

EXPEDITED RULE MAKING

CR-105 (June 2004)

(Implements RCW 34.05.353)

EXPEDITED RULE MAKING ONLY

Agency: Insurance Commissioner

Title of rule and other identifying information: Audited Financial Statement Reporting Insurance Commissioner Matter No. R 2009-09

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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AND RECEIVED BY [September 21, 2009](#)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed rules amend the Audited Financial Statement Regulations (WAC 284-07-100 through WAC 284-07-230) to incorporate an amendment to the National Association of Insurance Commissioner's (NAIC) Accreditation Standards. The amendments will improve the Commissioner's surveillance of the financial condition of insurers by: (1) strengthening the independence of certified public accountants preparing audits of insurer financial statements; (2) establishing more control and independence by the Audit committee of insurer boards of directors; and (3) requiring insurers with \$500 million or more in direct and assumed premiums to annually prepare a Management's Report of Internal Control over Financial Reporting.

Reasons supporting proposal: Insurers must file audited financial statements for each calendar year with the Commissioner by June of the following year. On December 31, 2009, an amendment to the NAIC accreditation standard related to the audited financial statements filed with the Commissioner becomes effective. The new standards apply to calendar year 2009 statements filed by June 2010 and will improve the Commissioner's surveillance of the financial condition of insurers.

Statutory authority for adoption: RCW 48.02.060, 48.44.050, 48.46.200,

Statute being implemented: RCW 48.05.250, 48.44.095, 48.46.080, 48.46.200, 48.125.090

Is rule necessary because of a:

Federal Law? Yes · No

Federal Court Decision? Yes · No

State Court Decision? Yes · No

If yes, CITATION:

DATE June 20, 2009

NAME (TYPE OR PRINT) Mike Kreidler

SIGNATURE /s/

TITLE Insurance Commissioner

Name of proponent: (person or organization) Mike Kreidler, Insurance Commissioner

Private

Public

· Governmental

Name of agency personnel responsible for:

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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

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OTS-2479.3

AMENDATORY SECTION (Amending Matter No. R 2006-06, filed 7/31/06, effective 8/31/06)

WAC 284-07-100 Purpose and scope. (1) The purpose of ~~this regulation,~~ WAC 284-07-100 through 284-07-230, is to improve the Washington state insurance commissioner's surveillance of the financial condition of insurers by requiring:

(a) An annual ~~examination by independent certified public accountants~~ audit of ~~the~~ financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants;

(b) Communications of Internal Control Related Matters Noted in an Audit; and

(c) Management's report of internal control over financial reporting.

(2) Every insurer, as defined in WAC 284-07-110, shall be subject to ~~this regulation~~ WAC 284-07-100 through 284-07-230. Insurers having direct premiums written of less than one million dollars in any calendar year and less than one thousand policyholders or certificate holders of ~~directly~~ direct written policies nationwide at the end of ~~such the~~ calendar year shall be exempt from ~~this rule~~ WAC 284-07-100 through 284-07-230 for ~~such the~~ year (unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of one million dollars or more will not be so exempt.

(3) Foreign or alien insurers filing ~~the~~ audited financial reports in another state, pursuant to ~~such other~~ that state's requirement for filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from ~~this rule~~ WAC 284-07- 120 through 284-07-210 if:

(a) A copy of the audited financial report, ~~Report on Significant Deficiencies in Communication of Internal Controls Related Matters Noted in an Audit~~, and the Accountant's Letter of Qualifications ~~which that~~ are filed with ~~such the~~ other state are filed with the NAIC in accordance with the filing dates specified in WAC 284-07-120, 284-07-190 and 284-07-200, respectively (Canadian insurers may submit accountant's reports as filed with the Office of the Superintendent of Financial Institutions, Canada); and

(b) A copy of any Notification of Adverse Financial Condition Report filed with ~~such the~~ other state is filed with the NAIC within the time specified in WAC 284-07-180.

~~Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance.~~

(4) ~~This rule~~ Foreign or alien insurers required to file management's report of internal control over financial reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.

