

**WSR 15-21-090
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION**

[Docket U-140621, General Order R-582—Filed October 21, 2015, 9:18 a.m., effective January 1, 2016]

In the matter of adopting chapter 480-54 WAC relating to attachment to transmission facilities.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 15-15-170, filed with the code reviser on July 22, 2015. The commission has authority to take this action pursuant to RCW 80.01.040, 80.04.160, 80.54.020, and 80.54.060.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule to be effective on January 1, 2016.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including appendices, as its concise explanatory statement. This order provides a complete but concise explanation of the agency's actions and its reasons for taking those actions.

**Appendix A
(Comment Summary Matrix)
U-140621 Pole Attachment Rules
Summary of Comments on Proposed Rules
September 17, 2015**

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Staff Recommendation
020(2)	Definitions - Carrying Charge				Frontier: Clarify and avoid disputes by substituting "which are limited to" for "including"		Clarify that carrying charges are comprised of the listed items consistent with the FCC's long-standing practice.
020(15)	Definitions - Owner					AT&T and PCIA: Reinsert express exemption of commercial mobile radio service companies because the commission lacks jurisdiction to regulate attachments to their facilities	Do not make the suggested change. The definition mirrors the language in the statute. If an entity requests access to a CMRS provider's facilities, the commission can address the jurisdictional question at that time.
030(1)	Duty to provide access; make-ready work; timelines	Remove pole replacement requirement as beyond FCC requirements, unsupported by evidence, and improperly prioritizing needs of attachers over other PSE customers; timelines to process applications and conduct make-ready work are arbitrary, do not	Delete requirement to replace existing poles with taller poles as inconsistent with FCC and other state rules and diminishing ability of electric utilities to provide safe and reliable electric service	Joins Avista and PSE in opposing mandatory capacity expansion; substitute "and" for "or" in last sentence to clarify that a requester must pay all costs incurred to increase pole capacity for attachment			Adopt Pacific Power proposal to use "and" rather than "or" but clarify in the adoption order that the owner need not incur both costs to recover either of them. Do not make other proposed changes. The specific timelines are the same as the timelines in the FCC rules, which PSE proposes the commission adopt. The pole replacement requirement reflects current industry practice, and the rules provide the pole owners

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Staff Recommendation
		allow sufficient time for owner evaluation, and will result in increased number of complaints to the commission					with longer times to complete pole replacements to accommodate issues beyond the owner's control. The electric utilities have provided no evidence to demonstrate that this practice will have any detrimental impact on their ability to provide safe and reliable electric service. Owners can include language in their attachment agreements to address these concerns if necessary, or they may seek a waiver of this requirement if a legitimate and demonstrable issue arises.
030(11)	Overlashing	Delete this subsection and rely on FCC rules as more appropriately balancing safety with needs of attachers; alternatively, adopt revisions PSE previously proposed	Delete this subsection and require overlashing projects be submitted as applications to enable owners to evaluate safety and reliability impacts on poles	Joins Avista and PSE in opposing allowing overlashing without an application			Do not make proposed changes. Overlashing without an application is available only for adding communications wires on existing attachments to a small number of poles, and the electric utilities provided no evidence that such overlashing poses any legitimate safety or reliability concerns. The notice requirements provide pole owners with adequate time to inspect the proposed route for the overlashing, consistent with, or more lenient than, the time Pacific Power suggested in prior written comments.
050	Modification costs; notice; temporary stay			Limit time in which owner or occupant has cost responsibility for benefits from modifications to sixty days; require occupants to transfer their attachments to a new pole at their cost; clarify subsection (2) that a conforming occupant bears no cost to rearrange its attachment if required	BCAW: Modify language to clarify the intent that an existing compliant attacher (including an owner) is not responsible for modification costs it does not cause or benefit from		Make most of the proposed changes to address commenters' concerns. Staff removed the limitation on timing for cost responsibility in response to concerns about the lack of owners' ability to track such intervals but believes such a limitation is appropriate. Staff agrees that subsection (2) is specific to rearrangements of attachments to address safety issues and that the language concerning space for an additional attachment should be deleted. On the other hand, the requester is responsible for all costs of replacing an existing pole with a taller

480-54-	WAC Title	PSE	Avista	Pacific Power	Cable/ILECs	Wireless	Staff Recommendation
				solely as a result of creating capacity to comply with safety requirements			one, and thus the requester - not the owner or occupants - should bear the cost to transfer attachments to the new pole. Accordingly, staff recommends that the commission not revise the proposed rule as Pacific Power suggests on this issue. With respect to BCAW's proposed changes, staff's intent is also to ensure that neither the owner nor other occupants on the pole are responsible for costs they do not cause or benefit from, and some minor revisions would clarify that intent.
070	Complaint	Keep burden of proof with the complainant or rely on existing rules regarding complaints	Authorize owners to apply sanctions comparable to those authorized in Oregon against occupants with unauthorized or noncompliant attachments				Do not make proposed change. The proposed rules properly shift the burden of proof only to the entity denying a right or seeking to deviate from the rules. The commission cannot, and should not, delegate its authority to penalize entities for violating commission rules. The absence of sanctions in the rules, however, does not preclude parties from negotiating to include such terms in attachment agreements.

6 REFERENCE TO AFFECTED RULES: This order adopts WAC 480-54-010 Purpose, interpretation, and application, 480-54-020 Definitions, 480-54-030 Duty to provide access; make-ready work; timelines, 480-54-040 Contractors for survey and make-ready work, 480-54-050 Modification costs; notice; temporary stay, 480-54-060 Rates, and 480-54-070 Complaint.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on April 22, 2014, at WSR 14-09-087. The statement advised interested persons that the commission was considering entering a rule making to implement chapter 80.54 RCW, relating to attachments to transmission facilities. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered telecommunications companies, all regulated electric companies, the commission's list of utility attorneys, and the commission's list of telecommunications attorneys. The commission posted the relevant rule-making information on its web site at www.utc.wa.gov/140621. Pursuant to the notice, the commission received written comments on May

30, 2014, and convened a workshop for interested stakeholders on July 28, 2014.

8 On September 8, 2014, the commission issued a notice soliciting written comments from stakeholders on draft rules by October 8, 2014, and convened a second workshop on October 28, 2014. On February 6, 2015, the commission received a second round of comments from stakeholders regarding revised draft rules, and responses to the second comments on February 27, 2015.

9 On March 24, 2015, the commission issued a notice soliciting written comments from stakeholders on a third revised draft rule with opening comments by April 17, 2015, and reply comments by May 1, 2015.

10 On May 27, 2015, the commission issued a small business economic impact statement questionnaire requesting responses concerning the cost impact of the rules on utilities and licensees by June 17, 2015. The commission received comments from the Broadband Communications Association of Washington (BCAW); PCIA - The Wireless Infrastructure Association and the HetNet Forum, a membership section of PCIA (collectively PCIA); Pacific Power & Light Company (Pacific Power); Avista Corporation d/b/a Avista Utilities (Avista); and Puget Sound Energy (PSE).

11 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on July 22, 2015, at WSR 15-15-170. The commission scheduled this matter for oral comment and adoption under Notice WSR No. 15-15-170 at 9:30 a.m., Thursday, September 17, 2015, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission by August 24, 2015.

12 WRITTEN COMMENTS: The commission received written comments in response to the WSR 15-15-070 notice from Frontier Communications Northwest Inc. (Frontier), Integra Telecom of Washington (Integra), Avista, BCAW, Pacific Power, AT&T Corp., New Cingular Wireless PCS, LLC, and Teleport Communications America, Inc. (collectively AT&T), PCIA, and PSE. Summaries of all written comments and the commission's responses are contained in Appendix A, shown below, and made part of, this order.

13 RULE-MAKING HEARING: The commission considered the proposed rules for adoption at a rule-making hearing on Thursday, September 17, 2015, before Chairman David W. Danner and Commissioner Ann E. Rendahl. The commission heard comments from representatives of Pacific Power, PSE, PCIA, Avista, Frontier, AT&T, and BCAW. Most of those commenting emphasized points they raised in their prior written comments. Pacific Power, however, also advocated that the commission revise staff's proposed modification of the language in proposed WAC 480-54-050(2) to delete "or owner's" in the last sentence so that an owner would not be solely responsible for the costs to move all occupants' attachments when general safety or operational requirements necessitated a change to the pole. PSE also requested that the commission make any rules it promulgates effective no sooner than January 1, 2016, to enable PSE to modify its processes and otherwise prepare to comply with the new rules.¹

¹We address this request in paragraph 31 below.

14 SUGGESTIONS FOR CHANGE THAT ARE REJECTED/ACCEPTED: Written and oral comments suggested changes to the proposed rules. The suggested changes and the commission's reason for rejecting or accepting the suggested changes are included in Appendix A. The commission expands on its explanation for its actions on four of those suggested changes in the following paragraphs.

15 JURISDICTION: Proposed WAC 480-54-020 defines an "owner" as "the utility that owns or controls the facilities to or in which an occupant maintains, or a requester seeks to make, attachments." A "utility," in turn, is "any electrical company or telecommunications company as defined in RCW 80.04.010." That statute defines a "telecommunications company" as any person or entity "owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public." "Telecommunications" is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means." The definition of "owner," consistent with Washington law, includes all telecommunications service providers and investor-owned electric companies.

16 PCIA and AT&T request that the commission exempt commercial mobile radio service (CMRS) companies from the definition of "owner" in the proposed rules, claiming that the commission lacks jurisdiction to regulate attachments to wireless company facilities. Washington statutes do not support this claim. The definition of "telecommunications" in RCW 80.04.010 expressly includes transmission of information by radio, which is the service CMRS companies provide. As telecommunications providers, these companies are "utilities" and "owners" within the contemplation of RCW 80.54.010.

17 The wireless carriers point to RCW 80.36.370(6), which provides that the commission shall not regulate "[r]adio communications services provided by a regulated telecommunications company, *except that when those services are the only voice grade, local exchange telecommunications service available to a customer of the company* the commission may regulate the radio communication service of that company." (Emphasis added.) PCIA and AT&T overlook that the commission can regulate wireless carriers under certain circumstances. Although the commission is not aware that those circumstances currently exist, we are not willing to foreclose the possibility that they will arise in the future. More fundamentally, we question whether requiring a company to allow attachments to its utility facilities is regulation of that company's "service" within the contemplation of RCW 80.36.370(6).²

²Nor are we persuaded that a policy justification exists for categorically relieving CMRS providers from the obligation to allow attachments to their facilities. PCIA suggests that the rationale for that obligation is to provide competitors with access to monopoly service providers' infrastructure, but chapter 80.54 RCW is not so limited. The statutory definition of "utility" includes all telecommunications companies, incumbents and competitors alike. The legislature's concern thus was more with the exclusivity of a utility's *facilities* than the service it offers. No municipality wants a plethora of poles along, or a collection of conduit under, its streets. The statute is designed to minimize such infrastructure as well as to facilitate service availability from multiple providers. To the extent that a CMRS carrier has constructed facilities to which requesters seek access, we do not believe that the service the carrier provides, without more, is a reasonable basis for denying such access.

18 The commission, however, does not intend to assert jurisdiction over CMRS providers by promulgating the proposed rules. We recognize that the Federal Communications Commission (FCC) has the primary responsibility to oversee the wireless industry, and we have no desire to challenge that agency's supremacy in this area. We also agree with PCIA and AT&T that the rules we are adopting were not developed with access to CMRS facilities in mind. Accordingly, we leave for another day and specific factual circumstances the issue of whether these rules could or should be construed to require access to wireless carrier facilities.

19 POLE REPLACEMENT: Proposed WAC 480-54-030(1) provides that utility pole owners may not deny a request for attachment to a pole due to lack of space if the requester is willing to pay all costs to replace the existing pole with a taller pole. Avista, Pacific Power, and PSE all object to this requirement. These companies concede that they currently undertake this work but contend that an obligation to do so exceeds the requirements in the FCC rules without sufficient evidentiary support, "would unreasonably diminish the ability of electric utility personnel to perform their primary obli-

gation of providing safe and reliable electric service, and would result in communications attachments on electric utility poles taking precedence over electric utility operations."³

³Comments of Avista at 2 (Aug. 24, 2015); *accord* Comments of PSE at 2 (Aug. 24, 2015). Pacific Power states only that it supports these comments and shares the concerns they raise with mandatory capacity expansions. Comments of Pacific Power at 2 (Aug. 24, 2015).

20 Unlike federal law, chapter 80.54 RCW does not authorize a pole owner to deny access for lack of capacity on the pole. Washington law provides only that "[a]ll rates, terms, and conditions made, demanded, or received by any utility for any attachment by a licensee or by a utility must be just, fair, reasonable, and sufficient."⁴ It is the current practice of Avista, Pacific Power, and PSE to replace existing poles and thereby create additional capacity for attachment if a requester is willing to pay all costs of that replacement. We are not persuaded that it is unreasonable to require these pole owners to do what they are already doing.

⁴RCW 80.54.020.

21 Nor have the electric utilities presented any information demonstrating how mandating their current practice would diminish their ability to provide safe and reliable electric service. The commission takes very seriously any threat to safety and reliability of utility service. Accordingly, proposed WAC 480-54-030(8) provides additional time for pole owners to replace a pole if they cannot do so within the time frames specified due to circumstances beyond the owner's control and in light of other system demands. Owners also may negotiate additional terms and conditions with requesters to be included in the attachment agreement the rules require. We find that this rule properly balances the needs of electric utility pole owners, attaching communications carriers, and the customers of all companies.

22 **OVERLASHING:** Proposed WAC 480-54-030(11) allows an occupant to attach or "overlash" an additional wire onto the occupant's existing attachment to a utility pole without filing an application with the pole owner under limited circumstances. Avista, Pacific Power, and PSE all oppose this allowance as an unwarranted departure from the FCC's rules. Avista focuses on safety concerns it alleges would result from overlash without an application:

Overlashing new communication cable to cable already in place creates additional wind and ice load on the poles along with low sag issues, and these are serious safety concerns to pole owners. Moreover, without sufficient oversight and approval, cables that are no longer used are typically left in place rather than removed. Overlashing proposals can be more difficult to analyze for safety concerns than applications for new pole contacts, and while communication companies engineer for their own circuitry, they historically fail to account for their own existing code violations and for safety impacts related to the new overlash construction.⁵

⁵Comments of Avista at 3.

23 PSE also discusses safety, as well as liability issues, and contends that the proposed rules unreasonably favor pole occupants over owners:

The arbitrary timelines in the proposed rules compromise a pole owner's ability to adequately assess the impacts

of the overlash on the safety and reliability of the electric system and adds additional risk to the safety of the communication workers installing the overlash. In addition, requiring only a notice instead of an application to overlash additional wires or cables prioritizes attachers needs over pole owners and reduces a pole owners' ability to maintain a safe and reliable system. Finally, the proposed rules fail to include any language addressing liability for damages caused by attacher overlash. PSE proposes that the attacher be liable for all damages if the actual overlash differs from the overlash proposed in the occupant's notice or fails to meet applicable rules and codes.⁶

⁶Comments of PSE at 3. Again, Pacific Power supports Avista's and PSE's comments and shares their concerns with overlash. Comments of Pacific Power at 2.

24 We note as an initial matter than [that] proposed WAC 480-54-030(11) is more restrictive of overlash than the FCC or current practice. The FCC has determined that an occupant is not required to obtain the owner's consent prior to overlash, although the owner is entitled to notice.⁷ Stakeholder comments in this docket indicate that occupants currently are overlash without the owner's prior consent and with minimal notice. The proposed rule's limit on the number of poles subject to overlash in a given time period, the requirements for the content and timing of notice, and the ability of owners to prohibit overlash in advance are all new safeguards that the electric utilities would not have if we simply adopted the FCC rules, as PSE advocates. This provision thus provides far more benefit than detriment to those utilities.

⁷*In re Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Red. 12,103, 12,144-45 (May 25, 2001).

25 We nevertheless repeat that the commission considers safety of the electrical system to be critically important. Avista, Pacific Power, and PSE have not demonstrated that proposed WAC 480-54-030(11) imperils that system. That rule requires an occupant to notify the pole owner fifteen business days in advance of the size, weight per foot, and number of wires or cables to be overlash and to provide a map of the proposed overlash route. The occupant may not notice overlash of more than one hundred poles within any ten business day period. The owner has ten business days to inspect the proposed route and provide a written response and explanation if the owner prohibits the noticed overlash.⁸ The electric utilities have provided no information to demonstrate that these requirements are insufficient to enable an owner to determine whether the limited overlash the proposed rule authorizes would pose a significant safety risk.

⁸Although PSE characterizes these limitations as "arbitrary," we note that the proposed rule reflects Pacific Power's recommendation "limiting the number of poles identified for overlash in a 10-day period to 100 poles and the number of notices submitted to no more than five." Pacific Power Comments at 1 (April 17, 2015). The commission addressed PSE's and Avista's continued concerns with the time for review by extending that period in the proposed rule to ten business (rather than calendar) days and lengthening the notice period to fifteen business days.

26 Several of the stated concerns, moreover, arise from how the overlash is actually done, including failure to remove unused cable, the safety of the communications

workers doing the overlashing, and liability for damages caused by the overlashing. Requiring occupants to submit an application, as the electric companies propose, would not remedy any of these issues. Rather, owners can and should negotiate terms and conditions in their attachment agreements to address such concerns. BCAW stated at the adoption hearing that all attachment agreements of which it is aware include provisions that do just that.

27 We find that proposed WAC 480-54-030(11) strikes the appropriate balance between the interests of pole owners and occupants. We encourage all parties to work cooperatively to ensure that their operations do not impact negatively the safety of the electrical system, the other networks whose facilities are attached to utility poles, and the personnel who work on those poles.

28 **MODIFICATION COSTS:** Consistent with cost causation principles, the proposed rules provide in WAC 480-54-050(2) that occupants with an attachment that conforms to applicable safety and legal requirements do not bear any of the costs to modify the pole or their attachment to remedy another occupant's safety violation. In response to BCAW's written comments, the commission modifies the proposed language to clarify that an owner similarly is not responsible for modification costs caused by another attaching entity.

29 At the adoption hearing, Pacific Power requested that the commission further revise this provision to clarify that occupants should bear the costs to rearrange their attachments if the owner modifies the pole to conform to general safety requirements or as part of the owner's business operations. We agree that our intent was for each party with attachments on the pole to bear its own costs to rearrange those attachments to conform to generally applicable safety requirements, and we clarify the proposed rule accordingly. We do not agree, however, that occupants should pay to modify their attachments to accommodate measures the owner takes for its own benefit. Indeed, WAC 480-54-050(1) expressly provides to the contrary in the context of creating additional capacity on a pole. We thus do not accept this aspect of Pacific Power's proposal.

30 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should adopt the rules as proposed in the CR-102 at WSR 15-15-170 with the changes below as described more fully above and in Appendix A:

WAC 480-54-020 Definition of "carrying charge" - delete ", including" and replace with ". These costs are comprised of" (Frontier).

WAC 480-54-030(1) Second sentence - delete "pole or otherwise" and replace with "pole and otherwise" (Pacific Power).⁹

⁹The substitution of "and" for "or" clarifies the commission's intent that the requester must pay all make-ready costs associated with making more attachment space available on the pole and should not be construed to condition such payment on the existence of both pole replacement and other make-ready work.

WAC 480-54-050(1) Third sentence - insert "within 60 days" before "after receiving notification" (Pacific Power.)

WAC 480-54-050(2) First sentence - add "that necessitated the modification" at the end of the sentence.
 Third sentence - Insert "or owner" after "An occupant";
 Insert "or owner's" after "the occupant's";
 Delete "as a result of creating capacity for a requester's attachment or";
 Delete "or another occupant's existing attachment made";
 Delete "bring that attachment" and replace with "bring another occupant's or owner's attachment";
 Add "to remedy a safety violation caused by another occupant or owner" at the end of the sentence;
 Add a fourth sentence that states, "The owner and each occupant shall bear their own costs to modify their existing attachments if required to comply with applicable safety requirements if an owner or occupant did not create a safety violation that necessitated the modification." (BCAW and Pacific Power).

WAC 480-54-060(3) Formulas:
 Insert a division line between the number "1" and "Number of Ducts" on the lines below;
 Insert a division line between "1 Duct" and "Number of Inner Ducts["] on the lines below;
 Insert a division line between "Net Conduit Investment" and "System Duct Length (ft./m.)" on the lines below (corrects typographical errors).

3/ STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-54-010, 480-54-020, 480-54-030, 480-54-040, 480-54-050, 480-54-060, and 480-54-070 should be adopted to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission. Pursuant to RCW 34.05.380(2), we generally adopt rules to become effective on the thirty-first day after filing with the code reviser. PSE, however, states that it and other affected stakeholders would be better able to modify their existing processes and procedures to comply with the rules if they are not effective until the beginning of next year. We agree, and accordingly, we adopt the rules listed in this paragraph to take effect on **January 1, 2016**.

Number of Sections Adopted in Order to Comply with Federal Statute: New 7, 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 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.

ORDER

32 THE COMMISSION ORDERS:

33 The commission adopts WAC 480-54-010, 480-54-020, 480-54-030, 480-54-040, 480-54-050, 480-54-060, and 480-54-070 to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on January 1, 2016.

34 This order and the rule set out below, after being recorded in the order register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, October 21, 2015.

Washington Utilities and Transportation Commission

David W. Danner, Chairman
Philip B. Jones, Commissioner
Ann E. Rendahl, Commissioner

Appendix B

Chapter 480-54 WAC

ATTACHMENT TO TRANSMISSION FACILITIES

NEW SECTION

WAC 480-54-010 Purpose, interpretation, and application. (1) This chapter implements chapter 80.54 RCW "Attachment to Transmission Facilities."

(2) The commission will consider Federal Communications Commission orders promulgating and interpreting its pole attachment rules and federal court decisions reviewing those rules and interpretations as persuasive authority in construing the provisions in this chapter.

(3) The rules in this chapter apply to all owners, occupants, and requesters as defined in this chapter without regard to whether those entities are otherwise subject to commission jurisdiction.

NEW SECTION

WAC 480-54-020 Definitions. "Attachment" means any wire, cable, or antenna for the transmission of intelli-

gence by telecommunications or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telecommunications, electrical, cable television, or communications right of way, duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by one or more owners, where the installation has been made with the consent of the one or more owners consistent with the rules in this chapter.

"Attachment agreement" means an agreement negotiated in good faith between an owner and a utility or licensee establishing the rates, terms, and conditions for attachments to the owner's facilities.

"Carrying charge" means the costs the owner incurs to own and maintain poles, ducts, or conduits without regard to attachments. Those costs are comprised of the owner's administrative, maintenance, and depreciation expenses, commission-authorized rate of return on investment, and applicable taxes. When used to calculate an attachment rate, the carrying charge may be expressed as a percentage of the net pole, duct, or conduit investment.

"Communications space" means the usable space on a pole below the communications workers safety zone and above the vertical space for meeting ground clearance requirements under the National Electrical Safety Code.

"Conduit" means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

"Duct" means a single enclosed raceway for conductors, cable, or wire.

"Facility" means a pole, duct, conduit, manhole or handhole, right of way, or similar structure on or in which attachments can be made. "Facilities" refers to more than one facility.

"Inner duct" means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.

"Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, that is authorized to construct attachments upon, along, under, or across the public ways.

"Make-ready work" means engineering or construction activities necessary to make a pole, duct, conduit, right of way, or other support equipment available for a new attachment, attachment modifications, or additional attachments. Such work may include rearrangement of existing attachments, installation of additional support for the utility pole, or creation of additional capacity, up to and including replacement of an existing pole with a taller pole.

"Net cost of a bare pole" means (a) the original investment in poles, including purchase price of poles and fixtures and excluding cross-arms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by (b) the number of poles represented in the investment amount. When an owner owns poles jointly with another utility, the number of poles for purposes of calculating the net cost of a bare pole is the number of solely owned poles plus the product of the number of the jointly owned poles multiplied by the owner's ownership per-

centage in those poles. In the unusual situation in which net pole investment is zero or negative, the owner may use gross figures with appropriate net adjustments.

"Occupant" means any utility or licensee with an attachment to an owner's facility that the owner has granted the utility or licensee the right to maintain.

"Occupied space" means that portion of the facility used for attachment that is rendered unusable for any other attachment, which is presumed to be one foot on a pole and one half of a duct in a duct or conduit.

"Overlashing" means the tying of additional communications wires or cables to existing communications wires or cables attached to poles.

"Owner" means the utility that owns or controls the facilities to or in which an occupant maintains, or a requester seeks to make, attachments.

"Pole" means an above-ground structure on which an owner maintains attachments, which is presumed to be thirty-seven and one-half feet in height. When the owner is an electrical company as defined in RCW 80.04.010, "pole" is limited to structures used to attach electric distribution lines.

"Requester" means a licensee or utility that applies to an owner to make attachments to or in the owner's facilities and that has an agreement with the owner establishing the rates, terms, and conditions for attachments to the owner's facilities.

"Right of way" is an owner's legal right to construct, install, or maintain facilities or related equipment in or on grounds or property belonging to another person. For purposes of this chapter, "right of way" includes only such legal rights that permit the owner to allow third parties access to those rights.

"Unusable space," with respect to poles, means the space on the pole below the usable space, including the amount required to set the depth of the pole. In the absence of measurements to the contrary, a pole is presumed to have twenty-four feet of unusable space.

"Usable space," with respect to poles, means the vertical space on a pole above the minimum grade level that can be used for the attachment of wires, cables, and associated equipment, and that includes space occupied by the owner. In the absence of measurements to the contrary, a pole is presumed to have thirteen and one-half feet of usable space. With respect to conduit, "usable space" means capacity within a conduit that is available or that could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable, and associated equipment for telecommunications or cable services, and that includes capacity occupied by the owner.

"Utility" means any electrical company or telecommunications company as defined in RCW 80.04.010, and does not include any entity cooperatively organized or owned by federal, state, or local government, or a subdivision of state or local government.

NEW SECTION

WAC 480-54-030 Duty to provide access; make-ready work; timelines. (1) An owner shall provide requesters with nondiscriminatory access for attachments to or in any facility the owner owns or controls, except that if the

owner is an electrical company as defined in RCW 80.04.-010, the owner is not obligated to provide access for attachment to its facilities by another electrical company. An owner may deny such access to specific facilities on a nondiscriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles; provided that the owner may not deny access to a pole based on insufficient capacity if the requester is willing to compensate the owner for the costs to replace the existing pole with a taller pole and otherwise undertake make-ready work to increase the capacity of the pole to accommodate an additional attachment including, but not limited to, using space- and cost-saving attachment techniques, such as boxing (installation of attachments on both sides of the pole at approximately the same height) or bracketing (installation of extension arms), to the extent that the owner uses, or allows occupants to use, such attachment techniques in the communications space of the owner's poles.

(2) All rates, terms, and conditions made, demanded, or received by any owner for any attachment by a licensee or by a utility must be fair, just, reasonable, and sufficient and must be included in an attachment agreement with the licensee or utility. Parties may mutually agree on terms for attachment to or in facilities that differ from those in this chapter. In the event of disputes submitted for commission resolution, any party advocating rates, terms, or conditions that vary from the rules in this chapter bears the burden to prove those rates, terms, or conditions are fair, just, reasonable, and sufficient.

(3) Except for overlashing requests described in subsection (11) of this section, a requester must submit a written application to an owner to request access to its facilities. The owner may recover from the requester the reasonable costs the owner actually and reasonably incurs to process the application, including the costs of inspecting the facilities identified in the application and preparing a preliminary estimate for any necessary make-ready work, to the extent these costs are not, and would not ordinarily be, included in the accounts used to calculate the attachment rates in WAC 480-54-060. The owner may survey the facilities identified in the application and may recover from the requester the costs the owner actually and reasonably incurs to conduct that survey. The owner must provide the requester with an estimate of those costs prior to conducting a survey. The owner must complete any such survey and respond in writing to requests for access to the facilities identified in the application within forty-five days from the date the owner receives a complete application, except as otherwise provided in this section. A complete application is an application that provides the information necessary to enable the owner to identify and evaluate the facilities to or in which the requester seeks to attach.

(4) If the owner denies the request in an application for access, in whole or in part, the owner's written response to the application must include an explanation of the reasons for the denial for each facility to which the owner is denying access. Such a response must include all relevant information supporting the denial.

(5) To the extent that it grants the access requested in an application, the owner's written response must inform the requester of the results of the review of the application. Within fourteen days of providing its written response, the

owner must provide an estimate of charges to perform all necessary make-ready work, including the costs of completing the estimate. Make-ready work costs are nonrecurring costs that are not included in carrying charges and must be costs that the owner actually and reasonably incurs to provide the requester with access to the facility.

(a) The requester must accept or reject an estimate of charges to perform make-ready work within thirty days of receipt of the estimate. The owner may require the requester to pay all estimated charges to perform make-ready work as part of acceptance of the estimate or before the owner undertakes the make-ready work subject to true-up to the reasonable costs the owner actually incurs to undertake the work.

(b) An owner may withdraw an outstanding estimate of charges to perform make-ready work any time after thirty days from the date the owner provides the estimate to the requester if the requester has not accepted or rejected that estimate. An owner also may establish a date no earlier than thirty days from the date the owner provides the estimate to the requester after which the estimate expires without further action by the owner.

(6) For requests to attach to poles, the owner must determine the time period for completing the make-ready work and provide that information in a written notice to the requester and all known occupants with existing attachments on the poles that may be affected by the make-ready work. The owner and the requester must coordinate the make-ready work with any such occupants, as necessary.

(a) For attachments in the communications space, the notice shall:

(i) Specify where and what make-ready work will be performed.

(ii) Set a date for completion of make-ready work that is no later than sixty days after the notice is sent. For good cause shown, the owner may extend completion of the make-ready work by an additional fifteen days.

(iii) State that any occupant with an existing attachment may modify that attachment consistent with the specified make-ready work before the date set for completion of that work. Any occupant with an existing attachment that does not comply with applicable safety requirements must modify that attachment to bring it into compliance before the date set for completion of the make-ready work. The occupant shall be responsible for all costs incurred to bring its attachment into compliance.

(iv) State that the owner may assert its right to fifteen additional days to complete the make-ready work.

(v) State that if make-ready work is not completed by the completion date set by the owner (or fifteen days later if the owner has asserted its right to fifteen additional days), the owner and the requester may negotiate an extension of the completion date or the requester, after giving reasonable notice to the owner, may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the specified make-ready work within the communications space. If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

(vi) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work.

(b) For wireless antennas or other attachments on poles in the space above the communications space, the notice shall:

(i) Specify where and what make-ready work will be performed.

(ii) Set a date for completion of make-ready work that is no later than ninety days after notice is sent. For good cause shown, the owner may extend completion of the make-ready work by an additional fifteen days.

(iii) State that any occupant with an existing attachment may modify the attachment consistent with the specified make-ready work before the date set for completion of that work. Any occupant with an existing attachment that does not comply with applicable safety requirements must modify that attachment to bring it into compliance before the date set for completion of the make-ready work. The occupant shall be responsible for all costs incurred to bring its attachment into compliance.

(iv) State that the owner may assert its right to fifteen additional days to complete the make-ready work.

(v) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work.

(7) For the purpose of compliance with the time periods in this section:

(a) The time periods apply to all requests for access to up to three hundred poles or 0.5 percent of the owner's poles in Washington, whichever is less.

(b) An owner shall negotiate in good faith the time periods for all requests for access to more than three hundred poles or 0.5 percent of the owner's poles in Washington, whichever is less.

(c) An owner may treat multiple requests from a single requester as one request when the requests are filed within the same thirty-day period. The applicable time period for completing the optional survey or required make-ready work begins on the date of the last request the owner receives from the requester within the thirty-day period.

(8) An owner may extend the time periods specified in this section under the following circumstances:

(a) For replacing existing poles to the extent that circumstances beyond the owner's control including, but not necessarily limited to, local government permitting, landowner approval, or adverse weather conditions, require additional time to complete the work; or

(b) During performance of make-ready work if the owner discovers unanticipated circumstances that reasonably require additional time to complete the work. Upon discovery of the circumstances in (a) or (b) of this subsection, the owner must promptly notify, in writing, the requester and other affected occupants with existing attachments. The notice must include the reason for the extension and date by which the owner will complete the work. The owner may not extend completion of make-ready work for a period any longer than reasonably necessary and shall undertake such work on a nondiscriminatory basis with the other work the owner undertakes on its facilities.

(9) If the owner determines that a survey is necessary for responding to a request for attachment to poles and fails to complete a survey of the facilities specified in the application within the time periods established in this section, a requester

seeking attachment in the communications space may negotiate an extension of the completion date with the owner or may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the survey. If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

(10) If the owner does not complete any required make-ready work within the time periods established in this section, a requester seeking attachment in the communications space may negotiate an extension of the completion date with the owner or may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the make-ready work within the communications space:

(a) Immediately, if the owner declines to exercise its right to perform any necessary make-ready work by notifying the requester that the owner will not undertake that work; or

(b) After the end of the applicable time period authorized in this section if the owner has asserted its right to perform make-ready work and has failed to timely complete that work.

If the owner does not maintain a list of authorized contractors, the requester may choose a contractor without the owner's authorization.

(11) An occupant need not submit an application to the owner if the occupant intends only to overlash additional communications wires or cables onto communications wires or cables it previously attached to poles with the owner's consent under the following circumstances:

(a) The occupant must provide the owner with written notice fifteen business days prior to undertaking the overlashing. The notice must identify no more than one hundred affected poles and describe the additional communications wires or cables to be overlashed so that the owner can determine any impact of the overlashing on the poles or other occupants' attachments. The notice period does not begin until the owner receives a complete written notice that includes the following information:

(i) The size, weight per foot, and number of wires or cables to be overlashed; and

(ii) Maps of the proposed overlash route, including pole numbers if available.

(b) A single occupant may not submit more than five notices or identify more than a total of one hundred poles for overlashing in any ten business day period. The applicable time period for responding to multiple notices begins on the date of the last notice the owner receives from the occupant within the ten business day period.

(c) The occupant may proceed with the overlashing described in the notice unless the owner provides a written response, within ten business days of receiving the occupant's notice, prohibiting the overlashing as proposed. The owner may recover from the requester the costs the owner actually and reasonably incurs to inspect the facilities identified in the notice and to prepare any written response. The occupant must correct any safety violations caused by its existing attachments before overlashing additional wires or cables on those attachments.

(d) The owner may refuse to permit the overlashing described in the notice only if, in the owner's reasonable judgment, the overlashing would have a significant adverse

impact on the poles or other occupants' attachments. The refusal must describe the nature and extent of that impact, include all relevant information supporting the owner's determination, and identify the make-ready work that the owner has determined would be required prior to allowing the proposed overlashing. The parties must negotiate in good faith to resolve the issues raised in the owner's refusal.

(e) A utility's or licensee's wires or cables may not be overlashed on another occupant's attachments without the owner's consent and unless the utility or licensee has an attachment agreement with the owner that includes rates, terms, and conditions for overlashing on the attachments of other occupants.

NEW SECTION

WAC 480-54-040 Contractors for survey and make-ready work. (1) An owner should make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready work in the communications space on its poles in cases where the owner has failed to meet deadlines specified in WAC 480-54-030.

(2) If a requester hires a contractor for purposes specified in WAC 480-54-030, the requester must choose a contractor included on the owner's list of authorized contractors. If the owner does not maintain such a list, the requester may choose a contractor without the owner's approval of that choice.

(3) A requester that hires a contractor for survey or make-ready work must provide the owner with prior written notice identifying and providing the contact information for the contractor and must provide a reasonable opportunity for an owner representative to accompany and consult with the contractor and the requester.

(4) Subject to commission review in a complaint proceeding, the consulting representative of an owner may make final determinations, on a nondiscriminatory basis, on the attachment capacity of any pole and on issues of safety, reliability, and generally applicable engineering principles.

NEW SECTION

WAC 480-54-050 Modification costs; notice; temporary stay. (1) The costs of modifying a facility to create capacity for additional attachment, including but not limited to replacement of a pole, shall be borne by the requester and all existing occupants and owner that directly benefit from the modification. Each such occupant or owner shall share the cost of the modification in proportion to the amount of new or additional usable space the occupant or owner occupies on or in the facility. An occupant or owner with an existing attachment to the modified facility shall be deemed to directly benefit from a modification if, within sixty days after receiving notification of such modification, that occupant or owner adds to its existing attachment or otherwise modifies its attachment. An occupant or owner with an existing attachment shall not be deemed to directly benefit from replacement of a pole if the occupant or owner only transfers its attachment to the new pole.

(2) The costs of modifying a facility to bring an existing attachment into compliance with applicable safety requirements shall be borne by the occupant or owner that created

the safety violation that necessitated the modification. Such costs include, but are not necessarily limited to, the costs incurred by the owner or other occupants to modify the facility or conforming attachments. An occupant or owner with an existing conforming attachment to a facility shall not be required to bear any of the costs to rearrange or replace the occupant's or owner's attachment if such rearrangement or replacement is necessitated solely to accommodate modifications to the facility to bring another occupant's or owner's attachment into conformance with applicable safety requirements to remedy a safety violation caused by another occupant or owner. The owner and each occupant shall bear their own costs to modify their existing attachments if required to comply with applicable safety requirements if an owner or occupant did not create a safety violation that necessitated the modification.

(3) An owner shall provide an occupant with written notice prior to removal of, termination of service to, or modification of (other than routine maintenance or modification in response to emergencies) any facilities on or in which the occupant has attachments affected by such action. The owner must provide such notice as soon as practicable but no less than sixty days prior to taking the action described in the notice; provided that the owner may provide notice less than sixty days in advance if a governmental entity or landowner other than the owner requires the action described in the notice and did not notify the owner of that requirement more than sixty days in advance.

(4) A utility or licensee may file with the commission and serve on the owner a "petition for temporary stay" of utility action contained in a notice received pursuant to subsection (3) of this section within twenty days of receipt of such notice. The petition must be supported by declarations or affidavits and legal argument sufficient to demonstrate that the petitioner or its customers will suffer irreparable harm in the absence of the relief requested that outweighs any harm to the owner and its customers and that the petitioner will likely be successful on the merits of its dispute. The owner may file and serve an answer to the petition within seven days after the

petition is filed unless the commission establishes a different deadline for an answer.

(5) An owner may file with the commission and serve on the occupant a petition for authority to remove the occupant's abandoned attachments. The petition must identify the attachments and provide sufficient evidence to demonstrate that the occupant has abandoned those attachments. The occupant must file an answer to the petition within twenty days after the petition is filed unless the commission establishes a different deadline for an answer. If the occupant does not file an answer or otherwise respond to the petition, the commission may authorize the owner to remove the attachments without further proceedings.

NEW SECTION

WAC 480-54-060 Rates. (1) A fair, just, reasonable, and sufficient rate for attachments to or in facilities shall assure the owner the recovery of not less than all the additional costs of procuring and maintaining the attachments, nor more than the actual capital and operating expenses, including just compensation, of the owner attributable to that portion of the facility used for the attachments, including a share of the required support and clearance space, in proportion to the space used for the attachment, as compared to all other uses made of the facility, and uses that remain available to the owner.

