that, before each day of use, equipment used by their employees for mixing, loading, transferring, or applying pesticides is inspected for leaks, obstructions, and

worn or damaged parts, and any damaged equipment is repaired or is replaced.

(8) Ensure that whenever a handler who is employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler is provided information about, or is aware of, the specific location and description of any treated areas where a restricted-entry interval is in effect, and the restrictions on entering those areas.

(9) Provide the agricultural employer all of the following information before the application of any pesticide on an agricultural establishment:

(a) Specific location(s) and description of the area(s) to be treated.

(b) The date(s) and start and estimated end times of application.

(c) Product name, EPA registration number, and active ingredient(s).

(d) The labeling-specified restricted-entry interval applicable for the application.

(e) Whether posting, oral notification or both are required under WAC 296-307-10925.

(f) Any restrictions or use directions on the pesticide product labeling that must be followed for protection of workers, handlers, or other persons during or after application.

(10) If there are any changes to the information provided in subsection (9)(a), (d), (e), and (f) of this section or if the start time for the application will be earlier than originally forecasted or scheduled, ensure that the agricultural employer is provided updated information prior to the application. If there are any changes to any other information provided pursuant to subsection (9) of this section, the commercial pesticide handler employer must provide updated information to the agricultural employer within two hours after completing the application. Changes to the estimated application end time of less than one hour need not be reported to the agricultural employer.

(11) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a handler employed by the commercial pesticide handling establishment has experienced a potential pesticide exposure during his or her employment by the commercial pesticide handling establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within seventy-two hours after his or her employment by the commercial pesticide handling establishment, and needs emergency medical treatment, the commercial pesticide handler employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person prompt transportation from the commercial pesticide handling establishment, or any agricultural establishment on which that handler may be working on behalf of the commercial pesticide handling establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s)(SDS) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(iv) Antidote, first aid and other medical information from the product labeling.

(12) Ensure that persons directly employed by the commercial pesticide handling establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under WAC 296-307-11205. Before allowing any person not directly employed by the commercial pesticide handling establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the commercial pesticide handler employer shall assure that pesticide residues have been removed from the equipment if feasible and must provide all of the following information to such persons:

(a) Notice that the pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(13) Provide any records or other information required by this part for inspection and copying upon request by an employee of EPA or any duly authorized representative of the Washington state department of agriculture or the department of labor and industries.

NEW SECTION

WAC 296-307-10840 Prohibited actions—40 C.F.R., Sec. 170.315. No agricultural employer, commercial pesticide handler employer, or other person involved in the use of a pesticide to which this part applies, shall intimidate, threaten, coerce, or discriminate against any worker or handler for complying with or attempting to comply with this part, or because the worker or handler provided, caused to be provided or is about to provide information to the employer or the EPA or any duly authorized representative of the Washington state department of agriculture, or the department of labor and industries regarding conduct that the worker or handler reasonably believes violates this part, has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this part, or has objected to, or refused to participate in, any activity, policy, practice, or assigned task that the worker or handler reasonably believed to be in violation of this part. Any such intimidation, threat, coercion, or discrimination violates the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 12 (a)(2)(G), 7 U.S.C. 136j (a)(2)(G).

NEW SECTION

WAC 296-307-10845 Violations of this part—40 C.F.R., Sec. 170.317. (1) RCW 15.58.150 (2)(c) provides that it is unlawful for any person "… to use or cause to be used any pesticide contrary to label directions …." When 40 C.F.R., Part 170 is referenced on a label, users must comply with all of its requirements, except those that are inconsistent with product-specific instructions on the pesticide product labeling, except as provided for in WAC 296-307-11405, 296-307-11410, and 296-307-11420.

(2) A person who has a duty under this part, as referenced on the pesticide product labeling, and who fails to perform that duty, violates RCW 15.58.330 and 17.21.315, FIFRA Section 12 (a)(2)(G), and is subject to civil penalties under RCW 15.58.335, 15.58.260, and 17.21.315.

(3) FIFRA Section 14 (b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for that person violates any provision of FIFRA. The term "acting for" includes both employment and contractual relationships including, but not limited to, labor contractors.

(4) The requirements of this part including the decontamination requirements, must not, for the purposes of Title 29 U.S.C. Sec. 653 (b)(1), be deemed to be the exercise of statutory authority to prescribe or enforce standards or regulations affecting the general sanitary hazards addressed by the WISHA Field Sanitation Standard, WAC 296-307-095, OSHA Field Sanitation Standard, 29 C.F.R. Sec. 1928.110, or other agricultural nonpesticide hazards.

NEW SECTION

WAC 296-307-109 Requirements for protection of agricultural workers.

NEW SECTION

WAC 296-307-10905 Training requirements for workers—40 C.F.R., Sec. 170.401. (1) General requirement. Before any worker performs any task in a treated area on an agricultural establishment where within the last thirty days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that each worker has been trained in accordance with this section within the last twelve months, except as provided in subsection (2) of this section.

Note: In addition to the training required by this section, the agricultural employer shall assure without exception, that all employees are trained in accordance with chapter 296-901 WAC, Globally harmonized system for hazard communication.

(2) Exceptions. The following workers need not be trained under this section:

(a) A worker who is currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(b) A worker who has satisfied the handler training requirements in WAC 296-307-11205.

(c) A worker who is certified or licensed as a crop advisor by the Washington state department of agriculture under RCW 15.58.230, provided, that a requirement for such certification or licensing is pesticide safety training that includes all the topics in WAC 296-307-11205 (3)(b) or (c) as applicable depending on the date of training.

(3) Training programs.

(a) Pesticide safety training must be presented to workers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the workers can understand, such as through a translator. The training must be conducted by a person who meets the worker trainer requirements of (d) of this subsection, and who must be present during the entire training program and must respond to workers' questions.

(b) The training must include, at a minimum, all of the following topics:

(i) Where and in what form pesticides may be encountered during work activities.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes through which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures, including emergency eye flushing techniques.

(viii) Hazards from chemigation and drift.

(ix) Hazards from pesticide residues on clothing.

(x) Warnings about taking pesticides or pesticide containers home.

(xi) Requirements of this section designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.

(c) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within one hundred eighty-one days after a notice of availability of such training materials appears in the *Federal Register*, training programs required under this section must include, at a minimum, all of the topics listed in (c)(i) through (xxiii) of this subsection instead of the topics listed in (b)(i) through (xi) of this subsection.

(i) The responsibility of agricultural employers to provide workers and handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes ensuring workers and handlers have been trained on pesticide safety, providing pesticide safety and application and hazard information, decontamination supplies and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas. A worker or handler may designate in writing a representative to request access to pesticide application and hazard information.

(ii) How to recognize and understand the meaning of the posted warning signs used for notifying workers of restrictions on entering pesticide treated areas on the establishment.

(iii) How to follow directions and/or signs about keeping out of pesticide treated areas subject to a restricted-entry interval and application exclusion zones.

(iv) Where and in what forms pesticides may be encountered during work activities, and potential sources of pesticide exposure on the agricultural establishment. This includes exposure to pesticide residues that may be on or in plants, soil, tractors, application and chemigation equipment, or used personal protective equipment, and that pesticides may drift through the air from nearby applications or be in irrigation water.

(v) Potential hazards from toxicity and exposure that pesticides present to workers and their families, including acute and chronic effects, delayed effects, and sensitization.

(vi) Routes through which pesticides can enter the body.

(vii) Signs and symptoms of common types of pesticide poisoning.

(viii) Emergency first aid for pesticide injuries or poisonings.

(ix) Routine and emergency decontamination procedures, including emergency eye flushing techniques, and if pesticides are spilled or sprayed on the body to use decontamination supplies to wash immediately or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

(x) How and when to obtain emergency medical care.