(5) WAC 284-07-100 through 284-07-230 shall not prohibit, preclude, or in any way limit the commissioner from ordering, conducting, or performing examinations of insurers under the rules, regulations, practices, and procedures of the insurance commissioner.

~~(5) After January 1, 2003,~~ (6) All reports and filings required by WAC 284-07-100 through 284-07-230 must be filed electronically with the commissioner. Insurers must electronically transmit the report or filing in PDF or other format as noted on the commissioner's web site. The commissioner has the discretion to allow an insurer to file paper copies of reports and filings required by WAC 284-07-100 through 284-07-230. The insurer must demonstrate that filing in electronic form will create an undue financial hardship for the insurer. Applications for permission to file in hard copy must be received by the commissioner at least ninety days before the statement of annual statement is due.

~~(6)~~ (7) To comply with statutory or other requirements that reports or filings be signed or verified, insurers and accountants may:

(a) Use a method of electronic signature verification that has been approved by the commissioner; or

(b) File a paper copy of the signature or verification at the time of the electronic transmission of the report or filing.

~~(7)~~ (8) The report or filing and the appropriate signatures and/or verifications must both be received to complete a filing. The date of receipt of the later of the two parts of the filing is considered the receipt date of the report or filing.

AMENDATORY SECTION (Amending Matter No. R 2008-29, filed 3/11/09, effective 4/11/09)

WAC 284-07-110 Definitions. For the purposes of ~~this regulation~~ WAC 284-07-100 through 284-07-230 the following definitions shall apply:

(1) ~~"Audited financial report" means and includes those items specified in WAC 284-07-130.~~

~~(2)~~ "Accountant" ~~and or~~ "independent certified public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which ~~they are~~ he or she is licensed to practice; for Canadian and British companies, the terms mean a "Canadian-chartered or British-chartered accountant."

~~(3)~~ (2) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Audit committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of WAC 284-07-100 through 284-07-230 at the election of the controlling person. Refer to WAC 284-07-213(5) for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

(4) "Audited financial report" means and includes those items specified in WAC 284-07-130.

(5) "Group of insurers" means those licensed insurers included in the reporting requirements of chapters 48.31B and 48.31C RCW, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal control over financial reporting.

(6) "Indemnification" means an agreement of indemnity or a release ~~of~~ from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

~~(4)~~ (7) "Independent board member" has the same meaning as described in WAC 284-07-213(3).

(8) "Insurer" has the same meaning as set forth in RCW 48.01.050. It also includes health care service contractors registered under chapter 48.44 RCW, health maintenance organizations registered under chapter 48.46 RCW, ~~and~~ fraternal benefit societies registered under chapter 48.36A RCW, and self-funded multiple employer welfare arrangements authorized under chapter 48.125 RCW.

~~(5)~~ (9) "Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in WAC 284-07-130 (2)(b) through (g) and includes those policies and procedures that:

(a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

(b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in WAC 284-07-130 (2)(b) through (g) and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

(c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in WAC 284-07-130 (2)(b) through (g).

(10) "NAIC" means the National Association of Insurance Commissioners.

~~(6)~~ (11) "Policy holder" shall also mean subscriber.

(12) "SEC" means the United States Securities and Exchange Commission.

(13) "Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

(14) "Section 404 report" means management's report on internal control over financial reporting as defined by the SEC and the related attestation report of the independent certified public accountant described in WAC 284-07-110(1).

(15) "SOX compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

(a) The preapproval requirements of Section 201 (Section 10A(i) of the Securities and Exchange Act of 1934);

(b) The audit committee independence requirements of Section 301 (Section 10A (m)(3) of the Securities and Exchange Act of 1934); and

(c) The internal control of financial reporting requirements of Section 404 (Item 308 of SEC Regulations S-K).

AMENDATORY SECTION (Amending Order R 92-10, filed 9/9/92, effective 10/10/92)

WAC 284-07-120 General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment. (1) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety days advance notice to the insurer.