(2) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to poles:

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

$$\text{Where Space Factor} = \frac{\text{Occupied Space}}{\text{Total Usable Space}}$$

(3) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to ducts or conduits:

$$\text{Maximum Rate per Linear ft./m.} = \left[\frac{1}{\text{Number of Ducts}} \times \frac{1 \text{ Duct}}{\text{Number of Inner Ducts}} \right] \times \left[\frac{\text{Number of Ducts}}{\text{Number of Ducts}} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \text{Carrying Charge Rate}$$

(Percentage of Conduit Capacity) (Net Linear Cost of a Conduit)

simplified as:

$$\text{Maximum Rate per Linear ft./m.} = \left[\frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \right] \times \left[\frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \text{Carrying Charge Rate}$$

If no inner duct or only a single inner duct is installed, the fraction "1 Duct divided by the Number of Inner Ducts" is presumed to be 1/2.

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

NEW SECTION

WAC 480-54-070 Complaint. (1) Whenever the commission shall find, after hearing had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any owner in connection with attachments to its facilities are not fair, just, and reasonable, or by an owner that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission will determine the fair, just, reasonable, and sufficient rates, terms, and conditions thereafter to be observed and in force and fix the same by final order entered within three hundred sixty days after the filing of the complaint. The commission will enter an initial order resolving a complaint filed in conformance with this rule within six months of the date the complaint is filed. The commission may extend this deadline for good cause. In determining and fixing the rates, terms, and conditions, the commission will consider the interest of the customers of the licensee or utility, as well as the interest of the customers of the owner. Except as provided in this rule, the commission's procedural rules, chapter 480-07 WAC, govern complaints filed pursuant to this rule.

(2) A utility or licensee may file a formal complaint pursuant to this rule if:

- (a) An owner has denied access to its facilities;
- (b) An owner fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or
- (c) The utility or licensee disputes the rates, terms, or conditions in an attachment agreement, the owner's performance under the agreement, or the owner's obligations under the agreement or other applicable law.

(3) An owner may file a formal complaint pursuant to this rule if:

- (a) Another utility or licensee is unlawfully making or maintaining attachments to or in the owner's facilities;
- (b) Another utility or licensee fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or
- (c) The owner disputes the rates, terms, or conditions in an attachment agreement, the occupant's performance under the agreement, or the occupant's obligations under the agreement or other applicable law.

(4) The execution of an attachment agreement does not preclude any challenge to the lawfulness or reasonableness of the rates, terms, or conditions in that agreement, provided that one of the following circumstances exists:

- (a) The parties made good faith efforts to negotiate the disputed rates, terms, or conditions prior to executing the agreement but were unable to resolve the dispute despite those efforts, and such challenge is brought within six months from the agreement execution date; or
- (b) The party challenging the rate, term, or condition was reasonably unaware of the other party's interpretation of that rate, term, or condition when the agreement was executed.

(5) A complaint authorized under this section must contain the following:

- (a) A statement, including specific facts, demonstrating that the complainant engaged or reasonably attempted to engage in good faith, executive-level negotiations to resolve the disputed issues raised in the complaint and that the parties

failed to resolve those issues despite those efforts; such negotiations must include the exchange of reasonably relevant information necessary to resolve the dispute including, but not limited to, the information required to calculate rates in compliance with WAC 480-54-060;

(b) Identification of all actions, rates, terms, and conditions alleged to be unjust, unfair, unreasonable, insufficient, or otherwise contrary to applicable law;

(c) Sufficient data or other factual information and legal argument to support the allegations to the extent that the complainant possesses such factual information; and

(d) A copy of the attachment agreement, if any, between the parties.

(6) The commission will issue a notice of prehearing conference within five business days after the complaint is filed. The party complained against must answer the complaint within ten business days from the date the commission serves the complaint. The answer must respond to each allegation in the complaint with sufficient data or other factual information and legal argument to support that response to the extent the respondent possesses such factual information.

(7) A licensee or utility has the burden to prove its right to attach to or in the owner's facilities and that any attachment requirement, term, or condition an owner imposes or seeks to impose that the licensee or utility challenges violates any provision of chapter 80.54 RCW, this chapter, or other applicable law. An owner bears the burden to prove that the attachment rates it charges or proposes to charge are fair, just, reasonable, and sufficient or that the owner's denial of access to its facilities is lawful and reasonable.

(8) If the commission determines that a rate, term, or condition complained of is not fair, just, reasonable, and sufficient, the commission may prescribe a rate, term, or condition that is fair, just, reasonable, and sufficient. The commission may require the inclusion of that rate, term, or condition in an attachment agreement and to the extent authorized by applicable law, may order a refund or payment of the difference between any rate the commission prescribes and the rate that was previously charged during the time the owner was charging the rate after the effective date of this rule.

(9) If the commission determines that an owner has unlawfully or unreasonably denied or delayed access to a facility, the commission may order the owner to provide access to that facility within a reasonable time frame and in accordance with fair, just, reasonable, and sufficient rates, terms, and conditions.

(10) Nothing in this section precludes an owner or occupant from bringing any other complaint that is otherwise authorized under applicable law.

**WSR 15-22-011
PERMANENT RULES
DEPARTMENT OF
ENTERPRISE SERVICES**

[Filed October 22, 2015, 4:59 p.m., effective November 22, 2015]

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

Purpose: Amend the self-insurance rules for local governments and nonprofit corporations as required by the pas-

sage of SB 5119. Additional changes include updating agency name, locations, division name and program name changes as needed as well as other necessary clarifications and streamlining.

These rules provide authority for two or more nonprofit corporations to participate in a joint self-insurance program covering property or liability risks.

Citation of Existing Rules Affected by this Order: Repealing WAC 200-100-030, 200-100-039 and 200-100-040; and amending WAC 200-100-010, 200-100-020, 200-100-02005, 200-100-02007, 200-100-02011, 200-100-02013, 200-100-02017, 200-100-02019, 200-100-02021, 200-100-02023, 200-100-03001, 200-100-033, 200-100-034, 200-100-050, 200-100-060, 200-100-065, 200-100-100, and 200-100-220.

Statutory Authority for Adoption: New chapter as created under SB 5119 Insurance—Nonprofit risk pools, chapter 109, Laws of 2015.

Adopted under notice filed as WSR 15-18-006 on August 19, 2015.

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 26, Amended 18, Repealed 3.

Number of Sections Adopted at 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 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 21, 2015.

Jack Zeigler
Policy and Rules Manager

Chapter 200-100 WAC

SELF-INSURANCE REQUIREMENTS AS TO LOCAL GOVERNMENTS ((~~AND NONPROFIT CORPORATIONS~~))

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-010 Preamble and authority. These rules governing local government ((~~and nonprofit~~)) self-insurance transactions are adopted by the state risk manager to implement chapter 48.62 RCW relating to the management and operations of both individual and joint local government property and liability self-insurance programs ((~~and nonprofit property and liability self-insurance programs~~)).

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-020 Definitions. (1) "Actuary" means any person who is a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

(2) "Assessment" means the moneys paid by the members to a joint self-insurance program.

(3) "Broker of record" means the insurance producer licensed in the state of Washington who, through a contractual agreement with the joint self-insurance program, procures insurance on behalf of the joint self-insurance program.

(4) "Case reserves" means the total of all claims and claims adjustment expenses for covered events which have occurred and have been reported to the joint and individual self-insurance programs as of the date of the financial statement. Case reserves include an estimate for each reported claim based on the undiscounted jury verdict value of said claim.

(5) "Claim adjustment expense" means expenses, other than claim payments, incurred in the course of investigating and settling claims.

(6) "Claim" means a demand for payment for damages or policy benefit because of the occurrence of an event that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.

(7) "Claims auditor" means a person who has the following qualifications:

(a) A minimum of five years in claims management and investigative experience;

(b) A minimum of three years of experience in auditing the same manner of claims filed against the program being audited;

(c) Proof of professional liability insurance; and

(d) Provides a statement that the auditor is independent from the program being audited, its vendors, insurers, brokers, and third-party administrators.

(8) "Competitive process" means a formal sealed, electronic, or web-based bid procedure used for all nonclaims related purchases for goods and services over fifty thousand dollars. For purchases between five thousand dollars and fifty thousand dollars, competitive process means quotations obtained from at least three vendors by telephone or written quotations, or both, and supported by evidence of competition. Purchases up to five thousand dollars are exempt from competitive bids providing procurement is based on obtaining maximum quality at minimum cost.

(9) "Competitive solicitation" means a documented formal process requiring sealed bids, providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(10) "Consultant" means an independent individual or firm contracting with a joint self-insurance program to perform actuarial, claims auditing or third-party administration services, represent the program as broker of record, or render

an opinion or recommendation according to the consultant's methods, all without being subject to the control of the program, except as to satisfaction of the contracted deliverables.

~~((11))~~ ~~("Foundation agreement" means the interlocal agreement binding local government members or the contract binding nonprofit members to a joint self-insurance program.~~

~~((12))~~ "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

~~((13))~~ (12) "Incurred but not reported, or IBNR" means claims and claim adjustment expenses for covered events which have occurred but have not yet been reported to the self-insurance program as of the date of the financial statement. IBNR claims include (a) known loss events that are expected to be presented later as claims, (b) unknown loss events that are expected to become claims, and (c) future development on claims already reported.

~~((14))~~ (13) "Individual self-insurance program" means a formal program established and maintained by a local government entity to provide advance funding to self-insure for property and liability risks on its own behalf as opposed to risk assumption, which means a decision to absorb the entity's financial exposure to a risk of loss without the creation of a formal program of advance funding of anticipated losses.

~~((15))~~ (14) "Interlocal agreement" means an agreement established under the Interlocal Cooperation Act defined in chapter 39.34 RCW.

~~((16))~~ (15) "Joint self-insurance program" means any two or more local government entities ~~(, two or more nonprofit corporations or a combination of local government entities and nonprofit corporations)~~ which have entered into a cooperative risk sharing ~~(foundation)~~ agreement subject to regulation under chapter 48.62 RCW.

~~((17))~~ (16) "Jury verdict value" means the claim value established on an individual case basis by the entity's analysis of the jury verdict results within a jurisdiction in addition to other factors including, but not limited to, severity of injury or damage, length of recovery, credibility of parties and witnesses, ability of attorney, sympathy factors, degree of negligence of the parties and contribution or recovery from other sources.

~~((18))~~ (17) "Member" means a local government entity ~~(or nonprofit corporation)~~ that:

(a) Is a signatory to a joint insurance program's ~~(foundation)~~ interlocal agreement;

(b) Agrees to future assessments or reassessments as part of the program's joint self-insurance program; and

(c) Is a past or present participant in the excess or self-insured retention portion of the pool's insurance program subject to regulation under chapter 48.62 RCW.

~~((19))~~ ~~"Nonprofit corporation," as defined in RCW 24.03.005(3), means a corporation of which no part of the income is distributable to its members, directors or officers.~~

~~((20))~~ (18) "Primary assets" means cash and investments (less any nonclaims liabilities).

~~((21))~~ (19) "Reassessment" means additional moneys paid by the members to a joint self-insurance program.

~~((22))~~ (20) "Risk sharing" means a decision by the members of a joint self-insurance program to jointly absorb certain or specified financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated losses; and/or joint purchase of insurance or reinsurance as a member of a joint self-insurance program formed under chapter 48.62 RCW.

~~((23))~~ (21) "Secondary assets" means insurance receivables, real estate or other assets (less any nonclaims liabilities) the value of which can be independently verified by the state risk manager.

~~((24))~~ (22) "Self-insurance program" means any individual or joint self-insurance program required by chapter 48.62 RCW to comply with this chapter.

~~((25))~~ (23) "Services" means administrative, electronic, management, loss prevention, training or other support services which do not include the participation in or purchase of the pools excess or self-insured insurance programs.

~~((26))~~ (24) "Stop-loss insurance" means a promise by an insurance company that it will cover losses of the entity it insures over and above an agreed-upon aggregated amount.

~~((27))~~ (25) "Third-party administrator" means ~~(a)~~ an independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services: Pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.

~~((28))~~ (26) "Unallocated loss adjustment expense (ULAE)" means costs that cannot be associated with specific claims but are related to the claims adjustment process, such as administrative and internal expenses related to settlement of claims at the termination of the program.

~~((29))~~ (27) "Unpaid claims" means the obligations for future payment resulting from claims due to past events. This liability includes loss and adjustments expenses, incurred but not reported claims (IBNR), case reserves, and unallocated loss adjustment expenses (ULAE).

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-02005 Standards for operation—Membership. Membership in a joint self-insurance program requires the execution of ~~(a foundation)~~ an interlocal agreement. Only members may participate in risk-sharing. Only members may participate in the self-insured retention layer, and only members may participate in the joint purchase of insurance or reinsurance. Further, each member shall agree to the following:

(1) Each member shall pay assessments and reassessments when required by the governing body of the program.

(2) Each member shall obtain approval to join the program from the governing body of the respective member. The approval shall be by resolution or ordinance of the governing body as appropriate for the entity type.

(3) Each member shall become a signatory to the ~~(foundation)~~ interlocal agreement and subsequent amendments to the ~~(foundation)~~ interlocal agreement of the joint self-insurance program.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-02007 Standards for operation—Providing services to nonmembers. (1) Nonmembers may purchase services through an interlocal agreement as authorized by chapter 39.34 RCW. Nonmembers shall not participate in any coverages of the joint self-insurance program including the self-insured retention layer and the excess insurance or reinsurance layer. This section is not intended to preclude nonmembers purchasing services from becoming members of the joint self-insurance program, provided the nonmember meets the requirements of WAC ~~((82-60-020(18)))~~ 200-100-020(17) and is eligible for membership as authorized by RCW 48.62.021(1).

(2) A program intending to provide services to nonmembers shall submit a written plan to the state risk manager for approval prior to providing services. The plan shall include, at a minimum, the services to be provided, the time frame for providing such services, the expected revenues and expenditures resulting from providing said services, and a written ~~((legal determination))~~ analysis of all potential federal and state tax liabilities created by providing services to nonmembers. The arrangement to provide such services shall be approved in writing by the state risk manager within sixty days of the joint self-insurance program's final plan submission.

(3) Every joint self-insurance program providing services as of the effective date of these regulations must submit a written plan meeting the requirements stated herein.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-02011 Standards for operations—Meetings. All joint self-insurance programs are subject to the requirements of the Open Public Meetings Act as described in chapter 42.30 RCW and all additional requirements for meeting notifications as described in this chapter.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-02013 Standards for operation—Notice of regular meetings of the governing body. Every joint self-insurance program shall provide every member with a notice of the time and place of each regular meeting of the governing body at least ten days prior to the meeting. The notice shall be ~~((delivered))~~ provided in electronic or paper form, and the time and location of each meeting shall be included in such notice. The state risk manager shall be provided a copy of all meeting notifications to members in the same form, manner and time as provided to members. In addition to electronic or regular mail, programs shall publish notification of regular meetings on the ~~((electronic))~~ web site of the program accessible to the public. Notice of regular meetings shall comply with the meeting notification requirements of chapter 42.30 RCW or be published at least ten days in advance of regular meetings, whichever notification time is greater.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-02017 Standards for operations—Meeting agendas—Meeting minutes. Every joint self-insurance program ~~((will))~~ must provide the state risk manager and every member with a preliminary agenda in advance of each meeting of the governing body. The agenda shall be ~~((delivered))~~ provided by electronic mail and shall be posted on the web site of the program accessible to the public. Meeting minutes, after approval, ~~((shall be provided to the state risk manager and every member of the program by electronic mail and))~~ shall be posted on the web site of the program accessible to the public.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-02019 Standards for operation—Notification of changes to bylaws or ~~((foundation))~~ interlocal agreement. Every joint self-insurance program shall provide notification of the intent to change the bylaws or ~~((foundation))~~ interlocal agreement to each member of the joint self-insurance program and the state risk manager by regular or electronic mail at least thirty days in advance of the meeting during which a vote on the proposed change will occur. Such notification shall include a copy of proposed changes.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-02021 Standards for operation—Changes to ~~((foundation))~~ interlocal agreement. (1) ~~((Changes to any terms of the foundation agreement shall be approved by a majority of the members, or by a greater majority if provided for in the bylaws or foundation agreement of the joint self-insurance program.))~~ Changes to the ~~((foundation))~~ interlocal agreement shall be by amendment and shall be approved by the governing body of each joint self-insurance program during a regular meeting of the governing body ~~((or by mail-in ballot. If mail-in ballots are used, the ballots are to be secured and remain unopened until the next regular meeting of the governing body. The opening and counting of the ballots shall be conducted by the governing body of the joint self-insurance program during the next regular meeting and retained in compliance with public records retention laws. Each ballot shall be read orally as to the member name and vote, either in the affirmative or negative, and recorded in the meeting minutes.))~~.

(2) Amendments to the ~~((foundation))~~ interlocal agreement shall be adopted by ordinance or resolution of the governing board or council of each member and signed by an authorized representative of each member. The resolution or ordinance shall include, but not be limited to, an acknowledgment that the entity shall be subject to assessments and reassessments if required by the joint self-insurance program. The signed amendment and copy of the ordinance or resolution, as appropriate, shall be submitted to, and retained by, the joint self-insurance program. ~~((The foundation))~~ Copies of the interlocal agreement and subsequent amendments shall

be published on the (~~electronic~~) web site of the joint self-insurance program.

(3) Changes to any terms of the (~~foundation~~) interlocal agreement shall require amendment using the approval and adoption process described above.

(4) (~~The addition of~~) Each new member(~~s to~~) joining a joint self-insurance program (~~and/or the subscription of the foundation agreement by said new members shall not be considered as amendments to the foundation agreement~~) after the formation of the program shall sign a copy of the most current interlocal agreement and copies of all subsequent amendments to that agreement that have been adopted by the governing body of the joint self-insurance program. The joint self-insurance program shall retain the signed interlocal agreements and amendments until termination of the program occurs.

(5) When a new interlocal agreement is adopted by the governing body of the joint self-insurance program to replace the existing interlocal agreement and incorporate amendments, the new interlocal agreement shall be adopted by ordinance or resolution by the governing body of each member of the joint self-insurance program. The new interlocal agreement shall be signed by an authorized representative of each member. The signed interlocal agreement and a copy of the ordinance or resolution adopting the program shall be submitted to, and retained by, the joint self-insurance program until termination of the program occurs.

AMENDATORY SECTION (Amending WSR 14-05-079, filed 2/18/14, effective 1/1/15)

WAC 200-100-0203 Standards for operation—Elections of the governing body. The governing body of every joint self-insurance program shall be elected by a majority of the members voting in the election. Elections may be conducted during a regular meeting of the governing body or by mail-in ballot or electronic ballot. If mail-in or electronic ballots are used, the ballots are to be (~~secured and remain unopened until the next regular meeting of the governing body. The opening and counting of the ballots shall be conducted by the governing body of the joint self-insurance program during the next regular meeting and retained in compliance with public records retention laws~~) counted and secured until certified by the governing body at the same or the next regular meeting and recorded in the meeting minutes. Vacancies on the governing board shall be filled according to program by-laws. Joint self-insurance programs governed by a governing body which requires the inclusion of a voting representative from each member entity in such governing body are exempt from the requirements of this section.

AMENDATORY SECTION (Amending WSR 14-05-079, filed 2/18/14, effective 1/1/15)

WAC 200-100-03001 Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements. (1) All joint self-insurance programs shall obtain an annual actuarial review as of fiscal year end which provides written estimates of the liability for unpaid claims measured at the expected level and the seventy, eighty, and ninety percent confidence level.

(2) The governing body of the joint self-insurance program shall establish and maintain primary assets in an amount at least equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs meeting this requirement shall be considered in compliance with the primary asset test. All joint self-insurance programs that do not meet the requirements of the primary asset test shall notify the state risk manager in writing of the condition. The state risk manager shall take corrective action, which may include the service of a cease and desist order upon the program, to require that the program increase primary assets in an amount equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end.

(3) The governing body of every joint self-insurance program operating under this chapter shall establish and maintain total primary and secondary assets in an amount equal to or greater than the unpaid claim estimate at the eighty percent confidence level as determined by the program's actuary as of fiscal year end.

(4) All joint self-insurance programs authorized by chapter 48.62 RCW shall meet the requirements of both the primary asset test and the total asset test. The governing body of all joint self-insurance programs that do not meet requirements of the total asset test shall notify the state risk manager in writing of the condition. The state risk manager shall require that the program submit a written corrective action plan to the state risk manager within sixty days of notification. Such plan shall include a proposal for improving the financial condition of the self-insurance program and a time frame for completion. The state risk manager shall approve or deny the proposed plan in writing within thirty days of receipt of the final plan submission.

Joint self-insurance programs operating under an approved plan and making satisfactory progress according to the terms of the plan shall remain under supervisory watch by the state risk manager until the terms of the approved plan have been met. Programs under supervisory watch but not making satisfactory progress may be subject to the following requirements:

- (a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;
 - (b) Submission of quarterly reports;
 - (c) On-site monitoring by the state risk manager; or
 - (d) Service of a cease and desist order upon the program.
- (5) Failure by the joint self-insurance program to respond or submit a plan to improve the financial condition of the program shall cause the state risk manager to take corrective action, which may include written notification to every member of the joint self-insurance program, the service of a cease and desist order upon the program, and other available remedies necessary to ensure the program operates in a financially sound manner.

(6) All joint self-insurance programs that do not maintain total primary and secondary assets in an amount equal to or greater than unpaid claim estimate at the seventy percent(~~;~~) confidence level, as determined by the program's actuary, as of fiscal year end shall be issued a cease and desist order by the state risk manager. Such programs will be considered under a supervisory cease and desist order.

(7) The state risk manager shall evaluate the operational safety and soundness of the program by monitoring changes in liquidity, claims reserves and liabilities, member equity, self-insured retention, and other financial trends over time. Programs experiencing adverse trends may cause the state risk manager to increase frequency of on-site program review and monitoring, including increased communication with the governing body and requirements for corrective plans.

(8) When the state risk manager determines it necessary to analyze the program's soundness and financial safety, the state risk manager may obtain an independent actuarial evaluation to determine the accuracy of the estimate for unpaid claims liabilities, including the estimate of unallocated loss adjustment expenses. Costs of these services shall be the responsibility of the joint self-insurance program.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-033 Standards for management and operations—Individual rate setting—Nondiscrimination in joint program assessments. (1) Joint self-insurance program assessment formulas shall include all costs including rating for insured and self-insured layers of coverage. Assessment formulas shall be consistent and nondiscriminatory among all members.

(2) This provision shall not be construed to prohibit individual choice of coverage by members from several offered by the joint self-insurance program. The assessment formula, including the insured and self-insured components, shall be consistently applied to reflect the selection from among these choices.

(3) The assessment formula shall be available for review by the state risk manager.

(4) Joint self-insurance programs shall not sell equity, security, or shares in the joint self-insurance program.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-034 Standards for operations—Disclosures. (1) All joint self-insurance programs shall furnish to each new member ((of the)) joining a self-insurance program written statements which describe:

~~((1))~~ (a) Insurance coverages or benefits currently provided by the program, including any applicable restrictions, limitations, and exclusions;

~~((2))~~ (b) The method by which members' (re)assessments are determined;

~~((3))~~ (c) The procedure for filing a claim against the joint self-insurance program;

~~((4))~~ (d) The procedure for a member to request an adjudication of disputes or appeals arising from coverage, claim payment or denial, membership, and other issues; and

~~((5))~~ (e) General characteristics of the insurance coverage portion of the program.

(2) If any changes are made to subsection (1)(a) through (e) of this section, new written documents must be provided to all members which include these changes.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-050 Standards for claims management—Claims administration. (1) All joint self-insurance programs shall adopt a written claims administration program which includes, as a minimum, the following procedures:

(a) Claims filing procedures and forms.

(b) Standards requiring case reserves for each claim be established in the amount of the jury verdict value.

(c) Standards requiring case reserves be reviewed every ninety days or when reasonably practicable and such review is documented in the claims diary.

(d) Standards requiring appropriate adjuster work loads.

(e) Standards requiring claims payment procedures include sufficient internal controls to ensure adequate review and approval by claims management staff.

(f) Standards requiring file documentation be complete and up-to-date.

(g) Standards requiring timely and appropriate claim resolution practices.

(h) Standards requiring opportunities for recoveries be reviewed and documented for each claim.

(i) Standards requiring compliance with Internal Revenue Service (IRS) rules for 1099MISC regulations.

(j) Standards requiring claims files be audited on the following categories: Staffing, caseloads, supervision, diary, coverage, reserves, promptness of contacts, field investigations, file documentation, settlements, litigation management and subrogation.

(2) All joint self-insurance programs may perform claims administration services on their own behalf or may contract for claims administration services with a qualified third-party administrator, provided all of the specific requirements under subsection (1) of this section are included in the contract.

(3) All joint self-insurance programs shall have a written ~~((number))~~ member coverage appeal procedure that contains, as a minimum, procedures for a member filing an appeal with the joint self-insurance program, including the time limit for filing, a time limit for response, and a provision for an additional level of review.

(4) All joint self-insurance programs shall maintain a financial system that identifies claim and claim adjustment expenses.

(5) All joint self-insurance programs shall provide for the purchase of goods and services to replace or repair property in a manner which will, in the judgment of the governing body of the joint self-insurance program, avoid further damage, injury, or loss of use to a member or third-party claimant.

(6) All joint self-insurance programs shall maintain claim expense reports for all claims made against the joint self-insurance program and its members.

(7) All joint self-insurance programs shall obtain an independent ~~((review))~~ audit of claim reserving, adjusting and payment procedures every three years at a minimum. ~~((Said))~~ The audit shall be conducted by an independent qualified claims auditor not affiliated with the program, its insurers, its broker of record, or its third-party administrator. Such review shall be in writing and identify strengths, areas of improvement, findings, conclusions and recommendations.

Such review shall be provided to the governing body and retained for a period not less than six years. The scope of the claims audit shall include claims administration procedures listed in subsection (1) of this section.

(8) The state risk manager may require more frequent claims audits for programs that, in the state risk manager's opinion, are not operationally or financially sound. Failure to obtain the requested independent claims audit when required may result in the procurement of such audit by the state risk manager on behalf of the program. Costs of these services shall be the responsibility of the joint self-insurance program.

AMENDATORY SECTION (Amending WSR 14-05-079, filed 2/18/14, effective 1/1/15)

WAC 200-100-060 Standards for management and operations—State risk manager reports. (1) Every joint property and liability self-insurance program authorized to transact business in the state of Washington shall submit the annual report to the state risk manager.

(2) The annual report to the state risk manager shall require the following information to be submitted in electronic form:

- (a) Unaudited annual financial statements, including attestation, as provided to the state auditors office;
- (b) Actuarial reserve review report on which the net claims liabilities at fiscal year end reported in the unaudited financial statements are based;
- (c) Copies of all insurance coverage documents;
- (d) List of contracted consultants;
- (e) Details of changes in articles of incorporation, bylaws or ~~((foundation))~~ interlocal agreement;
- (f) Details of services provided by contract to nonmembers;
- (g) List of members added or terminated.

Such reports shall be submitted to the state risk manager no later than one hundred fifty days following the completion of the joint program's fiscal year.

(3) Audited financial statements shall be provided to the state risk manager within eight months of the program's fiscal year end and comply with requirements for submission of audited financial statements established by the state risk manager.

(4) All joint self-insurance programs shall submit quarterly financial reports if, in the estimation of the state risk manager, the financial condition of a program warrants additional quarterly reporting requirements.

(5) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:

- (a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;
- (b) On-site monitoring by the state risk manager;
- (c) Service of a cease and desist order upon the program.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-065 Standards for operations—Program changes—Notification to the state risk manager. (1) All joint self-insurance programs shall operate in the same

form and manner stated in the program's original application approved by the state risk manager. Programs shall submit a written request and receive approval from the state risk manager prior to implementing the following proposed program changes:

- (a) ~~((Any change in the terms of the foundation agreement;~~
- ~~((b)))~~ Elimination or reduction of stop loss insurance;
- ~~((c)))~~ (b) Acceptance of any loans or lines of credit;
- ~~((d)))~~ (c) Provision of services to nonmembers;
- ~~((e)))~~ (d) Addition of members of other entity types than those included in original application approved by state risk manager.

(2) The following program changes require written notification to the state risk manager prior to implementing the following changes:

- (a) Increases in retention level;
- (b) Decrease or elimination of insurance limits;
- (c) Initial contract with a third-party administrator, or change in third-party administrator;
- (d) Any change to bylaws;
- (e) Any amendments to the interlocal agreement.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-100 Standards for operations—State risk manager—Expense and operating cost fees. (1) The state risk manager ~~((, with concurrence from the property and liability advisory board,))~~ shall fix state risk manager fees to cover expenses and operating costs of the state risk manager's office in administering chapter 48.62 RCW. Such fees shall be levied against each joint property and liability self-insurance program regulated by chapter 48.62 RCW. Services covered by the state risk manager fees will include program reviews, monitoring and continuing oversight.

(2) The state risk manager fees shall be paid by each joint self-insurance program to the state of Washington, ~~((office of financial management))~~ department of enterprise services within sixty days of the date of invoice. Any joint self-insurance program failing to remit its fee when due is subject to denial of permission to operate or to a cease and desist order until the fee is paid.

(3) A joint self-insurance program that has voluntarily or involuntarily terminated shall continue to pay an administrative fee until such time as all liabilities for unpaid claims and claim adjustment expenses and all administrative responsibilities of the joint self-insurance program have been satisfied.

(4) The state risk manager shall assess each prospective joint self-insurance program an initial investigation fee at a rate determined annually by the state risk manager ~~((, with the concurrence of the advisory boards)).~~

NEW SECTION

WAC 200-100-190 Standards for operation—Multi-state operations. Local government joint self-insurance programs domiciled in this state and operating in this state and other states must obtain any licenses, permits, and permissions to the extent required by a state prior to commencing operations in that state.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-100-220 Standards for contracts—Standards for operation—Purchases of goods and services not related to claims. Joint self-insurance programs comprised of one common entity type must comply with bidding and purchasing requirements as prescribed by law or regulation for that entity type. Joint self-insurance programs comprised of multiple entity types shall use a competitive process for the purchase of goods and services not described in WAC ((82-60-215)) 200-100-215. Vendor selection shall be based on fees or costs, ability, capacity, experience, reputation, and responsiveness to time limitations. These regulations do not apply to the purchase of goods and services described in WAC ((82-60-050(5))) 200-100-050(5).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 200-100-030 Standards for management and operation—Adoption of program.
- WAC 200-100-039 Standards for management and operations—Preparation for incorporation of nonprofit corporation members.
- WAC 200-100-040 Standards for operation and management—Risk management.

Chapter 200-150 WAC

SELF-INSURANCE REQUIREMENTS AS TO NON-PROFIT CORPORATIONS

NEW SECTION

WAC 200-150-010 Preamble and authority. These rules governing nonprofit self-insurance transactions are adopted by the state risk manager to implement chapter 109, Laws of 2015 relating to the management and operations of joint nonprofit property and liability self-insurance programs.

NEW SECTION

WAC 200-150-020 Definitions. (1) "Actuary" means any person who is a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

(2) "Assessment" means the moneys paid by the members to a joint self-insurance program.

(3) "Broker of record" means the insurance producer licensed in the state of Washington who, through a contractual agreement with the joint self-insurance program, procures insurance on behalf of the joint self-insurance program.

(4) "Case reserves" means the total of all claims and claims adjustment expenses for covered events which have occurred and have been reported to the joint self-insurance programs as of the date of the financial statement. Case reserves include an estimate for each reported claim based on the undiscounted jury verdict value of said claim.

(5) "Claim adjustment expense" means expenses, other than claim payments, incurred in the course of investigating and settling claims.

(6) "Claim" means a demand for payment for damages or policy benefit because of the occurrence of an event that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.

(7) "Claims auditor" means a person who has the following qualifications:

(a) A minimum of five years in claims management and investigative experience;

(b) A minimum of three years of experience in auditing the same manner of claims filed against the program being audited;

(c) Proof of professional liability insurance; and

(d) Provides a statement that the auditor is independent from the program being audited, its vendors, insurers, brokers, and third-party administrators.

(8) "Competitive solicitation" means a documented formal process requiring sealed bids, providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(9) "Consultant" means an independent individual or firm contracting with a joint self-insurance program to perform actuarial, claims auditing or third-party administration services, represent the program as broker of record, or render an opinion or recommendation according to the consultant's methods, all without being subject to the control of the program, except as to satisfaction of the contracted deliverables.

(10) "Foundation agreement" means the contract binding nonprofit members to a joint self-insurance program.

(11) "Governing body" means the board, or governing body of a nonprofit risk pool formed under this chapter, or any committee thereof when the committee acts on behalf of the board or governing body.

(12) "Incurred but not reported, or IBNR" means claims and claim adjustment expenses for covered events which have occurred but have not yet been reported to the self-insurance program as of the date of the financial statement. IBNR claims include (a) known loss events that are expected to be presented later as claims, (b) unknown loss events that are expected to become claims, and (c) future development on claims already reported.

(13) "Joint self-insurance program" means any two or more nonprofit corporations which have entered into a cooperative risk sharing foundation agreement subject to regulation under chapter 109, Laws of 2015.

(14) "Jury verdict value" means the claim value established on an individual case basis by the entity's analysis of the jury verdict results within a jurisdiction in addition to other factors including, but not limited to, severity of injury or damage, length of recovery, credibility of parties and witnesses, ability of attorney, sympathy factors, degree of negli-

gence of the parties and contribution or recovery from other sources.

(15) "Member" means a nonprofit corporation that:

(a) Is a signatory to a joint insurance program's foundation agreement;

(b) Agrees to future assessments or reassessments as part of the program's joint self-insurance program if required by the terms of the program's foundation agreement; and

(c) Is a past or present participant in the excess or self-insured retention portion of the pool's insurance program subject to regulation under chapter 109, Laws of 2015.

(16) "Nonprofit corporation," as defined in RCW 24.03.-005(3) or in similar laws of other states, means a corporation of which no part of the income is distributable to its members, directors or officers.

(17) "Primary assets" means cash and investments (less any nonclaims liabilities).

(18) "Reassessment" means additional moneys paid by the members to a joint self-insurance program.

(19) "Risk sharing" means a decision by the members of a joint self-insurance program to jointly absorb certain or specified financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated losses; and/or joint purchase of insurance or reinsurance as a member of a joint self-insurance program formed under chapter 109, Laws of 2015.

(20) "Secondary assets" means insurance receivables, real estate or other assets (less any nonclaims liabilities) the value of which can be independently verified by the state risk manager.

(21) "Self-insurance program" means any individual or joint self-insurance program required by chapter 109, Laws of 2015 to comply with this chapter.

(22) "Services" means administrative, electronic, management, loss prevention, training or other support services which do not include the participation in or purchase of the pool's excess or self-insured insurance programs.

(23) "Stop-loss insurance" means a promise by an insurance company that it will cover losses of the entity it insures over and above an agreed-upon aggregated amount.

(24) "Third-party administrator" means an independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services: Pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.

(25) "Unallocated loss adjustment expense (ULAE)" means costs that cannot be associated with specific claims but are related to the claims adjustment process, such as administrative and internal expenses related to settlement of claims at the termination of the program.

(26) "Unpaid claims" means the obligations for future payment resulting from claims due to past events. This liability includes loss and adjustments expenses, incurred but not reported claims (IBNR), case reserves, and unallocated loss adjustment expenses (ULAE).

NEW SECTION

WAC 200-150-02005 Standards for operation—Membership. Membership in a joint self-insurance program requires the execution of a foundation agreement. Only members may participate in risk-sharing. Only members may participate in the self-insured retention layer, and only members may participate in the joint purchase of insurance or reinsurance. Further, each member shall agree to the following:

(1) Each member shall pay assessments and reassessments when required by the governing body of the program.

(2) Each member shall obtain approval to join the program from the governing body of the respective member.

(3) Each member shall become a signatory to the foundation agreement and subsequent amendments to the foundation agreement of the joint self-insurance program.

NEW SECTION

WAC 200-150-02007 Standards for operation—Providing services to nonmembers. (1) Nonmembers may purchase services through a contract or agreement. Nonmembers shall not participate in any coverages of the joint self-insurance program including the self-insured retention layer and the excess insurance or reinsurance layer. This section is not intended to preclude nonmembers purchasing services from becoming members of the joint self-insurance program, provided the nonmember meets the requirements of WAC 200-150-020 (15) and (16) and is eligible for membership as authorized by chapter 109, Laws of 2015.

(2) A program intending to provide services to nonmembers shall submit a written plan to the state risk manager for approval prior to providing services. The plan shall include, at a minimum, the services to be provided, the time frame for providing such services, the expected revenues and expenditures resulting from providing said services, and a written legal analysis of all potential federal and state tax liabilities created by providing services to nonmembers. The arrangement to provide such services shall be approved in writing by the state risk manager within sixty days of the joint self-insurance program's final plan submission.

(3) Every joint self-insurance program providing services as of the effective date of these regulations must submit a written plan meeting the requirements stated herein.

NEW SECTION

WAC 200-150-02009 Standards for operation—Communication with members—Annual membership report. The joint self-insurance program shall make available to each member a copy of the program's annual membership report. The annual membership report shall include, at a minimum, financial information which includes the comparative balance sheet and statement of revenues, expenses and net assets. The reports shall be delivered to each member by electronic or regular mail. Programs may meet the delivery requirement by publishing and maintaining the membership report on the official web site of the program for a minimum of three years from the date of publication.

NEW SECTION

WAC 200-150-02013 Standards for operation—Notice of regular meetings of the governing body. Every joint self-insurance program shall provide every member with a notice of the time and place of each regular meeting of the governing body at least ten days prior to the meeting. The notice shall be provided in electronic or paper form, and the time and location of each meeting shall be included in such notice. The state risk manager shall be provided a copy of all meeting notifications to members in the same form, manner and time as provided to members. In addition to electronic or regular mail, programs shall publish notification of regular meetings on the electronic web site of the program accessible to the public.

NEW SECTION

WAC 200-150-02015 Standards for operation—Special meetings—Notice to members. All joint self-insurance programs shall provide notice by electronic mail to the state risk manager and every member of the joint self-insurance program twenty-four hours in advance of every special meeting.

NEW SECTION

WAC 200-150-02017 Standards for operations—Meeting agendas—Meeting minutes. Every joint self-insurance program must provide the state risk manager and every member with a preliminary agenda in advance of each meeting of the governing body. The agenda shall be provided by electronic mail and shall be posted on the web site of the program accessible to the public. Meeting minutes, after approval, shall be posted on the web site of the program accessible to the public.

NEW SECTION

WAC 200-150-02019 Standards for operation—Notification of changes to bylaws or foundation agreement. Every joint self-insurance program shall provide notification of the intent to change the bylaws or foundation agreement to each member of the joint self-insurance program and the state risk manager by regular or electronic mail at least thirty days in advance of the meeting during which a vote on the proposed change will occur. Such notification shall include a copy of proposed changes.

NEW SECTION

WAC 200-150-02021 Standards for operation—Changes to foundation agreement. (1) Changes to the foundation agreement shall be by amendment and shall be approved by the governing body of each joint self-insurance program during a regular meeting of the governing body.

(2) Amendments to the foundation agreement shall be adopted by the governing body of each member and signed by an authorized representative of each member. The signed amendment, shall be submitted to, and retained by, the joint self-insurance program. Copies of the foundation agreement

and subsequent amendments shall be published on the web site of the joint self-insurance program.

(3) Changes to any terms of the foundation agreement shall require amendment using the approval and adoption process described above.

(4) Each new member joining a joint self-insurance program after the formation of the program shall sign a copy of the most current foundation agreement and copies of all subsequent amendments to that agreement that have been adopted by the governing body of the joint self-insurance program. The joint self-insurance program shall retain the signed foundation agreements and amendments until termination of the program occurs.

