



# RULE-MAKING ORDER

## CR-103 (June 2004) (Implements RCW 34.05.360)

**Agency:** Office of Insurance Commissioner

**Permanent Rule**  
 **Emergency Rule**

**Effective date of rule:**

**Permanent Rules**

31 days after filing.  
 Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

Immediately upon filing.  
 Later (specify) \_\_\_\_\_

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

Yes     No    If Yes, explain:

**Purpose:** These rules amend the Audited Financial Statement Regulations to: (1) prohibit the Commissioner from recognizing a person or firm as a qualified independent certified public accountant if the person or firm has entered into an indemnification agreement with respect to the audit and (2) permit the agreement between an insurer and its qualified independent certified accountant to include an arbitration and/or mediation provision.

Insurance Commissioner Matter No. R 2008-29

**Citation of existing rules affected by this order:**

Repealed:  
Amended: WAC 284-07-110, 284-07-150  
Suspended:

**Statutory authority for adoption:** RCW 48.02.060, 48.05.250, 48.44.050, 48.44.095, 48.46.080, 48.46.200, 48.125.090

**Other authority :**

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR 09-01-150 on December 22, 2008 (date).  
Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
e-mail \_\_\_\_\_

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

**Date adopted:** March, 11, 2009

**NAME (TYPE OR PRINT)**  
Mike Kreidler

**SIGNATURE**

**TITLE**  
Insurance Commissioner

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** March 11, 2009  
**TIME:** 7:23 AM

**WSR 09-07-044**

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	<u>2</u>	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	<u>2</u>	Repealed	_____

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

**WAC 284-07-110 Definitions.** For the purposes of this regulation the following definitions shall apply:

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

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

(3) "Indemnification" means an agreement of indemnity or a release of 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) "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.

~~((+4))~~ (5) "NAIC" means National Association of Insurance Commissioners.

~~((+5))~~ (6) "Policy holder" shall also mean subscriber.

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

**WAC 284-07-150 Qualifications of independent certified public accountant.** (1) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant ~~((that))~~ 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, 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 and the code of professional conduct of the state of Washington board of public accountancy, or similar applicable code.

(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 partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following any period of service such 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 years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if the relief should be granted:

- (a) Number of partners, expertise of the partners, or the number of insurance clients in the currently registered firm;
- (b) Premium volume of the insurer; and
- (c) 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.

~~((+4+))~~ (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; 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.

~~((+5+))~~ (6) The commissioner as provided in RCW 48.02.060 may hold a hearing to determine whether a 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 and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this regulation.