(2) Extensions of the June 1 filing date may be granted by the commissioner for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting ~~such an~~ extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

(3) If an extension is granted in accordance with the provisions in subsection (2) of this section, a similar extension of thirty days is granted to the filing of management's report of internal control over financial reporting.

(4) Every insurer required to file an annual audited financial report pursuant to WAC 284-07-100 through 284-07-230 shall designate a group of individuals as constituting its audit committee, as defined in WAC 284-07-110(3). The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of WAC 284-07-100 through 284-07-230 at the election of the controlling person.

AMENDATORY SECTION (Amending Matter No. R 2002-07, filed 10/23/02, effective 11/23/02)

WAC 284-07-130 Contents of annual audited financial report.

(1) The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the commissioner of the state of domicile.

(2) The annual audited financial report shall include the following:

(a) Report of independent certified public accountant.

(b) Balance sheet reporting admitted assets, liabilities, capital, and surplus.

(c) Statement of operations. (d) Statement of cash flows.

(e) Statement of changes in capital and surplus.

(f) Notes to financial statements. These notes shall be those required by the appropriate NAIC Annual Statement Instructions and *NAIC Accounting Practices and Procedures Manual*. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to RCW 48.05.250, 48.05.073, 48.36A.260, 48.43.050, 48.43.097, 48.44.095, ~~or~~ 48.46.080, or 48.125.090 with a written description of the nature of these differences.

(g) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statements shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

AMENDATORY SECTION (Amending Order R 94-2, filed 1/27/94, effective 2/27/94)

WAC 284-07-140 Designation of independent certified public accountant. (1) Each insurer required by ~~this regulation~~ WAC 284-07-100 through 284-07-230 to file an annual audited financial report must, within sixty days after becoming subject to ~~such the~~ requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit ~~required by this regulation set forth in WAC 284-07-100 through 284-07-230~~. ~~Each Insurers~~ not retaining an independent certified public accountant on the effective date of ~~this rule, or the date on which this rule becomes applicable to it,~~ WAC 284-07-100 through 284-07-230 shall register the name and address of their retained independent certified public accountant not less than ~~two~~ six months before the date when the first audited financial report is to be filed.

(2) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner stating that the accountant is aware of the provisions of the Washington state insurance code, Title 48 RCW, and the rules and regulations ~~thereunder,~~ that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the commissioner, specifying such exceptions as ~~are believed~~ he or she may believe appropriate.

(3) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall, within five business days, notify the commissioner of this event. The insurer shall also furnish the commissioner with a separate letter within ten business days of the above notification stating whether in the twenty-four months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request ~~such the~~ former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for ~~disagreement~~ which he or she does not agree; and the insurer shall furnish such responsive letter from the former accountant to the commissioner together with its own.

AMENDATORY SECTION (Amending Matter No. R 2008-29, filed 3/11/09, effective 4/11/09)

WAC 284-07-150 Qualifications of independent certified public accountant. (1) The commissioner shall not recognize ~~any a~~ person or firm as a qualified independent certified public accountant if the person or firm:

(a) Is not in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

(b) Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as an indemnification) with respect to the audit of the insurer.

(2) Except as otherwise provided ~~herein in WAC 284-07-100 through 284-07-230, the commissioner shall recognize~~ an independent certified public accountant ~~shall be recognized~~ as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants (AICPA) and ~~the code of professional conduct statutes (chapter 18.04 RCW) and rules (chapter 4-25 WAC)~~ of the ~~state of~~ Washington state board of ~~public~~ accountancy, or similar ~~applicable code~~ rules.

(3) A qualified independent certified public accountant may enter into any agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under chapters 48.31 and 48.99 RCW, the mediation or arbitration provisions shall operate at the option of the statutory successor.

(4) ~~No (a) The lead (or coordinating) partner or other person responsible for rendering a report (having primary responsibility for the audit)~~ may not act in that capacity for more than ~~seven~~ five consecutive years. ~~Following any period of service such~~ The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of ~~two~~ five consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application must be made at least thirty days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

~~(a)~~ (i) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;

~~(b)~~ (ii) Premium volume of the insurer; and

~~(c)~~ (iii) Number of jurisdictions in which the insurer transacts business.