(xi) When working in pesticide treated areas, wear work clothing that protects the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

Note: Consider including other activities that could be a route of exposure such as using a phone or cell phone, or tablet, applying makeup, and getting into a personal vehicle.

(xii) Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working in pesticide treated areas.

(xiii) Potential hazards from pesticide residues on clothing.

(xiv) Wash work clothes before wearing them again and wash them separately from other clothes.

(xv) Do not take pesticides or pesticide containers used at work to your home.

(xvi) Safety data sheets (SDSs) provide hazard, emergency medical treatment and other information about the pesticides used on the establishment they may come in contact with. The responsibility of agricultural employers to do all of the following:

(A) Display safety data sheets (SDSs) for all pesticides used on the establishment.

(B) Provide workers and handlers information about the location of the safety data sheets (SDSs) on the establishment.

(C) Provide workers and handlers unimpeded access to safety data sheets (SDSs) during normal work hours.

(xvii) This section prohibits agricultural employers from allowing or directing any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.

(xviii) The responsibility of agricultural employers to provide specific information to workers before directing them to perform early entry activities. Workers must be eighteen years old to perform early entry activities.

(xix) Potential hazards to children and pregnant women from pesticide exposure.

(xx) Keep children and nonworking family members away from pesticide treated areas.

(xxi) After working in pesticide treated areas, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.

(xxii) How to report suspected pesticide use violations to the Washington state department of agriculture.

(xxiii) This section prohibits agricultural employers from intimidating, threatening, coercing, or discriminating against any worker or handler for complying with or attempting to comply with the requirements of this chapter part, or because the worker or handler provided, caused to be provided or is about to provide information to the employer, the EPA or its agents, or any duly authorized representative of the Washington state department of agriculture regarding conduct that the employee reasonably believes violates this chapter part, and/or made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this chapter part.

(d) The person who conducts the training must meet one of the following criteria:

(i) Be currently designated as a trainer of certified applicators or pesticide handlers by the Washington state department of agriculture in accordance with chapters 15.58 and 17.21 RCW; or

(ii) Have completed a pesticide safety train-the-trainer program approved by the Washington state department of agriculture in accordance with chapters 15.58 and 17.21 RCW; or

(iii) Be currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(4) Recordkeeping.

(a) For each worker required to be trained under subsection (1) of this section, the agricultural employer must maintain on the agricultural establishment, for two years from the date of the training, a record documenting each worker's training including all of the following:

(i) The trained worker's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of subsection (3)(d) of this section at the time of training.

(v) The agricultural employer's name.

(b) An agricultural employer who provides, directly or indirectly, training required under subsection (1) of this section must provide to the worker upon request a copy of the

record of the training that contains the information required under (a) of this subsection.

NEW SECTION

WAC 296-307-10910 Establishment-specific information for workers—40 C.F.R., Sec. 170.403. Before any worker performs any activity in a treated area on an agricultural establishment where within the last thirty days a pesticide product has been used, or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that the worker has been informed of, in a manner the worker can understand, all of the following establishment-specific information:

(1) The location of pesticide safety information required in WAC 296-307-10830(1).

(2) The location of pesticide application and hazard information required in WAC 296-307-10830(2).

(3) The location of decontamination supplies required in WAC 296-307-10930.

NEW SECTION

WAC 296-307-10915 Entry restrictions associated with pesticide applications—40 C.F.R., Sec. 170.405. (1) Outdoor production pesticide applications.

(a) During any outdoor production pesticide application, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the treated area or an application exclusion zone (AEZ) that is within the boundaries of the establishment until the application is complete.

(b) A summary of outdoor production application exclusion zones (AEZ) can be found in Table 1 and is defined as follows:

(i) The application exclusion zone is the area that extends one hundred feet horizontally from the application equipment in all directions during application when the pesticide is applied by any of the following methods:

(A) Aerially.

(B) Air blast application.

(C) As a spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns).

(D) As a fumigant, smoke, mist, or fog.

(ii) The application exclusion zone is the area that extends twenty-five feet horizontally from the application equipment in all directions during application when the pesticide is applied not as in (a)(i)(A) through (D) of this subsection and is sprayed from a height of greater than twelve inches from the planting medium using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater).

(iii) There is no application exclusion zone when the pesticide is applied in a manner other than those covered in (a)(i) and (ii) of this subsection.

(c) During any outdoor production pesticide application, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the treated area or an application exclusion zone that is within the boundaries of the establishment until the application is complete.

(d) After the application is complete, the area subject to the labeling-specified restricted-entry interval and the postapplication entry restrictions specified in WAC 296-307-10920 is the treated area.

Table 1

Entry Restrictions* - During Outdoor Production Pesticide Application (AEZ)

Note: This applies to the area within the boundaries of the establishment, outside establishment boundaries, the handler must suspend application long enough to ensure no contact with any persons within the AEZ (see WAC 296-307-11215 (1) and (2)). Subsection (1)(b) and (c) of this section. During pesticide application and after application is complete, pesticide labeling-specified restricted-entry intervals and post-application restrictions apply to the treated area.

***During pesticides being applied:** (WAC 296-307-10915)	**Prohibit workers and any persons, other than appropriately trained and equipped handlers, from being in the AEZ:**
(A) Aerially (B) Air blast application (C) As a spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns) (D) As a fumigant, smoke, mist, fog, or aerosol	**Area that extends 100 feet** horizontally in all directions from the application equipment until after the application is complete.
Not applied as (A), (B), (C), or (D) above and: - From a height of greater than 12 inches from the planting medium; and - As a spray using a medium or larger spray quality droplet spectrum of volume median diameter of 294 microns or greater.	**Area that extends 25 feet** horizontally in all directions from the application equipment until after the application is complete.

***During pesticides being applied:** (WAC 296-307-10915)	**Prohibit workers and any persons, other than appropriately trained and equipped handlers, from being in the AEZ:**
- Otherwise - No AEZ	Follow applicable label directions for restricted-entry intervals.

(2) Enclosed space production pesticide applications.

(a) During any enclosed space production pesticide application described in column 1 of Table 2 under (d) of this subsection, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the application exclusion zone (AEZ) area specified in column 2 of Table 2 under (d) of this subsection during the application and until the time specified in column 3 of Table 2 under (d) of this subsection has expired.

(b) After the time specified in column 3 of Table 2 under (d) of this subsection has expired, the area subject to the labeling-specified restricted-entry interval and the postapplication entry restrictions specified in WAC 296-307-10920 is the area specified in column 4 of Table 2 under (d) of this subsection.

(c) When column 3 of Table 2 under (d) of this subsection specifies that ventilation criteria must be met, ventilation must continue until the air concentration is measured to be equal to or less than the inhalation exposure level required by the labeling. If no inhalation exposure level is listed on the labeling, ventilation must continue until after one of the following conditions is met:

(i) Ten air exchanges are completed.

(ii) Two hours of ventilation using fans or other mechanical ventilating systems.

(iii) Four hours of ventilation using vents, windows, or other passive ventilation.

(iv) Eleven hours with no ventilation followed by one hour of mechanical ventilation.

(v) Eleven hours with no ventilation followed by two hours of passive ventilation.

(vi) Twenty-four hours with no ventilation.

(d) The following table applies to (a), (b), and (c) of this subsection.

Table 2
Entry Restrictions During Enclosed Space Production Pesticide Applications

1. When a pesticide is applied:	**2. Prohibit workers and any persons, other than appropriately trained and equipped handlers, from being in the AEZ:**	**3. Until:**	**4. After the expiration of time specified in column 3, the area subject to the restricted-entry interval is:**
(a) As a fumigant.	Entire enclosed space plus any adjacent structure or area that cannot be sealed off from the treated area.	The ventilation criteria of subsection (2)(c) of this section are met.	No postapplication entry restrictions required by WAC 296-307-10920 after criteria in column 3 are met.
(b) As a: (i) Smoke; or (ii) Mist; or (iii) Fog; or (iv) Spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns).	Entire enclosed space.	The ventilation criteria of subsection (2)(c) of this section are met.	Entire enclosed space.
(c) Not as in (a) or (b) above, the pesticide product label requires a respirator during application.	Entire enclosed space.	The ventilation criteria of subsection (2)(c) of this section are met.	Treated area.
(d) Not as in (a), (b), or (c), above and: (i) From a height of greater than 12 inches from the planting medium; or	Treated area plus 25 feet in all directions of the treated area, but not outside the enclosed space.	Application is complete.	Treated area.