(5) When a new foundation agreement is adopted by the governing body of the joint self-insurance program to replace the existing foundation agreement and incorporate amendments, the new foundation agreement shall be approved by the governing body of each member of the joint self-insurance program. The new foundation agreement shall be signed by an authorized representative of each member. The signed agreement shall be submitted to, and retained by, the joint self-insurance program until termination of the program occurs.

NEW SECTION

WAC 200-150-02023 Standards for operation—Elections of the governing body. The governing body of every joint self-insurance program shall be elected by a majority of the members voting in the election. Elections may be conducted during a regular meeting of the governing body or by mail-in ballot or electronic ballot. If mail-in or electronic ballots are used, the ballots are to be counted and secured until certified by the governing body at the next regular meeting and recorded in the meeting minutes. Vacancies on the governing board shall be filled according to program bylaws. Joint self-insurance programs governed by a governing body which requires the inclusion of a voting representative from each member entity in such governing body are exempt from the requirements of this section.

NEW SECTION

WAC 200-150-03001 Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements. (1) All joint self-insurance programs shall obtain an annual actuarial review as of fiscal year end which provides written estimates of the liability for unpaid claims measured at the expected level and the seventy, eighty, and ninety percent confidence level.

(2) The governing body of the joint self-insurance program shall establish and maintain primary assets in an amount at least equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs meeting this requirement shall be considered in compliance with the primary asset test. All joint self-insurance programs that do not meet the requirements of the primary asset test shall notify the state risk manager in writing of the condition. The state risk manager shall take corrective action, which may include the service of a cease and desist order upon the program, to

require that the program increase primary assets in an amount equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end.

(3) The governing body of every joint self-insurance program operating under this chapter shall establish and maintain total primary and secondary assets in an amount equal to or greater than the unpaid claim estimate at the eighty percent confidence level as determined by the program's actuary as of fiscal year end.

(4) All joint self-insurance programs authorized by chapter 109, Laws of 2015 shall meet the requirements of both the primary asset test and the total asset test. The governing body of all joint self-insurance programs that do not meet requirements of the total asset test shall notify the state risk manager in writing of the condition. The state risk manager shall require that the program submit a written corrective action plan to the state risk manager within sixty days of notification. Such plan shall include a proposal for improving the financial condition of the self-insurance program and a time frame for completion. The state risk manager shall approve or deny the proposed plan in writing within thirty days of receipt of the final plan submission.

Joint self-insurance programs operating under an approved plan and making satisfactory progress according to the terms of the plan shall remain under supervisory watch by the state risk manager until the terms of the approved plan have been met. Programs under supervisory watch but not making satisfactory progress may be subject to the following requirements:

- (a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;
 - (b) Submission of quarterly reports;
 - (c) On-site monitoring by the state risk manager; or
 - (d) Service of a cease and desist order upon the program.
- (5) Failure by the joint self-insurance program to respond or submit a plan to improve the financial condition of the program shall cause the state risk manager to take corrective action, which may include written notification to every member of the joint self-insurance program, the service of a cease and desist order upon the program, and other available remedies necessary to ensure the program operates in a financially sound manner.

(6) All joint self-insurance programs that do not maintain total primary and secondary assets in an amount equal to or greater than unpaid claim estimate at the seventy percent confidence level, as determined by the program's actuary, as of fiscal year end shall be issued a cease and desist order by the state risk manager. Such programs will be considered under a supervisory cease and desist order.

(7) The state risk manager shall evaluate the operational safety and soundness of the program by monitoring changes in liquidity, claims reserves and liabilities, member equity, self-insured retention, and other financial trends over time. Programs experiencing adverse trends may cause the state risk manager to increase frequency of on-site program review and monitoring, including increased communication with the governing body and requirements for corrective plans.

(8) When the state risk manager determines it necessary to analyze the program's soundness and financial safety, the state risk manager may obtain an independent actuarial eval-

uation to determine the accuracy of the estimate for unpaid claims liabilities, including the estimate of unallocated loss adjustment expenses. Costs of these services shall be the responsibility of the joint self-insurance program.

NEW SECTION

WAC 200-150-033 Standards for management and operations—Individual rate setting—Nondiscrimination in joint program assessments. (1) Joint self-insurance program assessment formulas shall include all costs including rating for insured and self-insured layers of coverage. Assessment formulas shall be consistent and nondiscriminatory among all members.

(2) This provision shall not be construed to prohibit individual choice of coverage by members from several offered by the joint self-insurance program. The assessment formula, including the insured and self-insured components, shall be consistently applied to reflect the selection from among these choices.

(3) The assessment formula shall be available for review by the state risk manager.

(4) Joint self-insurance programs shall not sell equity, security, or shares in the joint self-insurance program.

NEW SECTION

WAC 200-150-034 Standards for operations—Disclosures. (1) All joint self-insurance programs shall furnish to each new member joining a self-insurance program written statements which describe:

- (a) Insurance coverages or benefits currently provided by the program, including any applicable restrictions, limitations, and exclusions;
- (b) The method by which members' (re)assessments are determined;
- (c) The procedure for filing a claim against the joint self-insurance program;
- (d) The procedure for a member to request an adjudication of disputes or appeals arising from coverage, claim payment or denial, membership, and other issues; and
- (e) General characteristics of the insurance coverage portion of the program.

(2) If any changes are made to subsection (1)(a) through (e) of this section, new written documents must be provided to all members that include these changes.

NEW SECTION

WAC 200-150-036 Standards for operations—Standards for solvency—Termination provisions. (1) Program terminations. All joint self-insurance programs shall maintain a written plan that provides for the partial or complete termination of the program and for liquidation of its assets upon termination of the program. The termination procedure shall include, but not be limited to, a provision for the settling of all its liabilities for unpaid claims and claim adjustment expenses.

(2) Member terminations. All joint self-insurance programs shall maintain a written plan that provides for the termination of membership of a member.

NEW SECTION

WAC 200-150-037 Standards for management and operations—Financial plans. (1) All joint self-insurance programs shall maintain a written plan for managing the financial resources of the program. The financial plan shall include:

- (a) A procedure for accounting for moneys received, payments made and liabilities of the joint program which complies with generally accepted accounting principles;
 - (b) An investment policy approved by the governing body governing the investments of the program;
 - (c) The preparation of accurate and timely annual financial reports of the program; and
 - (d) The submission of audited financial statements to the state risk manager within one hundred twenty days of the program's fiscal year end which meet the requirements of the state risk manager as described in this chapter.
- (2) No financial plan of a joint self-insurance program shall permit any loans from primary assets held for payment of unpaid claims at the expected level as determined by an actuary as of fiscal year end.

NEW SECTION

WAC 200-150-038 Standards for management—Standards for contracts—Third-party administrator contracts. Before contracting for third-party administrator professional services, all joint self-insurance programs shall establish and maintain written procedures for contracting with third-party administrators. Entering a contract for services shall not relieve the governing body of the joint self-insurance program of its ultimate governing, managerial and financial responsibilities. The procedures shall, as a minimum:

- (1) Provide a method of third-party administrator selection using a formal competitive solicitation process;
- (2) Require a complete written description of the services to be provided, remuneration levels, contract period and expiration date providing for a contract term no greater than five years. The contract may include an additional one year extension to be exercised at the discretion of the joint self-insurance program;
- (3) Provide for the confidentiality of the program's information, data and other intellectual property developed or shared during the course of the contract;
- (4) Provide for the program's ownership of the information, data, and other intellectual property developed or shared during the course of the contract;
- (5) Provide for the expressed authorization of the joint self-insurance program, consultants to the program, the state risk manager, or their designees, to enter the third-party administrator's premises to inspect and audit the records and performance of the third-party administrator which pertains to the program and to obtain such records electronically when audit travel costs can be eliminated or reduced;
- (6) Require the compliance with all applicable local, state and federal laws;
- (7) Establish a monitoring and acceptance procedure to determine compliance with third-party administrator contract requirements; and

- (8) Establish indemnification provisions and set forth insurance requirements between the parties.

NEW SECTION

WAC 200-150-050 Standards for claims management—Claims administration. (1) All joint self-insurance programs shall adopt a written claims administration program which includes, as a minimum, the following procedures:

- (a) Claims filing procedures and forms.
 - (b) Standards requiring case reserves for each claim be established in the amount of the jury verdict value.
 - (c) Standards requiring case reserves be reviewed every ninety days or when reasonably practicable and such review is documented in the claims diary.
 - (d) Standards requiring appropriate adjuster work loads.
 - (e) Standards requiring claims payment procedures include sufficient internal controls to ensure adequate review and approval by claims management staff.
 - (f) Standards requiring file documentation be complete and up-to-date.
 - (g) Standards requiring timely and appropriate claim resolution practices.
 - (h) Standards requiring opportunities for recoveries be reviewed and documented for each claim.
 - (i) Standards requiring compliance with Internal Revenue Service (IRS) rules for 1099MISC regulations.
 - (j) Standards requiring claims files be audited on the following categories: Staffing, caseloads, supervision, diary, coverage, reserves, promptness of contacts, field investigations, file documentation, settlements, litigation management and subrogation.
- (2) All joint self-insurance programs may perform claims administration services on their own behalf or may contract for claims administration services with a qualified third-party administrator, provided all of the specific requirements under subsection (1) of this section are included in the contract.
- (3) All joint self-insurance programs shall have a written member coverage appeal procedure that contains, as a minimum, procedures for a member filing an appeal with the joint self-insurance program, including the time limit for filing, a time limit for response, and a provision for an additional level of review.
- (4) All joint self-insurance programs shall maintain a financial system that identifies claim and claim adjustment expenses.
- (5) All joint self-insurance programs shall provide for the purchase of goods and services to replace or repair property in a manner which will, in the judgment of the governing body of the joint self-insurance program, avoid further damage, injury, or loss of use to a member or third-party claimant.
- (6) All joint self-insurance programs shall maintain claim expense reports for all claims made against the joint self-insurance program and its members.
- (7) All joint self-insurance programs shall obtain an independent audit of claim reserving, adjusting and payment procedures every three years at a minimum. The audit shall be conducted by an independent qualified claims auditor not affiliated with the program, its insurers, its broker of record,

or its third-party administrator. Such review shall be in writing and identify strengths, areas of improvement, findings, conclusions and recommendations. Such review shall be provided to the governing body and retained for a period not less than six years. The scope of the claims audit shall include claims administration procedures listed in subsection (1) of this section.

(8) The state risk manager may require more frequent claims audits for programs that, in the state risk manager's opinion, are not operationally or financially sound. Failure to obtain the requested independent claims audit when required may result in the procurement of such audit by the state risk manager on behalf of the program. Costs of these services shall be the responsibility of the joint self-insurance program.

NEW SECTION

WAC 200-150-060 Standards for management and operations—State risk manager reports. (1) Every joint property and liability self-insurance program authorized to transact business in the state of Washington shall submit the annual report to the state risk manager.

(2) The annual report to the state risk manager shall require the following information to be submitted in electronic form:

- (a) Audited annual financial statements;
- (b) Actuarial reserve review report on which the net claims liabilities at fiscal year end reported in the audited financial statements are based;
- (c) Copies of all insurance coverage documents;
- (d) List of contracted consultants;
- (e) Details of changes in articles of incorporation, bylaws or foundation agreement;
- (f) Details of services provided by contract to nonmembers;
- (g) List of members added or terminated.

Such reports shall be submitted to the state risk manager no later than one hundred twenty days following the completion of the joint program's fiscal year.

(3) All joint self-insurance programs shall submit quarterly financial reports if, in the estimation of the state risk manager, the financial condition of a program warrants additional quarterly reporting requirements.

(4) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:

- (a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;
- (b) On-site monitoring by the state risk manager;
- (c) Service of a cease and desist order upon the program.

NEW SECTION

WAC 200-150-065 Standards for operations—Program changes—Notification to the state risk manager. (1) All joint self-insurance programs shall operate in the same form and manner stated in the program's original application approved by the state risk manager. Programs shall submit a written request and receive approval from the state risk manager prior to implementing the following proposed program changes:

- (a) Elimination or reduction of stop loss insurance;
 - (b) Acceptance of any loans or lines of credit;
 - (c) Provision of services to nonmembers;
 - (d) Addition of members of other entity types than those included in original application approved by state risk manager.
- (2) The following program changes require written notification to the state risk manager prior to implementing the following changes:
- (a) Increases in retention level;
 - (b) Decrease or elimination of insurance limits;
 - (c) Initial contract with a third-party administrator, or change in third-party administrator;
 - (d) Any change to bylaws;
 - (e) Any amendments to the foundation agreement.

NEW SECTION

WAC 200-150-080 Standards for management and operations—Conflict of interest. (1) Every joint self-insurance program shall require the claims auditor, the third-party administrator, the actuary, and the broker of record to contract separately with the joint self-insurance program. Each contract shall require that a written statement be submitted to the program on a form provided by the state risk manager providing assurance that no conflict of interest exists prior to acceptance of the contract by the joint self-insurance program.

(2) All joint self-insurance programs shall meet the following standards regarding restrictions on the financial interests of the program administrators:

(a) No member of the board of directors; trustee; administrator, including a third-party administrator; or any other person having responsibility for the management or administration of a joint self-insurance program or the investment or other handling of the program's money shall:

(i) Receive directly or indirectly or be pecuniarily interested in any fee, commission, compensation, or emolument arising out of any transaction to which the program is or is expected to be a party except for salary or other similar compensation regularly fixed and allowed for because of services regularly rendered to the program.

(ii) Receive compensation as a consultant to the program while also acting as a member of the board of directors, trustee, third-party administrator, or as an employee.

(iii) Have any direct or indirect pecuniary interest in any loan or investment of the program.

(b) No consultant or legal counsel to the joint self-insurance program shall directly or indirectly receive or be pecuniarily interested in any commission or other compensation arising out of any contract or transaction between the joint self-insurance program and any insurer or consultant.

(c) Brokers of record for the joint self-insurance programs may receive compensation for insurance transactions performed within the scope of their licenses. The terms of compensation shall be provided for by contract between the broker of record and the governing body, and the amount or percentage of the compensation must be disclosed in writing. Contracts between brokers of record and the governing body shall include a provision that contingent commissions or

other form of compensation not specified in the contract shall not be paid to the broker of record as a result of any joint self-insurance program insurance transactions. The joint self-insurance program shall establish a contract provision which requires the broker provide to the program a written annual report on a form provided by the state risk manager which discloses the actual financial compensation received. The report shall include verification that no undisclosed commission was received as a result of any such insurance transaction made on behalf of the program.

(d) No third-party administrator shall serve as an officer or on the board of directors of a self-insurance program.

NEW SECTION

WAC 200-150-100 Standards for operations—State risk manager—Expense and operating cost fees. (1) The state risk manager shall fix state risk manager fees to cover expenses and operating costs of the state risk manager's office in administering chapter 109, Laws of 2015. Such fees shall be levied against each joint property and liability self-insurance program regulated by chapter 109, Laws of 2015. Services covered by the state risk manager fees will include program reviews, monitoring and continuing oversight.

(2) The state risk manager fees shall be paid by each joint self-insurance program to the state of Washington, department of enterprise services within sixty days of the date of invoice. Any joint self-insurance program failing to remit its fee when due is subject to denial of permission to operate or to a cease and desist order until the fee is paid.

(3) A joint self-insurance program that has voluntarily or involuntarily terminated shall continue to pay an administrative fee until such time as all liabilities for unpaid claims and claim adjustment expenses and all administrative responsibilities of the joint self-insurance program have been satisfied.

(4) The state risk manager shall assess each prospective joint self-insurance program an initial investigation fee at a rate determined annually by the state risk manager.

NEW SECTION

WAC 200-150-190 Standards for operation—Multi-state operations. Nonprofit joint self-insurance programs domiciled in this state and operating in this state and other states must obtain any licenses, permits and permissions to the extent required by a state prior to commencing operations in that state.

NEW SECTION

WAC 200-150-200 Standards for operations—Appeals of fees. (1) A joint self-insurance program which disagrees with a fee for services issued to it by the state risk manager shall notify the state risk manager in writing within thirty days after receipt of the invoice. The writing shall include the self-insurance program's reasons for challenging the fee and any other information the self-insurance program deems pertinent.

(2) The state risk manager shall review any fee appealed by a joint self-insurance program, together with the reasons for the appeal. Within fourteen days of receipt of notification

from the self-insurance program, the state risk manager shall respond in writing to the self-insurance program, either reaffirming the fee or modifying it, and stating the reasons for the decision.

NEW SECTION

WAC 200-150-210 Standards for operations—Appeals of cease and desist orders. Within ten days after a joint self-insurance program covering property or liability risks has been served with a cease and desist order under section 12(3), chapter 109, Laws of 2015, the entity may request an administrative hearing. The hearing provided may be held in such a place as is designated by the state risk manager and shall be conducted in accordance with chapters 34.05 RCW and 10-08 WAC.

WSR 15-22-039

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed October 28, 2015, 11:43 a.m., effective November 28, 2015]

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

Purpose: The developmental disabilities administration (DDA) is making these changes because the majority of individual and family services (IFS) clients will start to receive medicaid with the implementation of the IFS waiver, and DDA wants to evenly apply the adjustment based on medical acuity and activities of daily living support needs to all clients, regardless of medicaid eligibility. The consequences of not making these changes would be that an estimated seventy-five percent of IFS clients would experience a reduction in their IFS allocation at their next assessment, with the receipt of medicaid.

Citation of Existing Rules Affected by this Order: Amending WAC 388-828-9060, 388-828-9100, 388-828-9120, and 388-832-0120.

Statutory Authority for Adoption: RCW 71A.12.030 General authority of secretary—Rule adoption and 71A.12.-140 Duties of state agencies generally.

Adopted under notice filed as WSR 15-17-091 on August 18, 2015.

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 4, Repealed 0.

Number of Sections Adopted at 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 4, Repealed 0.

Date Adopted: October 26, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-21-033, filed 10/13/09, effective 11/13/09)

WAC 388-828-9060 How does DDD determine your individual and family services support rating? ~~((+))~~
Your individual and family services support rating is determined by using the following table:

If your unadjusted individual and family services level is:	Then your individual and family services support rating is:
1	0

~~((+))~~

If your individual and family services level is 1, 2, 3, 4, or 5 ((and you are not eligible for medicaid personal care))	And your ADL support needs level for the SIS per WAC 388-828-5480				
	None	Low	Medium	High	
And your medical acuity level per WAC 388-828-5700	None	57	57	76	85
	Low	57	57	76	85
	Medium	57	88	122	145
	High	57	145	245	287

~~((2))~~

If your individual and family services level is 1, 2, 3, 4, or 5 and you are eligible for medicaid personal care per chapter 388-106 WAC	And your ADL support needs level for the SIS per WAC 388-828-5480				
	None	Low	Medium	High	
And your medical acuity level per WAC 388-828-5700	None	0	0	0	0
	Low	0	0	0	0
	Medium	0	0	0	0
	High	0	0	0	0))

Example: If your individual and family service level is 3 ~~((and you are not eligible for medicaid personal care services))~~ and your ADL support needs level is "low" and your medical acuity level is "medium," the amount of your adjustment is 88.

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-828-9120 How does DDD determine your individual and family services score? DDD adds your individual and family services support rating from WAC 388-828-9060 to the adjustment amount in WAC 388-828-9100 to determine your individual and family services score.

Example: If ~~((you are not eligible for medicaid personal care services and))~~ your individual and family services support rating is 336 and the amount of your adjustment is 122, your individual and family services score is 458.

If your unadjusted individual and family services level is:	Then your individual and family services support rating is:
2	240
3	336
4	432
5	528

AMENDATORY SECTION (Amending WSR 08-16-121, filed 8/5/08, effective 9/5/08)

WAC 388-828-9100 How does DDD determine the number to use in the adjustment of your individual and family services support rating? DDD determines the amount of the adjustment for your individual and family services support rating using the following tables:

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0120 Will my IFS allocation be impacted if I am eligible for medicaid personal care services? ~~((If you meet financial and functional eligibility for medicaid personal care services, your IFS allocation will be adjusted according to WAC 388-828-9100 through 388-828-9140-))~~ Financial and functional eligibility for medicaid personal care services will not impact your IFS allocation.

WSR 15-22-044

PERMANENT RULES

SECRETARY OF STATE

[Filed October 29, 2015, 9:07 a.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: Update classifications of goods and services. Chapter 434-12 WAC, Trademarks, changes include updating the method of delivery of registrations to include "online" when the system is available, and updating the classifications of goods and services to match the federal classifications.

Citation of Existing Rules Affected by this Order: Repealing 434-12-190; and amending WAC 434-12-005, 434-12-015, and 434-12-025.

Statutory Authority for Adoption: RCW 19.77.115.

Adopted under notice filed as WSR 15-18-061 on August 27, 2015.

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 3, Amended 0, Repealed 1.

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, 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 3, Amended 0, 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 28, 2015.

Mark Neary
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 10-04-045, filed 1/28/10, effective 2/28/10)

WAC 434-12-005 Trademark filing—Fees(~~—Office hours—Location~~). (1) Trademarks are filed with the corporations division of the secretary of state and may be delivered in person, by mail, and when available, online.

(2) Filing and other fees for trademarks are set forth in WAC 434-112-080 through 434-112-090.

(3) Photocopy fees for trademarks are per WAC 434-12A-100.

(4) Certified copies of trademarks are ten dollars for each certification plus the photocopy fee.

AMENDATORY SECTION (Amending WSR 10-04-045, filed 1/28/10, effective 2/28/10)

WAC 434-12-015 Classification of goods and services. (1) The corporations division adopts the following table for classification of goods and services:

Goods

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins; unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.

3. Cosmetics and cleaning preparations, bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

4. Lubricants and fuels, industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.

5. Pharmaceuticals, veterinary, and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Metal goods, common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

7. Machinery, machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs.

8. Hand tools and implements (hand-operated); cutlery; side arms; razors.

9. Electrical and scientific apparatus, scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus.

10. Medical apparatus, surgical, medical, dental, and veterinary apparatus and instruments, artificial limbs, eyes, and teeth; orthopedic articles; suture materials.

11. Environmental control apparatus, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air, or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Jewelry, precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments.

15. Musical instruments.

16. Paper goods and printed matter, paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not

included in other classes); playing cards; printers' type; printing blocks.

17. Rubber goods, rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.

18. Leather goods, leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and traveling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

19. Nonmetallic building materials, building materials (nonmetallic); nonmetallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; monuments, not of metal.

20. Furniture and articles not otherwise classified, furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

21. Housewares and glass, household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush making materials; articles for cleaning purposes; steel wool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

22. Cordage and fibers, ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

23. Yarns and threads, for textile use.

24. Fabrics, textiles and textile goods, not included in other classes; beds and table covers.

25. Clothing, footwear, headgear.

26. Fancy goods, lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

27. Floor coverings, carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (nontextile).

28. Toys and sporting goods, games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

29. Meats and processed foods, meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.

30. Staple foods, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice.

31. Natural agricultural products, agricultural, horticultural and forestry products and grains not included in other classes; ~~((five))~~ living animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals; malt.

32. Light beverages, beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

33. Wine and spirits, alcoholic beverages (except beers).

34. Smokers' articles, tobacco; smokers' articles; matches.

Services

35. Advertising and business, advertising; business management; business administration; office functions.

36. Insurance and financial, insurance; financial affairs; monetary affairs; real estate affairs.

37. Building construction and repair; installation services.

38. Telecommunications.

39. Transportation and storage, transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials.

41. Education and entertainment; providing of training; entertainment; sporting and cultural activities.

42. Computer ~~((and))~~, scientific~~((;))~~ and legal, scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; legal services.

43. Hotels and restaurants; services for providing food and drink; temporary accommodations.

44. Medical, beauty and agricultural; medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services.

45. Personal ~~((and legal))~~; personal and social services rendered by others to meet the needs of individuals; security services for the protection of property and individuals.

(2) This table is adopted from the schedule for classification of goods and services published by the United States Patent and Trademark Office.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-12-025 Document and specimen standards for trademark filing. (1) ~~((In addition to the requirements of WAC 434-112-040, the following rules apply to trademark filings:~~

~~((a)))~~ Specimens submitted in support of a trademark filing must:

~~((+))~~ (a) Be of sufficient quality, size and clarity to allow the ~~((corporations))~~ division to create and maintain an accurate digital image of the specimen; and

~~((+))~~ (b) Demonstrate that the trademark is in use in commerce; preliminary design artwork is not acceptable.

~~((+))~~ (c) Be in pdf (portable document format), if filing online.

(2) Specimens submitted in support of a trademark reservation:

~~((+))~~ (a) Must be of sufficient quality, size and clarity to allow the ~~((corporations))~~ division to create and maintain an accurate digital image of the specimen; and

~~((f))~~ (b) May be in the form of preliminary design artwork so long as the design clearly describes the trademark to be reserved; and

(c) Must be in pdf format, if filing online.

~~((2))~~ (3) Corporations division staff may reject submissions that do not meet these requirements.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-12-190 Intervention.

WSR 15-22-046 PERMANENT RULES SECRETARY OF STATE

[Filed October 29, 2015, 9:08 a.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: A new section has been added to chapter 434-120 WAC that will, except for initial charitable trust registrations, eliminate paper submissions. Charitable organizations, commercial fundraisers, and charitable trust renewals will be required to submit their annual registrations, along with other miscellaneous filings, using the new online filing system. While the rules becomes effective January 1, 2016, the mandated online filing does not take effect until May 1, 2017, when the system is available.

Statutory Authority for Adoption: RCW 11.110.070, 19.09.020, 19.09.541, 19.09.560, 43.07.120.

Adopted under notice filed as WSR 15-18-060 on August 27, 2015.

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 Request of a Nongovernmental Entity: New 0, 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 1, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, 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 27, 2015.

Mark Neary
Assistant Secretary of State

NEW SECTION

WAC 434-120-035 Mandatory filing online. All charitable organizations and commercial fund-raisers filing registrations and renewals, and charitable trusts filing renewals, will be required to file using the secretary of state's online fil-

ing application as of May 1, 2017. Except for initial trust registrations, paper documents will not be accepted after April 30, 2017.

WSR 15-22-047

PERMANENT RULES SECRETARY OF STATE

[Filed October 29, 2015, 9:08 a.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: Updates to implement new law from 2015.

Chapter 434-55 WAC, to be repealed due to SB 5387 of the 2015 legislative session, combining limited partnership filing provisions in one chapter with other entities. Updating chapter 434-112 WAC to include limited partnerships.

Chapter 434-112 WAC, updating chapter to include all filing provisions for business corporations, nonprofit corporations, limited liability partnerships, limited partnerships, limited liability companies, and general cooperative association per SB 5387 of the 2015 session. Addresses the new designation of commercial-registered-agent and the procedures and fees associated; streamline filings for office and customers.

Chapter 434-130 WAC, to be repealed due to SB 5387 of the 2015 legislative session, combining limited liability companies filing with other business entities. Updating chapter 434-112 WAC to include limited liability companies.

Chapter 434-135 WAC, to be repealed due to SB 5387 of the 2015 legislative session, combining limited liability partnerships filing provisions with other business entities. Updating chapter 434-112 WAC to include limited liability partnerships.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-112-005, 434-112-020, 434-112-062 and 434-112-092; and amending chapter 434-112 WAC.

Statutory Authority for Adoption: Chapter 176, Laws of 2015 (HUB) and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW.

Adopted under notice filed as WSR 15-18-088 on August 31, 2015.

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 4, Amended 16, Repealed 4.

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

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 16, Repealed 4.

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 4, Amended 16, Repealed 4; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 27, 2015.

Mark Neary
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-010 Services provided by the corporations and charities division. ~~((1) The division includes the corporations program and the charities program.~~

~~(2))~~ The corporations ~~((program))~~ and charities division provides the following services:

~~((a) Business filings))~~ (1) Filing business records under chapters 18.100, 23.78, 23.86, 23.90 RCW, and Titles 23B and 25 RCW, and chapter 176, Laws of 2015;

~~((b))~~ (2) Filing nonprofit organization ((filings)) records under Title 24 RCW and chapter 176, Laws of 2015;

~~((c))~~ (3) Filing charities program registrations under chapters 19.09 RCW and 434-120 WAC;

(4) Filing trademark registration records under chapters 19.77 RCW and 434-12 WAC;

~~((d))~~ (5) Certification authority licensing under chapters 19.34 RCW ~~((, the Electronic Authentication Act))~~ and 434-180 WAC;

~~((e))~~ (6) Filing registration records of international student exchange programs under chapters 19.166 RCW and 434-166 WAC;

~~((f) Registration under the Immigration Assistant Practices Act, chapter 19.154 RCW;~~

~~((g))~~ (7) Apostilles under RCW 42.44.180;

~~((h))~~ (8) Agent for service of process on nonresident motorists under RCW 46.64.040;

~~((i))~~ (9) Agent for service of process on defendants in actions for recovery of damages for motor vehicle theft, as authorized by RCW 9A.56.078;

~~((j))~~ (10) Agent for service of process for those entities and under those circumstances listed in ~~((a), (b), and (c) of this subsection))~~ section 1411(4), chapter 176, Laws of 2015;

~~((k))~~ (11) Filing registration records of state registered domestic partnerships under chapter 26.60 RCW and RCW 43.07.400.

~~((3) The charities program provides the following services:~~

~~(a) Registrations under the Charitable Solicitations Act, chapter 19.09 RCW including:~~

~~(i) Charitable organizations;~~

~~(ii) Commercial fund-raisers; and~~

~~(iii) Fund-raising contracts;~~

~~(b) Registration of charitable trusts under chapter 11.110 RCW;~~

~~(c) Publication of the trust directory; and~~

~~(d) Agent for service of process for those entities and under those circumstances listed in (a) and (b) of this subsection.)~~

NEW SECTION

WAC 434-112-023 Preclearance. Records will only be precleared in person at the front counter. The filing fee is ten dollars plus the immediate service fee of fifty dollars. If

immediate service is not required, the record may be left for processing with other records received that day and the precleared record will be returned by mail or electronically within five business days. If grounds for rejection are found, a notice of the grounds will be included with the returned record.

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-025 ((Documents)) Paper records delivered after normal working hours. (1) ~~((Documents))~~

Paper records, including substitute service of process on the secretary of state, delivered after the normal working hours ~~((of 8:00 a.m. to 5:00 p.m.)),~~ will be treated as though received on the next working day.

(2) ~~((Filings))~~ Records submitted online ~~((or by fax))~~ will be treated as though received as of the date and time the division's computer system ~~((or fax machine))~~ records the complete submission and credit card approval for the transaction.

(3) The secretary assumes no responsibility for any form of delivery other than that:

(a) Received personally by an employee of the office of the secretary of state; or

(b) Received by the division's computer system ~~((or fax machine))~~ as a result of an electronic ~~((filing))~~ record submission.

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-028 ((Mail-in service—Corporate)) Name reservation. (1) ~~((All mailed-in documents are processed and filed in order of date of receipt unless expedited, incomplete, or incorrect. A specific filing date may be reserved up to thirty days in advance. The necessary documents, in appropriate form, with complete and correct information and fees, must be in the office by the specified date.~~

~~((2))~~ Paper requests for ((name searches coupled with)) a name reservation are completed in order of date received unless immediate or expedited service is requested. A name reservation may be made by completing the form provided by the division or in a letter clearly containing all the following information:

(a) The corporate name desired ~~((, with two alternate names));~~

(b) The name, address, and telephone number of the applicant;

(c) The signature of the applicant; and

(d) The application date.

An application on behalf of a client should also include the client's name and complete address.

(2) A name reservation expires in one hundred eighty days and may not be renewed. A new filing may be made after the expiration date.

(3) Requests for a name reservation may be filed online, when the system is available.

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-030 Certificates (~~for filings~~). Certificates issued by the secretary of state or the secretary's designee in furtherance of duties under Titles 18, 19, 23, 23B, 24, 25, 26 RCW, (~~and~~) chapter 42.44 RCW, and chapter 176, Laws of 2015, will:

- (1) Contain a rendition of the Washington state seal;
- (2) Contain a mechanical or electronic reproduction of the secretary's signature; (~~and~~)
- (3) Be regarded as the secretary of state's official certification of the matters itemized in the certificate; and
- (4) Types of certificates issued include, but are not limited to:
 - (a) Certificate of existence;
 - (b) Certificate of registration;
 - (c) Certificate of fact or record.

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-040 (~~Document~~) Standards for (~~filings~~) confirmation of filed records. (~~All corporations~~) All paper or electronic business related (~~filings~~) records are returned to the registered (~~agent for~~) agent's mail or electronic address on behalf of the entity when processing is (~~complete~~) completed unless the (~~filings~~) record indicates otherwise.

(~~2~~) Correspondence pertaining to a charities program filing is sent to the entity's mailing address of record when processing is complete unless the filing indicates otherwise.

(3) The corporations and charities programs may reject and return documents that are not legible or not able to be recorded as an image with adequate resolution and clarity, or are not complete.

Documents completed in pencil will not be accepted for filing.)

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-045 Rejection of (~~documents~~) records. (1) The corporations (~~and charities~~) program(s) may reject (~~documents under WAC 434-112-040~~) paper or electronic records that:

- (a) Are not legible; or
- (b) Are not able to be recorded as an image with adequate resolution and clarity; or
- (c) Are incomplete; or
- (d) Are not permitted to be filed in the corporations office; or
- (e) Paper records completed in pencil or faxed will not be accepted for filing.

(2) Additional information or payment may be requested by telephone, (~~fax~~) e-mail or letter.

(3) The corporations (~~and charities~~) program(s) may hold (~~documents~~) records for up to thirty days to await additional information or funds needed to complete the filing. (~~This time may extend to forty-five days if the filing party is~~

~~making good faith efforts to complete the filing~~) process. After thirty days, new records and fees are required.

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-050 (~~Duplicate originals not required~~) Filing procedure. (1) Persons submitting paper business (~~filings~~) records under chapters 18.100, 19.77 RCW, or Titles 23, 23B, 24 (~~and~~), 25 RCW, and chapter 176, Laws of 2015, must submit one (~~original~~) copy of the (~~document~~) record for filing.

(2) (~~Subsection (1) of this section does not apply to:~~)

- (a) Filings completed electronically;
- (b) Summons and complaints; and
- (c) Specimens provided in support of a trademark filing.

(~~3~~) The corporations (~~and charities~~) program(s) will retain a digital image of the paper or electronic record submitted for filing (~~and~~). The corporations program will, on completion of the filing (~~will return to the filer a copy of the digital image with a "Filed" endorsement~~), send a confirmation per WAC 434-112-040.

(~~4~~) (~~3~~) The corporations (~~and charities~~) program(s) may return the completed (~~filing~~) filed record via e-mail or other electronic means if the (~~filing~~) record indicates that an electronic response is acceptable.

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-055 Registered (~~office address—Requirements~~) agent. (~~All~~) A post office box address may be used in addition to a registered Washington geographic office address.

(2) The registered agent is required to notify the office of the secretary of state and the corporation of any changes in either the street address or the post office box address as soon as possible.) A domestic entity and a foreign registered entity must designate a registered agent. A registered agent may be a noncommercial or commercial registered agent. To be designated as a commercial registered agent, a person must deliver to the secretary of state a commercial-registered-agent-listing statement accompanied by a list of all entities' names and unified business identifier numbers the commercial registered agent represents in this state.

NEW SECTION

WAC 434-112-056 Statement of change for registered agent name and address. (1) A statement of change to change the registered agent name and/or address, may be completed online by:

- (a) The entity;
- (b) A noncommercial registered agent;
- (c) A commercial registered agent; or
- (d) Paper forms may be available at the secretary's online site.

(2) When a statement of change is filed by a noncommercial or commercial registered agent, the agent making the change must give each entity represented a notice in the form of a record relating to the change.

NEW SECTION

WAC 434-112-057 Resignation of agent. (1) A registered agent may resign as agent for a represented entity by delivering to the secretary of state for filing, a statement of resignation, executed by the agent.

(2) A statement of resignation takes effect on the 31st day after the day on which it is filed by the secretary or the designation of a new registered agent, whichever is earlier.

(3) A resigning registered agent must promptly furnish each represented entity notice in a record of the date on which a statement of resignation was filed. Notice must include the warning that the entity may be administratively dissolved if a new registered agent is not appointed within sixty days of the resignation of the agent.

NEW SECTION

WAC 434-112-058 Service of process. (1) The secretary serves as an agent for an entity only after service has been attempted by:

(a) Serving the registered agent;

(b) If the registered agent cannot be served, service should be sent to the principal office address as shown in the entity's most recent annual report;

(c) If process cannot be served by (a) or (b) of this subsection, service may be made by handing a copy to an individual in charge of any regular place of business or activity of the entity, if the individual served is not a plaintiff.

(2) Service is effected on the earliest of:

(a) The date the entity receives the mail delivery by the commercial delivery service;

(b) The date shown on the return receipt, if executed by the entity; or

(c) Five days after its deposit with the United States Postal Service or commercial delivery service, if correctly addressed and with sufficient postage or payment.

(3) Service must be in a written record, but service may be made on a commercial registered agent in other forms and subject to such requirements as the agent has stated in its commercial-registered-agent-listing statement.

(4) Service of process, notice, or demand may be made by other means under law.

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-060 ((Initial and)) Annual reports((—Form of content)). ~~((1) Any corporation filing under Title 23B RCW, shall file its initial annual report electronically, or on the form provided by the secretary of state, or shall clearly provide the information arranged in the following manner:~~

~~(a) Section 1. Corporate name, registered agent name and physical office address currently on file with the corporations program, the unified business identification number, state of incorporation, and original date filed in Washington;~~

~~(b) Section 2. If there has been a change in registered agent or registered office address since the articles were filed, include the effective date of the change and the new name or address with the agent's signature agreeing to accept the appointment;~~

~~(c) Section 3. Address of principal place of business in Washington or, if a foreign corporation, the principal office address as stated in original incorporation in foreign jurisdiction; for both domestic and foreign corporations, the corporation telephone number, e-mail address, and a brief statement of nature of business;~~

~~(d) Section 4. A list of names and addresses of all corporate officers and directors; and~~

~~(e) Section 5. Signature and title of either the chair or president of the board of directors or an officer listed within the report.~~

~~(2) All profit and nonprofit corporations shall file their annual reports electronically, or on the form prescribed by the secretary of state, or clearly and concisely sectioned in the following manner:~~

~~(a) Section 1. Corporate name and registered agent and office address currently on file with the corporations program, the unified business identification number, state of incorporation and original date filed in Washington;~~

~~(b) Section 2. If there has been a change in registered agent or registered office address include the effective date and the new agent's signature signifying acceptance of the appointment or the new address;~~

~~(c) Section 3. Statement of purpose, or, if a foreign profit or nonprofit corporation, a statement of activities conducted and an address of principal office;~~

~~(d) Section 4. A list of names and addresses of all corporate officers and directors; and~~

~~(e) Section 5. The signature of either the chair or president of the board of directors or an officer listed within the report.)~~ All business entities, as defined in section 1102(6), chapter 176, Laws of 2015, must file annual reports ((must be)) accompanied by the statutory fee under WAC 434-112-085 and are due by the last day of the month that the business entity was formed or registered in the secretary of state's office.

Any entity formed under Titles 23, 23B, and 25 RCW must disclose any transfer in the controlling interest of the entity and any interest in real property on the annual report, under RCW 43.07.390.