~~The requirements of this subsection shall become effective two years after the enactment of this regulation.~~

(b) The insurer shall file, with its annual statement filing, the approval for relief from WAC 284-07-150 (4)(a) with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(5) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by, any natural person who:

(a) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

(b) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under ~~this rule~~ WAC 284-07-100 through 284-07-230; or

(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of ~~this rule~~ WAC 284-07-100 through 284-07-230.

(6) The commissioner as provided in RCW 48.02.060 may hold a hearing to determine whether ~~a~~ an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to ~~this regulation~~ WAC 284-07-100 through 284-07-230 and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of ~~this regulation~~ WAC 284-07-100 through 284-07-230.

(7)(a) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit services:

(i) Bookkeeping or other services related to the accounting records or financial statements of the insurer;

(ii) Financial information systems design and implementation; (iii) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

(iv) Actuarially oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statements only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements.

An accountant's actuary may also issue an actuarial opinion or certification (opinion) on an insurer's reserves if the following conditions have been met:

(A) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

(B) The insurer has competent personnel (or engages a third-party actuary) to estimate the reserves for which management takes responsibility; and

(C) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

(v) Internal audit outsourcing services; (vi) Management functions or human resources;

(vii) Broker or dealer, investment adviser, or investment banking services;

(viii) Legal services or expert services unrelated to the audit; or

(ix) Any other services that the commissioner determines, by rule, are impermissible.

(b) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role of the insurer.

(8) Insurers having direct written and assumed premiums of less than one hundred million dollars in any calendar year may request an exemption from subsection (7)(a) of this section. The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with WAC 284-07-100 through 284-07-230 would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

(9) A qualified independent certified public accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in subsection (7)(a) of this section or that do not conflict with subsection (7)(b) of this section, only if the activity is approved in advance by the audit committee, in accordance with subsection (10) of this section.

(10) All auditing services and nonaudit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to nonaudit services if the insurer is a SOX compliant entity or a direct or indirect wholly owned subsidiary of a SOX compliant entity or:

(a) The aggregate amount of all such nonaudit services provided to the insurer constitutes not more than five percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the nonaudit services are provided;

(b) The services were not recognized by the insurer at the time of the engagement to be nonaudit services; and

(c) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more of the members of the audit committee who are the members of the board

of directors to whom authority to grant such approvals has been delegated by the audit committee.

(11) The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by subsection (10) of this section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

(12)(a) The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any other person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

(b) The insurer shall file, with its annual statement filing, the approval for relief from (a) of this subsection with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

AMENDATORY SECTION (Amending Order R 92-10, filed 9/9/92, effective 10/10/92)

WAC 284-07-160 Consolidated or combined audits. An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and ~~such~~ the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

(1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet-~~;~~

(2) Amounts for each insurer subject to this section shall be stated separately-~~;~~

(3) Noninsurance operations may be shown on the worksheet on a combined or individual basis-~~;~~

(4) Explanations of consolidating and eliminating entries shall be included-~~;~~ and

(5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

AMENDATORY SECTION (Amending Order R 92-10, filed 9/9/92, effective 10/10/92)

WAC 284-07-170 Scope of ~~examination~~ audit and report of independent certified public accountant. Financial statements furnished pursuant to WAC 284-07-130 hereof shall be examined by an independent certified public accountant. The ~~examination~~ audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, Consideration of Internal Control in a Financial Statement Audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a management's report of internal control over financial reporting pursuant to WAC 284-07-217, the independent certified public accountant should consider (as that term is defined in Statement of Auditing Standards (SAS) No. 102, Defining Professional Requirements in Statements on Auditing Standards, or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration ~~should also~~ shall be given to ~~such other~~ the procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

AMENDATORY SECTION (Amending Order R 94-2, filed 1/27/94, effective 2/27/94)

WAC 284-07-180 Notification of adverse financial condition.