(ii) As a spray using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater).			
(e) Otherwise.	Treated area.	Follow any applicable label restrictions for reentry.	Otherwise no AEZ.

NEW SECTION

WAC 296-307-10920 Worker entry restrictions after pesticide applications—40 C.F.R., Sec. 170.407. (1) After the application of any pesticide to an area of outdoor production, the agricultural employer must not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide product labeling has expired and all treated area warning signs have been removed or covered, except for early entry activities permitted in WAC 296-307-11410.

(2) After the application of any pesticide to an area of enclosed space production, the agricultural employer must not allow or direct any worker to enter or to remain in the areas specified in column 4 of the table in WAC 296-307-10915 (2)(d), before the restricted-entry interval specified on the pesticide product labeling has expired and all treated area warning signs have been removed or covered, except for early entry activities permitted in WAC 296-307-11410.

(3) When two or more pesticides are applied to a treated area at the same time, the applicable restricted-entry interval is the longest of all applicable restricted-entry intervals.

(4) When two or more pesticides are applied to a treated area at the same time, the employer must provide and ensure employees, workers and handlers wear the applicable PPE to protect against all of the pesticides as a mixture and combined product.

NEW SECTION

WAC 296-307-10925 Oral and posted notification of worker entry restrictions—40 C.F.R., Sec. 170.409. (1) General requirement. The agricultural employer must notify workers of all entry restrictions required in WAC 296-307-10915 and 296-307-10920 in accordance with this section.

(a) Type of notification required:

(i) Double notification. If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer must post signs in accordance with subsection (2) of this section and must also provide oral notification of the application to workers in accordance with subsection (3) of this section.

(ii) Outdoor production areas subject to restricted-entry intervals greater than forty-eight hours. If a pesticide with product labeling that requires a restricted-entry interval greater than forty-eight hours is applied to an outdoor production area, the agricultural employer must notify workers of the application by posting warning signs in accordance with subsection (2) of this section.

(iii) Outdoor production areas subject to restricted-entry intervals equal to or less than forty-eight hours. If a pesticide with product labeling that requires a restricted-entry interval equal to or less than forty-eight hours is applied to an outdoor production area, the agricultural employer must notify workers of the application either by posting warning signs in accordance with subsection (2) of this section or by providing workers with an oral warning in accordance with subsection (3) of this section.

(iv) Enclosed space production areas subject to restricted-entry intervals greater than four hours. If a pesticide with product labeling that requires a restricted-entry interval greater than four hours is applied to an enclosed space production area, the agricultural employer must notify workers of the application by posting warning signs in accordance with subsection (2) of this section.

(v) Enclosed space production areas subject to restricted-entry intervals equal to or less than four hours. If a pesticide with product labeling that requires a restricted-entry interval equal to or less than four hours is applied to an enclosed space production area, the agricultural employer must notify workers of the application either by posting warning signs in accordance with subsection (2) of this section or by providing workers with an oral warning in accordance with subsection (3) of this section.

(b) Exceptions. Notification does not need to be given to a worker if the agricultural employer can ensure that one of the following is met:

(i) From the start of the application in an enclosed space production area until the end of any restricted-entry interval, the worker will not enter any part of the entire enclosed structure or space.

(ii) From the start of the application to an outdoor production area until the end of any restricted-entry interval, the worker will not enter, work in, remain in, or pass on foot through the treated area or any area within one-quarter mile of the treated area on the agricultural establishment.

(iii) The worker was involved in the application of the pesticide as a handler, and is aware of all information required in subsection (3)(a) of this section.

(2) Requirements for posted warning signs. If notification by posted warning signs is required pursuant to subsection (1) of this section, the agricultural employer must, unless otherwise prescribed by the label, ensure that all warning signs meet the requirements of this subsection. When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted. Worker entry is prohibited for the entire area while the signs are posted, except for entry permitted in WAC 296-307-11410.

(a) General. The warning signs must meet all of the following requirements:

(i) Be one of the three sizes specified in (c) of this subsection and comply with the posting placement and spacing requirements applicable to that sign size.

(ii) Be posted prior to but no earlier than twenty-four hours before the scheduled application of the pesticide.

(iii) Remain posted throughout the application and any restricted-entry interval.

(iv) Be removed or covered within three days after the end of the application or any restricted-entry interval, whichever is later.

(v) Remain visible and legible during the time they are required to be posted.

(b) Content.

(i) The warning sign must have a white background. The words "DANGER" and "PELIGRO," plus "PESTICIDES" and "PESTICIDAS," must be at the top of the sign, and the words "KEEP OUT" and "NO ENTRE" must be at the bottom of the sign. Letters for all words must be clearly legible. A circle containing an upraised hand on the left and a stern face on the right must be near the center of the sign. The inside of the circle must be red, except that the hand and a large portion of the face must be in white. The length of the hand must be at least twice the height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the size and appearance of the sign or change the meaning of the required information. An example of a warning sign meeting these requirements, other than the size and color requirements, follows:

(ii) The agricultural employer may replace the Spanish language portion of the warning sign with equivalent terms in an alternative non-English language if that alternative language is the language read by the largest group of workers at that agricultural establishment who do not read English. The alternative language sign must be in the same format as the original sign and conform to all other requirements of (b)(i) of this subsection.

(c) Size and posting.

(i) The standard sign must be at least fourteen inches by sixteen inches with letters at least one inch in height.

(ii) When posting an outdoor production area using the standard sign, the signs must be visible from all reasonably expected points of worker entry to the treated area, including at least each access road, each border with any worker housing area within one hundred feet of the treated area and each footpath and other walking route that enters the treated area. Where there are no reasonably expected points of worker entry, signs must be posted in the corners of the treated area or in any other location affording maximum visibility.

(iii) When posting an enclosed space production area using the standard sign and the entire structure or space is subject to the labeling-specified restricted-entry interval and the postapplication entry restrictions specified in WAC 296-307-10920, the signs must be posted so they are visible from all reasonably expected points of worker entry to the structure or space. When posting treated areas in enclosed space production using the standard sign and the treated area only comprises a subsection of the structure or space, the signs must be posted so they are visible from all reasonably expected points of worker entry to the treated area including each aisle or other walking route that enters the treated area. Where there are no reasonably expected points of worker entry to the treated area, signs must be posted in the corners of the treated area or in any other location affording maximum visibility.

(iv) If a smaller warning sign is used with "DANGER" and "PELIGRO" in letters at least seven-eighths inch in height and the remaining letters at least one-half inch in height and a red circle at least three inches in diameter containing an upraised hand and a stern face, the signs must be posted no farther than fifty feet apart around the perimeter of the treated area in addition to the locations specified in (c)(ii) or (iii) of this subsection.

(v) If a smaller sign is used with "DANGER" and "PELIGRO" in letters at least seven-sixteenths inch in height and the remaining letters at least one-quarter inch in height and a red circle at least one and one-half inches in diameter containing an upraised hand and a stern face, the signs must be posted no farther than twenty-five feet apart around the perimeter of the treated area in addition to the locations specified in (c)(ii) or (iii) of this subsection.

(vi) A sign with "DANGER" and "PELIGRO" in letters less than seven-sixteenths inch in height or with any words in letters less than one-quarter inch in height or a red circle smaller than one and one-half inches in diameter containing an upraised hand and a stern face will not satisfy the requirements of this chapter part.