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-065 Online filing—((Consent)) Designation of registered agent. (1) When completing and submitting an online filing for any entity required by Washington law to appoint a registered agent the filing party shall affirm under oath that they have obtained and have in their possession the signed, written consent of the person appointed as registered agent.

(2) When the person submitting the filing is the person appointed as registered agent, ~~((they are not required to obtain))~~ a separate written consent is not required.

(3) Submitting a false affirmation is punishable as a gross misdemeanor under RCW 43.07.210.

(4) The ~~((corporation or other))~~ entity required to maintain a registered agent must:

(a) Retain the original of the registered agent's signed consent;

(b) Make the original of the registered agent's signed consent available for inspection on request; and

(c) Submit the original signed consent to the corporations program or the office of the attorney general within ten business days upon demand.

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-070 Online filing—~~(Application for certificate of authority)~~ For foreign entity registration—Certificate of ~~(good standing)~~ existence. (1) When a foreign ~~(corporation or foreign limited liability company)~~ entity as defined by section 1102(6), chapter 176, Laws of 2015, submits an online ~~(application for certificate of authority under RCW 23B.15.030, 24.03.325, or an online registration under RCW 25.15.315)~~ foreign entity registration statement, the filing party may meet the statutory requirement for submitting a ~~(certificate of good standing or a)~~ certificate of existence by submitting a digital image of a ~~(certificate of good standing)~~ certificate of existence~~(s)~~ or document of similar import ~~(meeting the requirements of the statute)~~ no older than sixty days before the date of submission.

(2) The image must be in a format specified as acceptable on the online filing web site.

(3) The ~~(certificate of good standing must meet the requirements of chapters 23B.15, 24.03, or 25.15 RCW for certificates of authority submitted in support of an application for certificate of authority.~~

~~(4) The corporation or limited liability company) entity must:~~

(a) Retain the original certificate of ~~(good standing)~~ existence;

(b) Make the original certificate of ~~(good standing)~~ existence available for inspection on request; and

(c) Submit the original to the corporations program or the office of the attorney general within ten business days upon demand.

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-075 Online services. (1) ~~(The corporations and charities division offers online services. The division's web site provides a variety of services for charities and corporations including online lookup, online filing and downloadable forms.~~

~~(2) Entities filing annual reports online must have twenty-five or fewer board members, officers, shareholders, members or managers to report.~~

~~(3)) Online filings:~~

~~(a) (Will be processed as expedited filings;~~

~~(b)) Will be subject to ((an expedited)) a processing fee of twenty dollars, with the exception of annual ((renewals)) reports or statements of change for registered agent information processed online; and~~

~~((e)) (b) Be treated as received when the division's system records receipt of the completed transaction including payment authorization.~~

~~((4)) (2) When submitting an online filing, the person completing the filing shall sign the application by: Typing their full name in the space provided on the web form; stating their capacity with the entity addressed in the filing; and following the directions for signing the web form.~~

~~((5)) (3) Online processing fees are nonrefundable.~~

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-080 ~~(In-person or) Immediate and expedited service—Special fees.~~ (1) ~~(In-person)) Immediate~~ service is available at the division's front counter ~~(which is open for all program service requests from 8:00 am to 5:00 p.m. each business day. The fee for in-person expedited service is fifty dollars plus any transaction fee.~~

~~(a) The division is unable to guarantee same day processing of any filing or request submitted in-person after 4:30 p.m. on that day.~~

~~(b)) for an immediate service fee of fifty dollars for single or multiple transactions on paper within each new or existing division program filing. In addition, the filing fee for each transaction applies.~~

(2) There is no ~~(in-person expedited)) immediate~~ service fee for ~~(documents)) records~~ dropped off in-person for processing with nonexpedited ~~(documents)) records~~ received that day.

~~((e)) (3) There is no ((in-person expedited)) immediate~~ service fee for photocopies requested in-person, however, photocopies ordered online are subject to a twenty dollar online processing fee. If a request is made for immediate service on a photocopy that was ordered online, an additional immediate service fee may be assessed.

~~((2)) (4) Expedited service requests((including online services)) for filing paper records received by mail, will be completed within two working days of submission ((or as soon thereafter as possible, depending on volume received. Expedited service is available on:~~

~~(a) All paper documents submitted to our office by fax or mail for filing relating to any division program;~~

~~(b) Document copying from microfilmed records; and~~

~~(c) Certification and status certificates.~~

~~(3) The fee for expedited service is fifty dollars for single or multiple transactions on paper within each new or existing division program file. In addition, the filing fee for each transaction will apply. If an online filing is subsequently filed in-person, an additional paper expedite fee is required.~~

~~(4)) for an expedited service fee of fifty dollars. If a request is made for immediate service on an expedited record, an immediate service fee may be assessed.~~

(5) Nonexpedited records are processed within fifteen business days with no service fee. If a request is made for expedite or immediate service, the applicable fee may be assessed.

(6) The processing fee for online service is twenty dollars and records are filed within two business days. If an online record is subsequently requested to be filed immediately, an additional immediate service fee may be required.

(7) The filing party may indicate ~~(that)) expedited ((pro-~~ processing) service is requested on mailed records by placing

the word "expedite" in bold letters on either the envelope, the face of the ~~((document))~~ record to be filed, or on any cover letter submitted with the ~~((document))~~ record.

~~((5)) Documents submitted via fax will receive expedited processing if accompanied by the expedite service fee. Otherwise, they will be processed with nonexpedited documents received the same day.~~

~~(6) Services may be limited under extraordinary circumstances.~~

~~(a) Over the counter service hours may be shortened under extraordinary circumstances.~~

~~(b) Separate over the counter requests by one person may be limited to those relating to three entities per transaction.~~

~~(7)) (8) Customers who resubmit rejected records that were expedited the first time they were submitted, may be charged an additional expedite fee upon resubmission.~~

(9) Emergency services outside regular business hours requiring employee overtime are one hundred fifty dollars per hour plus transaction fees due on any filing. When the division receives a request for emergency services, staff will notify the customer of the service fee and any other reasonable conditions set by the director. The customer must agree to pay the fees or have received a fee waiver before emergency services are provided.

~~((8)) (10) A customer may make alternate arrangements with the director prior to bringing or sending in ~~((documents))~~ records, if a sudden, unexpected situation occurs during the business day.~~

~~((9)) (11) A customer may submit a written request ~~((asking the secretary))~~ to waive emergency, expedited, or penalty fees, which must include the special circumstances justifying the fee waiver. The ~~((secretary))~~ director or deputy director will make the determination to waive fees or not.~~

~~((10) In person)) (12) Immediate, online, or expedited service fees are not refundable.~~

AMENDATORY SECTION (Amending WSR 11-12-020, filed 5/24/11, effective 7/1/11)

WAC 434-112-085 Fees and penalties. (1) For ~~((Washington registered profit))~~ domestic and foreign ~~((corporations, including employee cooperative associations, limited liability companies, limited partnerships, Massachusetts trusts, and limited liability partnerships,))~~ business entities, formed under Title 23B RCW, chapters 23.78, 25.15, 25.10, and 25.05 RCW, fees and penalties are:

- (a) ~~((Articles of incorporation))~~ Public organic record including employee cooperatives One hundred eighty dollars ~~((includes heritage center fee of five dollars under RCW 43.07.128))~~
- ~~((b))~~ Certificates of formation one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128))

- ~~((e))~~ ~~((Applications for registration))~~ Foreign registration statement One hundred eighty dollars ~~((includes heritage center fee of five dollars under RCW 43.07.128))~~ (may include back fees)
- ~~((d))~~ Certificates of authority one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)
- (e) Certificate of limited partnership one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128)
- (f) Other original filings one hundred eighty dollars (includes heritage center fee of five dollars under RCW 43.07.128))
- ~~((g))~~ (c) Articles of amendment or amendment of foreign registration statement Thirty dollars
- ~~((h))~~ (d) Articles of restatement Thirty dollars
- ~~((i))~~ (e) ~~((Articles))~~ Statement of correction Thirty dollars
- ~~((j))~~ (f) Revocation of voluntary dissolution ~~((or withdrawal))~~ Thirty dollars
- ~~((k))~~ (g) Delinquent ~~((license renewal))~~ fee ~~((ninety-four dollars, including twenty-five dollars penalty, sixty dollars statutory fee, and nine dollars department of licensing handling fee, when applicable))~~ Twenty-five dollars
- ~~((l))~~ (h) ~~((Limited partnership))~~ Annual report including employee cooperative Sixty dollars plus business licensing services fee when applicable
- ~~((m))~~ (i) Limited liability partnership annual report sixty dollars
- (n) Limited liability limited partnership annual report sixty dollars
- (o) Cooperative association annual report ten dollars))

((p)) <u>(i)</u>	Reinstatement from administrative dissolution	<u>One hundred forty dollars plus all delinquent license or annual fees</u>	(a)	((Articles of incorporation)) <u>Public organic record</u>	<u>Thirty dollars</u>
((q)) <u>(j)</u>	Requalification from administrative ((revocation)) <u>termination</u>	<u>One hundred eighty dollars plus all delinquent fees or penalties</u>	(b)	((Certificates of authority)) <u>Foreign registration statement</u>	<u>Thirty dollars</u>
((r)) <u>(k)</u>	Articles of merger or exchange	<u>Twenty dollars for each listed company</u>	(c)	((Other original filings)) <u>Cooperative association</u>	((thirty)) <u>Twenty-five dollars</u>
((s)) <u>(l)</u>	Resignation of registered agent	((twenty dollars)) <u>No fee</u>	(d)	Articles of amendment	<u>Twenty dollars</u>
((t)) <u>(m)</u>	Resignation of officer or director	ten dollars))	(e)	Restatement	<u>Twenty dollars</u>
((u)) <u>(n)</u>	Initial report filed with ((formation)) <u>public organic record</u>	<u>No fee</u>	(f)	Annual report	<u>Ten dollars</u>
((v)) <u>(o)</u>	Amended annual report ((or initial report filed after formation))	<u>Ten dollars</u>	(g)	Articles of <u>voluntary</u> dissolution, ((certificate)) <u>statement of withdrawal</u>	<u>No fee</u>
((w)) <u>(p)</u>	Change of registered agent	<u>No fee</u>	(h)	Reinstatement from administrative dissolution	<u>Thirty dollars plus all delinquent annual fees and five dollar penalty</u>
((x)) <u>(q)</u>	Change of registered office address	no fee))	(i)	Articles of merger or exchange	<u>Twenty dollars for each listed corporation</u>
((y)) <u>(r)</u>	Registration, reservation, or transfer of name	<u>Thirty dollars</u>	((j))	Resignation of officer or director	ten dollars))
((z)) <u>(s)</u>	Articles of dissolution or ((certificate of dissolution)) <u>voluntary termination of statement</u>	<u>No fee</u>	((k)) <u>(j)</u>	Amended annual report	<u>Ten dollars</u>
((aa)) <u>(t)</u>	Certificate of withdrawal	no fee	((l)) <u>(k)</u>	Change of registered agent	<u>No fee</u>
((ab)) <u>(u)</u>	Certificate of cancellation	no fee))	((m)) <u>(l)</u>	Change of registered ((office)) <u>agent address</u>	<u>No fee</u>
((ac)) <u>(v)</u>	Agent's consent to act as agent	<u>No fee</u>	((n)) <u>(m)</u>	Resignation of registered agent	((twenty dollars)) <u>No fee</u>
((ad)) <u>(w)</u>	Agent's resignation if appointed without consent	<u>No fee</u>	((o)) <u>(n)</u>	Registration, reservation, or transfer of reservation of name	<u>Twenty dollars</u>
((ae)) <u>(x)</u>	Other statement or report	<u>Ten dollars</u>	((p)) <u>(o)</u>	Certificate of election adopting provisions of chapter 24.03 RCW	<u>Thirty dollars</u>
			((q)) <u>(p)</u>	Other statement or report filed	<u>Ten dollars</u>

(3) For registering trademarks for use within the state, the fees are as follows:

(a)	Five year registration	<u>Fifty-five dollars (includes five dollars heritage center fee) for each class registered</u>
(b)	Five year renewal	<u>Fifty dollars for each class registered</u>
(c)	((Recording)) <u>Assignment of trademark</u>	<u>Ten dollars</u> ((includes registration))

(2) For ~~((Washington registered))~~ domestic and foreign nonprofit ~~((corporations, cooperative associations, nonprofit miscellaneous and mutual corporations, building corporations, and other associations and corporations))~~ entities under Title 24 RCW and chapter 23.86 RCW, fees and penalties are:

- (d) New certificate with name of assignee Five dollars
- (e) Reservation of trademark Thirty dollars for each class reserved, for one hundred eighty days
- (f) Amendment of trademark Fifty dollars for each class
- (g) Cancellation of trademark No fee
- (h) Other statement or report filed Ten dollars

(4) For filings related to state registered domestic partnership, the fees are:

- (a) Registration Fifty dollars
- (b) Name change No fee
- (c) Address change No fee
- (d) Notice of termination by reason of death No fee

(5) Fees paid under WAC 434-112-085 are not refundable. ~~((Under special circumstances, the filing party may petition the secretary in writing to request a waiver of emergency or penalty fees.))~~

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-090 Miscellaneous fees. (1) Copy fees for corporate ~~((documents))~~ records are:

- (a) Each annual report, five dollars;
- (b) Initial articles of incorporation, initial certificate of formation, or other initial organizing ((document)) records including a foreign entity registration or any single document except an annual report, ten dollars each;
- (c) ~~((Articles of incorporation, certificate of formation, other organizing documents including))~~ Initial organizational records as listed in (b) of this subsection plus all subsequent amendments, changes, and restatements, including mergers, conversions, etc., twenty dollars;
- (d) Copy of any filing related to a state registered domestic partnership, five dollars;
- (e) Surcharge for files exceeding one hundred pages of copy, thirteen dollars for each fifty-page increment.

(2) For certificates of existence, registration, or any fact on record, fees are as follows:

- (a) With complete historical data, ~~((under state seal,))~~ thirty dollars;
- (b) Without complete historical data, ~~((under state seal,))~~ twenty dollars;
- (c) Duplicate certificate ~~((under state seal,))~~, twenty dollars.

(3) For additional certificates of registration of a state registered domestic partnership, five dollars. For an additional or replacement state registered domestic partnership wallet card, ten dollars.

(4) For verifying the signature of a notary or public official, for an apostille or certification authenticating a sworn document, the fee is fifteen dollars.

(5) For each certified copy of any ~~((document))~~ record the fee is ten dollars plus the ~~((document))~~ record copy fee.

(6) For any service of process the fee is fifty dollars.

(7) Dishonored checks. If a person, corporation, or other submitting entity has attempted to pay any fee due to the secretary of state by means of a check, and the check is dishonored by the financial institution when presented, the secretary of state will impose a twenty-five-dollar penalty, payable to the secretary of state.

In the event a valid replacement check and dishonor charge is not received in the office of the secretary of state within the time prescribed by its accounting division, the transaction covered by the dishonored check will be canceled and all other late filing fees and penalties will be instituted.

AMENDATORY SECTION (Amending WSR 10-20-150, filed 10/6/10, effective 11/6/10)

WAC 434-112-100 State registered domestic partnerships. (1) State registered domestic partnerships will be registered by the corporations program, in the corporations and charities division of the office of the secretary of state.

(2) Declarations of state registered domestic partnerships may be submitted to the division by mail, or in person.

(3) The ~~((document))~~ paper record standards in WAC 434-112-040 apply to declarations of state registered domestic partnerships.

(4) At the time of registration of a declaration of state registered domestic partnership the corporations program will provide to ~~((each))~~ the state registered domestic ~~((partner))~~ partnership:

(a) One original certificate of registration. Further certificates or additional certificates requested after registration are available subject to the fees set forth in WAC 434-112-090.

(b) Two wallet sized cards documenting registration of the state registered domestic partnership.

(5) Registrations of state registered domestic partnerships are public records and all ~~((documents))~~ records related to the registration are subject to public disclosure.

(6) Notice of termination of domestic partnership by reason of death only may be submitted to the corporations program by e-mail, regular mail or in person and must include a copy of the death certificate. There is no fee.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 434-112-005 Purpose.
- WAC 434-112-020 Office hours.
- WAC 434-112-062 Annual reports—Due date for all non-profit corporations.
- WAC 434-112-092 Inactive profit domestic corporations—Proof.

WSR 15-22-050
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed October 29, 2015, 10:20 a.m., effective November 29, 2015]

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

Purpose: WAC 246-138-030, the adopted rule updates the reference to the Control of Communicable Diseases Manual, as published by the American Public Health Association, to the 20th edition. The rule now reflects national and current best practices for infectious disease control.

Citation of Existing Rules Affected by this Order: Amending WAC 246-138-030.

Statutory Authority for Adoption: RCW 70.05.180.

Adopted under notice filed as WSR 15-13-088 on June 15, 2015.

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 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 1, Repealed 0.

Date Adopted: October 27, 2015.

John Wiesman, DrPH, MPH
 Secretary

AMENDATORY SECTION (Amending WSR 00-01-066, filed 12/13/99, effective 1/13/00)

WAC 246-138-030 What are the duties and responsibilities of the local health department? Local health departments, during regular hours of operation shall:

(1) Determine whether the good samaritan has sustained an exchange of bodily fluids significantly increasing the odds of being exposed to a deadly infectious disease;

(2) Determine which certain infectious diseases or other infectious diseases are appropriate to test for, which tests should be done and when the tests should be done, based on the nature and time of the exchange of bodily fluids significantly increasing the odds of being exposed to a deadly infectious disease and the natural history of infection for the diseases in question;

(3) Offer counseling and testing, consistent with recommendations in the ~~((sixteenth edition 1995 of))~~ *Control of Communicable Diseases Manual*, ~~((edited by Abram S. Benenson))~~ 20th edition, published by the American Public Health Association, for those infectious diseases to which the good samaritan is determined to have sustained an exchange of bodily fluids significantly increasing the odds of being exposed to a deadly infectious disease;

(4) Obtain the informed consent of the good samaritan prior to testing;

(5) Provide the good samaritan with the results of the testing and the possible need for retesting;

(6) Refer the good samaritan to an appropriate health care provider for any subsequent needed care in the event of a positive test; and

(7) Maintain the confidentiality of those medical records as required by chapters 70.24 RCW and 246-100 WAC.

WSR 15-22-051
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 29, 2015, 11:05 a.m., effective November 29, 2015]

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

Purpose: The department is amending sections under chapter 388-410 WAC, Benefit error, to clarify how state and federal food assistance overpayments are established, calculated, and recovered. Amendments address and clarify the administrative hearings procedures for reviewing overpayment appeals and procedures for requesting an overpayment write-off, compromise, or termination through the department. Hardship language is removed.

The changes also add reference to the state-funded food assistance program (FAP) to clarify that FAP is one of the food assistance programs covered by these rules.

Citation of Existing Rules Affected by this Order: Amending WAC 388-410-0020 What happens if I receive more Basic Food or WASHCAP benefits than I am supposed to receive?, 388-410-0025 Am I responsible for an overpayment in my assistance unit?, 388-410-0030 How does the department calculate and set up my Basic Food or WASHCAP overpayment?, and 388-410-0033 How and when does the department collect a Basic Food or WASHCAP overpayment?

Statutory Authority for Adoption: RCW 43.20A.550, 43.20B.630, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.120.

Other Authority: 7 C.F.R. §273.18.

Adopted under notice filed as WSR 15-18-105 on September 1, 2015.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 388-410-0030:

a. The department added reference to 7 C.F.R. 273.18 after RCW 43.20B.630 and will remove the reference to WAC 388-406-0050 in subsection (10) and instead reference chapter 388-458 WAC. These changes only provide context; they do not alter the effect of the regulation. WAC 388-271-0030 was not included because the current citations adequately describe translation requirements.

b. Moved all examples under subsection for clarity as suggested.

2. WAC 388-410-0033:

a. The Treasury Offset Program (TOP) reporting statute, 31 U.S.C. §3716 (c)(6)(A), was amended by Public Law No.

113-101, § 5 to require the reporting of past due SNAP debts to the Secretary of Treasury within one hundred twenty days instead of one hundred eighty days. The Food and Nutrition Service has updated its TOP Handbook to require state agencies to comply with the statutory deadline.

b. Corrected grammatical error.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at 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 4, Repealed 0.

Date Adopted: October 27, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-05-064, filed 2/18/14, effective 3/21/14)

WAC 388-410-0020 What happens if I receive more Basic Food, FAP, or WASHCAP benefits than I am supposed to receive? (1) If you receive more Basic Food, FAP, or WASHCAP benefits than you were supposed to receive, your assistance unit (AU) has an overpayment. There are three types of overpayments:

(a) **Administrative error overpayment:** When you received too many benefits because the department made a mistake.

(b) **Inadvertent household error overpayment:** When you received too many benefits because you made a mistake or didn't understand what you were supposed to do.

(c) **Intentional program violation (IPV) overpayment:** When you received too many benefits because you broke a federal food assistance rule on purpose. If you have an IPV, you could be disqualified from receiving Basic Food or WASHCAP benefits under chapter 388-446 WAC.

AMENDATORY SECTION (Amending WSR 14-05-062, filed 2/18/14, effective 3/21/14)

WAC 388-410-0025 Am I responsible for ~~(an)~~ a food benefits overpayment in my assistance unit? If your assistance unit (AU) received more Basic Food, FAP, or WASHCAP benefits than it was supposed to receive, your AU has an overpayment. If you have an overpayment, we determine the amount you were overpaid and set up a claim to recover this overpayment.

(1) We set up an overpayment for the full amount your AU was overpaid for every adult AU member at the time your AU was overpaid.

(2) ~~((Each))~~ Except as provided in WAC 388-410-0030 and 388-410-0033, each adult member is responsible for the whole overpayment until we recover the entire amount of the overpayment. We do not collect more than the amount your AU was overpaid.

(3) If we determine you are responsible for an overpayment, you are responsible for the overpayment even if you are now in a different AU than you were when you had the overpayment.

(4) You may be responsible for a Basic Food, FAP, or WASHCAP overpayment even if it was the department's fault you were overpaid.

(5) ~~((We do not apply))~~ Equitable estoppel, ((as)) described under WAC 388-02-0495, does not apply to Basic Food, FAP, or WASHCAP overpayments. Federal law provides that your AU is responsible for repaying any overpayment of benefits, as stated in 7 U.S.C. §2022 (a)(4) and 7 C.F.R. §273.18(a). Federal law does not permit states to make exceptions based on equitable estoppel, as stated in the Federal Register at volume 63, page 29307 and volume 65, page 41765. This also applies to FAP overpayments because under RCW 74.08A.120, FAP rules must follow federal food assistance rules.

~~((6) We may reduce all or part of an overpayment if we determine you are unable to repay the balance or that doing so would be a hardship. See WAC 388-410-0033.))~~

AMENDATORY SECTION (Amending WSR 14-05-064, filed 2/18/14, effective 3/21/14)

WAC 388-410-0030 How does the department calculate and set up my Basic Food, FAP, or WASHCAP overpayment? (1) We calculate the amount of your Basic Food or WASHCAP overpayment by counting the difference between:

- (a) The benefits your assistance unit (AU) received; and
- (b) The benefits your AU should have received.

(2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

- (a) Had correct and complete information; and
- (b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0005 and 388-418-0007, you do not receive the earned income deduction under WAC 388-450-0185 when we calculate your overpayment amount.

(4) ~~((If we paid you too few Basic Food or WASHCAP benefits for a period of time, we will use the amount we underpaid your AU to reduce your overpayment if:~~

~~(a) We have not already issued you benefits to replace what you were underpaid; and~~

~~(b) We have not used this amount to reduce another overpayment.~~

~~(5))~~ We **must** set up an inadvertent household error or administrative error overpayment if:

(a) We discovered the overpayment through the federal quality control process;

(b) You currently receive Basic Food, FAP, or WASHCAP benefits; or

(c) The overpayment is over one hundred twenty-five dollars and you do not currently receive Basic Food, FAP, or WASHCAP benefits.

(5) We do not set up an inadvertent household error or administrative error overpayment if all of the following are true:

(a) We did not discover the overpayment through the federal quality control process;

(b) You do not currently receive Basic Food, FAP, or WASHCAP benefits; and

(c) The total amount your household was overpaid was one hundred twenty-five dollars or less.

(6) If you have an inadvertent household error that we referred for prosecution or an administrative disqualification hearing, we will not set up and start collecting the overpayment if doing so could negatively impact this process.

(7) We set up an intentional program violation overpayment based on the results of an administrative disqualification hearing (chapter 388-02 WAC) unless:

(a) Your AU has repaid the overpayment; or

(b) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.

(8) We must calculate the overpayment amount:

(a) For an administrative error overpayment - Up to twelve months prior to when we became aware of the overpayment;

(b) For an inadvertent household error overpayment - For no more than twenty-four months before we became aware of the overpayment; and

(c) For intentional program violation (IPV) overpayments - From the month the act of IPV first occurred as determined under WAC 388-446-0015, but no more than six years before we became aware of the overpayment.

(9) If we paid you too few Basic Food, FAP, or WASHCAP benefits for a period of time, we will use the amount we underpaid your AU to reduce your overpayment if:

(a) We have not already issued you benefits to replace what you were underpaid; and

(b) We have not used this amount to reduce another overpayment.

(10) We will send you an overpayment notice under RCW 43.20B.630 and 7 C.F.R. 273.18. We send notices as required under chapter 388-458 WAC. If all adult AU members live at the same address, we serve an overpayment notice on the head of household.

(11) The overpayment becomes an established (set-up) debt in one of the following ways:

(a) By operation of law if you do not respond within ninety days of service of the overpayment notice;

(b) By administrative order if you timely request a hearing; or

(c) By written agreement.

(12) You may request a hearing to contest an overpayment of your Basic Food, FAP, or WASHCAP benefits.

(a) The hearing can include issues such as whether you were overpaid, whether we calculated the amount of the overpayment correctly, and the type of the overpayment.

(b) The administrative law judge (ALJ) does not have the authority to compromise, terminate, write-off, defer, or otherwise waive the overpayment claim or recovery of the claim.

(13) If the overpayment has been referred for prosecution (in accordance with WAC 388-446-0001(4)), you may request that the administrative hearing related to the overpayment be postponed.

AMENDATORY SECTION (Amending WSR 14-05-062, filed 2/18/14, effective 3/21/14)

WAC 388-410-0033 How and when does the department collect a Basic Food, FAP, or WASHCAP overpayment? (1) ~~((When))~~ After we set up ~~((an))~~ a Basic Food, FAP, WASHCAP overpayment ~~((because you received more Basic Food or WASHCAP benefits than you were supposed to receive))~~ under WAC 388-410-0030, we ~~((start to))~~ collect the ~~((benefits))~~ amount you were overpaid even when the total is less than \$125 as discussed in WAC 388-410-0030(4). This includes when we:

(a) Modify an established overpayment to an amount we would not have to set up under WAC 388-410-0030(5); or

(b) Set up an overpayment that we do not have to set up under WAC 388-410-0030~~((5))~~4.

(2) You can repay your overpayment by:

(a) Paying the entire amount at once;

(b) Having us take the amount of your overpayment out of your EBT account;

(c) Making regular payments under a scheduled repayment agreement as described in subsection (4) of this section; or

(d) Having your current Basic Food, FAP, or WASHCAP benefits reduced.

(3) If you have an inactive EBT account and we cancelled Basic Food, FAP, or WASHCAP benefits in the account under WAC 388-412-0025, we use the cancelled benefits to reduce the amount of your overpayment.

~~((If your AU currently receives Basic Food or WASHCAP benefits, you can repay your overpayment by making monthly payments. The payments must be more than we would recover through us reducing your benefits. Your AU or the department can request a change to the agreement if necessary-~~

~~((5)))~~ If you are responsible for repaying an administrative or inadvertent household error overpayment, we ~~((automatically))~~ reduce your monthly benefits unless you:

(a) Pay the overpayment all at once;

(b) Set up a repayment agreement with us; or

(c) Arrange with us to compromise (reduce) ~~((or waive))~~ all or part of your overpayment under section (13) below; or

(d) Request a hearing and continued benefits ~~((within ninety days of the date you received your collection action notice))~~ under WAC 388-458-0040.

~~((6)))~~ (5) If you are responsible for an intentional program violation (IPV) overpayment, you must tell us how you want to repay this overpayment within ten days of the date ~~((you receive))~~ we sent your collection action notice. If you do not do this, we ~~((will))~~ reduce your current monthly benefits.

~~((7))~~ (6) If your AU currently receives Basic Food, FAP, or WASHCAP benefits, you can choose to repay your overpayment by making monthly payments. The payments must be more than we would recover by reducing your benefits. Your AU or the department can request a change to the agreement if necessary.

(7) If you receive ongoing Basic Food, FAP, or WASHCAP benefits, we ~~(can)~~ reduce your monthly benefits to repay the overpayment. We do not reduce your first Basic Food, FAP, or WASHCAP allotment when we first approve your application for benefits.

(a) If you have an administrative or inadvertent household error overpayment, we reduce your benefits by the greater of:

- (i) Ten percent of your monthly benefits; or
- (ii) Ten dollars per month.

(b) If you have an IPV overpayment, we reduce your benefits by the greater of:

- (i) Twenty percent of your monthly benefits; or
- (ii) Twenty dollars per month.

(8) We send you a change letter under WAC 388-458-0025 before we reduce your Basic Food, FAP, or WASHCAP benefits.

(a) You may request a hearing on the change letter, for instance, if you do not feel the amount of the overpayment was calculated correctly making the reduction incorrect.

(b) The administrative law judge (ALJ) does not have authority to compromise, terminate, write-off, defer or otherwise waive the overpayment claim or recovery thereunder.

(9) If you do not meet the terms of a repayment agreement ~~((with the department))~~, we ~~((automatically))~~ reduce your current benefits unless you:

(a) Pay all overdue payments to bring your repayment agreement current; or

(b) Ask us to consider a change to the repayment schedule.

(10) We may also collect overpaid food benefits with an order to withhold and deliver property under RCW 43.20B.635.

~~((9))~~ (11) If your overpayment claim is past due for one hundred ~~((eighty))~~ twenty or more days, we refer your overpayment for federal collection. A federal collection includes reducing your income tax refund, Social Security benefits, or federal wages. We do not count your overpayment as past due if you:

(a) Repay the entire overpayment by the due date;

(b) Have your monthly benefits reduced to repay the overpayment; or

(c) Arrange with us to compromise (reduce) ~~((or waive))~~ all or part of your overpayment under section (13) below; or

(d) Meet the requirements of your scheduled repayment agreement.

~~((10))~~ (12) If you no longer receive Basic Food, FAP, or WASHCAP benefits, we can garnish your wages, file a lien against your personal or real property, attach other benefits, or otherwise access your property to collect the overpayment amount.

~~((11))~~ We suspend collection on an overpayment if:

~~(a) We cannot find the responsible AU members; or~~

~~(b) The cost of collecting the overpayment would likely be more than the amount we would recover.~~

~~(12) We can)~~ (13) At anytime based on your request or our own, we may compromise (reduce) all or part of ~~((any unpaid claim when:))~~ your overpayment.

~~(a) ((The amount you offer to repay is close to what we could expect to receive from you before we can no longer legally collect the overpayment from you; or~~

~~(b) We determine that you are unable to repay the balance or that doing so would be a hardship))~~ We may, at our discretion, compromise a claim or any portion of a claim if we determine that your household's economic circumstances dictate that you will not be able to pay the claim in three years.

(b) If you disagree with our decision not to compromise all or part of a food benefits overpayment, you may ask for a review of that decision.

(i) The review will be heard by someone other than the person who made the decision you disagree with.

(ii) You do not have a right to an administrative hearing to contest our decision not to compromise all or part of a food benefits overpayment.

(c) If your claim becomes delinquent (you have failed to follow a written repayment agreement entered with the Office of Financial Recovery (OFR)), we may reinstate the compromised portion of your claim.

~~((13))~~ (14) We write off unpaid overpayments and release any related liens when:

(a) The claim is invalid;

(b) All adult household members die;

(c) The claim balance is less than twenty-five dollars and has been delinquent for ninety days or more;

(d) We determine it is not cost effective to pursue the claim further;

(e) We agreed to accept a partial payment that left an unpaid balance after this payment;

(f) You have paid ten percent of your monthly benefits or ten dollars, whichever is greater, on an administrative or inadvertent household error overpayment for at least thirty-six months; or

(g) The claim has been delinquent for three years or more unless we plan to pursue the claim through the treasury offset program ~~((; or~~

~~(h) An administrative law judge orders us to do so)).~~

~~((14))~~ (15) If your AU has an overpayment from another state, we can collect this overpayment if the state where you were overpaid does not plan to collect it and they give us the following:

(a) A copy of the overpayment calculation and overpayment notice made for the client; and

(b) Proof that you received the overpayment notice.

~~((15))~~ You can ask for a hearing to contest whether you owe an overpayment, whether we calculated the overpayment correctly, or whether we should have waived an overpayment.)

WSR 15-22-052
PERMANENT RULES
TRANSPORTATION IMPROVEMENT BOARD

[Filed October 29, 2015, 11:34 a.m., effective November 29, 2015]

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

Purpose: Update of small city programs, new LED streetlight program, and other updates.

Citation of Existing Rules Affected by this Order: Amending chapters 479-05, 479-10, and 479-14 WAC.

Statutory Authority for Adoption: Chapter 47.26 RCW.

Adopted under notice filed as WSR 15-17-033 on August 11, 2015.

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 7, Amended 0, Repealed 0.

Number of Sections Adopted at 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 12, 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 29, 2015.

Stevan Gorcester
 Executive Director

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-020 Six-year transportation plan. Projects selected in the priority array must be included in the local agency's six-year transportation plan prior to receiving authorization to proceed on the project.

~~((Small city))~~ Preservation projects identified through pavement condition ratings are not required to appear in the local agency's six-year transportation plan.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-035 Qualifications for small city projects administered by another agency. A local agency that has a small city arterial program or small city preservation project may elect to have, or the executive director may require, the project to be administered by another city, a county, state department of transportation, or state transportation improvement board when:

(1) The local agency does not have certification acceptance from the state department of transportation per the Washington state department of transportation local agency guidelines manual, chapter 13; or

(2) The executive director determines that the local agency has ~~((no internal))~~ insufficient capacity to directly administer transportation projects.

AMENDATORY SECTION (Amending WSR 13-20-087, filed 9/30/13, effective 10/31/13)

WAC 479-10-310 Who is eligible for arterial preservation program funds. Incorporated cities with a population of ~~((more than))~~ five thousand or more and an assessed property valuation below a maximum valuation established annually by the board are eligible to receive arterial preservation program funding.

NEW SECTION

WAC 479-10-400 Intent of the streetlight program. The intent of the streetlight program is to provide funding for cities to modernize their street lights to current technology.

NEW SECTION

WAC 479-10-410 Who is eligible for streetlight program funds. Agencies eligible to receive streetlight program funding are:

(1) Incorporated cities with a population less than five thousand; and

(2) Incorporated cities with a population of five thousand or more with an assessed property valuation below a maximum valuation established by the board based on available funding.

For the purposes of determining population, cities may exclude the population of any state correctional facility located within the city.

NEW SECTION

WAC 479-10-420 Work eligible for streetlight program funds. Eligible projects include:

(1) Replacement of existing luminaires;
 (2) Replacement of existing streetlight infrastructure may be included when:

(a) The infrastructure is required for installation of new luminaires; and

(b) The cost is determined by TIB to be appropriately borne by the city.

(3) Placement of new lights when necessary as determined by the executive director or board.

NEW SECTION

WAC 479-10-422 When streetlights are on state routes facilities. WSDOT approval is required in advance of award of TIB funding.

NEW SECTION

WAC 479-10-430 Project types for the streetlight program. To be considered for a project under the streetlight program, a streetlight program project may be identified through the following ways:

(1) An eligible agency may submit a funding application in response to a TIB call for projects;

(2) TIB may select eligible agencies based on opportunities provided by an electrical service provider; or

(3) TIB may select eligible agencies based on other board established criteria.

NEW SECTION

WAC 479-10-440 Project award criteria for the streetlight program. When funds are available projects may be awarded by the board based on cost savings for the city, installation efficiency, or energy savings. Availability of other funding sources or rebates may also be considered.

NEW SECTION

WAC 479-10-450 Project phases for the streetlight program. Streetlight program projects will have three phases. Each phase will require specific documentation as described below and each phase must be approved before the applicant agency is eligible to receive the related funding:

- (1) Application phase - The city shall submit an application form as well as documentation showing scope, schedule, and budget.
- (2) Design and construction phase - TIB will provide documents for the city to sign and return. The city must submit the following agreements where utilized:
 - (a) Grant agreement;
 - (b) Rights of entry agreement (if applicable);
 - (c) Consultant agreement (if applicable).
- (3) Project closeout phase - All necessary project cost documentation must be received prior to final payment.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 479-10-005 Purpose, authority, and funding.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-151 Funding distribution formula for the urban program. The statewide distribution of urban program funds is allocated between regions according to the following formula:

The average of the ratios of region urban area population (RUP) divided by the statewide urban population (SUP) plus region functionally classified lane miles within the urban area (RFC) divided by statewide functionally classified lane miles within urban areas (SFC).

$$\frac{(RUP/SUP) + (RFC/SFC)}{2}$$

The board may adjust the regional allocation by plus or minus five percent of the total annual allocation to fully fund the approved list of regional projects. When requested by the board, TIB staff will update the regional allocation to ensure equitable distribution of funds.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-200 Sidewalk deviation authorities for the urban and small city arterial programs. The board recognizes the need for pedestrian facilities on arterial roadways and has required that sidewalks be provided under the urban program. A sidewalk deviation may be requested by the lead agency and may be granted under the following authorities:

- (1) The executive director has administrative authority to grant sidewalk deviations as follows:
 - (a) On both sides if the roadway is a ramp providing access to a limited access route;
 - (b) On both sides of a designated limited access facility if:
 - (i) Route is signed to prohibit pedestrians; or
 - (ii) Pedestrian facilities are provided on an adjacent parallel route;
 - (c) On one side if the roadway is a frontage road immediately adjacent to a limited access route; or
 - (d) On one side if the roadway is immediately adjacent to a railroad or other facility considered dangerous to pedestrians.
- (2) All other sidewalk deviation requests require board action.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-221 What projects are eligible for small city arterial program funding. To be eligible for funding(~~;~~ a proposed project must improve an arterial that meets at least one of the following standards:

- (1) Serves as a logical extension of a county arterial or state highway through the city; or
- (2) Acts as a bypass or truck route to relieve the central core area; or
- (3) Serves as a route providing access to local facilities such as:
 - (a) Schools;
 - (b) Medical facilities;
 - (c) Social centers;
 - (d) Recreational areas;
 - (e) Commercial centers;
 - (f) Industrial sites.

~~Sidewalks are required on one side of the roadway unless a deviation is granted under WAC 479-14-200))~~ from the transportation improvement account a small city street must be classified as an arterial by the board.

Arterials are paved streets connecting to other paved streets on both ends that are publicly owned by the city or a state route. Arterials must provide circulation within the network or provide access to at least twenty residential units, or equivalent trip generation, per point of access.

Alleys are not considered arterials.

Dead end paved streets may be determined by the board to be arterials if they serve significant generators of traffic or at least twenty residential units or equivalent trip generation.

New streets may be determined by the board to be arterials if they would meet the description of an arterial in this section after they are completed.

Gravel streets may be determined by the board to be arterials if they should be paved based on serving significant traffic generators only if the funded project results in a paved street.