(1) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under ~~examination~~ audit or that the insurer does not meet the minimum capital and surplus or net worth requirements of the Washington state insurance code, Title 48 RCW, as of that date. An insurer ~~who~~ that has received a report pursuant to this subsection shall forward a copy of the report to the commissioner within five business days of receipt of ~~such~~ the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive ~~such~~ the evidence within the required five business day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next five business days.

(2) No independent public accountant shall, by virtue of ~~this regulation~~ WAC 284-07-100 through 284-07-230, be liable in any manner to any person for any statement made in connection with subsection (1) of this section if ~~such~~ the statement is made in good faith in compliance with subsection (1) of this section.

(3) If the accountant, subsequent to the date of the audited financial report filed pursuant to ~~this regulation~~ WAC 284-07-100 through 284-07-230, becomes aware of facts which might have affected his or her report, the commissioner notes the obligation of the accountant ~~should to~~ take such action as ~~is~~ prescribed in Volume 1,

Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants ([AICPA](#)) or its replacement.

AMENDATORY SECTION (Amending Order R 92-10, filed 9/9/92, effective 10/10/92)

WAC 284-07-190 ~~Report on significant deficiencies in~~ Communication of internal controls related matters noted in an audit. (1) In addition to the annual audited financial ~~statements report~~, each insurer shall furnish the commissioner with a written ~~report prepared by the accountant describing significant deficiencies communication as to any unremediated material weaknesses in the insurer's its~~ internal controls ~~structure over financial reporting~~ noted ~~by the accountant~~ during the audit. Such communication shall be prepared by the accountant within sixty days after the filing of the annual audited financial report, and shall contain a description of any unremediated material weakness (as the term material weakness is defined by SAS No. 60, Communication of Internal Control Structure Related Matters Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants) requires an accountant to communicate significant deficiencies (known as "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the commissioner within sixty days after the filing of the annual audited financial statements, or its replacement) as of December 31 immediately preceding (so as to coincide with the audited financial report discussed in WAC 284-07-120(1)) in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

(2) The insurer is required to provide a description of remedial actions taken or proposed to correct ~~significant deficiencies~~ unremediated material weaknesses, if such actions are not described in the accountant's ~~report~~ communication.

AMENDATORY SECTION (Amending Order R 92-10, filed 9/9/92, effective 10/10/92)

WAC 284-07-200 Accountant's letter of qualifications. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(1) That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants ([AICPA](#)) and the statutes (chapter 18.04 RCW) and rules (chapter 4-25 WAC) of ~~professional conduct of~~ the Washington state board of ~~public~~ accountancy, or similar ~~applicable~~ rules.;

(2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within ~~this rule~~ WAC 284-07-100 through 284-07-230 shall be construed as prohibiting the accountant from utilizing

such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards-;

(3) That the accountant understands the annual audited financial report and ~~the~~ his or her opinion thereon will be filed in compliance with ~~this rule~~ WAC 284-07-100 through 284-07-230 and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers-;

(4) That the accountant consents to the requirements of WAC 284-07-210 and that the accountant consents and agrees to make available for review by the commissioner, ~~or his~~ the commissioner's designee or appointed agent, the workpapers, as defined in WAC 284-07-210-;

(5) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants- (AICPA); and

(6) A representation that the accountant is in compliance with the requirements of WAC 284-07-150.

AMENDATORY SECTION (Amending Order R 92-10, filed 9/9/92, effective 10/10/92)

WAC 284-07-210 Definition, availability, and maintenance of ~~CPA~~ independent certified public accountants workpapers. (1) Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the ~~examination~~ accountant's audit of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of ~~the examination~~ his or her audit of the financial statements of an insurer and which support the accountant's opinion ~~thereof~~.

(2) Every insurer required to file an audited financial report pursuant to ~~this regulation~~ WAC 284-07-100 through 284-07-230, shall require the accountant to make available for review by the commissioner's examiners, all workpapers prepared in the conduct of the ~~examination~~ accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the commissioner's office or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the commissioner has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

(3) In the conduct of the aforementioned periodic review by the commissioner's examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the commissioner's office. Such reviews by the commissioner's examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded

the same confidentiality as other examination workpapers generated by the insurance commissioner.