(3) Oral warnings - Requirement. If oral notification is required pursuant to subsection (1) of this section, the agricultural employer must provide oral warnings to workers in a manner that the workers can understand. If a worker will be on the establishment when an application begins, the warning must be given before the application begins. If a worker

arrives on the establishment while an application is taking place or a restricted-entry interval for a pesticide application is in effect, the warning must be given at the beginning of the worker's work period. The warning must include all of the following:

(a) The location(s) and description of any treated area(s) subject to the entry restrictions during and after application specified in WAC 296-307-10915 and 296-307-10920.

(b) The dates and times during which entry is restricted in any treated area(s) subject to the entry restrictions during and after application specified in WAC 296-307-10915 and 296-307-10920.

(c) Instructions not to enter the treated area or an application exclusion zone during application, and that entry to the treated area is not allowed until the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by WAC 296-307-11410.

NEW SECTION

WAC 296-307-10930 Decontamination supplies for workers—40 C.F.R., Sec. 170.411. (1) Requirement. The agricultural employer must provide decontamination supplies for routine washing and emergency decontamination in accordance with this section for any worker on an agricultural establishment who is performing an activity in an area where a pesticide was applied and who contacts anything that has been treated with the pesticide including, but not limited to, soil, water, and plants.

(2) Materials and quantities. The decontamination supplies required in subsection (1) of this section must provide adequate water at a minimum to include at least one gallon of water per worker at the beginning of each worker's work period for routine washing and emergency decontamination, soap, and single-use towels. The supplies must meet all of the following requirements:

(a) Water. At all times when this part requires agricultural employers to make water available to workers, the agricultural employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination, unless equipped with properly functioning valves or other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

(b) Soap and single-use towels. The agricultural employer must provide soap and single-use towels for drying in quantities sufficient to meet the workers' reasonable needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(3) Timing.

(a) If any pesticide with a restricted-entry interval greater than four hours was applied, the decontamination supplies must be provided from the time workers first enter the treated area until at least thirty days after the restricted-entry interval expires.

(b) If the only pesticides applied in the treated area are products with restricted-entry intervals of four hours or less, the decontamination supplies must be provided from the time workers first enter the treated area until at least seven days after the restricted-entry interval expires.

(4) Location. The decontamination supplies must be located together outside any treated area or area subject to a restricted-entry interval, and must be reasonably accessible to the workers. The decontamination supplies must not be more than one-quarter mile from where workers are working, except that where workers are working more than one-quarter mile from the nearest place of vehicular access or more than one-quarter mile from any nontreated area, the decontamination supplies may be at the nearest place of vehicular access outside any treated area or area subject to a restricted-entry interval.

(5) Decontamination after early entry activities. At the end of any exposure period for workers engaged in early entry activities permitted by WAC 296-307-11415 and involving contact with anything that has been treated with the pesticide to which the restricted-entry interval applies including, but not limited to, soil, water, air, or surfaces of plants, the agricultural employer shall provide, at the site where the workers remove personal protective equipment, soap, clean towels, and an adequate amount of water so that the workers may wash thoroughly. At least ten gallons of water for one employee and twenty gallons of water for two or more employees shall be provided at early entry sites that do not have running water.

NEW SECTION

WAC 296-307-112 Requirements for protection of agricultural pesticide handlers.

NEW SECTION

WAC 296-307-11205 Training requirements for handlers—40 C.F.R., Sec. 170.501. (1) General requirement. Before any handler performs any handler activity involving a pesticide product, the handler employer must ensure that the handler has been trained in accordance with this section within the last twelve months, except as provided in subsection (2) of this section.

Note: In addition to the training required by this section, the agricultural employer shall assure without exception, that all employees are trained in accordance with chapter 296-901 WAC, Globally harmonized system for hazard communication.

(2) Exceptions. The following handlers need not be trained under this section:

(a) A handler who is currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(b) A handler who is certified or licensed as a crop advisor by the Washington state department of agriculture under RCW 15.58.230, provided that a requirement for such certification or licensing is pesticide safety training that includes all the topics set out in subsection (3)(b) or (c) of this section as applicable depending on the date of training.

(3) Training programs.

(a) Pesticide safety training must be presented to handlers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the handlers can understand, such as through a translator. The training must be conducted by a person who meets the handler trainer requirements of (d) of this subsection, and who must be present during the entire training program and must respond to handlers' questions.

(b) The pesticide safety training materials must include, at a minimum, all of the following topics:

(i) Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes by which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures.

(viii) Need for and appropriate use of personal protective equipment.

(ix) Prevention, recognition, and first-aid treatment of heat-related illness.

(x) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(xi) Environmental concerns such as drift, runoff, and wildlife hazards.

(xii) Warnings about taking pesticides or pesticide containers home.

(xiii) Requirements of this section that must be followed by handler employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontamination, and the protection against retaliatory acts.

(c) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within one hundred eighty days after a notice of availability of such training materials appears in the *Federal Register*, training programs required under this section must include, at a minimum, all of the topics listed in (c)(i) through (xiv) of this subsection instead of the points listed in (b)(i) through (xiii) of this subsection.

(i) All the topics required in WAC 296-307-10905 (3)(c).

(ii) Information on proper application and use of pesticides.

(iii) Handlers must follow the portions of the labeling applicable to the safe use of the pesticide.

(iv) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide.

(v) Need for and appropriate use and removal of all personal protective equipment.

(vi) How to recognize, prevent, and provide first-aid treatment for heat-related illness.

(vii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(viii) Environmental concerns, such as drift, runoff, and wildlife hazards.

(ix) Handlers must not apply pesticides in a manner that results in contact with workers or other persons.

(x) The responsibility of handler employers to provide handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing, cleaning, maintaining, storing, and ensuring proper use of all required personal protective equipment; providing decontamination supplies; and providing specific information about pesticide use and labeling information.

(xi) Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone.

(xii) Handlers must be at least eighteen years old.

(xiii) The responsibility of handler employers to ensure handlers have received respirator fit-testing, training and medical evaluation if they are required to wear a respirator by the product labeling.

(xiv) The responsibility of agricultural employers to post treated areas as required by this part.

(d) The person who conducts the training must have one of the following qualifications:

(i) Be currently designated as a trainer of certified applicators or pesticide handlers by the Washington state department of agriculture under chapter 15.58 or 17.21 RCW; or

(ii) Have completed a pesticide safety train-the-trainer program approved by a state, federal, or tribal agency having jurisdiction.

(iii) Be currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(4) Recordkeeping.

(a) Handler employers must maintain records of training for handlers employed by their establishment for two years after the date of the training. The records must be maintained on the establishment and must include all of the following information:

(i) The trained handler's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of subsection (3)(d) of this section at the time of training.

(v) The handler employer's name.

(b) The handler employer must, upon request by a handler trained on the establishment, provide to the handler a copy of the record of the training that contains the information required under (a) of this subsection.

NEW SECTION

WAC 296-307-11210 Knowledge of labeling, application-specific, and establishment-specific information for handlers—40 C.F.R., Sec. 170.503. (1) **Knowledge of labeling and application-specific information.**

(a) The handler employer must ensure that before any handler performs any handler activity involving a pesticide product, the handler either has read the portions of the labeling applicable to the safe use of the pesticide or has been informed in a manner the handler can understand of all labeling requirements and use directions applicable to the safe use of the pesticide.

(b) The handler employer must ensure that the handler has access to the applicable product labeling at all times during handler activities.

(c) The handler employer must ensure that the handler is aware of requirements for any entry restrictions, application exclusion zones and restricted-entry intervals as described in WAC 296-307-10915 and 296-307-10920 that may apply based on the handler's activity.