NEW SECTION

WAC 479-14-223 When is a sidewalk required for the small city arterial program. A sidewalk is required on at least one side of the street when project scope includes full depth reconstruction or new construction on an arterial that:

- (1) Is in a business district; or
- (2) Connects significant pedestrian generators to a business district.

Unless a deviation is granted under WAC 479-14-200.

NEW SECTION

WAC 479-14-225 What is eligible on state highways under the small city arterial program? State highways in small cities are not eligible for preservation projects inside the curb face.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-231 Award criteria for the small city arterial program. The board establishes the following criteria for use in evaluating small city arterial program grant applications:

~~((1) Safety improvement—Projects that address accident reduction, hazard elimination, and roadway deficiencies.~~

~~(2) Pavement condition—Replaces or rehabilitates street surfaces and structural deficiencies.~~

~~(3) Local support—Projects that improve network development and address community needs.~~

~~(4) Sustainability—Improves network development of street system, reduces or eliminates water detention, and encourages energy reduction technology and use of recycled materials.)~~ (1) Condition of surface;

(2) Stability of subsurface base structure;

(3) Condition of subsurface utilities;

(4) Accessibility;

(5) Leveraging of funding sources;

(6) Elimination of hazards;

(7) Continuity of improved street segments including sidewalk;

(8) Community needs;

(9) Sustainable design;

(10) Efficient project implementation.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-251 Funding distribution formula for the small city arterial program. The statewide distribution of small city arterial program funds is allocated between regions according to the following formula:

Region small city population divided by statewide small city population.

The board may adjust the regional allocation by plus or minus five percent of the total annual allocation to fully fund the approved list of regional projects. When requested by the board, staff will update the regional allocations to ensure equitable distribution of funds.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-261 Matching requirement for the small city arterial program. ~~((There is no match requirement for cities with a population of one thousand or less. Cities with a population over one thousand must provide a minimum match of five percent of the total project cost.))~~ The small city arterial program provides funding which will be matched by other funds as follows:

(1) If the city assessed valuation is greater than five hundred million, a match of ten percent will be contributed.

(2) If the city assessed valuation is from one hundred million to five hundred million, a five percent match will be contributed.

(3) If the city assessed valuation is under one hundred million, no cash match is necessary.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-451 Distribution formula for the sidewalk program. For the purpose of allocating funds, the sidewalk program is divided into two subprograms, the urban sidewalk program and the small city sidewalk program. The distribution formulas are as follows:

(1) Urban sidewalk program - The average of the ratios of region urban area population (RUP) divided by statewide urban population (SUP) plus region functionally classified lane miles within the urban area (RFC) divided by statewide functionally classified lane miles within urban areas (SFC).

The equation is as follows:

$$\frac{(RUP/SUP) + (RFC/SFC)}{2}$$

(2) Small city sidewalk program - Region small city population divided by statewide small city population.

For either program, the board may adjust regional allocations by plus or minus five percent of the total annual allocation to fully fund the approved list of regional projects. When requested by the board, staff will update the regional allocations to ensure equitable distribution of funds.

WSR 15-22-062

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2015-05—Filed October 30, 2015, 4:18 p.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: These rules amend the existing holding company regulation, chapter 284-18 WAC and other WAC sections to conform to the NAIC Model Holding Company Regulation and amendments to the Insurer Holding Company Act made by legislation during the 2015 legislative session. In addition since the legislation repealed chapter 48.31C RCW and provided that the entities regulated by this chapter would now be regulated under chapter 48.31B RCW, the rule repeals chapter 284-18A WAC.

Citation of Existing Rules Affected by this Order: Repealing chapter 284-18A WAC; and amending WAC 284-03-030, 284-07-110, 284-07-600, 284-18-300, 284-18-310, 284-18-320, 284-18-330, 284-18-340, 284-18-350, 284-18-360, 284-18-370, 284-18-380, 284-18-390, 284-18-400, 284-18-410, 284-18-420, 284-18-430, 284-18-440, 284-18-450, 284-18-460, 284-18-910, 284-18-920, 284-18-930, and 284-18-940.

Statutory Authority for Adoption: RCW 48.02.060 and 48.31B.040.

Other Authority: Chapter 48.31B RCW and chapter 122, Laws of 2015.

Adopted under notice filed as WSR 15-16-113 on August 4, 2015.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-03-030 (1)(e) was amended to add: "RCW 48.31B.015 (2)(l) and (m).["

A new subsection (1)(f) was added to WAC 284-03-030(1) to read as follows: "Documents, materials, or other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to RCW 48.31B.035." and the remaining subsections were renumbered accordingly.

A final cost-benefit analysis is available by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail rulescoordinator@oic.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 6, Amended 24, Repealed 21.

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

Number of Sections Adopted on the Agency's Own Initiative: New 6, Amended 24, Repealed 21.

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 6, Amended 24, Repealed 21.

Date Adopted: October 30, 2015.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 12-03-087, filed 1/15/12, effective 2/15/12)

WAC 284-03-030 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions found specifically in the insurance code (Title 48 RCW), that restrict the availability of some documents held by the OIC for inspection and copying:

(a) Medical malpractice - Closed claim reports - Annual reports, RCW 48.140.040 and 48.140.050.

(b) Confidentiality of documents, materials, or other information, RCW 48.02.065.

(c) Insurer's risk-based capital reports, RCW 48.05.510 through 48.05.535.

(d) Insurance fraud, RCW 48.30A.045 through 48.30A.-065 and 48.135.060.

(e) ~~((Confidential proprietary and trade secret information, RCW 48.31C.020 through 48.31C.050 and 48.31C.070-~~

~~(f)) Documents, materials, or information about insurer's transactions with affiliates, RCW 48.31B.015 (2)(l) and (m), 48.31B.025, and 48.31B.030.~~

(f) Documents, materials, or other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to RCW 48.31B.035.

(g) Material acquisitions or disposition information, RCW 48.43.200, 48.44.530 through 48.44.555, and 48.46.-600 through 48.46.625.

~~((g))~~ (h) Service contract provider's annual reports, RCW 48.110.040.

~~((h))~~ (i) Statistical summaries, RCW 48.140.040.

(2) The OIC is prohibited by statute from disclosing lists of individuals for commercial purposes.

This list is **for informational purposes** only and a failure to list an exemption **shall not affect the efficacy of any exemption.**

AMENDATORY SECTION (Amending WSR 09-20-069, filed 10/5/09, effective 11/5/09)

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

(1) "Accountant" 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 he or she is licensed to practice; for Canadian and British companies, the terms mean a Canadian-chartered or British-chartered accountant.

(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 chapter((s)) 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 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.

(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, fraternal benefit societies registered under chapter 48.36A RCW, and self-funded multiple employer welfare arrangements authorized under chapter 48.125 RCW.

(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.

(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 WSR 11-24-087, filed 12/7/11, effective 1/7/12)

WAC 284-07-600 Definitions. For the purposes of this regulation, WAC 284-07-610 and 284-07-620, called the biographical affidavits regulation, the following definitions apply:

(1) A "biographical affidavit" means the current National Association of Insurance Commissioners (NAIC) Biographical Affidavit, Form 11, available on the NAIC's web site at www.naic.org.

(2) A "domestic insurer" includes an entity organized under the laws of this state, domiciled in this state or using this state as its state of entry including:

(a) An insurer authorized under chapter 48.05 RCW.

(b) A fraternal benefit society as defined in RCW 48.36A.010 and authorized under chapter 48.36A RCW.

(c) A health care service contractor defined in RCW 48.44.010 and registered under chapter 48.44 RCW.

(d) A health maintenance organization defined in RCW 48.46.020 and registered under chapter 48.46 RCW.

(e) A self-funded multiple employer welfare arrangement defined in RCW 48.125.010 and authorized under chapter 48.125 RCW.

(f) An alien insurer authorized under chapter 48.05 RCW and subject to the requirements under chapter 48.35 RCW.

(3) A "foreign insurer" or an "alien insurer" are as defined in RCW 48.05.010 and authorized under chapter 48.05 RCW.

(4) An "officer" or "director" includes:

(a) ~~((A controlling))~~ An individual with controlling interests as defined in RCW 48.31B.005~~((2) and 48.31C-010))~~ (3);

(b) An executive officer as defined in WAC 284-18-340 and 284-18A-340; and

(c) Key management personnel who control the operations of a domestic, foreign or alien insurer.

NEW SECTION

WAC 284-18-200 Purpose. The purpose of these rules is to set forth rules and procedural requirements which the

commissioner deems necessary to carry out the provisions of the NAIC Insurance Holding Company System Regulatory Act, chapter 48.31B RCW, of the insurance code hereinafter referred to as "the act." The information called for by these rules is hereby declared to be necessary and appropriate in the public interest and for the protection of the policyholders in this state.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-300 Forms—General requirements. (1)

Forms A, B, C, ~~((and))~~ D, E, and F are intended to be guides in the preparation of the statements required by ~~((sections 4, 6, and 7, chapter 462, Laws of 1993))~~ RCW 48.31B.015, 48.31B.020, 48.31B.025, and 48.31B.030. They are not intended to be blank forms which are to be filled in. These statements filed ~~((shall))~~ must contain the numbers and captions of all items, but the text of the items may be omitted provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect ~~((shall))~~ must be made.

(2) ~~((Two complete copies of))~~ The Forms A, ((and one copy of Forms)) B, C, ~~((and))~~ D, E, and F including exhibits and all other papers and documents filed as a part thereof, ~~((shall))~~ must be filed with the commissioner ~~((by personal delivery or mail addressed to: Insurance Commissioner of the State of Washington, Insurance Building, Post Office Box 40255, Olympia, Washington 98504-0255, Attention: Company Supervision. One complete copy of Form A shall also be filed with the commissioner by personal delivery or mail addressed to: Insurance Commissioner of the State of Washington, Seattle, Washington 98104, Attention: Chief Examiner. A copy of Form C shall be filed in each state in which an insurer is authorized to do business, if the commissioner of that state has notified the insurer of its request in writing, in which case the insurer has ten days from receipt of the notice to file such form. At least one of the copies shall))~~ as instructed on the commissioner's web site. The forms must be manually or electronically signed in the manner prescribed on the ((form)) commissioner's web site. Unsigned copies ((shall)) must be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of ((such)) the power of attorney or other authority ((shall)) must also be filed with the statement.

(3) If an applicant requests a hearing on a consolidated basis under RCW 48.31B.015 (4)(c) in addition to filing the Form A with the commissioner, the applicant must file a copy of the Form A with the National Association of Insurance Commissioners (NAIC) in electronic form.

(4) Statements ((should)) must be prepared ((on paper 8 1/2" x 11" (or 8 1/2" x 14")) in size and preferably bound at the top or the top-left hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements, or exhibits shall be clear, easily read-

able, and suitable for photocopying)) electronically as instructed on the commissioner's web site. Debits in credit categories and credits in debit categories ((shall)) must be designated so as to be clearly distinguishable as such on ((photocopies)) the statements. Statements ((shall)) must be in the English language and monetary values ((shall)) must be stated in United States currency. If any exhibit or other ((paper or)) document filed with the statement is in a foreign language, it ((shall)) must be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally ((shall)) must be converted into United States currency.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-310 Forms—Incorporation by reference, summaries, and omissions. (1)

Information required by any item of Form A, ~~((Form))~~ B, ~~((or Form))~~ D, E, or F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, ~~((Form))~~ B, ~~((or Form))~~ D, E, or F provided ~~((such))~~ the document ((or paper)) is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the commissioner which were filed within three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file ((shall)) must clearly identify the material and ((shall)) must specifically indicate that such material is to be incorporated by reference in answer to the item. Matter ((shall)) must not be incorporated by reference in any case where ((such)) the incorporation would render the statement incomplete, unclear, or confusing.

(2) Where an item requires a summary or outline of the provisions of any document, only a brief statement ~~((shall))~~ must be made as to the pertinent provisions of the document. In addition to ~~((such))~~ the statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which was filed within three years and may be qualified in its entirety by ~~((such))~~ the reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of ~~((such))~~ the documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which ~~((such))~~ the documents differ from the documents a copy of which is filed.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-320 Forms—Information unknown or unavailable and extension of time to furnish. ~~((1))~~ Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably avail-

able to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:

(a) The person filing shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and

(b) The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

(2)) If it is impractical to furnish any required information, document, or report at the time it is required to be filed, there ((may)) must be filed with the commissioner a separate document:

((a)) (1) Identifying the information, document, or report in question;

((b)) (2) Stating why the filing thereof at the time required is impractical; and

((c)) (3) Requesting an extension of time for filing the information, document, or report to a specified date. The request for extension ((shall be deemed)) is granted unless the commissioner within sixty days after receipt thereof enters an order denying the request.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-330 Forms—Additional information and exhibits. In addition to the information expressly required to be included in Forms A, ((Form)) B, ((Form)) C, ((and Form)) D, ((there shall be added such)) E, and F the commissioner may request further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file ((such)) exhibits as it may desire in addition to those expressly required by the statement. ((Such)) The exhibits ((shall)) must be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, ((or)) D ((shall)), E, or F must include on the top of the cover page the phrase: "Change No. (insert number) to" and ((shall)) must indicate the date of the change and not the date of the original filing.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-340 Definitions. (1) "The act" means the Insurer Holding Company Act, ((sections 1 through 15, chapter 462, Laws of 1993)) chapter 48.31B RCW.

(2) "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

(3) ("Foreign insurer" shall include an alien insurer except where clearly noted otherwise.

(4)) "Ultimate controlling person" means that person which is not controlled by any other person.

((5)) (4) Unless the context otherwise requires, other terms found in ((these regulations)) this chapter and in ((section 2, chapter 462, Laws of 1993)) RCW 48.31B.005, are used as defined in ((that section 2, chapter 462, Laws of 1993)) RCW 48.31B.005. Other nomenclature or terminology is according to Title 48 RCW, or industry usage if not defined by Title 48 RCW.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-350 Subsidiaries of domestic insurers.

The authority to invest in subsidiaries under ((the act)) chapter 48.31B RCW is in addition to any authority to invest in subsidiaries which may be contained in any other provision of Title 48 RCW.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-360 Acquisition of control—Statement filing. A person required to file a statement ((pursuant to section 4, chapter 462, Laws of 1993, shall)) under RCW 48.31B.015, must furnish the required information on Form A, ((hereby made a part of this regulation)) set forth in WAC 284-18-910. The person must also furnish the required information on Form E set forth in WAC 284-18-950.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-370 Amendments to Form A. The applicant ((shall)) must promptly advise the commissioner of any changes in the information ((so)) furnished on Form A arising subsequent to the date upon which ((such)) the information was furnished but prior to the commissioner's disposition of the application.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-380 Acquisition ((of section 4(1), chapter 462, Laws of 1993)) under RCW 48.31B.015, insurers. (1) If the person being acquired is ((deemed to be)) a "domestic insurer" solely because of the provisions of ((the second paragraph of section (4)(1), chapter 462, Laws of 1993)) RCW 48.31B.015 (1)(d), the name of the domestic insurer on the cover page should be indicated as follows:

"ABC Insurance Company, a subsidiary of XYZ Holding Company."

(2) Where ((such an)) the insurer is being acquired, references to "the insurer" contained in Form A ((shall)) must refer to both the domestic subsidiary insurer and the person being acquired.

NEW SECTION

WAC 284-18-385 Preacquisition notification. If a domestic insurer, including any person controlling a domes-

tic insurer, is proposing a merger or acquisition under RCW 48.31B.015 (1)(a) that person must file a preacquisition notification form, Form E, set forth in WAC 284-18-950.

Additionally, if a nondomiciliary insurer authorized to do business in this state is proposing a merger or acquisition under RCW 48.31B.020 that person must file a preacquisition notification form, Form E. No preacquisition form need be filed if the acquisition is beyond the scope of RCW 48.31B.020 as set forth in RCW 48.31B.020 (2)(b).

In addition to the information required by Form E, the commissioner may require an expert opinion as to the competitive impact of the proposed acquisition.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-390 Annual registration of insurers—Statement filing. An insurer required to file an annual registration statement (~~(pursuant to section 6, chapter 462, Laws of 1993, shall)~~ under RCW 48.31B.025, must furnish the required information on Form B, (~~(hereby made a part of these regulations)~~) set forth in WAC 284-18-920.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-400 Summary of registration—Statement filing. An insurer required to file an annual registration statement (~~(pursuant to section 6, chapter 462, Laws of 1993)~~ under RCW 48.31B.025, is also required to furnish information required on Form C, (~~(hereby made a part of this regulation. An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the commissioner of that state)~~) set forth in WAC 284-18-930.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-410 Amendments to Form B. (1) An amendment to Form B (~~(shall)~~ must be filed within fifteen days after the end of any month in which there is a material change to the information provided in the annual registration statement.

(2) Amendments (~~(shall)~~ must be filed in the Form B format with only those items which are being amended reported. Each (~~(such)~~) amendment (~~(shall)~~ must include at the top of the cover page "Amendment No. (insert number) to Form B for (insert year)" and (~~(shall)~~ must indicate the date of the change and not the date of the original filings.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-420 Alternative and consolidated registrations. (1) Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under (~~(section 6, chapter 462, Laws of 1993)~~ RCW 48.31B.025. A registration statement may include information not required by the act regarding any insurer in the insurance holding company system even if

(~~(such)~~) the insurer is not authorized to do business in this state. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:

(a) The statement or report contains substantially similar information required to be furnished on Form B; and

(b) The filing insurer is the principal insurance company in the insurance holding company system.

(2) The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, (~~(shall)~~ must set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

(3) With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under subsection (1) of this section.

(4) Any insurer may take advantage of the provisions of (~~(section 6 (8) or (9), chapter 462, Laws of 1993)~~ RCW 48.31B.025 (8) or (9), without obtaining the prior approval of the commissioner. The commissioner, however, reserves the right to require individual filings if he or she deems (~~(such)~~) the filings necessary in the interest of clarity, ease of administration, or the public good.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-430 Disclaimers and termination of registration. (1) A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the "subject") (~~(shall)~~ must contain the following information:

(a) The number of authorized, issued, and outstanding voting securities of the subject;

(b) With respect to the person whose control is denied and all affiliates of (~~(such)~~) the person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of (~~(such)~~) the shares concerning which there is a right to acquire, directly or indirectly;

(c) All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of (~~(such)~~) the person;

(d) A statement explaining why (~~(such)~~) the person should not be considered to control the subject.

(2) A request for termination of registration (~~(shall be deemed to have been)~~) is granted unless the commissioner, within thirty days after he or she receives the request, notifies the registrant otherwise.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-440 Transactions subject to prior notice—Notice filing. (1) An insurer required to give notice

of a proposed transaction (~~pursuant to section 7, chapter 462, Laws of 1993, shall~~) under RCW 48.31B.030, must furnish the required information on Form D, ((hereby made a part of these regulations)) set forth in WAC 284-18-940.

(2) Agreements for cost-sharing services and management services must at a minimum and as applicable:

(a) Identify the person providing the services and the nature of the services;

(b) Set forth the methods to allocate costs;

(c) Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the accounting practices and procedures manual;

(d) Prohibit advancement of funds by the insurer to the affiliate except to pay for services defined in the agreement;

(e) State that the insurer will maintain oversight for functions provided to the insurer by the affiliate and that the insurer will monitor services annually for quality assurance;

(f) Define books and records of the insurer to include all books and records developed or maintained under or related to the agreement;

(g) Specify that all books and records of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;

(h) State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer and are subject to the control of the insurer;

(i) Include standards for termination of the agreement with and without cause;

(j) Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;

(k) Specify that, if the insurer is placed in receivership or delinquency proceedings by the commissioner under either chapter 48.31 or 48.99 RCW, or both:

(i) All of the rights of the insurer under the agreement extend to the receiver or commissioner; and

(ii) All books and records will immediately be made available to the receiver or commissioner, and must be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request;

(l) Specify that the affiliate has no automatic right to terminate the agreement if the insurer is placed in receivership under either chapter 48.31 or 48.99 RCW, or both; and

(m) Specify that the affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding a delinquency proceeding by the commissioner under either chapter 48.31 or 48.99 RCW, or both, and will make them available to the receiver, for so long as the affiliate continues to receive timely payments for services rendered.

NEW SECTION

WAC 284-18-445 Enterprise risk report. The ultimate controlling person of an insurer required to file an enterprise risk report under RCW 48.31B.025(12) must furnish the required information on Form F, set forth in WAC 284-18-960.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-450 Extraordinary dividends and other distributions. (1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders (~~shall~~) must include the following:

(a) The amount of the proposed dividend;

(b) The date established for payment of the dividend;

(c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;

(d) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper (~~shall~~) must include the following information:

(i) The amounts, dates, and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurers own securities) paid within the period of twelve consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

(ii) Surplus as regards policyholders (total capital and surplus) as of the (~~31st day of~~) preceding December (~~next preceding~~) 31st;

(iii) If the insurer is a life insurer, the net gain from operations for the twelve-month period ending the (~~31st day of~~) preceding December (~~next preceding~~) 31st;

(iv) If the insurer is not a life insurer, the net income less realized capital gains for the twelve-month period ending the (~~31st day of December next~~) preceding December 31st and the two preceding twelve-month periods; and

(v) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years.

(e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and

(f) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

(2) Subject to RCW 48.31B.030(2) each registered insurer ((shall) must report to the commissioner all (~~other~~) dividends and other distributions to shareholders within ((five)) fifteen business days following the declaration thereof, ((and at least fifteen business days before payment,)) including the same information required by subsection (1)((a) and (d)(i) through (v)) of this section.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-460 Adequacy of surplus. The factors set forth in (~~section 7(3), chapter 462, Laws of 1993~~) RCW 48.31B.030(3), are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's

surplus no single factor is necessarily controlling. The commissioner, instead, will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

NEW SECTION

WAC 284-18-500 Severability. If any provision of this chapter or its application to any person or circumstances is held invalid, the remainder of the chapter or its application of the provision to other persons or circumstances is not affected.

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-910 Form A.

FORM A
STATEMENT REGARDING THE
ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC
INSURER

Name of Domestic Insurer
BY

Name of Acquiring Person (Applicant)

Filed with the Insurance Department of

(State of domicile of insurer being acquired)

Date: _____, ((+9)) 20 ____

Name, Title, Address, and Telephone Number of Individual to Whom Notices and Correspondence Concerning this Statement Should be Addressed:

ITEM 1. INSURER AND METHOD OF ACQUISITION

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

(a) State the name and address of the applicant seeking to acquire control over the insurer.

(b) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as ((such)) the person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.

(c) Furnish a chart or listing clearly presenting the identities of the inter-relationships among the applicant and all affiliates of the applicant. ~~((No affiliate need be identified if its total assets are equal to less than one-half of one percent of the total assets of the ultimate controlling person affiliated with the applicant.))~~ Indicate in ((such)) the chart or listing the percentage of voting securities of each ((such)) person which is owned or controlled by the applicant or by any other ((such)) person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of ((such)) the control. As to each person specified in such chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings and the date when commenced.

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

On the biographical affidavit, include a third-party background check, and state the following with respect to (1) the applicant if (s)he is an individual or (2) all persons who are directors, executive officers or owners of ten percent or more of the voting securities of the applicant if the applicant is not an individual.

(a) Name and business address;

(b) Present principal business activity, occupation or employment including position and office held and the name, principal business and address of any corporation or other organization in which ((such)) employment is carried on;

(c) Material occupations, positions, offices or employment during the last five years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which each ((such)) occupation, position, office or employment was carried on; if any ((such)) occupation, position, office or employment required licensing by or registration with any federal, state or municipal governmental agency, indicate ((such)) the fact, the current status of ((such)) the licensing or registration, and an explanation of any surrender, revocation, suspension or disciplinary proceedings in connection therewith;

(d) Whether or not ((such)) the person has ever been convicted in a criminal proceeding (excluding minor traffic violations) during the last ten years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

ITEM 4. NATURE, SOURCE AND AMOUNT OF CONSIDERATION

(a) Describe the nature, source and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of

acquiring, holding or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes and security arrangements relating thereto.

(b) Explain the criteria used in determining the nature and amount of ~~((such))~~ the consideration.

(c) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he or she must specifically request that the identity be kept confidential.

ITEM 5. FUTURE PLANS OF INSURER

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate ~~((such))~~ the insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

ITEM 6. VOTING SECURITIES TO BE ACQUIRED

State the number of shares of the insurer's voting securities which the applicant, its affiliates and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

ITEM 7. OWNERSHIP OF VOTING SECURITIES

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates or any person listed in Item 3.

ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER

Give a full description of any contracts, arrangements or understandings with respect to any voting security of the insurer in which the applicant, its affiliates or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. ~~((Such))~~ The description ~~((shall))~~ must identify the persons with whom such contracts, arrangements or understandings have been entered into.

ITEM 9. RECENT PURCHASES OF VOTING SECURITIES

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Item 3 during the twelve calendar months preceding the filing of this statement. Include in ~~((such))~~ the description the dates of purchase, the names of the purchasers, and the consideration paid or agreed to be paid therefor. State whether any ~~((such))~~ shares so purchased are hypothecated.

ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates or

any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates or any person listed in Item 3 during the twelve calendar months preceding the filing of this statement.

ITEM 11. AGREEMENTS WITH BROKER-DEALERS

Describe the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto.

ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial statements ~~((and))~~, exhibits ~~((shall))~~, and three-year projections of the insurer(s) must be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

(b) The financial statements ~~((shall))~~ must include the annual financial statements of the persons identified in Item 2(c) for the preceding five fiscal years (or for such lesser period as ~~((such))~~ the applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of ~~((such))~~ the person's last fiscal year, if ~~((such))~~ the information is available. ~~((Such))~~ The statements ~~((may))~~ must be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if ~~((such))~~ the consolidated statements are prepared in the usual course of business.

The annual financial statements of the applicant ~~((shall))~~ must be accompanied by the certificate of an independent public accountant to the effect that ~~((such))~~ the statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the annual statement of ~~((such))~~ the person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of ~~((such))~~ the state.

(c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, any proposed employment, consultation, advisory or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or WAC 284-18-300 or 284-18-320.

ITEM 13. AGREEMENT REQUIREMENTS FOR ENTERPRISE RISK MANAGEMENT

Applicant agrees to provide, to the best of its knowledge and belief, the information required by Form F within fifteen business days after the end of the month in which the acquisition of control occurs.

ITEM 14. SIGNATURE AND CERTIFICATION

Date: _____, ((19)) 20 _____

Signature and certification required as follows:

SIGNATURE

~~((Pursuant to))~~ Under the requirements of ~~((section 4, chapter 462, Laws of 1993))~~ RCW 48.31B.015 _____ has caused this application to be duly signed on its behalf in the City of _____ and State of _____ on the ____ day of _____, ((19)) 20 ____.

(SEAL) _____
Name of Applicant

BY _____
(Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached application dated _____, ((19)) 20 _____, for and on behalf of (Name of Applicant); that (s)he is the (Title of Officer) of such company and that (s)he is authorized to execute and file ~~((such))~~ the instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-920 Form B.

FORM B
INSURANCE HOLDING COMPANY SYSTEM
ANNUAL REGISTRATION STATEMENT

Filed with the Insurance Department of the State of

By

Name of Registrant

On Behalf of Following Insurance Companies

Name Address

Name, Title, Address, and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

Furnish the exact name of each insurer registering or being registered (hereinafter called "the registrant"), the home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the method(s) by which control of each registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities and interrelationships among all affiliated persons within the insurance holding company system. ~~((No affiliate need be shown if its total assets are equal to less than one-half of one percent of the total assets of the ultimate controlling person within the insurance holding company system unless it has assets valued at or exceeding ten million dollars.))~~ The chart or listing ~~((should))~~ must show the percentage of each class of voting securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of ~~((such))~~ the control. As to each person specified in ~~((such))~~ the chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON

As to the ultimate controlling person in the insurance holding company system furnish the following information:

- (a) Name.
- (b) Home office address.
- (c) Principal executive office address.
- (d) The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.
- (e) The principal business of the person.
- (f) The name and address of any person who holds or owns ten percent or more of any class of voting security, the class of ~~((such))~~ the security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned.

(g) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings and the date when commenced.

ITEM 4. BIOGRAPHICAL INFORMATION

If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, furnish the following information for the directors and

executive officers of the ultimate controlling person: The individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years. If the ultimate controlling person is an individual, furnish the individual's name and address, his or her principal occupation and all offices and positions held during the past five years, and any convictions of crimes other than minor traffic violations.

ITEM 5. TRANSACTIONS AND AGREEMENTS

Briefly describe the following agreements in force, and transactions currently outstanding or which have occurred during the last calendar year between the registrant and its affiliates:

- (a) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the registrant or of the registrant by its affiliates;
- (b) Purchases, sales or exchanges of assets;
- (c) Transactions not in the ordinary course of business;
- (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;
- (e) All management agreements, service contracts and all cost-sharing arrangements;
- (f) Reinsurance agreements;
- (g) Dividends and other distributions to shareholders;
- (h) Consolidated tax allocation agreements; and
- (i) Any pledge of the registrant's stock or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material for purposes of (~~section 6, chapter 462, Laws of 1993~~) RCW 48.31B.025.

Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of one percent or less of the registrant's admitted assets as of the (~~31st day of~~) preceding December (~~(next preceding shall not be deemed)~~) 31st are not material. (Note: Commissioner may by rule, regulation, or order provide otherwise.)

The description (~~(shall)~~) must be in a manner as to permit the proper evaluation thereof by the commissioner, and (~~(shall)~~) must include at least the following: The nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to (~~(such)~~) the transaction, and relationship of the affiliated parties to the registrant.

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any (~~(such)~~) person is or was the subject; give the names of the parties and the court or agency in which (~~(such)~~) the litigation or proceeding is or was pending:

(a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and

(b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership or other corporate reorganizations.

ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

The insurer (~~(shall)~~) must furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial statements and exhibits (~~(should)~~) must be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

(b) If the ultimate controlling person is a corporation, an organization, a limited liability company, or other legal entity, the financial statements (~~(shall)~~) must include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information (~~(shall)~~) must be filed for any subsequent period to the extent such information is available. (~~(Such)~~) The financial statements may be prepared on either an individual basis, or unless the commissioner otherwise requires, on a consolidated basis if (~~(such)~~) the consolidated statements are prepared in the usual course of business.

Other than with respect to the foregoing, the financial statements must be filed in a standard form and format adopted by the National Association of Insurance Commissioners, unless an alternative form is accepted by the commissioner. Documentation and financial statements filed with the Securities and Exchange Commission or audited GAAP financial statements are an appropriate form and format.

Unless the commissioner otherwise permits, the annual financial statements (~~(shall)~~) must be accompanied by the certificate of an independent public accountant to the effect that (~~(such)~~) the statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the annual statement of (~~(such insurer filed with the insurance department of)~~) the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of (~~(such)~~) that state.

Any ultimate controlling person who is an individual may file personal financial statements that are reviewed rather than audited by an independent public accountant. The

review must be conducted in accordance with standards for review of personal financial statements published in the personal financial statements guide by the American Institute of Certified Public Accountants. Personal financial statements must be accompanied by the independent public accountant's standard review report stating that the accountant is not aware of any material modifications that should be made to the financial statements in order for the financial statements to be in conformity with generally accepted accounting principles.

(c) Exhibits (~~shall~~) must include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or WAC 284-18-300 and 284-18-320.

ITEM 9. FORM C REQUIRED

A Form C, Summary of Changes to Registration Statement, must be prepared and filed with this Form B.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

~~((Pursuant to))~~ Under the requirements of ~~((section 6, chapter 462, Laws of 1993))~~ RCW 48.31B.025, the registrant has caused this annual registration statement to be duly signed on its behalf in the City of _____ and State of ____ on the ____ day of _____, ~~((19))~~ 20 ____.

(SEAL) _____
Name of Registrant

By _____
(Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached annual registration statement dated _____, ~~((19))~~ 20 ____, for and on behalf of (Name of Company); that (s)he is the (Title of Officer) of ~~((such))~~ the company and that (s)he is authorized to execute and file ~~((such))~~ the instrument. Deponent further says that (s)he is familiar with ~~((such))~~ the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) _____
(Type or print name beneath) _____

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-930 Form C.

FORM C
SUMMARY OF REGISTRATION STATEMENT

Filed with the Insurance Department of the State of

By

Name of Registrant

On Behalf of Following Insurance Companies

Name	Address
_____	_____
_____	_____
_____	_____

Date: _____, ~~((19))~~ 20 ____

Name, Title, Address, and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description ~~((shall))~~ must be in a manner as to permit the proper evaluation thereof by the commissioner, and ~~((shall))~~ must include specific references to Item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where ~~((such))~~ the changes are ones which result in ownership or holdings of ten percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where: An individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of ~~((such))~~ the change ~~((shall))~~ must be included. If a transaction disclosed on the prior year's annual registration statement has been

effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer (~~shall~~) must furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose it is to avoid statutory threshold amounts and the review that might otherwise occur.

SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

~~((Pursuant to))~~ Under the requirements of ~~((section 6, chapter 462, Laws of 1993))~~ RCW 48.31B.025, the registrant has caused this summary of registration statement to be duly signed on its behalf in the City of _____ and State of ___ on the ___ day of ____, ~~((19))~~ 20 ____.

(SEAL)

Name of Registrant

BY

(Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached summary of registration statement dated _____, ~~((19))~~ 20 ____, for and on behalf of (Name of Company); that (s)he is the (Title of Officer) of ~~((such))~~ the company and that (s)he is authorized to execute and file ~~((such))~~ the instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____

AMENDATORY SECTION (Amending WSR 93-19-005, filed 9/1/93, effective 10/2/93)

WAC 284-18-940 Form D.

FORM D

PRIOR NOTICE OF A TRANSACTION

Filed with the Insurance Department of the State of

By _____

Name of Registrant

On Behalf of Following Insurance Companies

Name Address

Date: _____, ~~((19))~~ 20 ____

Name, Title, Address, and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

ITEM 1. IDENTITY OF PARTIES TO TRANSACTION

Furnish the following information for each of the parties to the transaction:

- (a) Name.
- (b) Home office address.
- (c) Principal executive office address.
- (d) The organizational structure, i.e., corporation, partnership, individual, trust, etc.
- (e) A description of the nature of the parties' business operations.

(f) Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties.

(g) Where the transaction is with a nonaffiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

ITEM 2. DESCRIPTION OF THE TRANSACTION

Furnish the following information for each transaction for which notice is being given:

- (a) A statement as to whether notice is being given under ~~((section 7 (1)(b)(i), (ii), (iii), (iv), or (v), chapter 462, Laws of 1993-))~~ RCW 48.31B.030 (1)(b)(i), (ii), (iii), (iv), or (v):
- (b) A statement of the nature of the transaction~~((-))~~;
- (c) A statement of how the transaction meets the "fair and reasonable" standard of RCW 48.31B.030 (1)(a)(i); and
- (d) The proposed effective date of the transaction.

ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES, OR INVESTMENTS

Furnish a brief description of the amount and source of funds, securities, property or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of

any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under ~~((such))~~ the loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee or other arrangement, state the time period during which the investment, guarantee or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit or guarantee is less than, (a) in the case of nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders or, (b) in the case of life insurers, three percent of the insurer's admitted assets, each as of the ~~((31st day of December next))~~ preceding December 31st.

ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NONAFFILIATE

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making ~~((such))~~ the loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets, of or make investments in any affiliate. Describe the amount and source of funds, securities, property, or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders or, with respect to life insurers, three percent of the insurer's admitted assets, each as of the ~~((31st day of December next))~~ preceding December 31st.

ITEM 5. REINSURANCE

If the transaction is a reinsurance agreement or modification thereto, as described by ~~((section 7 (1)(b)(iii), chapter 462, Laws of 1993))~~ RCW 48.31B.030 (1)(b)(iii)(B), or a reinsurance pooling agreement or modification thereto as described in RCW 48.31B.030 (1)(b)(iii)(A), furnish a

description of the known or estimated amount of liability to be ceded or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and nonaffiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or change in the insurer's liabilities in any of the next three years, in connection with the reinsurance agreement or modification thereto is less than five percent of the insurer's surplus as regards policyholders, as of the ~~((31st day of December next))~~ preceding December 31st. Notice must be given for all reinsurance pooling agreements including modifications thereto.

ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS, AND COST-SHARING ARRANGEMENTS.

For management and service agreements, furnish:

- (a) A brief description of the managerial responsibilities, or services to be performed.
- (b) A brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

- (a) A brief description of the purpose of the agreement~~((-))~~;
- (b) A description of the period of time during which the agreement is to be in effect~~((-))~~;
- (c) A brief description of each party's expenses or costs covered by the agreement~~((-))~~;
- (d) A brief description of the accounting basis to be used in calculating each party's costs under the agreement;
- (e) A brief statement as to the effect of the transaction upon the insurer's policyholder surplus;
- (f) A statement regarding the cost allocation methods that specifies whether the proposed charges are based on "cost or market." If market based, rationale for using market instead of cost, including justification for the company's determination that amounts are fair and reasonable; and
- (g) A statement regarding compliance with NAIC practices and procedures manual regarding expense allocation.

ITEM 7. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

~~((Pursuant to))~~ Under the requirements of ~~((section 7, chapter 462, Laws of 1993))~~ RCW 48.31B.030, _____ has caused this notice to be duly signed on its behalf in the City of _____ and State of _____ on the ____ day of _____, ~~((19))~~ 20 ____.

(SEAL) _____
Name of Applicant

BY _____
(Name) (Title)

Attest:

(Signature of Officer)

(Title)

CERTIFICATION

The undersigned deposes and says that (s)he has duly executed the attached notice dated _____, ~~((19))~~ 20 _____, for and on behalf of (Name of Applicant); that (s)he is the (Title of Officer) of ~~((such))~~ the company and that (s)he is authorized to execute and file ~~((such))~~ the instrument. Deponent further says that (s)he is familiar with ~~((such))~~ the instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____

NEW SECTION

WAC 284-18-950 Form E.

FORM E
PREACQUISITION NOTIFICATION FORM
REGARDING THE POTENTIAL COMPETITIVE IMPACT
OF A PROPOSED MERGER OR ACQUISITION BY A
NONDOMICILIARY INSURER DOING BUSINESS IN THIS
STATE OR BY A DOMESTIC INSURER

Name of Applicant

Name of Other Person
Involved in Merger or
Acquisition

Filed with the Insurance Department of the State of

(State of domicile of insurer being acquired)

Date: _____, 20 ____

Name, Title, Address, and Telephone Number of person
completing this statement:

ITEM 1. NAME AND ADDRESS

State the name and address of the person who hereby provides notice of their involvement in a pending acquisition or change in corporate control.

ITEM 2. NAME AND ADDRESSES OF AFFILIATED COMPANIES

State the name and addresses of the persons affiliated with those listed in Item 1.

Describe their affiliations.

ITEM 3. NATURE AND PURPOSE OF THE PROPOSED MERGER OR ACQUISITION

State the nature and purpose of the proposed merger or acquisition.

ITEM 4. NATURE OF BUSINESS

State the nature of the business performed by each of the persons identified in respect to Item 1 and Item 2.