NEW SECTION

WAC 284-07-213 Requirements for audit committees. This section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX compliant entity or a direct or indirect wholly owned subsidiary of a SOX compliant entity.

(1) The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the audited financial report or related work pursuant to WAC 284-07-100 through 284-07-230. Each accountant shall report directly to the audit committee.

(2) Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection (5) of this section and WAC 284-07-110(3).

(3) In order to be considered independent for purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise nonindependent members, that law shall prevail and the members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

(4) If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the state, may remain an audit committee member for the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

(5) To exercise the election of the controlling person to designate the audit committee for purposes of WAC 284-07-100 through 284-07-230, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

(6)(a) The audit committee shall require the accountant that performs for an insurer any audit required by WAC 284-07-100 through 284-07-230 to timely report to the audit committee in accordance with the requirements of SAS 61, *Communication with Audit Committees*, or its replacement, including:

(i) All significant accounting policies and material permitted practices;

(ii) All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

(iii) Other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

(b) If an insurer is a member of an insurance or health carrier holding company system, the reports required by (a) of this subsection may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

(7) The proportion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums

\$0 - \$300,000,000	Over \$300,000,000 - \$500,000,000	Over \$500,000,000
No minimum requirements. See also Note A and B.	Majority (50% or more) of members shall be independent. See also Note A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

Note A: The commissioner has authority by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a RBC action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than five hundred million dollars in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

(8) An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and federal flood program, less than five hundred million dollars may make application to the commissioner for a waiver from this section's requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from this section with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

NEW SECTION

WAC 284-07-215 Conduct of insurers in connection with the preparation of required reports and documents. (1) No director or officer of an insurer shall, directly or indirectly:

(a) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under WAC 284-07-100 through 284-07-230; or

(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under WAC 284-07-100 through 284-07-230.

(2) No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to WAC 284-07-100 through 284-07-230 if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

(3) For purposes of subsection (2) of this section, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

(a) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards);

(b) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

(c) Not to withdraw an issued report; or

(d) Not to communicate matters to an insurer's auditcommittee.

NEW SECTION

WAC 284-07-217 Management's report of internal control over financial reporting. (1) Every insurer required to file an audited financial report pursuant to WAC 284-07-100 through 284-07-230 that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and federal flood program, of five hundred million dollars or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in WAC 284-07-110. The report shall be filed with the commissioner along with the *Communications of Internal Control Related*

Matters Noted in an Audit described under WAC 284-07-190. Management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

(2) Notwithstanding the premium threshold in subsection (1) of this section, the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in WAC 284-16-310.

(3) An insurer or group of insurers that is:

(a) Directly subject to Section 404;

(b) Part of a holding company system whose parent is directly subject to Section 404;

(c) Not directly subject to Section 404 but is a SOX compliant entity; or

(d) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity may file its or its parent's Section 404 Report and an addendum in satisfaction of this section's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in WAC 284-07-130 (2)(b) through (g)) were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements (those items included in WAC 284-07-130 (2)(b) through (g)) excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file:

(i) A WAC 284-07-217 report; or

(ii) The Section 404 Report and a WAC 284-07-217 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

(4) Management's report of internal control over financial reporting shall include:

(a) A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

(b) A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective

to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

(c) A statement that briefly describes the approach or processes by which management evaluated the effectiveness of the internal control over financial reporting;

(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

(e) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weakness in its internal control over financial reporting;

(f) A statement regarding the inherent limitations of internal control systems; and

(g) Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

(5) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsection (4) of this section, are made. Management may base its assertions, in part, upon review, monitoring and testing of internal controls undertaken in the normal course of its activities.

(a) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation.

(b) Management's report on internal control over financial reporting, required by subsection (1) of this section, and any documentation provided in support thereof during the course of a financial condition examination, shall, to the extent provided by law, be kept confidential by the commissioner.