(2) **Knowledge of establishment-specific information.** Before any handler performs any handler activity on an agricultural establishment where within the last thirty days a pesticide product has been used, or a restricted-entry interval for such pesticide has been in effect, the handler employer must ensure that the handler has been informed, in a manner the handler can understand, all of the following establishment-specific information:

(a) The location of pesticide safety information required in WAC 296-307-10830(1).

(b) The location of pesticide application and hazard information required in WAC 296-307-10830(2).

(c) The location of decontamination supplies required in WAC 296-307-11225.

NEW SECTION

WAC 296-307-11215 Requirements during applications to protect handlers, workers, and other persons—40 C.F.R., Sec. 170.505. (1) Prohibition from contacting workers and other persons with pesticides during application. The handler employer and the handler must ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other person, other than an appropriately trained and equipped handler involved in the application.

(2) Suspending applications. The handler performing the application must immediately suspend a pesticide application if any worker or other person, other than an appropriately trained and equipped handler involved in the application, is in the application exclusion zone described in WAC 296-307-10915 (1)(a) or the area specified in column 2 of the table in WAC 296-307-10915 (2)(d).

(3) Handlers using highly toxic pesticides. The handler employer must ensure that any handler who is performing any handler activity with a pesticide product that has the skull-and-crossbones symbol on the front panel of the pesticide product label is monitored visually or by voice communication at least every two hours.

(4) Fumigant applications in enclosed space production. The handler employer must ensure all of the following:

(a) Any handler in an enclosed space production area during a fumigant application maintains continuous visual or voice contact with another handler stationed immediately outside of the enclosed space.

(b) The handler stationed outside the enclosed space has immediate access to and uses the personal protective equipment required by the fumigant labeling for applicators in the event that entry becomes necessary for rescue.

NEW SECTION

WAC 296-307-11220 Personal protective equipment—40 C.F.R., Sec. 170.507. (1) Handler responsibilities. Any person who performs handler activities involving a pesticide product must use the clothing and personal protective equipment specified on the pesticide product labeling for use of the product, except as provided in WAC 296-307-11420.

(2) Employer responsibilities for providing personal protective equipment. The handler employer must provide to the handler the personal protective equipment required by the pesticide product labeling in accordance with this section. The handler employer must ensure that the personal protective equipment fits, is clean and in proper operating condition. When two or more pesticides are applied to a treated area at the same time, the employer must ensure employees, workers and handlers wear the applicable PPE that would protect against all of the pesticides as a mixture and combined product. For the purposes of this section, long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, and socks are not considered personal protective equipment, although such work clothing must be worn if required by the pesticide product labeling.

(a) If the pesticide product labeling requires that "chemical-resistant" personal protective equipment be worn, it must be made of material that allows no measurable movement of the pesticide being used through the material during use.

(b) If the pesticide product labeling requires that "waterproof" personal protective equipment be worn, it must be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(c) If the pesticide product labeling requires that a "chemical-resistant suit" be worn, it must be a loose-fitting, one- or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(d) If the pesticide product labeling requires that "coveralls" be worn, they must be loose-fitting, one- or two-piece garments that cover, at a minimum, the entire body except head, hands, and feet.

(e) Gloves must be the type specified on the pesticide product labeling.

(i) Gloves made of leather, cotton, or other absorbent materials may not be worn while performing handler activities unless gloves made of these materials are listed as acceptable for such use on the pesticide product labeling.

(ii) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings, made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered

to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with nonseparable absorbent lining materials are prohibited.

(iii) If used, separable glove liners must be discarded immediately after a total of no more than ten hours of use or within twenty-four hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners must not be reused. Contaminated liners must be disposed of in accordance with any federal, state, or local regulations.

(f) If the pesticide product labeling requires that "chemical-resistant footwear" be worn, one of the following types of footwear must be worn:

(i) Chemical-resistant shoes.

(ii) Chemical-resistant boots.

(iii) Chemical-resistant shoe coverings worn over shoes or boots.

(g) If the pesticide product labeling requires that "protective eyewear" be worn, one of the following types of eyewear must be worn:

(i) Goggles.

(ii) Face shield.

(iii) Safety glasses with front, brow, and temple protection.

(iv) Full-face respirator.

(h) If the pesticide product labeling requires that a "chemical-resistant apron" be worn, a chemical-resistant apron that covers the front of the body from mid-chest to the knees must be worn.

(i) If the pesticide product labeling requires that "chemical-resistant headgear" be worn, it must be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

Table 3

Chemical Resistance Category Selection Chart for Gloves

(For use when selecting glove types to be listed in the PPE section on pesticide label. Only select glove(s) that indicate a high level of chemical resistance.)

Note: This table below provides examples of categories of chemical resistant materials that can be used to protect against different kinds of pesticides.

Solvent Category (see Table 4)	Barrier Laminate	Butyl Rubber ≥ 14 mils	Nitrile Rubber ≥ 14 mils	Neoprene Rubber ≥ 14 mils	Natural Rubber* ≥ 14 mils	Poly-ethylene	Polyvinyl Chloride (PVC) ≥ 14 mils	Viton ≥ 14 mils
A (dry and water-based formulations)	high	high	high	high	high	high	high	high
B	high	high	slight	slight	none	slight	slight	slight
C	high	high	high	high	moderate	moderate	high	high
D	high	high	moderate	moderate	none	none	none	slight
E	high	slight	high	high	slight	none	moderate	high
F	high	high	high	moderate	slight	none	slight	high
G	high	slight	slight	slight	none	none	none	high
H	high	slight	slight	slight	none	none	none	high

* Includes natural rubber blends and laminates.

HIGH: Highly chemical-resistant. Clean or replace PPE at end of each day's work period. Rinse off pesticides at rest breaks.

MODERATE: Moderately chemical-resistant. Clean or replace within an hour or two of contact.

SLIGHT: Slightly chemical-resistant. Clean or replace within ten minutes of contact.

NONE: No chemical-resistance.

(j) The respirator specified by the pesticide product labeling must be used. If the label does not specify the type of respirator to be used, it shall meet the requirements of Part Y-5 of this chapter. Whenever a respirator is required by the pesticide product labeling, the handler employer must ensure that the requirements of (j)(i) through (iii) of this subsection are met before the handler performs any handler activity where the respirator is required to be worn. The respiratory protection requirements of Part Y-5 of this chapter shall apply. The handler employer must maintain for two years, on the establishment, records documenting the completion of the requirements of (j)(i) through (iii) of this subsection.

(i) The handler employer shall assure that the respirator fits correctly by using the procedures consistent with Part Y-5 of this chapter.

(ii) Handler employers must provide handlers with training in the use of the respirator specified on the pesticide product labeling in a manner that conforms to the provisions of Part Y-5 of this chapter.

(iii) Handler employers must provide handlers with a medical evaluation by a physician or other licensed health

care professional that conforms to the provisions of WAC 296-307-604 to ensure the handler's physical ability to safely wear the respirator specified on the pesticide product labeling.

(3) Use of personal protective equipment.

(a) The handler employer must ensure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(b) The handler employer must ensure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(4) Cleaning and maintenance.

(a) The handler employer must ensure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it must be washed thoroughly in detergent and hot water.

(b) If any personal protective equipment cannot or will not be cleaned properly, the handler employer must ensure the contaminated personal protective equipment is made unusable as apparel or is made unavailable for further use by employees or third parties. The contaminated personal protective equipment must be disposed of in accordance with any applicable laws or regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with a pesticide that has the signal word "DANGER" or "WARNING" on the label must not be reused and must be disposed of as specified in this subsection. Handler employers must ensure that any person who handles contaminated personal protective equipment described in this subsection wears the gloves specified on the pesticide product labeling for mixing and loading the product(s) comprising the contaminant(s) on the equipment. If two or more pesticides are included in the contaminants, the gloves worn must meet the requirements for mixing and loading all of the pesticide products.