ITEM 5. MARKET AND MARKET SHARE

State specifically what market and market share in each relevant insurance market the persons identified in Item 1 and Item 2 currently enjoy in this state. Provide historical market and market share data for each person identified in Item 1 and Item 2 for the past five years and identify the source of the data. Provide a determination as to whether the proposed acquisition or merger, if consummated, would violate the competitive standards of this state as stated in RCW 48.31B.020(4). If the proposed acquisition or merger would violate the competitive standards, provide justification of why the acquisition or merger would not substantially lessen competition or create a monopoly in this state.

For purposes of this question, market means direct written premiums in this state for a line of business as contained in the annual statement required to be filed by insurers authorized to do business in this state.

NEW SECTION

WAC 284-18-960 Form F.

FORM F
ENTERPRISE RISK REPORT

Filed with the Insurance Department of the State of

By

Name of Registrant/Applicant

On Behalf of/Related to Following Insurance Companies

Name Address

Date: _____, 20____

Name, Title, Address, and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

ITEM 1. ENTERPRISE RISK

The registrant/applicant to the best of its knowledge and belief, must provide information regarding the following areas that could produce enterprise risk as defined in RCW 48.31B.005(4), provided the information is not disclosed in the insurance holding company system annual registration statement filed on behalf of itself or another insurer for which it is the ultimate controlling person:

- (a) Any material developments regarding strategy, internal audit findings, compliance or risk management affecting the insurance holding company system;
- (b) Acquisition or disposal of insurance entities and real-locating of existing financial or insurance entities within the insurance holding company system;
- (c) Any changes of shareholders of the insurance holding company system exceeding ten percent or more of voting securities;
- (d) Developments in various investigations, regulatory activities or litigation that may have a significant bearing or impact on the insurance holding company system;
- (e) Business plan of this insurance holding company system and summarized for next twelve months;
- (f) Identification of insurance holding company system capital resources and material distribution patterns;
- (g) Identification of any negative movement, or discussions with rating agencies which may have caused, or may cause, potential negative movement in the credit ratings and individual insurer financial strength ratings assessment of the insurance holding company system (including both the rating score and outlook);

(h) Information on corporate or parental guarantees throughout the holding company and the expected source of liquidity should the guarantees be called upon; and

(i) Identification of any material activity or development of the insurance holding company system that, in the opinion of senior management, could adversely affect the insurance holding company system.

The registrant/applicant may attach the appropriate form most recently filed with the United States Securities and Exchange Commission, provided the registrant/applicant includes specific references to those areas listed in Item 1 for which the form provides responsive information. If the registrant/applicant is not domiciled in the United States, it may attach its most recent public audited financial statement filed in its country of domicile, provided the registrant/applicant includes specific references to those areas in Item 1 for which the financial statement provides responsive information.

ITEM 2. OBLIGATION REPORT

If the registrant/applicant has not disclosed any information under Item 1, the registrant/applicant must include a statement affirming that, to the best of its knowledge and belief, it has not identified enterprise risk subject to disclosure under Item 1.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 284-18A-300 Forms—General requirements.
- WAC 284-18A-310 Forms—Incorporation by reference, summaries, and omissions.
- WAC 284-18A-320 Forms—Information unknown or unavailable and extension of time to furnish.
- WAC 284-18A-330 Forms—Additional information and exhibits.
- WAC 284-18A-340 Definitions.
- WAC 284-18A-350 Acquisition of control—Form A Statement filing.
- WAC 284-18A-360 Amendments to Form A.
- WAC 284-18A-370 Annual registration of health carriers—Form B Statement filing.
- WAC 284-18A-380 Summary of registration—Form C Statement filing.
- WAC 284-18A-390 Amendments to Form B.
- WAC 284-18A-400 Alternative and consolidated registrations.
- WAC 284-18A-410 Disclaimers and termination of registration.
- WAC 284-18A-420 Transactions subject to prior approval—Form D Notice filing.
- WAC 284-18A-430 Extraordinary dividends and other distributions.

WAC 284-18A-440 Confidential proprietary and trade secret information.
 WAC 284-18A-910 Form A.
 WAC 284-18A-920 Form B.
 WAC 284-18A-930 Form C.
 WAC 284-18A-940 Form D.
 WAC 284-18A-950 Form E.
 WAC 284-18A-960 Dividends and distributions.

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: November 2, 2015.

Kevin Dixon
 Rules Coordinator

WSR 15-22-065
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed November 2, 2015, 9:15 a.m., effective December 3, 2015]

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

Purpose: WAC 458-20-258 (Rule 258) describes the business and occupation (B&O), retail sales, and use tax responsibilities of persons providing travel agent and/or tour operator services. The department is amending this rule to reflect current law and clarify the tax reporting responsibilities of persons engaged in travel agent and tour operator businesses.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-258 Travel agents and tour operators.

Statutory Authority for Adoption: RCW 82.01.060(2) and 82.32.300.

Adopted under notice filed as WSR 15-15-173 on July 22, 2015.

Changes Other than Editing from Proposed to Adopted Version: The following changes were made at pages 14 and 15 at subsection (4)(c) and Example 5:

- Old phrase "centralized computer distribution system" was changed to the new phrase "global distribution systems" in subsection (4)(c);
- Old name "Centralized Computer Distribution Services" and "(CCDS)" were changed to the new name "Global Distribution Systems Company" and "(GDS)" in Example 5; and
- Old phrase "computerized booking services" was changed to new phrase "global distribution systems" also in Example 5.

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 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 1, Repealed 0.

AMENDATORY SECTION (Amending WSR 90-17-003, filed 8/2/90, effective 9/2/90)

WAC 458-20-258 Travel agents and tour operators.

(1) **Introduction.** This ~~(section describes the business and occupation (B&O) taxation of travel agents and tour operators. Travel agents are taxed at the special travel agent rate under RCW 82.04.260(10). Tour operators are generally taxed under the service or other business classification under RCW 82.04.290. However, the business activities of tour operators may sometimes include activities like those of a travel agent. This section recognizes the overlap of activities and taxes them consistently.~~

(2) Definitions:

(a) ~~"Commission" means the fee or percentage of the charge or their equivalent, received in the ordinary course of business as compensation for arranging the service. The customer or receiver of the service, not the person receiving the commission, is always responsible for payment of the charge.~~

(b) ~~"Pass-through expense" means a charge to a tour operator business where the tour operator is acting as an agent of the customer and the customer, not the tour operator, is liable for the charge. The tour operator cannot be primarily or secondarily liable for the charge other than as agent for the customer. See: WAC 458-20-111 Advances and reimbursements.~~

(c) ~~"Tour operator business" means a business activity of providing directly or through third party providers, transportation, lodging, meals, and other associated services where the tour operator purchases or itself provides any or all of the services offered, and is itself liable for the services purchased.~~

(d) ~~"Travel agent business" means the business activity of arranging transportation, lodging, meals, or other similar services which are purchased by the customer and where the travel agent or agency merely receives a commission for arranging the service.~~

(3) Travel agents:

(a) ~~The gross income of a travel agent or a travel agent business is the gross commissions received without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense. It is taxed at the special travel agent rate.~~

(b) ~~Gross receipts, other than commissions, from other business activities of a travel agent, including activities as a tour operator, are taxed in the appropriate B&O classification, service, retailing, etc., as the case may be.~~

(4) Tour operators:

(a) ~~The gross income of a tour operator or a tour operator business is the gross commissions received when the activity is that of a travel agent business.~~

(i) When a tour operator receives commissions from a third party service provider for all or a part of the tour or tour package, the gross income of the business for that travel agent activity is the commissions received.

(b) However, if the activity is that of a tour operator business, receipts are B&O taxable in the service classification without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense; **except**, receipts attributable to pass-through expenses are not included as part of the gross income of the business.

(5) Examples:

(a) A travel agent issues an airplane ticket to a customer. The cost of the ticket is \$250 which is paid by the customer. The travel agent receives \$25 from the airline for providing the service.

(i) The gross income of the business for the travel agent is the \$25 commission received.

(ii) The gross income of the business is taxed at the special travel agent rate.

(b) A tour operator offers a tour costing \$1,500 per person. The tour cost consists of \$800 airfare, \$500 lodging and meals, and \$200 bus transportation. The tour operator has an arrangement with each of the service providers to receive a 10% commission for each service of the tour, which in this case is \$150 (\$80 + \$50 + \$20). The tour operator issues tickets, etc., only when paid by the customer and is not liable for any services reserved but not provided.

(i) The tour operator is engaged in a travel agent activity and the gross income of the business is commissions received, \$150.

(ii) The gross income of the business, \$150, is taxed at the special travel agent rate.

(c) The same facts as in example (b) except that the tour operator has a policy of requiring 10% or \$150 as a down payment with the remaining \$1,350 payable 20 days prior to departure with 95% refundable up to 10 days prior to departure and nothing refunded after 10 days prior to departure. The customer cancels 15 days prior to departure and is refunded \$1,425 with the tour operator retaining \$75.

(i) The gross income of the tour operator business is the \$75 retained. No amount is attributable to pass-through expense since the tour operator was not obligated to the service provider in the event of cancellation and the tour operator was not acting as the agent of the customer.

(ii) The gross income of the business, \$75, is taxed in the service B&O tax classification.

(d) A tour operator offers a package tour for the Superbowl costing \$800 per person. The tour operator purchases noncancellable rooms in a hotel for \$300 per room for 2 nights, and game tickets which cost \$100 each. The package includes airfare which costs \$200 per person for which the tour operator receives the normal commission of \$20. As an extra feature, the tour operator offers to provide, for an extra cost, special event tickets, if available, at his cost of \$50 each. The tour operator is B&O taxable as follows:

(i) The gross income of the tour operator business is \$600 (\$800 less \$200 airfare). Because the tour operator purchased the rooms and the game tickets in its own name and is liable for the rooms or tickets if not resold, the tour operator

is not operating as a travel agent business and is B&O taxable in the service classification. If the tour operator receives a commission on the rooms sold to itself, the activity remains taxable as a tour operator business under the service classification and the commission received is treated as a cost dis-
count, not included in the gross income of the business.

(ii) The \$50 received for the special event ticket is attributable to a pass-through expense and is not included in the gross income of the tour operator business. The special event ticket receipt is attributable to a pass-through expense because the tour operator is acting as an agent for the customer.

(iii) The \$20 received as commission from the sale of the airfare is a travel agent business activity and is included as gross income of a travel agent and taxed at the special travel agent rate)) rule describes the business and occupation (B&O), and retail sales and use tax reporting responsibilities of persons providing travel agent or tour operator services. A travel business may include both travel agent and tour operator activities.

(a) References to related rules. The department of revenue (department) has adopted other rules that readers may want to refer to:

(i) WAC 458-20-111 (Advances and reimbursements);

(ii) WAC 458-20-183 (Amusement, recreation, and physical fitness services);

(iii) WAC 458-20-19401 (Minimum nexus thresholds for apportionable activities); and

(iv) WAC 458-20-19402 (Single factor receipts apportionment—Generally).

(b) Rule examples. This rule includes a number of examples that identify a set of facts and then state a conclusion. These examples are only a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

(2) Travel agents.

(a) Definitions. For purposes of this rule:

(i) A "travel agent" is a person engaging in the business activity of arranging travel including, but not limited to, transportation, lodging, meals, or other similar service that is purchased by the customer from the service provider and where the travel agent merely receives a commission for arranging the customer's service.

(ii) A "commission" is the fee or percentage of the price charged by a service provider to a customer that the travel agent receives from the service provider as compensation for arranging the purchase of the service by the customer. Commission also includes any additional fee charged by the travel agent to the customer that the travel agent receives as compensation for arranging the purchase of the service by the customer.

(b) Taxability of income.

Travel agent services. The gross income for engaging in business as a travel agent is the commissions received, which is subject to the travel agent/tour operator B&O tax classification. The gross amount of the commissions is taxable, without any deduction for the cost of materials used, labor costs, interest, discount, delivery cost, taxes, losses, or any other expense.

Example 1: Travel Agent books an airplane ticket for Jane in Jane's name. The cost of the ticket is \$250, which is paid by Jane. Travel Agent receives \$25 from the airline for providing the service. Travel Agent is at no time personally liable for the ticket price. The \$25 commission received by Travel Agent is subject to the travel agent/tour operator B&O tax classification.

(c) **Other income.** Income from other business activities is subject to tax under the appropriate B&O tax classification, such as service and other business activities B&O tax classification or retailing B&O tax classification, as the case may be. If the sale is a retail sale, retail sales tax must be collected unless the sale is specifically exempt by law. See subsection (3) of this rule for an explanation of the taxability of tour operator activities and subsection (4) of this rule for an explanation of the taxability of other potential income generating activities.

(d) **Taxability of purchases.** A travel agent is the consumer of tangible personal property or retail services the travel agent purchases or uses in providing travel agent services. If the travel agent does not pay retail sales tax to the seller of the property or services, the travel agent must remit retail sales (commonly referred to as "deferred sales tax") or use tax directly to the department.

Example 2: TTT Travel Services has a booking arrangement with its charter air and bus transportation service providers, under which TTT receives from the providers 10% of the selling price of each ticket sold. TTT charges its customers the face value of each ticket sold.

(i) If TTT, in its capacity as agent for Susan Smith, arranges the purchase of Susan's air transportation from XY Airlines for \$500, the \$50 TTT receives from XY Airlines is considered commission income subject to the travel agent/tour operator B&O tax classification.

(ii) TTT has a policy requiring customers to pay a 10% nonrefundable down payment for a tour, with the remaining balance due 15 days before departure. If a customer fails to pay the remaining balance or cancels the tour, TTT retains the 10% down payment. Any down payment retained by TTT is included in the gross income of the business and subject to the travel agent/tour operator B&O tax classification.

Example 3: SSS Travel Services offers a Washington state tour. The tour package consists of lodging and bus transportation services, which are reserved by SSS, but SSS has no liability for any lodging or bus tickets not sold by SSS to customers.

SSS sells a tour package to Jane and also arranges air transportation to the site where the tour begins. Jane pays \$300 for the airline ticket and SSS receives a \$30 fee (10% of the airfare) from the airline for booking the flight. Further, SSS collects \$600 from Jane for the lodging, only paying \$500 over to the lodging providers and collects \$400 for the bus transportation but only pays over to the transportation providers \$360.

SSS's gross income from travel agent/tour operator activities is \$170, which is subject to the travel agent/tour operator B&O tax classification. This total of \$170 income consists of the \$30 commission from the airline, \$100 retained from the sale of the lodging, and \$40 retained from the sale of the bus transportation.

(3) **Tour operators.**

(a) **Definitions.**

(i) A "tour operator" is a person engaging in the business activity of providing tours directly or through third-party providers including, but not limited to, transportation, lodging, meals and other associated services that are purchased by the customer. The tour operator generally either purchases or provides some or all of the services offered, and is itself liable for paying for any services it purchases.

(ii) "Day trips for sightseeing purposes" is a business activity of providing directly or through third-party providers, sight-seeing tours lasting less than twenty-four hours to consumers. Day trips for sightseeing purposes are taxable as "amusement and recreation services" subject to the retailing B&O tax classification and retail sales tax as provided in RCW 82.04.050 (15)(a) and 82.08.020, respectively. Information regarding amusement and recreation services is provided in WAC 458-20-183.

(iii) A "pass-through expense" is an amount received by a tour operator from a customer where the tour operator is acting solely as agent of the customer in purchasing services from a service provider. The customer, not the tour operator is liable for payment of the service provider's charge. The tour operator cannot be primarily or secondarily liable for the charge, other than as agent for the customer. Information regarding advances and reimbursements is provided in WAC 458-20-111.

(b) **Taxability of income.**

Tour operator services. The gross income received for engaging in business as a tour operator is subject to the travel agent/tour operator B&O tax classification. There is no deduction allowed for the cost of materials used, labor costs, discounts, taxes, losses, or any other expense to the tour operator. Amounts received from the customer for pass-through expenses are not included as a part of gross income.

Example 4: TTT Travel Services offers a Washington state tour priced at \$1,500. The tour package consists of air transportation, lodging, and bus transportation. TTT is liable for paying the service providers, even if a customer fails to pay TTT for a reserved tour. The gross income of the business is the total tour sales price received, \$1,500, and is subject to the travel agent/tour operator B&O tax classification.

(c) **Other income.** Income from other business activities is subject to tax under the appropriate B&O classification, such as service and other business activities classification or retailing classification, as the case may be. If the sale is a retail sale, retail sales tax must be collected unless specifically exempt by law. See subsection (2) of this rule for an explanation of the taxability of travel agent activities and subsection (4) of this rule for an explanation of the taxability of other potential income-generating activities.

(d) **Taxability of purchases.** A tour operator is the consumer of tangible personal property or retail services the tour operator purchases or uses in a tour operator's business. If the tour operator does not pay retail sales tax to the seller of the property or services, the tour operator must remit retail sales (commonly referred to as "deferred sales tax") or use tax directly to the department.

(4) **Taxability of other income.** A travel agent or tour operator may derive income from business activities other

than as a travel agent or tour operator. The gross income from these other business activities is subject to other B&O tax classifications and retail sales tax, as provided by law.

Examples of other income that a travel agent or tour operator may receive include:

(a) Sales of tangible personal property, such as a gift or merchandise to customers. Gross proceeds from these sales are subject to retailing B&O tax classification and the travel agent/tour operator must collect and remit retail sales tax, unless specifically exempt by law.

(b) Management, financial, and administrative services provided to an affiliated company. Gross income from these activities is subject to the service and other business activities B&O tax classification, even if the affiliated company is engaged in business as a travel agent or tour operator.

(c) Incentive payments or other referral fees. Gross income from the activities of making referrals for other providers or of using products or services of other providers is subject to the service and other business activities B&O tax classification. This includes payments to travel agents from businesses providing global distribution systems used to store and retrieve information and conduct transactions related to travel services provided by hotels, airlines, rental car companies, and other travel-service providers.

Example 5: TTT Travel Services (TTT) is hired to purchase an airline ticket for a customer. TTT uses Global Distribution Systems Company (GDS) to purchase the airline ticket from Airways Company. Airways Company pays GDS a commission for booking the airline ticket. GDS then pays TTT a fee for TTT using its global distribution systems. The fee to TTT is based on a percentage of the commission GDS received from Airways Company. The fee received by TTT from GDS is subject to the service and other business activities B&O tax classification.

Example 6: TTT Travel Services (TTT) is hired to book an airline ticket for a customer. After locating an XY Airlines flight the customer wants, TTT purchases the ticket in the name of the customer. XY Airlines agrees that TTT has no liability to pay for the flight and that the customer alone is liable to pay for the flight. The customer agrees that TTT has no liability for providing the purchased service and the customer will not be entitled to a refund from TTT if the flight is canceled. In these circumstances, TTT may exclude the amount of the ticket for its customer from its taxable gross income. However, if TTT Travel provided XY Airlines with a guarantee of payment, then TTT would have a secondary liability to pay for the ticket and would not be entitled to exclude the amount from gross income.

TTT must include as gross income all commission income received from XY Airlines, the service provider, for booking the air transportation, whether paid by the customer or the service provider. Any additional fees for other activities are subject to the service and other business activities B&O tax classification.

Example 7: TTT Travel Services (TTT) offers a Washington state tour priced at \$1,500. The tour package consists of air transportation, lodging, and bus transportation. TTT is liable for paying the service providers, even if a customer fails to pay TTT for a reserved tour. The gross income of the

business is the total tour sales price received, \$1,500, and is subject to the travel agent/tour operator B&O tax classification.

Example 8: TTT has a policy requiring customers to pay a 10% nonrefundable down payment for a tour, with the remaining balance due 15 days before the departure. If a customer fails to pay the remaining balance or cancels the tour, TTT retains the 10% down payment. Any down payment retained by TTT is included in the gross income of the business and subject to the travel agent/tour operator B&O tax classification.

Example 9: SSS Travel Services (SSS) offers a tour package and also arranges transportation to the site where the tour begins. The tour package includes a \$300 airline ticket, \$600 in lodging and \$400 for bus transportation. SSS secondarily guarantees only the airline payment. SSS's gross income from the air fare is \$300. If SSS purchases the lodging from Great Hotels to sell in its tour packages, it will include in gross income the price of the lodging purchased from Great Hotels that it resells to its tour package customers.

(5) Apportionment. Persons engaged in business as a travel agent or tour operator both inside and outside the state may be eligible to apportion gross income reportable under the travel agent/tour operator B&O tax classification. WAC 458-20-19401 and 458-20-19402 provide guidance on apportionment methods that may be appropriate for a travel agent or tour operator that has substantial nexus with other states.

WSR 15-22-078

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed November 3, 2015, 8:18 a.m., effective December 4, 2015]

Purpose: Clarify when deferred prosecution is included in criminal history records information.

Citation of Existing Rules Affected by this Order: Repealing [amending] WAC 446-20-040.

Statutory Authority for Adoption: RCW 10.97.080 and 10.97.090.

Adopted under notice filed as WSR 15-17-079 on August 17, 2015.

Changes Other than Editing from Proposed to Adopted Version: Clarification was provided to the language based on stakeholder feedback.

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 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 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: November 2, 2015.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 80-08-057, filed 7/1/80)

WAC 446-20-040 Deferred prosecutions. (1) A deferred prosecution under chapter 10.05 RCW of an alleged offender does not become nonconviction data until more than one year has elapsed since arrest, citation, charge, or service of warrant, or there is a final decision to dismiss charges or not to prosecute, whichever occurs first.

(2) A deferred prosecution under this section will not be subject to deletion under RCW 10.97.060 until there is a final decision to dismiss charges or not to prosecute.

(3) Notwithstanding subsection (2) if this section, the section retains the discretion to refuse to delete nonconviction data as provided in RCW 10.97.060.

WSR 15-22-079

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed November 3, 2015, 8:18 a.m., effective December 4, 2015]

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

Purpose: Rule changes are being proposed to clean up the chapter and align the affirmative action language with the requirements under current statute.

Citation of Existing Rules Affected by this Order: Repealing WAC 446-70-010, 446-70-020, 446-70-030, 446-70-040, 446-70-050, 446-70-060, 446-70-070, and 446-70-080.

Statutory Authority for Adoption: RCW 43.43.340.

Adopted under notice filed as WSR 15-17-080 on August 17, 2015.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 8.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 8.

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: November 2, 2015.

John R. Batiste
Chief

NEW SECTION

WAC 446-70-005 Affirmative action rules. For the purpose of RCW 43.43.340 the Washington state patrol hereby adopts the rules contained in chapter 357-25 WAC.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 446-70-010	Purpose.
WAC 446-70-020	Authority.
WAC 446-70-030	Goals and timetables regarding officer promotion to the ranks of RCW sergeant and lieutenant.
WAC 446-70-040	Definitions.
WAC 446-70-050	Affirmative action plan and requirements.
WAC 446-70-060	Affirmative action plan progress reporting.
WAC 446-70-070	Affirmative action plan use.
WAC 446-70-080	RCW 43.43.340 supplemental (plus 3) referrals.

WSR 15-22-082

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed November 3, 2015, 8:50 a.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: The proposed changes provide clarification regarding the process and articulate restrictions, requirements and penalties.

Citation of Existing Rules Affected by this Order: Repealing WAC 212-17-001, 212-17-010, 212-17-020, 212-17-030, 212-17-032, 212-17-035, 212-17-040, 212-17-042, 212-17-075, 212-17-090, 212-17-095, 212-17-100, 212-17-105, 212-17-110, 212-17-115, 212-17-120, 212-17-125, 212-17-135, 212-17-140, 212-17-150, 212-17-155, 212-17-160, 212-17-165, 212-17-170, 212-17-175, 212-17-180, 212-17-203, 212-17-21503, 212-17-21507, 212-17-21517, 212-17-240, 212-17-245, 212-17-255, 212-17-285, 212-17-290, 212-17-300, 212-17-305, 212-17-310, 212-17-315, 212-17-317, 212-17-320, 212-17-321, 212-17-323, 212-17-325, 212-17-327, 212-17-330, 212-17-335, 212-17-340, 212-17-342, 212-17-350, 212-17-352, 212-17-355, 212-17-360, 212-17-362, 212-17-365, 212-17-370, 212-17-375, 212-17-380, 212-17-385, 212-17-390, 212-17-395, 212-17-400, 212-17-405, 212-17-410, 212-17-415, 212-17-420, 212-17-445, 212-17-450, 212-17-455, 212-17-500, 212-17-505, 212-17-510 and 212-17-900; and amending WAC 212-17-015, 212-17-025, 212-17-045, 212-17-050, 212-17-055, 212-17-060, 212-17-065, 212-17-070, 212-17-080, 212-17-085, 212-17-130, 212-17-145, 212-17-185, 212-17-198, 212-17-21505, 212-17-21509, 212-17-21511, 212-17-21513, 212-17-21515, 212-17-21519,

212-17-220, 212-17-225, 212-17-230, 212-17-235, 212-17-250, 212-17-260, 212-17-270, 212-17-275, 212-17-280, 212-17-295, 212-17-345, 212-17-425, 212-17-430, 212-17-435, 212-17-440, 212-17-460, 212-17-465, 212-17-470, 212-17-475, 212-17-480, 212-17-485, 212-17-490, 212-17-495, and 212-17-515.

Statutory Authority for Adoption: RCW 70.77.250.

Adopted under notice filed as WSR 15-17-113 on August 18, 2015.

Changes Other than Editing from Proposed to Adopted Version: The changes made based on stakeholder comments include the following:

- Changing the edition of the NFPA 1123 adopted to reflect the current 2014 version.
- Changing the dimension of a commonly sized display firework aerial shell to be two - ten inches.
- Added consumer fireworks to the list of the types of display fireworks.
- Removed the definition of private display.
- Added the word consumer to the title for WAC 212-17-050.
- Added intended use to WAC 212-17-053 with regard to altered consumer fireworks and replaced the term ignitor with initiator.
- Removed under subsection (2) of WAC 212-17-060 concerning denial of special permits.
- Removed the proposed section (WAC 212-17-062) regarding storage of consumer fireworks for personal use.
- Updated WAC 212-17-080 to require shipments be made in accordance with transportation requirements.
- Provided clarification with regard to the purchase of fireworks by a retailer at wholesale.
- Clarified the application for a license must include the name of all intended wholesalers.
- Provided cleanup to consumer fireworks retail sales (CFRS) facility requirements and locations and updated the distances required.
- Updated the sign requirements for a CFRS facility.
- Added a requirement for the CFRS facility to post the address of the stand.
- Provided clarification under WAC 212-17-440 with regard to temporary storage of fireworks.
- Provided clarification under WAC 212-17-460 regarding determination of separate instances of noncompliance.

A final cost-benefit analysis is available by contacting Melissa Van Gorkom, P.O. Box 42600, Olympia, WA 98504, phone (360) 596-4017, fax (360) 596-4015, e-mail wsprules@wsp.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 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 9, Amended 44, Repealed 73.

Number of Sections Adopted Using Negotiated Rule Making: New 9, Amended 44, Repealed 73; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 2, 2015.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 82-22-068, filed 11/2/82)

WAC 212-17-015 Scope. These rules apply to ~~((fireworks))~~ the manufacture, storage, transportation, sale, importation, possession, classification, and discharge of fireworks of every class or kind in this state. With the exception of importation regulations, this chapter does not apply to tribal fireworks stands operated by an enrolled tribal member on tribal lands or allotted lands within an established Indian reservation pursuant to chapter 37.12 RCW.

- Exceptions:
- (1) Explosives, as defined and regulated under the state explosives law, chapter 70.74 RCW;
 - (2) Firearms and ammunition, including blank cartridges and pistols of the type used at sporting events or theatrical productions;
 - (3) Research or experiments with rockets or missiles, including model rockets and model rocket motors designed, sold and used for the purpose of propelling recoverable aero models;
 - (4) Toy paper and/or plastic caps, ~~((manufactured in accordance with DOT regulations, 49 C.F.R. 173.100(p), 1981, as of October 29, 1982,))~~ or toy pistols, toy canes, toy guns, or other devices in which toy paper and/or plastic caps are used;
 - (5) Emergency signaling devices including, but not limited to, devices intended for signaling, illuminating, and incendiary purposes such as:
 - (a) Railway torpedoes;
 - (b) Airplane flares;
 - (c) Illuminating projectiles;
 - (d) Incendiary and smoke projectiles;
 - (e) Flash cartridges (formerly classified as special fireworks);
 - (6) Line throwing rocket classified as UN0453 with DOT regulations 49 C.F.R. 171-173.

NEW SECTION

WAC 212-17-021 Adoption of code. (1) The state fire marshal adopts the following standards in effect on the effective date of this section unless otherwise outlined in this chapter:

- (a) National Fire Protection Association (NFPA) codes:
 - (i) NFPA 140 2013 edition, Standard on motion picture and television production, studio soundstages, approved production facilities, and production locations.
 - (ii) NFPA 160 2011 edition, Standard for the use of flame effects before an audience.

(iii) NFPA 1123 2014 edition, Code for fireworks display.

(iv) NFPA 1126 2011 edition, Standard for the use of pyrotechnics before a proximate audience.

(b) American Pyrotechnic Association (APA) standard 87-01 2004 edition, Standard for construction and approval for transportation of fireworks, novelties, and theatrical pyrotechnics.

(2) If there is a conflict between a standard and rule, the standard will be followed unless the rule is more stringent.

(3) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-025 Definition and classification—
"Fireworks." ~~((The term "fireworks" shall mean any composition or device for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of articles pyrotechnic, consumer, or display fireworks.))~~ (1) Consumer fireworks as defined in RCW 70.77.136 includes the following devices manufactured in accordance with the American Pyrotechnics Association Standards outlined in WAC 212-17-021:

(a) Ground and hand-held sparkling devices:

(i) Wire sparkler/dipped stick;

(ii) Cylindrical fountain;

(iii) Cone fountain;

(iv) Illuminating torch;

(v) Wheel;

(vi) Ground spinner;

(vii) Flitter sparkler;

(viii) Toy smoke device;

(b) Aerial device:

(i) Helicopter, aerial spinner;

(ii) Roman candles;

(iii) Mine and shell devices;

(iv) Aerial shell kit, reloadable tube.

(c) Multiple tube fireworks devices - Cake.

(d) New fireworks items as defined in RCW 70.77.236 may be added to the list of consumer fireworks if approved by the state fire marshal.

(2) "Dangerous fireworks" means:

(a) Any firework in its originally manufactured form that meets the standards for a consumer firework as established in this chapter, that has been altered, modified, enhanced, manipulated, tampered, or disassembled.

(b) Fireworks that are examined or tested for compliance with standards established for consumer fireworks and determined to possess characteristics of design or construction that make such item unsafe for use by any person not specially qualified or trained in the use of fireworks. The determination may be made by:

(i) The consumer product safety commission;

(ii) Bureau of Alcohol, Tobacco, Firearms and Explosives;

(iii) State fire marshal's office; or

(iv) Department of labor and industries.

(c) All fireworks designed and intended by the manufacturer to create the element of surprise upon the user.

(d) Fireworks that explode upon impact or by friction, unless otherwise classified by the state fire marshal pursuant to this chapter.

(3) "Display fireworks" means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use. Types of display fireworks:

(a) Aerial shell that is:

(i) Cylindrical or spherical cartridge containing:

(A) Lift charge;

(B) Burst charge;

(C) Effect composition.

(ii) Commonly sized from two to ten inches in diameter; and

(iii) Fired from metal, high-density polyethylene (HDPE), fiberglass, or heavy cardboard tubes.

(b) Salute that is:

(i) Paper-wrapped, cardboard tube, or sphere containing explosive composition in excess of 130 mg (2 grains); and

(ii) Upon ignition, produces noise and a flash of light.

(c) Consumer fireworks.

(4) "Explosive pest control devices (EPCDs)" means pest control pyrotechnics or agricultural and wildlife fireworks devices used for pest control efforts within the agricultural, aquacultural (commercial fishing operations), horticultural, and aviation industries when wildlife damage agriculture, property, or threaten public safety or health.

Commonly known types of EPCDs are:

(a) "Bird bombs, shell crackers or cracker shells" means 12 gauge shotgun shells containing a sound and flash explosive charge that is designed to explode in air or on the surface of the water at a distance of seventy-five to one hundred yards from the point of discharge.

(b) "Screamer rockets or banger rockets" means units ignited using a hand-held launcher, similar to a .22 short caliber starter pistol, that fly through the air, emitting a loud whistling sound (screamers) similar to other whistling type fireworks, or end in an impulsive report similar to a firecracker.

(c) "Seal bomb" means underwater firecrackers available domestically, similar to "M-80" firecrackers and contain approximately 2.3 grams of "flash and sound" charge mixture in a sealed cardboard tube, fitted with an eight to nine second waterproof fuse, UN0471 Class 1.4E explosives or NA0412 Class 1.4E explosive.

(d) "Rocket nets" means a net that is propelled by regulated explosive materials to capture or scare away pest wildlife.

(e) "Rope firecrackers" or "rope salutes" means the fuses of large firecrackers are inserted through cotton rope. As the rope burns, the fuses are ignited.

(5) "Flame effect" means the combustion of solids, liquids, or gases to produce thermal, physical, visual, or audible phenomena before an audience in one of the three methods:

(a) "Automatic flame effect" means a flame effect that is supervised and fired by an automatic control system.

(b) "Manual flame effect" means a flame effect that is operated manually without the use of an automatic control system.

(c) "Portable flame effects" means flame effects that are designed and installed, either in a permanent or temporary installation, and that are designed to move or be moved in the course of operation or installation.

(6) "Forbidden devices" means any device for sale to the public that produces an audible effect (other than a whistle) by a charge of more than 130 mg (2 grains) of explosive composition per report.

(7) "Igniter" means device used for the electrical ignition of fireworks and pyrotechnic articles that contains a small amount of pyrotechnic material that ignites when a specified electric current flows through the leads.

(8) "Prohibited components" means no component of any consumer fireworks device or novelty may upon functioning, project or disperse any metal, glass, or brittle plastic fragments.

(9) "Theatrical pyrotechnics" means pyrotechnics that are approved as:

(a) UN0431, Articles, Pyrotechnic 1.4G;

(b) UN0432, Articles, Pyrotechnic 1.4S;

(c) UN0430, Articles, Pyrotechnic 1.3G; and

(d) Do not bear a warning label that resembles the required wording on a consumer fireworks device.

(10) "Trick and novelty devices" means any small fireworks devices that are not regulated as explosives and are not classified as consumer or display fireworks by the United States Department of Transportation.

(a) These devices must still comply with all labeling requirements of the Consumer Product Safety Commission applicable to consumer fireworks devices as required in WAC 212-17-055 and includes the following items as defined in APA 87-1:

(i) Snakes, glow worm.

(ii) Party popper.

(iii) Snapper.

(iv) Toy smoke devices.

(v) Toy caps.

(b) Trick and novelty devices does not include any kind of sparklers as outlined in subsection (1)(a) of this section.

(11) For the purpose of this chapter the following terms will have the same meaning as APA 87-1 adopted under WAC 212-17-021:

(a) Chemical composition.

(b) Explosive composition.

(c) Pyrotechnic composition.

NEW SECTION

WAC 212-17-028 Definitions—General. (1) **"Citation"** means a document issued by the office of the state fire marshal pursuant to chapter 70.77 RCW to issue a civil penalty for a violation of RCW 70.77.480 through 70.77.520. A citation may include, but is not limited to, a description of the violation(s) and a notice of civil penalty assessment.

(2) **"Building"** means any structure used or intended for supporting or sheltering any use or occupancy.

(3) **"Consumer fireworks retail sales (CFRS) facility"** means a permanent or temporary structure, CFRS stand, tent, canopy, or membrane structure that is used primarily for the retail display and sale of consumer fireworks to the public.

(4) **"Facility"** means a consumer fireworks retail sales facility, distribution facility, or manufacturing facility.

(5) **"Formal hearing"** is a hearing before a hearings officer where the laws, rules, and evidence are presented, considered, and a proposed opinion issued.

(6) **"Hazard"** means a condition which could result in fire loss, injury, or damage to a person or property.

(7) **"Hearings request"** means the written request for a formal hearing to contest a civil penalty.

(8) **"Inhabited building"** means a building regularly occupied in whole or in part as a habitation for people, or any place of religious worship, schoolhouse, railroad station, store or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosive materials.

(9) **"International Building Code"** means the edition currently adopted by chapter 51-50 WAC.

(10) **"International Fire Code"** means the edition currently adopted by chapter 51-54A WAC.

(11) **"Magazine"** means a structure, other than an explosives manufacturing building approved for the storage of explosive materials.

(12) **"Permanent structure"** means an enclosure or shelter erected for a period of thirty days or more used for the sales, at retail or wholesale, of legal fireworks of any kind.

(13) **"Person"** means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations.

(14) **"Private way"** means any privately owned driveway, lane, access way, or similar parcel of land essentially unobstructed from the ground to the sky which serves as access from private property to a public road.

(15) **"Public road"** means any street or alley essentially unobstructed from the ground to the sky which is deeded, dedicated, or otherwise permanently appropriated to the public for public use.

(16) **"Recognized testing laboratory"** means a nationally recognized testing laboratory approved by the state fire marshal.

(17) **"State fire marshal"** means the director of the fire protection bureau of the Washington state patrol as appointed by the chief or his or her designee.

(18) **"Temperature overheat protection"** means a device which immediately interrupts the power to the heating element of a portable heating unit when the portable heating unit exceeds its designed operating temperature.

(19) **"Temporary power drop"** means an electrical service connection to a temporary retail fireworks stand.

(20) **"Temporary storage"** means a structure used for storage of consumer fireworks directly related to a CFRS facility and authorized under WAC 212-17-117.

(21) "**Temporary structure**" means an enclosure or shelter erected for a period of less than thirty days and not otherwise defined in the International Fire Code as a canopy.

(22) "**Tip-over protection**" means a device which immediately interrupts the power to the heating element of a portable heating unit when the portable heating unit is tipped or tilted more than forty-five degrees from its designed operating position.

AMENDATORY SECTION (Amending WSR 84-23-009, filed 11/9/84)

WAC 212-17-045 (~~Definition and classification~~—~~"))Explosive pest control devices (EPCDs) or "agricultural and wildlife fireworks."~~ ((The term "agricultural and wildlife fireworks" shall mean (1) fireworks devices, including but not limited to, firecrackers containing more than 50 mg (.772 grains) of pyrotechnic composition designed to produce audible effects, which are distributed to farmers, ranchers and growers through a wildlife management program administered by the United States Department of Interior (or by equivalent state or local governmental agencies); and, such distribution is in response to a written application describing the wildlife management problem that requires use of such devices, is of a quantity no greater than required to control the problem described, and is where other means of control is unavailable or inadequate or, (2) seal control units, purchased under a Certificate of Inclusion, issued by the United States Department of Commerce, National Oceanic and Atmosphere Administration, or sold by bona fide dealers to licensed commercial fishermen or licensed commercial fishing boat owners for marine mammal control.)) (1) No state fireworks license is required to purchase or use explosive pest control devices (EPCDs); however, as they are classified explosive devices and regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), a federal explosives permit is required.

(2) In order to purchase or use EPCDs, a federal explosives permit is required unless purchased by a government agency in accordance with RCW 70.77.311.

(3) For commercial fishers and licensed commercial fishing boat owners to receive or purchase EPCDs for use on pinnipeds (seals and sea lions), a written plan is needed to receive a Certificate of Inclusion, issued by the United States Department of Commerce, National Oceanic and Atmospheric Administration.

(a) The marine mammal management plan should describe the wildlife management problem that requires use of such devices.

(b) The frequency and duration of using EPCDs.

(c) The quantity of EPCDs is of a quantity no greater than required to control the problem described.