AMENDATORY SECTION (Amending Order R 94-2, filed 1/27/94, effective 2/27/94)

WAC 284-07-220 Exemptions and effective dates. (1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with ~~this regulation~~ any and all provisions of WAC 284-07-100 through 284-07-230 if the commissioner finds, upon review of the application, that compliance with WAC 284-07-100 through 284-07-230 would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten days from a denial of an insurer's written request for an exemption from ~~this regulation~~ WAC

284-07-100 through 284-07-230, ~~such the~~ insurer may request in writing a hearing on its application for an exemption. ~~Such The~~ hearing shall be held in accordance with the rules and procedures pertaining to administrative hearings.

(2) Domestic insurers retaining a certified public accountant on the effective date of ~~this regulation~~ WAC 284-07-100 through 284-07-230 who ~~qualifies~~ qualify as independent shall comply with ~~this regulation~~ WAC 284-07-100 through 284-07-230 for the year ending December 31, 1992, and each year thereafter unless the commissioner permits otherwise.

(3) Domestic insurers not retaining a certified public accountant on the effective date of ~~this regulation~~ WAC 284-07-100 through 284-07-230 who qualify as independent may meet the following schedule for compliance unless the commissioner permits otherwise.

(a) As of December 31, 1992, file with the commissioner:

~~(i) Report of independent certified public accountant;~~

~~(ii) Audited balance sheet;~~

~~(iii) Notes to audited balance sheet~~ an audited financial report.

(b) For the year ending December 31, 1992, and each year thereafter, ~~such the~~ insurers shall file with the commissioner all reports and communications required by ~~this regulation~~ WAC 284-07-100 through 284-07-210.

(4) Foreign insurers shall comply with ~~this regulation~~ WAC 284-07-100 through 284-07-230 for the year ending December 31, 1992, and each year thereafter, unless the commissioner permits otherwise.

~~(5) An insurer who on December 31, 1993, was not subject to WAC 284-07-100 through 284-07-230, and who on that date retained a certified public accountant, who is qualified as independent, shall comply with this regulation for the year ending December 31, 1993, and each year thereafter unless the commissioner permits by order, bulletin, letter, or otherwise, for a specific insurer or any one or more insurers. The requirements of WAC 284-07-150(4) shall be in effect for audits of the year beginning January 1, 2010 and thereafter.~~

~~(6) An insurer who on December 31, 1993, was not subject to WAC 284-07-100 through 284-07-230, and who on that date did not retain a certified public accountant, who is qualified as independent, shall meet the following minimum schedule for compliance unless the commissioner permits by order, bulletin, letter, or otherwise, for a specific insurer or any one or more insurers.~~

~~(a) As of December 31, 1993, file with the commissioner by June 1, 1994:~~

~~(i) Report of independent certified public accountant;~~

~~(ii) Audited balance sheet;~~

~~(iii) Notes to audited balance sheet.~~

~~(b) And, for the year ending December 31, 1994, and each year thereafter, such insurers shall file with the commissioner all reports required by this regulation. The requirements of WAC 284- 07-213 are to be in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written premium and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to change in premiums shall have one year following the year the threshold is exceeded (but not later than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.~~

(7) The requirements of WAC 284-07-150 (7) through (12), 284- 07-190, 284-07-215, and 284-07-217 are effective beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

AMENDATORY SECTION (Amending Order R 92-10, filed 9/9/92, effective 10/10/92)

WAC 284-07-230 Canadian and British companies. (1) In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by ~~such the~~ companies with their ~~domiciliary~~ supervision authority duly audited by an independent chartered accountant.

(2) For ~~such the~~ insurers, the letter required in WAC 284-07-140(2) shall state that the accountant is aware of the requirements relating to the annual audited ~~statement report~~ filed with the commissioner pursuant to WAC 284-07-120 and shall affirm that the opinion expressed is in conformity with ~~such those~~ requirements.

NEW SECTION

WAC 284-07-240 Severability provision. If any provision of WAC 284-07-100 through 284-07-230 or its application to any person or circumstances is held invalid, the remainder of WAC 284-07-100 through 284-07-230 or the application of the provision to other persons or circumstances is not affected.