(c) The handler employer must ensure that contaminated personal protective equipment is kept separate from noncontaminated personal protective equipment, other clothing or laundry and washed separately from any other clothing or laundry.

(d) The handler employer must ensure that all washed personal protective equipment is dried thoroughly before being stored or reused.

(e) The handler employer must ensure that all clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(f) The handler employer must ensure that when filtering facepiece respirators are used, they are replaced when one of the following conditions is met:

(i) When breathing resistance becomes excessive.

(ii) When the filter element has physical damage or tears.

(iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(g) The handler employer must ensure that when gas- or vapor-removing respirators are used, the gas- or vapor-removing canisters or cartridges are replaced before further respirator use when one of the following conditions is met:

(i) At the first indication of odor, taste, or irritation.

(ii) When the maximum use time is reached as determined by a change schedule conforming to the provisions of Part Y-5 of this chapter.

(iii) When breathing resistance becomes excessive.

(iv) When required according to manufacturer's recommendations or pesticide product labeling instructions, whichever is more frequent.

(v) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(h) The handler employer must inform any person who cleans or launders personal protective equipment of all the following:

(i) That such equipment may be contaminated with pesticides and there are potentially harmful effects from exposure to pesticides.

(ii) The correct way(s) to clean personal protective equipment and how to protect themselves when handling such equipment.

(iii) Proper decontamination procedures that should be followed after handling contaminated personal protective equipment.

(i) The handler employer must ensure that handlers have a place(s) away from pesticide storage and pesticide use areas where they may do all of the following:

(i) Store personal clothing not worn during handling activities.

(ii) Put on personal protective equipment at the start of any exposure period.

(iii) Remove personal protective equipment at the end of any exposure period.

(j) The handler employer must not allow or direct any handler to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(5) Heat-related illness. Where a pesticide's labeling requires the use of personal protective equipment for a handler activity, the handler employer must ensure that no handler is allowed or directed to wear personal protective equipment without implementing measures sufficient to prevent heat-related illness and that each handler is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

Note: Additional requirements in WAC 296-307-097 Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

NEW SECTION

WAC 296-307-11225 Decontamination and eye flushing supplies for handlers—40 C.F.R., Sec. 170.509. (1) Requirement. The handler employer must provide decontamination and eye flushing supplies in accordance with this section for any handler that is performing any handler activity or removing personal protective equipment at the place for changing required in WAC 296-307-11220 (4)(i).

(2) General conditions. The decontamination supplies required in subsection (1) of this section must include: At the site where handlers remove personal protective equipment,

soap, clean towels, and a sufficient amount of water so that the handlers may wash thoroughly. At least ten gallons of water for one employee and twenty gallons of water for two or more employees shall be provided at mixing and loading sites that do not have running water. The decontamination and eye flushing supplies required in subsection (1) of this section must meet all of the following requirements:

(a) Water. At all times when this section requires handler employers to make water available to handlers for routine washing, emergency decontamination or eye flushing, the handler employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination or eye flushing supplies, unless equipped with properly functioning valves or other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

(b) Soap and single-use towels. The handler employer must provide soap and single-use towels for drying in quantities sufficient to meet the handlers' needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(c) Clean change of clothing. The handler employer must provide one clean change of clothing, such as coveralls, for use in an emergency.

(3) Location. The decontamination supplies must be located together outside any treated area or area subject to a restricted-entry interval, and must be reasonably accessible to each handler during the handler activity. The decontamination supplies must not be more than one-quarter mile from the handler, except that where the handler activity is more than one-quarter mile from the nearest place of vehicular access or more than one-quarter mile from any nontreated area, the decontamination supplies may be at the nearest place of vehicular access outside any treated area or area subject to a restricted-entry interval.

(a) Mixing sites. Decontamination supplies must be provided at any mixing site.

(b) Exception for pilots. Decontamination supplies for a pilot who is applying pesticides aerially must be in the aircraft or at the aircraft loading site.

(c) Exception for treated areas. The decontamination supplies must be outside any treated area or area subject to a restricted-entry interval, unless the soap, single-use towels, water and clean change of clothing are protected from pesticide contamination in closed containers.

(4) Emergency eye-flushing.

(a) Whenever a handler is mixing or loading a pesticide product whose labeling requires protective eyewear for handlers, or is mixing or loading any pesticide using a closed system operating under pressure, the handler employer must provide at each mixing and loading station and handler decontamination sites, immediately available to the handler, at least one plumbed or portable eye wash system that is capable of delivering gently running water at a rate of at least 0.4 gallons (l.5 liters) per minute for at least fifteen minutes, at least six gallons of water. A plumbed or portable system meeting the above requirements shall be provided at all permanent mixing and loading sites.

(b) Whenever a handler is applying a pesticide product whose labeling requires protective eyewear for handlers, the handler employer must provide at least one pint of water per handler in portable containers that are immediately available to each handler.

NEW SECTION

WAC 296-307-114 Exemptions, exceptions and equivalency.

NEW SECTION

WAC 296-307-11405 Exemptions—40 C.F.R., Sec. 170.601. (1) Exemption for owners of agricultural establishments and their immediate families.

(a) On any agricultural establishment where a majority of the establishment is owned by one or more members of the same immediate family, the owner(s) of the establishment are not required to provide the protections of the following sections to themselves or members of their immediate family when they are performing handling activities or tasks related to the production of agricultural plants that would otherwise be covered by this part on their own agricultural establishment.

(i) WAC 296-307-10825 (6) through (10).

(ii) WAC 296-307-10830.

(iii) WAC 296-307-10905.

(iv) WAC 296-307-10910.

(v) WAC 296-307-10925.

(vi) WAC 296-307-10930 and 296-307-11225.

(vii) WAC 296-307-11205.

(viii) WAC 296-307-11210.

(ix) WAC 296-307-11215 (2) and (3) or 296-307-11220(4).

(x) WAC 296-307-11220 (3) through (5).

(xi) WAC 296-307-11415 (1) through (3) and (5) through (10).

(b) The owners of agricultural establishments must provide all of the applicable protections required by this part for any employees or other persons on the establishment that are not members of their immediate family.

(2) Exemption for certified crop advisors. Certified crop advisors may make their own determination for the appropriate personal protective equipment for entry into a treated area during a restricted-entry interval and substitute their self-determined set of personal protective equipment for the labeling-required personal protective equipment, and the requirements of WAC 296-307-10825 (5) and (6), 296-307-10835(11), 296-307-11225(1), 296-307-11210, and 296-307-11225 do not apply to certified crop advisors provided the application is complete and all of the following conditions are met:

(a) The crop advisor is certified or licensed as a crop advisor by the Washington state department of agriculture.

(b) The certification or licensing program requires pesticide safety training that includes all the information in WAC 296-307-11205 (3)(b) or (c) as applicable depending on the date of training.

(c) The crop advisor who enters a treated area during a restricted-entry interval only performs crop advising tasks while in the treated area.

NEW SECTION

WAC 296-307-11410 Exceptions for entry by workers during restricted-entry intervals—40 C.F.R., Sec. 170.603. An agricultural employer may direct workers to enter treated areas where a restricted-entry interval is in effect to perform certain activities as provided in this section, provided that the agricultural employer ensures all of the applicable conditions of this section and WAC 296-307-11415 are met.

(1) Exception for activities with no contact. A worker may enter a treated area during a restricted-entry interval if the agricultural employer ensures that all of the following conditions are met:

(a) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-entry interval applies including, but not limited to, soil, water, air, or surfaces of plants. This exception does not allow workers to perform any activities that involve contact with treated surfaces even if workers are wearing personal protective equipment.

(b) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 296-307-10915 (2)(c) or the pesticide product labeling have been met, and either inhalation exposure levels are below PELs in WAC 296-307-624, Part Y-6 Respiratory hazards, or respiratory protection is provided and worn according to requirements in WAC 296-307-594, Part Y-5.