(4) Unless specifically required to be used, EPCDs are not to be used when a burn ban is in place or there is an increased fire danger.

(5) EPCDs are not to be used in a reckless or malicious manner that is not reasonable or prudent that threatens to injure or kill wildlife or persons.

(6) The state fire marshal will notify the Washington state department of fish and wildlife of any violations.

(7) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-050 Consumer firework device chemical content, construction. (1) All consumer fireworks devices ((shall)) must meet the ((following)) chemical content, design, and construction requirements((-

~~(1) Prohibited chemicals. Fireworks devices shall not contain any of the following chemicals:~~

~~(a) Arsenic sulfide, arsenates, or arsenites.~~

~~(b) Boron.~~

~~(c) Chlorates, except:~~

~~(i) In colored smoke mixtures in which an equal or greater amount of sodium bicarbonate is included;~~

~~(ii) In caps and party poppers;~~

~~(iii) In those small items wherein the total powder content does not exceed four grams of which not greater than fifteen percent is potassium, sodium, or barium chlorate.~~

~~(d) Gallates or gallic acid.~~

~~(e) Magnesium (magnesium/aluminum alloys, called magnalium, are permitted).~~

~~(f) Mercury salts.~~

~~(g) Phosphorus (red or white). EXCEPT that red phosphorus is permissible in caps and party poppers.~~

~~(h) Picrates or picric acid.~~

~~(i) Thiocyanates.~~

~~(j) Titanium, except in particle size greater than 100-mesh.~~

~~(k) Zirconium.~~

~~(2) Fuses:~~

~~(a) Fireworks devices that require a fuse shall:~~

~~(i) Utilize only a fuse that has been treated or coated in such manner as to reduce the possibility of side ignition. Devices such as ground spinners that require a restricted orifice for proper thrust and contain less than 6 grams of pyrotechnic composition are exempt from this requirement.~~

~~(ii) Utilize only a fuse which will burn at least three seconds but not more than six seconds before ignition of the device.~~

~~(b) The fuse shall be securely attached so that it will support either the weight of the fireworks device plus eight ounces dead weight or double the weight of the device, whichever is less, without separation from the fireworks device.~~

~~(3) Bases. The base or bottom of fireworks devices that are operated in a standing upright position shall have the minimum horizontal dimensions or the diameter of the base equal to at least one-third of the height of the device including any base or cap affixed thereto.~~

~~(4) Pyrotechnic leakage. The pyrotechnic chamber in fireworks devices shall be sealed in a manner that prevents leakage of the pyrotechnic composition during shipping, handling and normal operation.~~

~~(5) Burnout and blowout. The pyrotechnic chamber in fireworks devices shall be constructed in a manner to allow functioning in a normal manner without burnout or blowout.~~

~~(6) Handles and spikes. Fireworks devices that are intended to be hand held and are so labeled shall incorporate a handle at least four inches in length. Handles shall remain firmly attached during transportation, handling and full operation of the device, or shall consist of an integral section of the device at least four inches below the pyrotechnic chamber, except sparklers 10" or less in length shall have handles at least 3" in length. Spikes provided with fireworks devices shall protrude at least two inches from the base of the device and shall have a blunt tip not less than 1/8 inch in diameter or 1/8 inch square.~~

~~(7) Wheel devices. Drivers in fireworks devices commonly known as "wheels" shall be securely attached to the device so that they will not come loose in transportation, handling, and normal operation. Wheel devices intended to operate in a fixed location shall be designed in such a manner that the axle remains attached to the device during normal operation.~~

~~(8) Toy smoke devices and flitter devices.~~

~~(a) Toy smoke devices shall be so constructed that they will neither burst nor produce external flame (excluding the fuse and small but brief bursts of flame accompanying normal smoke production) during normal operation.~~

~~(b) Toy smoke devices and flitter devices shall not be of such color and configuration so as to be confused with illegal explosive devices such as M-80 salutes, silver salutes, or cherry bombs.~~

~~(c) Toy smoke devices shall not incorporate plastic as an exterior material if the pyrotechnic composition comes in direct contact with the plastic.~~

~~(9) Rockets with sticks. Rockets with sticks (including sky rockets and bottle rockets) shall utilize a straight and rigid stick to provide a direct and stable flight. Such sticks shall remain straight and rigid and attached to the driver so as to prevent the stick from being damaged or detached during transportation, handling, or normal operation.~~

~~(10) Party poppers. Party poppers (also known by other names such as "champagne party poppers" and "party surprise poppers" shall not contain more than 0.25 grains of pyrotechnic composition. Such devices may contain non-flammable soft paper or cloth inserts)) required by the American Pyrotechnic Association Standard adopted under WAC 212-17-021, and the U.S. DOT regulations and Consumer Product Safety Commission standards.~~

(2) Consumer fireworks devices will not contain:

(a) Prohibited components.

(b) Forbidden devices.

(c) Any chemicals listed as prohibited in the American Pyrotechnic Association Standard adopted under WAC 212-17-021 and Consumer Product Safety Commission standards.

(i) Any fireworks device that is suspected by an authority having jurisdiction of containing prohibited chemicals will be sent to the Consumer Product Safety Commission for laboratory testing through the state fire marshal's office.

(ii) The manufacturer or importer may send samples for independent testing by a recognized testing laboratory at their own cost.

(iii) For a licensed manufacturer, importer, and wholesaler any similar devices are to be segregated from inventory

of products that can be sold or used until the findings of the testing laboratory indicate:

(A) The device(s) meet the chemical content in APA 87-1 and can be put into the owner's inventory for sale or use.

(B) The presence of prohibited chemicals which will result in the owner having the responsibility to make arrangements to destroy the devices.

Any items destroyed will need to be witnessed by the authority having jurisdiction or government official such as a police officer, fire marshal, or federal enforcement agent.

(3) Violations of this section are defined in WAC 212-17-515.

NEW SECTION

WAC 212-17-053 Altered consumer fireworks—Dangerous firework. (1) It is illegal to alter any firework from its originally manufactured form and intended use except as provided in subsection (3) of this section.

(2) It is illegal to possess, sell, purchase, store, or discharge any dangerous fireworks.

(3) The altering of a consumer or display firework can only be done legally when:

(a) For the purpose of this section a licensed pyrotechnic operator or person(s) under the direct supervision of a licensed pyrotechnic operator altering a fuse as part of a public display for consumer fireworks that are electronically fired is not considered a dangerous fireworks.

(b) A person without a pyrotechnic operator's license cannot alter fireworks.

This would include using an igniter attached to the fuse for electronically firing of the device.

This does not include the use of:

(i) A nonpyrogen type initiator that clips onto the fuse and a heated wire is the source of ignition.

(ii) Other nonregulated initiator approved by the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(c) This section does not apply to law enforcement, government agency, testing laboratory, or designated hazardous material transportation carrier who is transporting dangerous fireworks to a destruction site.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-055 Firework device, labeling. ~~((+) Any consumer fireworks device not required to have a specific label by 16 C.F.R. 1500.14 (b)(7), 1981, as of October 29, 1982, shall carry a warning label indicating to the user where and how the item is to be used and necessary safety precautions to be observed.~~

(2) Every fireworks device, or fireworks device container where the device is packaged in an immediate container intended or suitable for delivery to the ultimate consumer, shall be conspicuously labeled with the name and place of business of the manufacturer, packer, distributor, or seller and the United States Department of Transportation designation as "Division 1.4G consumer fireworks" or "Division 1.3G special fireworks."

(3) All label wording shall be prominently located, in the English language, and in conspicuous and legible type in contrast by typography, layout, or color with the printed matter on the fireworks device or container.)) (1) Fireworks intended for consumer sale and use must be labeled in conformance with the requirements of the Federal Hazardous Substances Act (FHSA) and regulations promulgated thereunder in Title 16 C.F.R., § 1500.

(2) All outside packaging containing fireworks must be marked and labeled in conformance with Title 49 C.F.R., Part 172.

(a) For consumer fireworks all label wording must be:

(i) Prominently located;

(ii) In the English language; and

(iii) In conspicuous and legible type in contrast by typography, layout, or color with the printed matter on the fireworks device or container.

(b) For display fireworks aerial shells, each shell must bear a label containing the following information:

(i) A description of the size of the shell (e.g., "3 in. (76 mm) shell").

(ii) A description of the type of shell (e.g., "2-break with report").

(iii) A warning statement reading:

"WARNING: DANGEROUS EXPLOSIVE.

IF FOUND, DO NOT HANDLE.

CONTACT LOCAL FIRE OR POLICE DEPARTMENT."

(iv) The name and location of business of the manufacturer, importer, or distributor.

(c) For proximate or theatrical fireworks, articles intended for indoor use:

(i) Must be so marked, and labels must include the following information:

(A) Accurate performance characteristics of the device.

(B) For fountains, gerbs, and other preloads, duration, height, and diameter of the effect, as applicable.

(ii) A warning label providing instructions to a trained operator is permitted for theatrical pyrotechnics that are approved as UN0431, Articles, Pyrotechnic, 1.4G but will not bear a warning label that resembles the required wording on a consumer fireworks device.

(iii) Theatrical pyrotechnics may or may not have an ignition device attached.

(iv) All requests for approval of a device as articles, pyrotechnic must be accompanied by a signed certification stating that the article is intended for professional use in the entertainment industry and will not be offered for sale to the general public.

(A) Approvals for classification as articles, pyrotechnic will be evaluated based on the weight of pyrotechnic composition in the individual article, and compared to the allowable weights for the corresponding category of 1.4G consumer fireworks.

(B) If a 1.4G classification is desired for an article containing more pyrotechnic composition than is permitted for a comparable consumer firework, the DOT approval procedure in Title 49 C.F.R., § 173.56 (b)(1) will be followed.

(3) Any firework that does not conform to the requirements of this section regarding labeling is to be confiscated

for destruction as a dangerous firework in accordance with the Consumer Product Safety Commission's timeline. The cost associated with destruction of any firework in violation of this section will be at the possessor's expense.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-060 Public purchase and use of fireworks. (1) The public may purchase and use consumer fireworks (~~(only)~~) from licensed (~~(retail fireworks stands between noon, June 28th and 9:00 p.m. July 5th of each year.~~ Purchase or discharge is prohibited between the hours of 11:00 p.m. and 9:00 a.m., except on July 4th, in which fireworks can be discharged between the hours of 9:00 a.m. and 12:00 midnight. Possession and discharge of fireworks is lawful during this period only, except as provided in subsection (2) of this section.

(2) Religious organizations or private organizations or adult persons may be authorized to purchase consumer fireworks or such audible ground devices as firecrackers, salutes, and chasers, as defined in WAC 212-17-040 (3) and (4) from licensed manufacturers, importers, or wholesalers for use on prescribed dates and locations for religious or specific purposes, when a permit is obtained from the fire chief or other designated local official. Application shall be on forms provided by the director of fire protection and shall contain the following information:

(a) The name and mailing address of the organization or person desiring to purchase and discharge the fireworks;

(b) The date and time of the proposed discharge;

(c) The location of the proposed discharge;

(d) The quantity and type of fireworks desired to be purchased and discharged;

(e) The reason or purpose of the discharge; and

(f) The signature of the applicant, following a statement that: "The applicant understands and agrees to comply with all provisions of the application and requirements of the approving authority, will discharge the fireworks only in a manner that will not endanger persons or property or constitute a nuisance, and assumes full responsibility for all consequences of the discharge, intended or not." Upon approval by the fire official, the applicant may submit a copy of the approval to any licensed wholesaler as proof of authorization to purchase the fireworks listed therein. The applicant shall retain the approval and have it available for inspection by any public official at the actual discharge of the fireworks.

(3) The purchase or receipt of mail-order fireworks through any medium of either interstate or intrastate commerce is prohibited unless the purchaser has first obtained an importers license)) CFRS facilities only:

(a) During the periods provided in RCW 70.77.395.

(b) With a permit issued by the local authority having jurisdiction under RCW 70.77.311(2) as follows:

(i) Application must be on forms provided by the state fire marshal (may be attached to any permit application form from a jurisdiction) and will contain the following information:

(A) The name and mailing address of the organization or person desiring to purchase and discharge the fireworks;

(B) The date and time of the proposed discharge;

(C) The location of the proposed discharge;

(D) The quantity and type of fireworks desired to be purchased and discharged;

(E) The reason or purpose of the discharge; and

(F) The signature of the applicant, following a statement that: "The applicant understands and agrees to comply with all provisions of the application and requirements of the approving authority, will discharge the fireworks only in a manner that will not endanger persons or property or constitute a nuisance, and assumes full responsibility for all consequences of the discharge, intended or not."

(ii) Upon approval by the fire official, the applicant will provide a copy of the approval to any licensed wholesaler as proof of authorization to purchase the fireworks listed therein.

(iii) The applicant must retain the approval and have it available for inspection by any public official at the actual discharge of the fireworks.

(2) This section does not apply to public displays of fireworks.

(3) Penalties for violations of this section are provided in WAC 212-17-515.

PART II—((MANUFACTURER)) FIREWORKS LICENSES—MANUFACTURER, IMPORTER AND WHOLESALER

AMENDATORY SECTION (Amending WSR 88-08-027, filed 3/31/88)

WAC 212-17-065 Fireworks ((~~manufacturer~~)) general. (1) Before receiving a state license under RCW 70.77.315 or local permit, persons intending to manufacture, import, or wholesale fireworks in this state ((shall)) must procure a federal and state license ((from the director of fire protection and a permit from the local governmental agency having jurisdiction prior to engaging in business. Applications for license shall be made on forms provided by the director of fire protection and the annual license fee shall accompany the application:)) where required.

(2) All state license applications ((shall)) must be made on or before January 31 of the year for which the license is desired((- Fireworks manufacturers domiciled in other than the state of Washington shall have a designated agent in the state of Washington, registered with the director of fire protection)) as provided in RCW 70.77.325.

(3) All facilities and structures used for manufacturing, wholesaling, and storage of fireworks are subject to this chapter and all local ordinances relating to building, design, construction, location, and zoning.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 88-08-027, filed 3/31/88)

WAC 212-17-070 Fireworks ((~~manufacturer~~)) licensing. (1) Upon receipt of application and license fee, the ((director of fire protection)) state fire marshal will cause an investigation to be made. The state fire marshal will grant or deny a license application within ninety days following the receipt of a properly submitted or amended application.

(a) If the investigation discloses compliance with state laws governing the manufacture, import, or wholesale of fireworks and that granting of a license would not be contrary to public safety or welfare, a license will be granted.

(b) If the license is denied, then the applicant ((shall)) will be notified in writing of the reason why the license was denied, and ((he shall)) will:

(i) Be given an opportunity to make such alterations and corrections as are deemed necessary. ((License applications shall be either granted or denied by the director of fire protection within ninety days following receipt of a properly submitted or amended application:))

(ii) Have the right to request a hearing as provided in RCW 70.77.370 and this chapter.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 82-22-068, filed 11/2/82)

WAC 212-17-080 Fireworks ((~~manufacturer~~)) license limitations. (1) Manufacturer:

(a) A fireworks manufacturer license, together with a permit from local authorities having jurisdiction, authorizes the holder to engage only in the business of manufacturing fireworks of all types and their sale and transportation to licensed wholesalers in Washington.

(b) If ((they)) the manufacturer desires to engage in other types of fireworks business, ((they shall)) the manufacturer must first procure the necessary license.

((2)) (c) By virtue of its license, a licensed fireworks manufacturer is permitted to sell fireworks for direct shipment out of this state. Such shipment must be made ((by a public carrier or by the manufacturer in vehicles owned or leased by the manufacturer)) in accordance with transportation requirements.

(2) Importer:

(a) A fireworks importer's license authorizes the holder to import fireworks into this state. This authorization is limited to:

(i) Procurement, delivery, or receipt of firework shipments into the state;

(ii) Buying or contracting of fireworks for shipment into the state;

(iii) An enrolled tribal member importing fireworks into the state for delivery to the registered member's tribal land;

(iv) Transportation of any type of fireworks licensed for and in compliance with 49 C.F.R., Parts 171 through 183;

(v) Storage of all classes and types of fireworks if there are no restrictions or provisions by the local authority having jurisdiction issuing a permit.

(b) An importer's license does not allow for the distribution or selling of fireworks at retail or wholesale.

(3) Wholesaler:

(a) A fireworks wholesaler's license authorizes the holder to engage only in the sale of fireworks at wholesale.

(b) A fireworks wholesaler's licensee can sell fireworks to:

(i) Licensed retailers;

(ii) Holder of a general display license;

(iii) Other licensed wholesalers;

(iv) Religious organizations, private organizations, or adult persons that have a permit issued by the local authority having jurisdictions to purchase specific fireworks items in accordance with WAC 212-17-061.

(c) A licensed fireworks wholesaler is authorized to sell fireworks for direct shipment out of this state, provided that:

(i) Such shipment is made in accordance with transportation requirements; and

(ii) If the purchaser's state requires a permit to purchase, possess, transport, store, distribute, sell, or otherwise deal with fireworks, the purchaser must possess and present the license to the wholesaler for inspection at the time of sale.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-085 Fireworks (~~(manufacturer)~~) records and reports. (~~(Manufacturers shall,)~~) (1) License holders will maintain written reports on the following information for each license type for a period of three years, and submit reports for each type of license when requested to do so (~~(submit written reports)~~) to the (~~(chief of the Washington state patrol, through the director of fire protection on))~~ state fire marshal:

(a) Manufacturer: Production, sale, and distribution of fireworks and name of the person to whom such fireworks were sold.

(b) Wholesaler: Imports, purchases, sales, and consumption of fireworks items by kind and class.

(c) Importer: Imports, purchases, sales of fireworks items by kind and class.

(d) All licensees:

(i) Third-party testing documentation to show, that if used properly, compliance of any consumer fireworks they distribute, sell, offer for sale, exchange for consideration, or transfer will work. The third-party testing entity must be approved by the Consumer Product Safety Commission.

(ii) Reports of the location and amount in storage of all class and types of fireworks in their possession at the time records are requested.

(e) License holders will have up to ten business days to submit the requested reports to the state fire marshal unless otherwise specified by the state fire marshal due to report of an injury, accident or other safety issue.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

~~((PART III—WHOLESALE))~~

AMENDATORY SECTION (Amending WSR 82-22-068, filed 11/2/82)

WAC 212-17-130 Fireworks (~~(wholesaler—Local ordinances)~~) restrictions. (~~(Applicants, before applying for a license should determine that their facilities conform to local zoning, health and building safety standards, fire safety requirements, and any other local ordinances pertaining to storage of fireworks. (See appendix.))~~) The storage, transportation, sale, and transfer of ownership by manufacturers of all classes and types of fireworks will be subject to the restrictions and provisions of chapter 70.77 RCW and this chapter.

AMENDATORY SECTION (Amending WSR 82-22-068, filed 11/2/82)

WAC 212-17-145 Fireworks (~~(wholesaler—)~~) importing requirements. (~~(Wholesalers who engage in the business of importing fireworks shall first procure a state license as is required for import licensees.))~~) (1) Any importer whose fireworks have been laboratory tested by the Consumer Product Safety Commission (CPSC) and found not to be in compliance with the standards in 16 C.F.R. Part 1500 and 1507 must notify the state fire marshal within five business days. Notification to the state fire marshal will include:

(a) A copy of the letter of advice and notice of noncompliance from the CPSC that provides the:

(i) Product name, type, and class of firework.

(ii) Requirement(s) the product did not conform to.

(b) Current and proposed storage location of the fireworks.

(2) Upon receiving the notification, the state fire marshal will notify:

(a) The local jurisdiction in which the firework is being stored.

(b) Other state and local agencies that may license or regulate explosives and explosives storage.

(3) The importer will hold such hazardous substance and not distribute it until further notice from CPSC which may be in the form of a "Letter of Advice (LOA)."

(4) Overloaded consumer fireworks described as fireworks, UN0336 1.4G that have a quantity of explosive and/or pyrotechnic composition that exceeds the limits for type of firework will be:

(a) Classified as fireworks, UN0335 1.3G.

(b) Stored in an approved, licensed explosive magazine approved for the storage of UN0335 1.3G fireworks.

(5) The following violations of this section are classified as serious threat to public safety and each day of noncompliance will be considered a separate offense:

(a) Failing to notify the state fire marshal within five business days that imported fireworks sampled and laboratory tested by the CPSC failed to conform to CPSC standards.

(b) Storing fireworks that have been identified as overloaded fireworks in a nonapproved facility.

(6) Notwithstanding the existence or use of any other remedy, any licensed fireworks importer or wholesaler violating this section may have its license suspended or revoked.

(7) Penalties for violations of this section are provided in WAC 212-17-515.

~~((PART IV—IMPORTER))~~

PART ~~(V)~~ III—FIREWORKS RETAILER

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-185 Retailer~~(s)~~ of fireworks—License and permit. (1) Persons desiring to engage in the business of selling fireworks at retail ~~((shall))~~ must:

(a) Secure a license from the ~~((director of the Washington state patrol fire protection bureau.~~

(2) In addition to the state license, ~~(state fire marshal.~~

(b) Obtain a permit ~~((must be obtained))~~ from the local governmental officials having jurisdiction.

~~((a) The application shall be made on forms provided by the director of fire protection and shall be accompanied by the license fee of forty dollars.~~

~~(b) License applications shall be made on or before May 1 of the year for which the license is desired.~~

~~(c) The director of fire protection shall grant or deny the license within fifteen days of receipt of the application.~~

~~(d) Applicants are cautioned to first determine whether a local retail sales permit for fireworks can be obtained.~~

~~(3)) (2) A license and permit are valid and effective from January 1 of the year in which the application is made and ending January 31 of the following year.~~

(3) A retailer's license to sell fireworks ~~((shall))~~ will not:

(a) Authorize the licensee to engage in any other fireworks activity. ~~((Retailers are limited to selling only those fireworks which have been approved for sale to the public and appear on the list of approved fireworks published annually by the director of fire protection. A copy of the list shall be prominently posted at each retail outlet.))~~ (b) Be used for the purchase of fireworks at wholesale:

(i) If an application for permit of a CFRS facility has not been made in accordance with RCW 70.77.260 for the sale of consumer fireworks to the public; or

(ii) If the intent is for the licensee to use the consumer fireworks for personal use.

(c) Be transferable, except that any license purchased by a licensed wholesaler may have the business or nonprofit group name added in addition to the wholesalers if required by the local authority having jurisdiction issuing the fireworks permit. The wholesaler will need to have a written agreement similar to any other retail license issued through the wholesaler.

(4) If the license is denied, the applicant will be notified in writing of the reason of the denial, and will:

(a) Be given an opportunity to make such alterations and corrections as are deemed necessary.

(b) Have the right to request a hearing as outlined in WAC 212-17-475.

(5) Applications for licenses must include the name of all the wholesaler(s) that consumer fireworks intend to be purchased from.

(6) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-198 ~~((Retailers of))~~ Fireworks—List.

((The following is the list of fireworks that may be sold to the public.

(1) Ground and hand held sparking devices.

(a) Dipped stick, sparkler. Stick, or wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. Total pyrotechnic composition may not exceed 100 grams per item. Those devices containing any perchlorate or chlorate salts may not exceed 5 grams of pyrotechnic composition per item. Wire sparklers which contain no magnesium and which contain less than 100 grams of composition per item, not Class C explosives under DOT regulations, are included in this category.

(b) Cylindrical fountain. Cylindrical tubes not more than 3/4 inch (19 mm) inside diameter, containing up to 75 grams of pyrotechnic composition. Upon ignition, a shower of colored sparks, and sometimes a whistling effect is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle, if intended to be hand held (handle fountain).

(c) Cone fountain. Cardboard or heavy paper cone containing up to 50 grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain.

(d) Illuminating torch. Cylindrical tube containing up to 100 grams of pyrotechnic composition. Upon ignition, colored fire is produced. May be spike, base, or hand held.

(e) Wheel. Pyrotechnic device attached to a post or tree by means of a nail or string. Each wheel may contain up to six "driver" units; tubes not exceeding 1/2 inch (12.5 mm) inside diameter and containing up to 60 grams of pyrotechnic composition. Total pyrotechnic composition of each wheel shall not exceed 240 grams. Upon ignition, the wheel revolves, producing a shower of color and sparks and, sometimes, a whistling effect.

(f) Ground spinner. Small device similar to a wheel in design and effect and placed on the ground and ignited. A shower of sparks and color is produced by the rapidly spinning device.

(g) Flutter sparkler. Narrow paper tube filled with pyrotechnic composition that produces color and sparks upon ignition. This device does not have a fuse for ignition. The paper at one end of the tube is ignited to make the device function.

(2) Aerial devices.

(a) Helicopter, aerial spinner. A tube not more than 1/2 inch (12.5 mm) inside diameter and containing up to 20 grams of pyrotechnic composition. A propeller or blade is attached, which, upon ignition, lifts the rapidly spinning device into the air. A visible or audible effect is produced at the height of flight.

(b) Roman candles. Heavy paper or cardboard tube not exceeding 3/8 inch (9.5 mm) inside diameter and containing up to 20 grams of pyrotechnic composition. Upon ignition,

up to ten "stars" (pellets of pressed pyrotechnic composition that burn with bright color) are individually expelled at several-second intervals.

(c) Mine, shell. Heavy cardboard or paper tube up to 2 1/2 inches (63.5 mm) inside diameter attached to a wood or plastic base and containing up to 40 grams of pyrotechnic composition. Upon ignition, "stars," firecrackers, or other devices are propelled into the air. The tube remains on the ground.

(d) Aerial shell. A 1 3/4" or smaller cylindrical or spherical cartridge containing up to 40 grams of chemical composition.

(e) Mortar. A 1 3/4" or smaller cardboard tube in which aerial shells are discharged into the air.

(3) Combination items. Fireworks devices containing combinations of two or more of the effects described in this section.

(4) Smoke device. Tube or sphere containing pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

(5) Division 1.4G explosives classified on January 1, 1984 as consumer fireworks by the United States Department of Transportation except that the term shall not include firecrackers, salutes, chasers, skyrockets or missile-type rockets.) (1) Retailers are limited to offering for sale or selling only those consumer fireworks which have been approved for sale to the public and appear on the list of approved types of fireworks published annually by the state fire marshal.

(2) Retailers must post prominently at each retail outlet this list of the approved consumer fireworks.

(3) The state fire marshal will provide the list to the retailers when licenses are issued.

(4) Fireworks prohibited under RCW 70.77.401 will not be used or possessed in the state of Washington except as provided in RCW 70.77.311(1).

(5) Penalties for violations of this section are provided in WAC 212-17-515.

NEW SECTION

WAC 212-17-21504 Retailers—Purchase and sale of fireworks. (1) A retail licensee must purchase only Division 1.4G consumer fireworks, not otherwise prohibited by chapter 70.77 RCW, this chapter, or local ordinance from state-licensed wholesalers.

(2) Sale of consumer fireworks:

(a) Will occur only from a licensed consumer fireworks retail sales (CFRS) facility. Retail sales of fireworks may occur at a non-CFRS facility when:

(i) An inert sample package of the consumer fireworks is displayed for sale inside a fixed place of business and a CFRS facility meeting all of the requirements in this chapter is placed outside of the fixed place of business.

(ii) The fireworks are paid for inside the business, the customer is provided a receipt of purchase after the sales transaction is complete, and the customer shows proof of purchase and takes possession of the firework package at the CFRS facility.

(b) May occur online as presale from a licensed Washington fireworks wholesaler or retailer provided that the fire-

works are delivered to fireworks stand where delivery to the consumer will take place at a CFRS facility during the authorized time periods outlined in RCW 70.77.395 and where the sale, possession, and discharge of fireworks are allowed in the jurisdiction.

(i) Any advertisements for sale of fireworks will contain the fireworks license number and expiration date. Advertising the sale of fireworks by unlicensed persons is prohibited.

(ii) The purchase or receipt of fireworks must be through a Washington licensed fireworks wholesaler or retailer.

(3) Holiday related products incidental but related to these products, may be sold in consumer fireworks retail sales facilities.

(4) Failure to comply at any time with the provisions of this section will constitute a violation of chapter 70.77 RCW and may result in:

(a) The temporary suspension of the license or permit;

(b) Immediate revocation of the license or permit for:

(i) A serious health or public safety violation, if the violation poses an immediate risk to any person, the action will become effective immediately. The duration of the revocation will be based upon the action:

(A) Willful, reckless, or malicious acts will cause the license to be revoked for the license year.

(B) Accidental or negligent acts will cause the license to be revoked until the licensee can show measures to correct and prevent further violations have been put in place (i.e., training).

(ii) Information provided to obtain a license or permit is subsequently found to be inaccurate or would have prevented the issuance of a license or permit.

(A) The license will be revoked through the remainder of the license year.

(B) The person, group, or business may be denied a future license.

(c) Surrendering the fireworks license to the state fire marshal.

(d) Surrendering the fireworks permit to the issuing jurisdiction.

(e) Temporary closure of the CFRS facility or storage structure, the seizure or forfeiture of some or all of the fireworks, or other criminal penalties as provided by law.

(5) If the license or permit is suspended or denied, the applicant will:

(a) Be notified in writing of the reason why license was denied;

(b) Be given an opportunity to make such alterations and corrections as are deemed necessary by the state fire marshal;

(c) Have the right to request a hearing as outlined in WAC 212-17-475.

(6) Penalties for violations of this section are provided in WAC 212-17-515.

**PART IV—CONSUMER FIREWORKS RETAIL
SALES FACILITIES (CFRS)**

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-21505 (~~Retailers of fireworks—General provisions~~)) CFRS facilities. ~~((1) The state of Washington hereby fully occupies the entire field of regulation relating to the construction and use of temporary and permanent structures for the retail sale and storage of fireworks including: The location of and areas surrounding, the operation of and the cleanup after the use of said structures, pursuant to RCW 70.77.270.~~

~~(2) The state of Washington hereby preempts the authority of local jurisdictions with respect to the retail sale and associated storage of consumer fireworks from temporary structures. This rule constitutes the entire and exclusive authority for regulation of all such matters. Subject to the limitations imposed by chapter 70.77 RCW, a city or county may ban fireworks; or a city or county may restrict the dates of sale, purchase, possession and use of fireworks; or a city or county may restrict the types of fireworks that may be sold and purchased within its boundaries. If a city or county allows the sale of fireworks classified as consumer fireworks from temporary structures these rules preempt that city's or that county's authority to enact or enforce any other regulations.~~

~~(3) Except as prescribed by this rule, the use of permanent structures or temporary structures over four hundred square feet for fireworks sales and storage shall be subject to the provisions of the International Fire Code and the International Building Code, and local ordinances.~~

~~(4) The use of temporary structures for the temporary sale or storage of consumer fireworks are exempt from the International Building Code, International Fire Code and local ordinances except that where a city or county ordinance regulates the sale or use of fireworks as a part of that city's or that county's building code or fire code, those provisions of that county's or that city's building code or fire code which are not in conflict with this rule are not hereby preempted or affected.~~

~~(5) Each license and permit shall be issued and shall remain valid and effective for the thirteen-month period beginning on January 1 of the year in which application is made and ending January 31 of the following year.~~

~~(6) Only Division 1.4G consumer fireworks, obtained from state-licensed wholesalers, not otherwise prohibited by chapter 70.77 RCW or local ordinance, and holiday related products incidental but related to these products, may be sold in retail fireworks stands.~~

~~(7) Except as limited by local ordinance, fireworks may be sold from 12:00 noon to 11:00 p.m. on June 28 through 9:00 p.m. on July 5. Fireworks may not be sold between the hours of 11:00 p.m. and 9:00 a.m. from June 28 through July 3. Fireworks may not be sold from 12:00 midnight on July 4 through 9:00 a.m. on July 5.~~

~~(8) Except as limited by local ordinance, fireworks may be sold from 12:00 noon to 11:00 p.m. on each day from the 27th of December through the 31st of December of each year.~~

~~(9) Licensees shall familiarize all persons working in a retail fireworks stand with the provisions of these rules.~~

~~(10) Failure to comply at any time with the provisions of this rule or any other applicable regulation shall constitute a violation of chapter 70.77 RCW and may result in the temporary suspension or immediate revocation of the license or permit, closure of the fireworks sales or storage structure, the seizure and/or forfeiture of some or all of the fireworks, and other criminal penalties as specified by law.~~

~~(11) The local authority having jurisdiction, with the concurrence of the state fire marshal, is authorized to modify any of the provisions of WAC 212-17-21509, 212-17-21511, 212-17-21513, 212-17-21515, and 212-17-21517 upon written application by the licensee or a duly authorized representative)) (1) Consumer fireworks will only be permitted to be sold at retail in any of the following structures:~~

~~(a) Temporary, stable structures made from wood, metal, fiberglass, or other material. Any temporary fireworks retail stand greater than four hundred square feet will meet the requirements of a permanent structure, except tents or canopies as defined in the International Fire Code;~~

~~(b) Tents, canopies, or structures utilizing temporary membrane material which must be made from fire retardant material or treated with a fire retardant as identified in the International Fire Code. When those requirements are in conflict with other provisions of these rules, the more restrictive provisions will apply;~~

~~(c) Permanent or temporary structures over four hundred square feet constructed in accordance with the building code and local ordinances enforced by the authority having jurisdiction;~~

~~(d) Trailers or shipping containers may be used as a CFRS facility only if they comply with the requirements of a CFRS facility.~~

~~(2) Vehicles, such as vans, buses, motor homes, travel trailers, trucks, and automobiles will not be allowed to operate as a CFRS facility.~~

~~(3) A structure must be permitted through the local authority having jurisdiction to operate as a CFRS facility. The local authority having jurisdiction may prescribe rules regarding CFRS facilities, where there are practical difficulties in the way of carrying out the provisions of these sections(~~(, provided that)~~) if the spirit of the rule (~~(shall be)~~) is complied with, public safety secured and substantial justice done(~~(The)~~) provided that the particulars of such modification (~~(shall)~~) must:~~

~~(a) Be registered with the state fire marshal and the fireworks license issued will include a notation as to the modification approved.~~

~~(b) Be applied to the retail licensee, not the retail sales location or wholesaler.~~

~~(4) Any break in licensing will void any approved modifications.~~

~~(5) Penalties for violations of this section are provided in WAC 212-17-515.~~

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-21509 (~~Retailers of fireworks~~)

Location. (1) CFRS facilities will be permitted only in the county shown on the license. If the county needs to be changed, or other corrections made, the license will be surrendered to the state fire marshal and the state fire marshal will issue a new license for the new county. Any corrections written on a license will void the license.

(2) CFRS facilities will only be located at the address for which the permit from the local jurisdiction was approved and placed according to the approved site plan.

(3) Activities or uses subject to this rule (~~shall~~) will not be limited in location except where such activities or uses are prohibited or controlled by local development regulation, traffic safety or road construction standards.

~~((2) Temporary retail fireworks stands shall)~~ (4) The CFRS facilities will not be located more than one hundred fifty feet from a private way, fire department access road,

public road, street or highway as measured by an approved route around the exterior of the stand.

The minimum requirements for a private way (~~shall~~) will be determined by the local authority having jurisdiction, but (~~shall~~) will not exceed the requirements of locally adopted street, road and access standards.

~~((3))~~ (5) Any two (~~retail fireworks stands shall~~) CFRS facilities must be at least one hundred feet apart or (~~shall~~) will be separated by a road, street or highway not less than thirty feet in width.

~~((4) Retail fireworks stands shall)~~ (6) CFRS facilities must be located as (~~required by Table 212-17-21509 in this section~~) follows:

(a) The minimum required area surrounding the (~~stand shall~~) CFRS facility must be marked or flagged, except that flagging and marking (~~shall~~) CFRS facility will not block a sidewalk or pedestrian pathway.

(b) Flagging need not exceed twenty feet in any direction.

<u>(Retail Fireworks Stands—Minimum Clearances)</u>						
	<u>Buildings</u>	<u>Combustibles</u>	<u>Property Line</u>	<u>Parking</u>	<u>Motor Vehicle Traffic PUBLIC ROAD*</u>	<u>Motor Vehicle Traffic PRIVATE WAY</u>
<u>BACK OF STAND</u>	<u>20 FT.</u>	<u>20 FT.</u>	<u>5 FT.</u>	<u>20 FT.</u>	<u>20 FT.</u>	<u>5 FT.</u>
<u>SIDE OF STAND</u>	<u>20 FT.</u>	<u>20 FT.</u>	<u>5 FT.</u>	<u>20 FT.</u>	<u>20 FT.</u>	<u>5 FT.</u>
<u>FRONT OF STAND</u>	<u>40 FT.</u> <u>20 FT.**</u>	<u>40 FT.</u> <u>20 FT.**</u>	<u>20 FT.</u>	<u>20 FT.</u>	<u>20 FT.</u>	<u>20 FT.</u>

NOTE: Clearance distances are not cumulative

* Measured from the outer edge of the nearest traffic lane.

** If stand is equipped with 135 fusible links which will automatically close all sales doors in case of fire, or is equipped with a wire-mesh screen with openings of not more than one inch which covers not less than 90% of all sales openings.

(5) Retail fireworks stands shall

<u>Minimum Setbacks and Clearances</u>						
	<u>Buildings</u>	<u>Combustibles</u>	<u>Tents</u>	<u>Parking</u>	<u>Stands</u>	<u>Storage</u>
<u>CFRS Facility</u>	<u>20 feet</u>	<u>20 feet</u>	<u>100 feet</u>	<u>20 feet</u>	<u>100 feet</u>	<u>20 feet</u>
	<u>Property Line</u>	<u>Public Road</u>	<u>Motor Vehicle Traffic</u>	<u>Fuel Dispensing Devices</u>	<u>Bulk Fuel</u>	<u>Generator</u>
<u>CFRS Facility</u>	<u>25 feet</u>	<u>20 feet</u>	<u>20 feet</u>	<u>100 feet</u>	<u>300 feet</u>	<u>20 feet</u>

(7) CFRS facilities will not be located closer than:

(a) One hundred feet from any motor vehicle dispensing station, retail propane dispensing station, flammable liquid storage, or combustible liquid storage. (~~Retail fireworks stands shall not be located closer than~~) Measurements will be taken from the pump, island, or dispensing device above ground tank storage or lids of underground tanks to the CFRS.

(b) Three hundred feet from any bulk storage of flammable or combustible liquid or gas, including bulk plant dispensing areas.

(EXCEPTION: 1. Fuel for generators as allowed by WAC 212-17-21513(4).
2. Fuel within the tanks of motor vehicles.)

(8) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-21511 (~~Retailers of fireworks Area~~)
Signs around the (~~retail fireworks stand~~) CFRS facility.

(1) The minimum areas around the (~~retail fireworks stand~~) CFRS facility specified in WAC 212-17-21509 (~~shall~~) will be kept free of accumulation of dry grass, dry brush and combustible debris. No parking (~~shall~~) will be permitted within this minimum area.

(2) No motor vehicle or trailer may be parked within twenty feet of a ~~((retail fireworks stand))~~ CFRS facility except when delivering, loading or unloading fireworks.

(3) Fireworks ~~((shall))~~ will not be discharged within ~~((one))~~ three hundred feet of a ~~((retail fireworks stand))~~ CFRS facility. Signs reading "NO FIREWORKS DISCHARGE WITHIN ~~((400))~~ 300 FEET" will be in letters at least two inches high, with a principal stroke of not less than one-half inch, on contrasting background, ~~((shall))~~ will be conspicuously posted on all four sides of the stand.