(2) Exception for short-term activities. A worker may enter a treated area during a restricted-entry interval for short-term activities, if the agricultural employer ensures that all of the following requirements are met:

(a) No hand labor activity is performed.

(b) The time in treated areas where a restricted-entry interval is in effect does not exceed one hour in any twenty-four-hour period for any worker.

(c) No such entry is allowed during the first four hours after the application ends.

(d) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 296-307-10915 (2)(c) or the pesticide product labeling have been met, and either inhalation exposure levels are below PELs in WAC 296-307-624, Part Y-6 Respiratory hazards, or respiratory protection is provided and worn according to requirements in WAC 296-307-594, Part Y-5.

(3) Exception for an agricultural emergency.

(a) An agricultural emergency means a sudden occurrence or set of circumstances that the agricultural employer could not have anticipated and over which the agricultural employer has no control, that requires entry into a treated area during a restricted-entry interval, and when no alternative practices would prevent or mitigate a substantial economic loss. A substantial economic loss means a loss in profitability greater than that which would be expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by the agricultural emergency specific to the affected site and geographic area are considered. Losses resulting from mismanagement cannot be included when determining whether a loss is substantial.

(b) A worker may enter a treated area where a restricted-entry interval is in effect in an agricultural emergency to perform tasks necessary to mitigate the effects of the agricultural emergency, including hand labor tasks, if the agricultural employer ensures that all the following criteria are met:

(i) The Washington state department of agriculture declares an agricultural emergency that applies to the treated area, or agricultural employer has determined that the circumstances within the treated area are the same as circumstances the Washington state department of agriculture has previously determined would constitute an agricultural emergency.

(ii) The agricultural employer determines that the agricultural establishment is subject to the circumstances that result in an agricultural emergency meeting the criteria of (a) of this subsection.

(iii) If the labeling of any pesticide product applied to the treated area requires workers to be notified of the location of treated areas by both posting and oral notification, then the agricultural employer must ensure that no individual worker spends more than four hours out of any twenty-four-hour period in treated areas where such a restricted-entry interval is in effect.

(iv) No such entry is allowed during the first four hours after the application ends.

(v) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 296-307-10915 (2)(c) the pesticide product labeling have been met, and either inhalation exposure levels are below PELs in WAC 296-307-624, Part Y-6 Respiratory hazards, or respiratory protection is provided and worn according to requirements in WAC 296-307-594, Part Y-5.

(vi) A decontamination site has been provided in accordance with WISHA regulations.

(4) Exceptions for limited contact and irrigation activities. A worker may enter a treated area during a restricted-entry interval for limited contact or irrigation activities, if the agricultural employer ensures that all of the following requirements are met:

(a) No hand labor activity is performed.

(b) No worker is allowed in the treated area for more than eight hours in a twenty-four-hour period.

(c) No such entry is allowed during the first four hours after the application ends.

(d) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 296-307-10915 (2)(c) or the pesticide product labeling have been met, and either inhalation exposure levels are below PELs in WAC 296-307-624, Part Y-6 Respiratory hazards, or respiratory protection is provided and worn according to requirements in WAC 296-307-594, Part Y-5.

(e) The task is one that, if not performed before the restricted-entry interval expires, would cause substantial eco-

nomic loss, and there are no alternative tasks that would prevent substantial loss.

(f) With the exception of irrigation tasks, the need for the task could not have been foreseen.

(g) The worker has no contact with pesticide-treated surfaces other than minimal contact with feet, lower legs, hands, and forearms.

(h) The labeling of the pesticide product that was applied does not require that workers be notified of the location of treated areas by both posting and oral notification.

NEW SECTION

WAC 296-307-11415 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval—40 C.F.R., Sec. 170.605. If an agricultural employer directs a worker to perform activities in a treated area where a restricted-entry interval is in effect, all of the following requirements must be met:

(1) The agricultural employer must ensure that the worker is at least eighteen years old.

(2) Prior to early entry, the agricultural employer must provide to each early entry worker the information described in (a) through (h) of this subsection. The information must be provided orally in a manner that the worker can understand.

(a) Location of early entry area where work activities are to be performed.

(b) Pesticide(s) applied.

(c) Dates and times that the restricted-entry interval begins and ends.

(d) Which exception in WAC 296-307-11410 is the basis for the early entry, and a description of tasks that may be performed under the exception.

(e) Whether contact with treated surfaces is permitted under the exception.

(f) Amount of time the worker is allowed to remain in the treated area.

(g) Personal protective equipment required by the pesticide product labeling for early entry.

(h) Location of the pesticide safety information required in WAC 296-307-10830(1) or 296-307-10835(1) and the location of the decontamination supplies required in subsection (8) of this section.

(3) Prior to early entry, the agricultural employer must ensure that each worker either has read the applicable pesticide product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements and statements related to human hazards or precautions, first aid, and user safety.

(4) The agricultural employer must ensure that each worker who enters a treated area during a restricted-entry interval is provided the personal protective equipment specified in the pesticide product labeling for early entry. The agricultural employer must ensure that the worker uses the personal protective equipment as intended according to manufacturer's instructions and follows any other applicable requirements on the pesticide product labeling. Personal protective equipment must conform to the standards in WAC 296-307-11220 (2)(a) through (i).

(5) The agricultural employer must maintain the personal protective equipment in accordance with WAC 296-307-11220 (3) and (4).

(6) The agricultural employer must ensure that no worker is allowed or directed to wear personal protective equipment without implementing measures sufficient to prevent heat-related illness and that each worker is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

(7)(a) The agricultural employer must instruct each worker on the proper use and removal of the personal protective equipment, and as appropriate, on its cleaning, maintenance and disposal. The agricultural employer must not allow or direct any worker to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(b) Each worker is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

Note: Additional requirements in WAC 296-307-097 Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

(8) During any early entry activity, the agricultural employer must provide decontamination supplies in accordance with WAC 296-307-11225, except the decontamination supplies must be outside any area being treated with pesticides or subject to a restricted-entry interval, unless the decontamination supplies would otherwise not be reasonably accessible to workers performing early entry tasks.

(9) If the pesticide product labeling of the product applied requires protective eyewear, the agricultural employer must provide at least one pint of water per worker in portable containers for eye flushing that is immediately available to each worker who is performing early entry activities.

(10) At the end of any early entry activities the agricultural employer must provide, at the site where the workers remove personal protective equipment, soap, single-use towels and an adequate amount of water so that the workers may wash thoroughly. At least ten gallons of water for one employee and twenty gallons of water for two or more employees shall be provided at early entry sites that do not have running water.

NEW SECTION

WAC 296-307-11420 Exceptions to personal protective equipment requirements specified on pesticide product labeling—40 C.F.R., Sec. 170.607. (1) Body protection.

(a) A chemical-resistant suit may be substituted for coveralls. If a chemical-resistant suit is substituted for coveralls, any labeling requirement for an additional layer of clothing beneath the coveralls is waived.

(b) A chemical-resistant suit may be substituted for coveralls and a chemical-resistant apron.

(2) Boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.

(3) Gloves. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during

activities with plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they must be worn only with chemical-resistant liners and they must not be worn for any other use.

(4) Closed systems.

(a) When pesticides are being mixed or loaded using a closed system that meets all of the requirements in (b) of this subsection, and the handler employer meets the requirements in (c) of this subsection, the following exceptions to labeling-specified personal protective equipment are permitted:

(i) Handlers using a closed system to mix or load pesticides with a signal word of "DANGER" or "WARNING" may substitute a long-sleeved shirt, long pants, shoes and socks, chemical-resistant apron, protective eyewear, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.

(ii) Handlers using a closed system to mix or load pesticides other than those specified in (a)(i) of this subsection may substitute protective eyewear, long-sleeved shirt, long pants, and shoes and socks for the labeling-specified personal protective equipment.

(b) The exceptions in (a) of this subsection apply only in the following situations:

(i) Where the closed system removes the pesticide from its original container and transfers the pesticide product through connecting hoses, pipes and couplings that are sufficiently tight to prevent exposure of handlers to the pesticide product, except for the negligible escape associated with normal operation of the system.

(ii) When loading intact, sealed, water soluble packaging into a mixing tank or system. If the integrity of a water soluble packaging is compromised (for example, if the packaging is dissolved, broken, punctured, torn, or in any way allows its contents to escape), it is no longer a closed system and the labeling-specified personal protective equipment must be worn.

(c) The exceptions in (a) of this subsection apply only where the handler employer has satisfied the requirements in WAC 296-307-10835 and all of the following conditions:

(i) Each closed system must have written operating instructions that are clearly legible and include: Operating procedures for use, including the safe removal of a probe; maintenance, cleaning and repair; known restrictions or limitations relating to the system, such as incompatible pesticides, sizes (or types) of containers or closures that cannot be handled by the system; any limits on the ability to measure a pesticide; and special procedures or limitations regarding partially filled containers.

(ii) The written operating instructions for the closed system must be available at the mixing or loading site and must be made available to any handlers who use the system.

(iii) Any handler operating the closed system must be trained in its use and operate the closed system in accordance with its written operating instructions.

(iv) The closed system must be cleaned and maintained as specified in the written operating instructions and as needed to make sure the system functions properly.

(v) All personal protective equipment specified in the pesticide product labeling is immediately available to the handler for use in an emergency.

(vi) Protective eyewear must be worn when using closed systems operating under pressure.

(5) Enclosed cabs.

(a) If handling tasks are performed from inside a cab that has a nonporous barrier which totally surrounds the occupants of the cab and prevents contact with pesticides outside of the cab, exceptions to personal protective equipment specified on the product labeling for that handling activity are permitted as provided in (a) and (b) of this subsection.

(b) Persons occupying an enclosed cab shall have all labeling-specified personal protective equipment immediately available and stored in a chemical-resistant container, such as a plastic bag. They shall wear such personal protective equipment if it is necessary to exit the cab within a treated area during application or when a restricted-entry interval is in effect. Once personal protective equipment is worn in the treated area, it must be removed before reentering the cab to prevent contamination of the cab.

(c) Persons occupying such an enclosed cab may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device is specified on the pesticide product labeling for the handling activity, it must be worn.

(d) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer to provide respiratory protection equivalent to or greater than a dust/mist filtering respirator may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device other than a particulate/dust/mist filtering respirator is specified on the pesticide product labeling, it must be worn.

(6) Aerial applications.

(a) Use of gloves. The wearing of chemical-resistant gloves when entering or leaving an aircraft used to apply pesticides is optional, unless such gloves are required on the pesticide product labeling. If gloves are brought into the cockpit of an aircraft that has been used to apply pesticides, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.

(b) Open cockpit. Handlers applying pesticides from an open cockpit aircraft must use the personal protective equipment specified in the pesticide product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A helmet with a face shield lowered to cover the face may be substituted for protective eyewear.

(c) Enclosed cockpit. Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.

(7) Crop advisors.

(a) Provided the conditions in (b) through (d) of this subsection are met, crop advisors and their employees entering treated areas to perform crop advising tasks while a

restricted-entry interval is in effect may substitute either of the following sets of personal protective equipment for the personal protective equipment specified on the pesticide labeling for handler activities:

(i) The personal protective equipment specified on the pesticide product labeling for early entry.

(ii) Coveralls, shoes plus socks and chemical-resistant gloves made of any waterproof material, and eye protection if the pesticide product labeling applied requires protective eyewear for handlers.

(b) The application has been complete for at least four hours.

(c) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 296-307-10915 (2)(c) or the pesticide product labeling have been met, and either inhalation exposure levels are below PELs in WAC 296-307-624, Part Y-6 Respiratory hazards, or respiratory protection is provided and worn according to requirements in WAC 296-307-594, Part Y-5.

(d) The crop advisor or crop advisor employee who enters a treated area during a restricted-entry interval only performs crop advising tasks while in the treated area.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-307-107	Federal worker protection standards—Washington state department of agriculture.
WAC 296-307-110	Scope and purpose—Worker protection standards—40 C.F.R., § 170.1.
WAC 296-307-11005	Definitions—Worker protection standards—40 C.F.R., § 170.3.
WAC 296-307-11010	General duties and prohibited actions—Worker protection standards—40 C.F.R., § 170.7.
WAC 296-307-11015	Violations of this part—Worker protection standards—40 C.F.R., § 170.9.
WAC 296-307-120	Applicability of this section—Standards for workers—40 C.F.R., § 170.102.
WAC 296-307-12005	Exceptions—Standards for workers—40 C.F.R., § 170.103.
WAC 296-307-12010	Exemptions—Standards for workers—40 C.F.R., § 170.104.
WAC 296-307-12015	Restrictions associated with pesticide applications—Standards for workers—40 C.F.R., § 170.110.
WAC 296-307-12020	Entry restrictions—Standards for workers—40 C.F.R., § 170.112.
WAC 296-307-12025	Notice of applications—Standards for workers—40 C.F.R., § 170.120.
WAC 296-307-12030	Providing specific information about applications—Standards for workers—40 C.F.R., § 170.122.
WAC 296-307-12035	Notice of applications to handler employers—Standards for workers—40 C.F.R., § 170.124.
WAC 296-307-12040	Pesticide safety training—Standards for workers—40 C.F.R., § 170.130.
WAC 296-307-12045	Posted pesticide safety information—Standards for workers—40 C.F.R., § 170.135.
WAC 296-307-12050	Decontamination—Standards for workers—40 C.F.R., § 170.150.
WAC 296-307-12055	Emergency assistance—Standards for workers—40 C.F.R., § 170.160.
WAC 296-307-130	Applicability of this section—Standards for pesticide handlers—40 C.F.R., § 170.202.
WAC 296-307-13005	Exemptions—Standards for handlers—40 C.F.R., § 170.204.
WAC 296-307-13010	Restrictions during applications—Standards for pesticide handlers—40 C.F.R., § 170.210.
WAC 296-307-13015	Providing specific information about applications—Standards for pesticide handlers—40 C.F.R., § 170.222.
WAC 296-307-13020	Notice of applications to agricultural employers—Standards for pesticide handlers—40 C.F.R., § 170.224.
WAC 296-307-13025	Pesticide safety training—Standards for pesticide handlers—40 C.F.R., § 170.230.
WAC 296-307-13030	Knowledge of labeling and site-specific information—Standards for pesticide handlers—40 C.F.R., § 170.232.
WAC 296-307-13035	Safe operation of equipment—Standards for pesticide handlers—40 C.F.R., § 170.234.
WAC 296-307-13040	Posted pesticide safety information—Standards for pesticide handlers—40 C.F.R., § 170.235.
WAC 296-307-13045	Personal protective equipment—Standards for pesticide handlers—40 C.F.R., § 170.240.

WAC 296-307-13050	Decontamination—Standards for pesticide handlers—40 C.F.R., § 170.250.
WAC 296-307-13055	Emergency assistance—Standards for pesticide handlers—40 C.F.R., § 170.260.

WSR 19-21-175
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed October 23, 2019, 10:00 a.m., effective November 23, 2019]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is repealing WAC 388-105-0005. Providers will still be able to find out their rates from the aging and long-term support administration's website, their residents' case managers, from their union if they have one, or by contacting the department.

Citation of Rules Affected by this Order: Repealing WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

Adopted under notice filed as WSR 19-15-085 on July 19, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 1.

Date Adopted: October 22, 2019.

Katherine I. Vasquez
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-105-0005	The daily medicaid payment rates for clients who have been assessed using the CARE tool and reside at an AFH or assisted living facility contracted to provide assisted living, adult residential care, or enhanced adult residential care services.