(4) No smoking ~~((shall))~~ will be allowed within the ~~((retail fireworks stand))~~ CFRS facility or within the minimum flagged off area. Signs reading "NO SMOKING WITHIN ~~((20))~~ 25 FEET" will be in letters at least two inches high, with principal stroke of not less than one-half inch, on a contrasting background, ~~((shall))~~ will be conspicuously posted on all four sides of the stand.

(5) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-21513 ((Retailers of fireworks—Stand use and construction)) CFRS facility electrical and heating. ~~((1))~~ Fireworks may be sold from:

~~(a) A permanent structure which meets provisions of WAC 212-17-21505(3).~~

~~(b) Temporary, stable structures made from wood, metal, fiberglass or other material. Any temporary fireworks retail stand greater than four hundred square feet shall meet the requirements of a permanent structure, except tents or canopies as defined in the International Fire Code.~~

~~(c) Tents, canopies, or structures utilizing temporary membrane material. All tents, canopies or temporary membrane materials structures shall be made from fire retardant material or treated with a fire retardant as identified in the International Fire Code. Any tent, canopy or temporary membrane material structure falling within the scope of the International Fire Code shall comply with those requirements. When those requirements are in conflict with other provisions of these rules, the more restrictive provisions shall apply.~~

~~(2) Battery powered equipment, electrical equipment and electrical cords which are used in conjunction with a retail fireworks stand or a temporary storage structure or location must be listed by a recognized laboratory and used in accordance with that listing.)~~ (1) If electrical power is supplied by an extension cord, the size ((of the cord, the)) and length of the cord and, the amperage and ((the)) voltage supplied ((shall)) will be in compliance with the requirements of the current edition of National Electrical Code((, current edition)). The cord ((shall)) must be protected as necessary from "drive-over" and other physical damage.

~~((No additional permits from a city or county or state official having jurisdiction shall be required for these temporary uses except as specified in subsection (5) of this section.~~

~~((3))~~ (2) All heating units ((shall)) must:

(a) Be listed by a recognized testing laboratory; and ((shall))

(b) Be used in accordance with the listing((—Heating sources shall)); and

(c) Have "tip-over" and temperature overheat protection((—All heating devices shall)); and

(d) Have sealed type elements (i.e., oil filled or water filled radiator type). Open flame heating devices are prohibited.

~~((4))~~ (3) Generators which use combustible fuel and which are at least twenty feet from the ((retail fireworks stand)) CFRS facility or the temporary fireworks storage structure ((shall)) will be allowed. Generator fuel ((shall)) will be limited to not more than five gallons and stored at least twenty feet from all ((stands)) CFRS facilities.

~~((5))~~ (4) Compliance with the National Electrical Code, current edition, ((shall)) will be required for all new, ((permanent)) electrical installations, including temporary power drops((, subject to possible permit fees.

~~(6) Retail sales of fireworks and other products which are holiday related shall be from buildings used for no other purpose).~~

(5) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-21515 ((Retailers of fireworks—) Operation of ((retail fireworks stands)) CFRS facility.

~~((1) A clear aisle or walkway not less than twenty four inches wide shall be maintained inside the full length of the structure. Customers shall only be permitted inside a temporary retail fireworks stand that is greater than four hundred square feet and which meets minimum exit requirements of the International Building Code and International Fire Code, as now or amended hereafter.~~

~~(2) Each temporary retail fireworks stand must have at least two exits, at least twenty eight inches in width, located at opposite ends of the structure. Exits must remain unlocked and unobstructed during the hours of operation or when the stand is occupied.~~

~~((3))~~ (1) Licensees must familiarize all persons working in a CFRS facility with the provisions of these rules.

(2) Sleeping inside a ((retail fireworks stand)) CFRS facility or an associated temporary fireworks storage facility is prohibited.

~~((4))~~ (3) The location of the nearest permanently mounted telephone and address of fireworks stand if using electronic means of contacting 911 must be posted inside the ((retail fireworks stand)) CFRS facility and persons working in the ((stand shall)) facility must be informed of that location.

~~((5))~~ (4) The local emergency telephone number ((shall)) will be conspicuously posted inside the ((retail fireworks stand)) CFRS facility.

~~((6))~~ (5) Each ((retail fireworks stand shall)) CFRS facility will be equipped with at least two approved, pressurized two and one-half gallon water-type fire extinguishers, located so that a maximum distance of travel required to reach an extinguisher from any point does not exceed thirty-five feet.

~~((7))~~ (6) No open flames nor any type of open flame equipment ~~((shall))~~ will be allowed in any ~~((retail fireworks stand))~~.

~~(8) Retail fireworks stands shall be secured when unoccupied and not open for business if fireworks are kept in the structure during these times. Retail fireworks stands shall never be locked when occupied. The fireworks may be removed and transferred to a temporary storage structure or location approved as a part of the license and permit.~~

~~(9))~~ CFRS facility.

(7) At least one adult person, eighteen years of age or older ~~((shall))~~ will be present at all times in every ~~((retail fireworks stand))~~ CFRS facility during the hours of sale to the public and ~~((shall))~~ will be responsible for supervision of the ~~((retail fireworks stand))~~ CFRS facility and its operation.

(8) No person, other than customers, under the age of sixteen ~~((shall))~~ will be allowed within a ~~((retail fireworks stand))~~ CFRS facility when it is open to the public.

(9) Fireworks, except for prepackaged assortments, boxes, or similarly packaged containers of more than one item, whether of the same or different kind, must be displayed in a manner which prevents the fireworks from being handled by the public or a customer without the direct intervention of the licensee or his or her representative who ~~((shall))~~ will maintain visual contact.

(10) ~~((Retail fireworks stands))~~ CFRS facilities may be required to be inspected by the state fire marshal and/or the local jurisdiction issuing the permit prior to opening for business and other inspections may occur on other days as warranted but there ~~((shall))~~ will be no additional charge for all such inspections.

~~(11) ((In order to obtain return of a clean-up bond if required by the local authority having jurisdiction as a condition of permit, the cleanup of debris associated with the retail fireworks activity and the removal of all structures authorized by the license and permit shall occur on or before the last day of the storage period specified in these rules.~~

~~(12))~~ Fireworks retailers ~~((shall))~~ will:

(a) Not knowingly sell fireworks to persons under the age of sixteen.

~~((a))~~ (b) Have a sign reading "no sale of fireworks to persons under the age of sixteen years. PHOTO ID REQUIRED" in letters at least two inches high, with a principal stroke of not less than one-half inch, on contrasting background, ~~((shall))~~ will be conspicuously posted on the front of each ~~((retail fireworks stand))~~ CFRS facility.

~~((b) Sellers shall))~~ (c) Require proof of age by means of display of a driver's license or photo identification card showing date of birth issued by a public or private school, state, federal or foreign government. No other forms of identification ~~((shall))~~ will be accepted.

(12) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-21519 (~~((Retailers of fireworks—))~~) Cleanup. (1) At the end of the legal selling period, all fireworks must remain in the ~~((retail fireworks stand))~~ CFRS

facility, temporary storage or structure location authorized by the retail permit or another location approved by the local authority having jurisdiction or his or her designee until returned to the suppliers from which they were obtained, or until transferred to an approved location.

(2) Cities and counties may require a clean-up bond, not to exceed five hundred dollars, as a condition of the permit, to ensure the removal of all structures and debris from the site.

(3) In order to obtain return of a clean-up bond, cleanup of debris associated with the retail fireworks activity and the removal of all temporary structures authorized by the license and permit ~~((shall))~~ will be completed no later than 11:59 p.m., July 15 for the Fourth of July selling period or no later than 11:59 p.m., January 10 for the New Year's selling season.

(4) Failure of the licensee to comply with subsection (3) of this section ~~((shall))~~ will constitute forfeiture of the clean-up bond and the licensee shall be liable for any clean-up costs incurred by the city or county which exceed the amount of the bond.

(5) Penalties for violations of this section are provided in WAC 212-17-515.

PART ~~((V))~~ V—PYROTECHNIC OPERATOR

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-220 Pyrotechnic operators—General.

(1) Pyrotechnic operators are licensed to conduct ~~((public))~~ displays of fireworks and articles pyrotechnic.

(2) No public display license ~~((is))~~ will be issued unless at least one licensed pyrotechnic operator is listed on the application as being responsible for conducting the display.

(3) An operator must be at least twenty-one years old and licensed in accordance with any and all applicable federal, state, and local laws.

(4) Penalties for this section are provided in WAC 212-17-515.

NEW SECTION

WAC 212-17-223 Pyrotechnic operator license types.

(1) A pyrotechnic operator is prohibited from conducting a public display of fireworks without a general display license under WAC 212-17-250. Each operator does not need a general display license if he or she is shooting displays for a company that has a general display license.

(2) The license types and displays allowed to be conducted are:

(a) Pyrotechnic operator license - Conducts an outdoor public display of fireworks following the requirements of NFPA 1123.

(b) Proximate display operator license - Conducts a proximate display before a proximate audience following the requirements of NFPA 1126.

(c) Flame effects operator license - Conducts a flame special effects following the requirements of NFPA 160.

(d) Special effects operator license - Conducts a special effects display used in connection with a television, theatri-

cal, or motion picture production which may or may not be presented before a live audience.

(3) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 88-08-027, filed 3/31/88)

WAC 212-17-225 (~~Pyrotechnic operators~~) Application for license. (1) Application for license (~~shall~~) must be made on forms prepared by the (~~director of fire protection and shall~~) state fire marshal and must be accompanied by the annual license fee.

(2) Every applicant for a pyrotechnic operators license (~~shall~~) must:

(a) Take and pass a written examination administered by the (~~director of fire protection and shall~~) state fire marshal or the equivalent out-of-state exam;

(b) Submit evidence attesting to the qualifications and experience of the applicant, including participation in the firing of at least six public displays as an assistant, at least one of which (~~shall~~) must have been in the current or preceding year, for the type of operator's license they are applying for; and

(c) A name and date of birth background check through the Washington state patrol criminal records division. Costs for the name and date of birth check will be the responsibility of the applicant. A name and date of birth check is not required if:

(i) The person has a valid ATF explosives license; or

(ii) They are employed or contracted to supervise a display for a general display licensee that has an ATF explosives license and the applicant is listed as an approved employee possessor.

(3) All information submitted regarding the experience must be true and accurate.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-230 (~~Pyrotechnic operators~~) Examination, investigation and licensing. (1) Upon receipt of application and license fee, the (~~director of fire protection shall~~) state fire marshal will cause an investigation to be made as to the experience and competency of the applicant to conduct and supervise a public or proximate display of fireworks in a safe manner. The investigation will include:

(a) Verification of past experience in assisting in (~~public~~) displays (~~shall be verified~~) with the licensed pyrotechnic operator under whose supervision the applicant assisted (~~If experience requirements are satisfactory, the director of fire protection shall schedule~~) for the type of license applying for.

(b) A written examination for the applicant, if experience requirements are satisfactory.

(i) A passing score of at least eighty percent (~~shall~~) must be attained on the written examination.

(ii) An applicant failing the written examination may reapply within thirty days to retake the examination.

(iii) No reexamination (~~shall~~) will be taken within thirty days of the previous and no more than two examinations may be taken by the applicant in the same (~~calendar year. Any applicant failing to appear for the written examination at the time and location established or who fails the written examination and fails to reapply within thirty days, or fails the examination on the second attempt, is deemed to have forfeited the license fee. All applicants shall submit to background check through the Washington state patrol criminal records division. Costs for the background check shall be the responsibility of the applicant.~~) ninety calendar day period.

(iv) License fees are forfeited for any applicant who fails:

(A) To appear for the written examination at the time and location established;

(B) The written examination and does not reapply within thirty days or fails the written examination on the second attempt.

(2) The (~~director of fire protection shall~~) state fire marshal will grant or deny the license on the basis of the successful completion of the investigation and examination.

NEW SECTION

WAC 212-17-232 License renewals. (1) Renewal of pyrotechnic operator's licenses begins January 2nd of each calendar year for those operator licenses that will expire January 31st. The renewal application must:

(a) Be on forms provided by the state fire marshal.

(b) Provide evidence of experience within the past thirty months as an operator or assistant as part of at least one display.

(c) Be signed.

(d) Include the annual license fee.

(2) Persons whose operator license is expired longer than the twelve months will be required to submit his or her application as a new applicant.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-235 Pyrotechnic operators—Responsibility. (1) The pyrotechnic operator (~~shall be~~) is responsible for:

(a) Properly setting up the fireworks public display in accordance with the rules and regulations of the (~~director of fire protection. He/she shall determine~~) state fire marshal.

(b) Determining that all the mortars(⊖) and set pieces(⊖) are properly installed and that the proper safety precautions have been taken to (~~insure~~) ensure the safety of persons and property. (~~He/she shall have~~)

(c) Having charge of all activities directly related to handling, preparing and firing all fireworks at the public display, including fixing lifting charges and quick match as needed to aerial shells.

(~~The pyrotechnic operator shall refuse~~) (d) Refusing to fire any fireworks that are deemed by him/her to be unsafe or where its discharge might jeopardize life or property.

(e) Strictly observing the provisions of chapter 70.77 RCW and this chapter.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

PART ~~(VH)~~ VI—PUBLIC DISPLAY LICENSE

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-250 ~~((Public displays of fireworks—))~~
Application, state license. (1) Application for ~~((fireworks public))~~ a general display license ~~((shall))~~ must be made on forms provided by the ~~((director of fire protection and shall be accompanied by the prescribed license fee))~~ state fire marshal.

(2) The application for a general display license to hold public displays of fireworks will be accompanied by:

(a) The prescribed license fee for a general display license; and

(b) A surety bond or a certificate evidencing public liability insurance required under chapter 70.77 RCW. Such bond and public liability insurance must be noncancellable except upon fifteen days' written notice by the insurer to the state fire marshal as required under RCW 70.77.355.

(3) Failing to submit the license fee, a bond or certificate of liability insurance will be reason to deny a license application.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-260 ~~((Public displays of fireworks—))~~
General display license~~((s))~~. ~~((Application for a "general" license to hold public displays of fireworks shall be accompanied by a surety bond or a certificate evidencing public liability insurance. Such bond and public liability insurance shall be noncancellable except upon fifteen days' written notice by the insurer to the director of fire protection.))~~ (1) Persons desiring to hold a public display of fireworks will secure a general display license from the state fire marshal.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-270 ~~((Public displays of fireworks—))~~
Local permit, application for. (1) A permit issued by the authority having jurisdiction is required before conducting any type of public fireworks display.

(2) Application for local permit must be made at least ten calendar days before the public fireworks display.

(3) When applying for permit, the applicant ~~((shall))~~ must submit information and evidence to local fire authorities covering the following:

~~((1))~~ (a) The name of the organization sponsoring the display, if other than the applicant.

~~((2))~~ (b) The date the display is to be held.

~~((3))~~ (c) The exact location for the display.

~~((4))~~ (d) The name and license number of the pyrotechnic operator who is to supervise discharge of the fireworks and the name of at least one experienced assistant.

~~((5))~~ (e) The number of set pieces, shells (specify single or multiple break), and other items.

~~((6))~~ (f) The manner and place of storage of such fireworks prior to the display.

~~((7))~~ (g) A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the location of all buildings, highways, and other lines of communication, the lines behind which the audience will be restrained, the location of all nearby trees, telegraph or telephone lines, or other overhead obstruction.

~~((8))~~ (h) Documentary proof of procurement of:

(i) Surety bond;

(ii) Public liability insurance; or

(iii) A ~~((director of fire protection's "general license"))~~ state fire marshal's general display license for the public display of fireworks.

~~((9))~~ (4) Permittee ~~((shall))~~ will be responsible for compliance with the provisions under which a public display permit has been granted.

(5) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-275 ~~((Public displays of fireworks—))~~
Investigation. The ~~((office))~~ authority having jurisdiction to whom the application for permit is made ~~((shall))~~ must:

(1) Make, or cause to be made, investigation of site of the proposed display for the purpose of determining if the fireworks will be of such a character or so located as to be hazardous to property or dangerous to any person. ~~((He shall also))~~

(2) Determine whether the provisions of ~~((the state fireworks law and these rules and regulations))~~ chapter 70.77 RCW and this chapter are complied with in the case of a particular display. ~~((He shall.))~~

(3) In the exercise of reasonable discretion, grant or deny the application subject to reasonable conditions, if any, as he may prescribe, taking into account locations, parking of vehicles, controlling spectators, storage and firing fireworks, and precautions in general against danger to life and property from fire, explosion, and panic.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-280 ~~((Public displays of fireworks—))~~
Permits may not be granted, when. No ~~((permit shall be granted for any))~~ public display of fireworks will be allowed where the discharge, failure to fire, faulty firing, or fallout of any fireworks or other objects would endanger persons, buildings, structures, forests, brush, or other grass covered land. This includes, but may not be limited to, when a burn ban is in effect.

PART ~~(VII)~~ VII—PUBLIC DISPLAYS

AMENDATORY SECTION (Amending WSR 06-12-010, filed 5/26/06, effective 6/26/06)

WAC 212-17-295 (~~(Public display)~~) General. (1) The intent of this (~~(chapter shall be)~~) part is to provide requirements for clearances upon which the authority having jurisdiction (~~(shall)~~) will base its approval of an outdoor fireworks display site.

(2) Where added safety precautions have been taken, or particularly favorable conditions exist, the authority having jurisdiction (~~(shall)~~) will be permitted to decrease the required separation distances as it deems appropriate, upon demonstration that the hazard has been reduced or the risk has been properly protected.

(3) Where unusual or safety-threatening conditions exist, the authority having jurisdiction (~~(shall)~~) will be permitted to increase the required separation distances as it deems necessary.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-345 Public display—Reports. (1) After every public display, it (~~(shall)~~) will be the responsibility of the licensed pyrotechnic operator in charge of the display to submit a written report to the (~~(director of fire protection)~~) state fire marshal, within ten days following the display, covering:

(~~(1)~~) (a) A brief report of any duds, defective shells, with manufacturer's name, and the type and size of shell.

(~~(2)~~) (b) A brief account of the cause of injury to any person(s) from fireworks and such person's name and address.

(~~(3)~~) (c) A brief account of any fires caused by fireworks.

(~~(4)~~) (d) Any violation of the state fireworks law or of these regulations relating to public display fireworks, with special observations on any irregularities on the part of persons present at the firing site.

(~~(5)~~) (e) The names of pyrotechnic assistants who satisfactorily assisted in all phases of the display, if other than those shown on the license.

(2) Failure to file this report (~~(shall)~~) will constitute grounds for revocation of the operator's current license and/or rejection of his application for his license renewal.

(3) Penalties for violations of this section are provided in WAC 212-17-515.

~~(PART IX—PROXIMATE DISPLAYS)~~**PART ~~(VIII)~~ VIII—TRANSPORTATION**

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-425 Transportation—General. (1) Licensees are authorized to transport the class and quantity of fireworks for which they have a license to possess from the

point of acceptance from a licensed source to an approved storage facility or use site.

(2) Transportation (~~(shall)~~) will be in accordance with the regulations of the United States Department of Transportation and the laws of the state of Washington governing the transportation of Division 1.3G and 1.4G explosives.

(3) Nothing in these rules will restrict the right of any person to transport in a private vehicle, fireworks which have been legally purchased for personal use.

(4) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-430 Transportation—By common carrier. (1) No common carrier, as defined in RCW 81.29.010, (~~(shall)~~) will deliver fireworks from an out-of-state shipper to any person or firm within this state without first determining:

(a) That the person or firm possesses an importer's license, issued by the (~~(director of fire protection)~~) state fire marshal to receive them(;) or

(b) The shipper has an importer's license, issued by the (~~(director of fire protection)~~) state fire marshal to ship them into this state.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

PART ~~(IX)~~ IX—STORAGE

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-435 Storage—General. (1) Storage of fireworks (~~(shall)~~) must be free from any condition which increases or may cause an increase of the hazard or menace of fire or explosion or which may obstruct, delay or hinder, or may become the cause of any obstruction, delay or hindrance, to the prevention or extinguishment of fire.

(2) Penalties for violations of this section are provided in WAC 212-17-515.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-440 Storage—Explosive safety. (1) Any person storing fireworks (~~(shall)~~) must have a license for the possession (manufacturer, wholesaler, importer, retailer, display) and, in addition, a permit from the (~~(local fire)~~) authority having jurisdiction for the storage site.

(2) If temporary storage is required outside the authority having jurisdiction issuing the CFRS permit, the authority issuing the permit must notify the appropriate authorities of the jurisdiction in which the temporary storage is to be located.

(3) Storage (~~(shall)~~) must be in accordance with requirements of the local (~~(fire official, who may use the safety practices in the appendix of these rules as guidelines)~~) authority having jurisdiction in approving the storage permit.

(4) No common carrier will store fireworks while in transit within a facility with the intent to store it there without first obtaining a storage permit from the local fire authority.

(5) Penalties for violations of this section are provided in WAC 212-17-515.

NEW SECTION

WAC 212-17-442 Fireworks permanent storage. (1) Permanent fireworks storage is:

(a) Subject to this chapter when the period of time of storage is other than, or longer than that specified for temporary storage under WAC 212-17-446.

(b) Subject to the International Fire Code, the International Building Code, and local ordinances.

(2) Storage of fireworks in a facility, not authorized by the license and permit is prohibited.

(3) Penalties for violations of this section are provided in WAC 212-17-515.

NEW SECTION

WAC 212-17-446 Temporary storage associated with CFRS operation. (1) Temporary storage associated with retail fireworks sales meeting the requirements of this section may only be from June 13th through July 31st and from December 12th through January 10th of the following year.

(2) A temporary storage, structure or location must be authorized as a part of a license and permit and meet the requirements specified herein.

(3) Temporary storage or temporary structures may be inspected prior to use and other inspections may occur on other days as warranted. There will be no additional charge for all such inspections.

(4) Fireworks may be stored:

(a) In a locked or secured CFRS facility; or

(b) In a locked or secured truck, container, trailer, other vehicle or anything similar which is not less than twenty feet from the CFRS facility during hours of retail sales;

(c) In a locked or secured truck, container, trailer, other vehicle or anything similar which is not less than twenty feet from an inhabited building;

(d) In a magazine which meets the minimum standards of Type 4 as prescribed by the International Fire Code, and which is not less than ten feet from an inhabited building; or

(e) In a locked or secured metal or wooden garage, shed, barn or other accessory structure, or anything similar which is not less than:

(i) Twenty feet from an inhabited building for storage of fireworks for one or two retail stands; or

(ii) Thirty feet from an inhabited building for storage of fireworks for three or more stands.

(5) For the purpose of this section the system used to lock or secure the storage structure as outlined under subsection (4)(e) of this section, must include one of the following combinations:

(a) Two mortise locks;

(b) Two padlocks in separate hasps and staples;

(c) A mortise lock and a padlock;

(d) A mortise lock that needs two keys to be opened; or

(e) A three-point lock or an equivalent lock that secures the door to the frame at more than one point.

(6) Padlocks must:

(a) Be made of steel;

(b) Have at least five tumblers;

(c) Have at least a 3/8 inch (9.5 mm) casehardened shackle;

(d) Be protected by steel hoods installed to discourage the insertion of bolt cutters.

(7) The local authority having jurisdiction may reduce the minimum separation requirements of this section provided that safety of life and property is not diminished.

(8) No open flames nor any type of open flame equipment will be allowed in any temporary storage or temporary structure.

(9) No cooking is permitted in a CFRS facility or in a temporary storage or structure.

(10) Penalties for violations of this section are provided in WAC 212-17-515.

~~((PART X—COMPLIANCE WITH ADOPTED STANDARDS))~~

~~PART ((XH)) X—FINES AND PENALTIES~~

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-460 General rules. (1) These rules establish civil penalty criteria for ~~((Types I, II, III, and IV Violations and the instances for each type of))~~ violations of chapter 70.77 RCW and this chapter.

~~(2) ((These rules apply to persons who violate the requirements of chapters 70.77 RCW and/or chapter 212-17 WAC.~~

~~(3))~~ Each separate instance of noncompliance with chapters 70.77 RCW and/or 212-17 WAC ~~((shall))~~ will be considered a separate violation.

(3) For the purpose of determining separate instances, the state of the product at the time of violation can be considered. For example:

(a) An unopened box containing multiple items/packs that are in violation would be considered one violation.

(b) Possession of an open or partial box or multiple individual items in violation would be considered multiple separate violations based on the number of items in violation.

(4) Each day that a violation continues ~~((shall))~~ will be considered a separate violation.

(5) The distribution, sale, use, manufacture, or possession of any amount of illegal fireworks is prohibited and subject to citation and penalty.

(6) In addition to the issuance of citations and penalties under these rules, the state fire marshal and local ~~((fire marshal))~~ authority having jurisdiction acting in accordance with chapters 70.77 RCW and/or 212-17 WAC may confiscate:

(a) ~~((May confiscate))~~ Any amount of illegal fireworks; and

(b) ~~((May confiscate))~~ Other fireworks possessed by persons violating chapters 70.77 RCW and/or 212-17 WAC.

(7) In addition to the issuance of citations, penalties, and the confiscation of fireworks, the state fire marshal may also revoke, suspend, or deny any fireworks license provided for under chapter 70.77 RCW to any person who fails to pay a penalty(ies) assessed under these rules.

(8) The penalty for each violation shall range from \$0 to \$1,000 per ~~((day and occurrence))~~ violation.

NEW SECTION

WAC 212-17-461 Revocation of license. The state fire marshal may deny, suspend, or revoke a license:

(1) Upon receiving evidence that any appointee has failed to comply or no longer complies with any requirement or provision of law or this chapter. The following process must be used:

(a) The state fire marshal must give the licensee notice of the action and an opportunity to be heard as prescribed in chapter 34.05 RCW, before denial, suspension, or revocation of the license.

(b) Upon receiving notice of the action, the licensee may, within twenty days from the date of the notice of action, request in writing to the state fire marshal a hearing on the denial, suspension, or revocation of the letter of appointment. An adjudicative proceeding will be commenced within ninety days of the receipt of a hearing request. Failure to request a hearing, or failure to appear at a requested hearing, a prehearing conference, or any other stage of an adjudicative proceeding, will constitute default and may result in the entry of a final order under RCW 34.05.440.

(c) Upon receiving a hearing request, the state fire marshal's office may, at the request of the licensee, or on its own initiative, schedule an informal settlement conference which will be without prejudice to the rights of the parties. The informal settlement conference will be held in a mutually agreed upon location at a mutually agreed upon time and may result in a settlement agreement. If no agreement is reached, a hearing will be scheduled as provided in chapter 34.05 RCW.

(2) Without prior notification if the state fire marshal finds that there is danger to the public health, safety, or welfare which requires immediate action. In every summary suspension of a license, an order signed by the state fire marshal or designee must be entered, in compliance with the provisions of RCW 34.05.479. Administrative proceedings consistent with chapter 34.05 RCW for revocation or other action shall be promptly instituted and determined. The state fire marshal must give notice as is practicable to the licensee.

(3) Immediately if the licensee's insurance bond is canceled.

(4) If the licensee voluntarily relinquishes the letter, the state fire marshal will be advised in writing of this voluntary relinquishment. After receiving notice, the state fire marshal will attempt to obtain the licensee's license. If the licensee requests reissuance of the license, the state fire marshal may require a new application.

(5) If the licensee's violations are subject to suspension for the first violation are categorized as major violations any subsequent or continuing major violation may be cause for

termination unless the state fire marshal imposes additional suspensions for longer periods, if deemed appropriate.

(a) When considering punitive action for a major violation, the state fire marshal may take into consideration all major and minor violations that occurred within thirty-six months before the date of the current violation.

(b) Terms of disciplinary action - Minor violations of this chapter may be cause for disciplinary action in the following manner:

(i) First violation within a twelve-month period - Letter of written reprimand;

(ii) Second violation within a twelve-month period - Thirty-day suspension;

(iii) Third violation within a twelve-month period - Sixty-day suspension;

(iv) Fourth violation within a twelve-month period - Revocation of the license.

(c) The state fire marshal may increase or decrease the suspension period based on finding aggravating or mitigating factors as provided in WAC 212-17-465.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-465 Violation types and penalty assessments. ~~((1) Penalties shall be assessed according to violation type.~~

~~(2) The types of violations are:~~

~~(a) Least - Type I;~~

~~(b) Minimal - Type II;~~

~~(c) Moderate - Type III;~~

~~(d) Severe - Type IV.)~~

(1) The state fire marshal may impose a different penalty than the standard penalties outlined in WAC 212-17-515 based on the following mitigating or aggravating circumstances:

(a) Mitigating circumstances are those that may result in fewer days of suspension or a lower monetary penalty assessed. A licensee may demonstrate by implementation of safety or business policies or practices that reduce the risk of future violations. Examples include, but are not limited to:

(i) Having a signed acknowledgment of the practice on file for each employee;

(ii) Having an employee training plan that includes annual training on fireworks laws.

(b) Aggravating circumstances are those that will result in increased days of suspension, increased monetary penalties, or revocation of a fireworks license. Examples include, but are not limited to:

(i) Business operations or behaviors that create an increased risk for a violation;

(ii) Repeated importation of fireworks that do not meet the standards when inspected by the U.S. Consumer Product Safety Commission;

(iii) Intentional commission of a violation;

(iv) Disregard for the safety of others that may or may not have resulted in an actual injury; or

(v) Repeated offenses where citations have been issued for the same violation during a given time period.

(c) In addition to the examples in (a) and (b) of this subsection, the state fire marshal will provide and maintain a list

of business practices for reference as examples where business policies or practices may constitute mitigating or aggravating circumstances. This list will not be all inclusive for determining mitigating or aggravating circumstances, and may be modified by the state fire marshal. The list will be accessible to all stakeholders and the general public via the internet.

(2) The state fire marshal may offer a monetary option in lieu of suspension based on mitigating circumstances during a settlement conference as outlined in this chapter.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-470 Violation assessment at the local level. (1) Local fire authorities ~~((shall))~~ will have the authority to issue civil penalty citations for violations of chapters 70.77 RCW and/or 212-17 WAC.

(2) A citation may impose a penalty or provide a warning.

(3) After issuing the citation notice, the citation ~~((shall))~~ will be forwarded to ~~((the office of))~~ the state fire marshal within ten days of issuance. ~~((Where possible,))~~ Each citation ~~((shall))~~ will be accompanied by a copy of the issuing authority's written report, inspection sheets, evidence receipt, or any other forms that are completed during the process of issuing citations.

(4) The ~~((office of the))~~ state fire marshal ~~((shall))~~ will review the information contained in the citation and any accompanying documentation.

(5) If the evidence exists that a violation occurred, the state fire marshal will issue ~~((a notice of civil penalty based upon the information contained in the citation and any accompanying documentation))~~ an administrative violation notice which will include:

(a) A brief narrative description of the charged violation(s);

(b) The date(s) of the violation(s);

(c) A copy of the law(s) or regulation(s) allegedly violated;

(d) A summary of the licensee's or permit holder's options as outlined in this chapter; and

(e) The penalty.

(6) The civil penalty will be delivered using registered mail.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-475 Hearings for civil penalties. (1) Any person may request a hearing regarding the assessment of a civil penalty.

(2) Hearings requests ~~((shall))~~ will be filed with the office of the state fire marshal within fourteen days from the date of the service of civil penalty.

(3) Any person who requests a hearing ~~((shall))~~ will be entitled to a hearing.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-480 Informal conference. (1) The ~~((office of the))~~ state fire marshal will provide an opportunity for a person to informally discuss a civil penalty that has been assessed against them.

(2) An informal conference may be requested prior to a request for a formal hearing; however, a formal hearing ~~((shall))~~ must be requested within twenty-eight days of the date of service of the notice of civil penalty.

(3) The request for an informal conference may be in any form ~~((;))~~ and must:

(a) ~~((shall))~~ Be addressed to the office of the state fire marshal; and

(b) ~~((shall))~~ Clearly state the subject to be discussed.

(c) ~~((An informal conference concerning civil penalties shall not exceed the))~~ Be requested within fourteen days ~~((allowed for filing a formal hearing request)).~~

(d) If the parties agree, an informal conference may be held by telephone.

(e) As the result of an informal conference, the state fire marshal may, for good cause, amend, withdraw, or reduce a civil penalty.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-485 Formal hearing. (1) A person may request a formal hearing at any time before or after an informal conference, as long as the twenty-eight day period for requesting a hearing has not lapsed.

(2) The office of the state fire marshal will arrange for a hearings officer to conduct the formal hearing through the office of administrative hearings.

(3) The office of ~~((the state fire marshal))~~ administrative hearings will set a date, time, and location for the formal hearing.

(4) The office of ~~((the state fire marshal))~~ administrative hearings will notify, by letter, the person requesting the hearing (or their designated representative) of the date, time, location and the hearings officer conducting the formal hearing.

(5) The hearings officer will hear the case and render a proposed opinion and order including recommended findings of fact and conclusions of law, according to chapter 34.05 RCW.

(6) The formal hearing ~~((shall))~~ will be conducted as follows:

(a) The hearings officer will act as an impartial third party.

(b) It is not necessary for the person that requested the hearing to be represented by legal council.

(c) Testimony ~~((shall))~~ will be taken under oath.

(d) All evidence of a type commonly relied upon by a reasonably prudent person in the conduct of their serious affairs is admissible.

(e) Hearsay evidence is admissible if it meets statutory standards for being reliable and trustworthy.

(7) The proposed opinion and order ~~((shall))~~ will be reviewed by the state fire marshal and, if accepted, finalized and issued as a final order.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-490 Penalty adjustment. (1) The assessment of ~~((adjustment of penalties))~~ penalty adjustments for amounts other than those set by chapter 70.77 RCW ~~((shall))~~ will be done only by the state fire marshal through a hearings process either formally or informally.

(2) The assessment of penalties for not being in conformance with chapters 70.77 RCW and/or 212-17 WAC may be made only after considering:

- (a) The gravity and magnitude of the violation;
- (b) The person's previous record;
- (c) Such other considerations as the state fire marshal may consider appropriate.

(3) During a formal hearing or informal conference, ~~((the office of))~~ the state fire marshal may modify or adjust the citation, cited violations, or penalties assessed in order to meet the requirements of these rules and to ensure uniformity and consistency in their application statewide.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-495 Payment of civil penalty. (1) The penalty ~~((shall))~~ must be paid to ~~((the office of))~~ the state fire marshal immediately after an order assessing a civil penalty becomes final by operation of law or on an appeal.

(2) The attorney general may bring an action in the name of the Washington state patrol, through the ~~((director of fire protection))~~ state fire marshal, in the superior court of Thurston County or of any county in which the violator may do business to collect any penalty imposed under chapter 70.77 RCW.

AMENDATORY SECTION (Amending WSR 05-12-033, filed 5/24/05, effective 6/24/05)

WAC 212-17-515 ~~((Type IV violations.))~~ Violation/penalty matrix. ~~((1) Type IV violations are subject to penalties ranging from one hundred twenty-five dollars to one thousand dollars per day depending on instance and in accordance with WAC 212-17-390.~~

~~((2) Examples of Type IV violations include, but are not limited to:~~

~~((a) Possession of fifty dollars or more of 1.3G fireworks without the necessary license issued by the office of the state fire marshal and the required permit from the local authority having jurisdiction;~~

~~((b) Conducting a public fireworks display without the necessary license issued by the office of the state fire marshal and the required permit from the local authority having jurisdiction;~~

~~((c) Purchase of any amount of 1.3G fireworks without the necessary licenses issued by the office of the state fire marshal and/or, where required, the local authority having jurisdiction;~~

~~((d) Conducting a public display using illegal or unauthorized fireworks;~~

~~((e) Intentional or indiscriminate use of fireworks which injure someone or cause more than two hundred fifty dollars in property damage;~~

~~((f) Wholesale sales of fireworks without a valid Washington state wholesalers license;~~

~~((g) Importing, or causing to be imported, fireworks into the state of Washington without a valid Washington state importers license.))~~

<u>WAC - Literal</u>	<u>Description</u>	<u>1st violation</u>	<u>2nd offense or aggravating factors to increase penalty</u>		<u>3rd offense or aggravating factors to increase penalty</u>	
212-17-045 (2) and (3)	Possession of an EPCD without a written management plan.	Warning to \$250	\$500		\$1,000	
212-17-045(4)	Improper use of EPCD during a burn ban period.	Warning to \$500	\$750	Used during a burn ban period or increased fire danger in the area where the device was used.	\$1,000	Used during a burn ban period or increased fire danger in the area where the device was used.
				Fire caused by item that results in a minor injury or property damage (under \$25,000).		Fire caused by item that results in a permanent injury, loss of life or major property damage (excess of \$25,000).
212-17-045(5)	Use of EPCD that threatens to injure or kill wildlife or persons.	Warning to \$500	\$750	Injury occurs to wildlife or persons.	\$1,000	Wildlife or person killed by use of the EPCD.

<u>WAC - Literal</u>	<u>Description</u>	<u>1st violation</u>	<u>2nd offense or aggravating factors to increase penalty</u>		<u>3rd offense or aggravating factors to increase penalty</u>	
212-17-050 (1) and (2)	Importing, manufacturing, selling or possessing a firework with prohibited components, devices or chemicals.	\$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	Attempt is made to disguise the item as another product that does not contain prohibited chemicals.
212-17-050 (2)(c)(iii)	Failing to segregate similar devices from inventory of products that can be sold or used until the laboratory test results are known.	\$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	
212-17-053(2)	Possess, purchase or discharge dangerous fireworks.	\$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	
212-17-053(2)	Offering for sale, storage or manufacturing a dangerous firework.	\$50 per item or \$500 whichever is greater.	\$75 per item or \$750 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	
212-17-053	Altering a firework without a pyrotechnic license.	\$250	\$500	Conducting a fireworks display for hire.	\$1,000	Selling altered fireworks.
212-17-055 (2)(c)(iii)(B)	Importing or manufacturing any firework device without receiving an approval from the U.S. DOT per 49 C.F.R. Part 173.56(b).	\$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	
212-17-055(2)	Importing or manufacturing a firework without the required labeling.	\$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	
212-17-060(1)	Purchase or use of fireworks outside of time period or from an unlicensed stand.	\$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	If a permit application was denied for under 212-17-060 (2)(i) and (ii).
212-17-065(1)	Fail to obtain a license or permit to manufacture, import and wholesale consumer fireworks. (Includes hobbyist or personal use.)	Warning to \$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	
212-17-065(1)	Fail to obtain a license or permit to manufacture, import and wholesale fireworks. (Commercial use.)	Warning to \$50 per item or \$500 whichever is greater.	\$75 per item or \$750 whichever is greater.	Aware of license and permit requirements as a previous license and permit holder.	\$100 per item or \$1,000 whichever is greater.	Permit application for activity submitted and denied.
212-17-070	Manufacturing, importing, and wholesaling fireworks after an application has been denied.	Warning to \$100 per item or \$1,000 whichever is greater.	\$100 per item or \$1,000 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	

<u>WAC - Literal</u>	<u>Description</u>	<u>1st violation</u>	<u>2nd offense or aggravating factors to increase penalty</u>		<u>3rd offense or aggravating factors to increase penalty</u>	
212-17-080	Violation of license limitations.	Warning to \$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	
212-17-085(1)	Fail to keep records for the required 3 year period.	Warning to \$50 per missing record or \$500 whichever is greater.	\$75 per missing record or \$750 whichever is greater.		\$100 per missing record or \$1,000 whichever is greater.	
212-17-085(1)	Fail to produce records and reports when requested .	Warning to \$50 per missing record or \$500 whichever is greater.	\$75 per missing record or \$750 whichever is greater.	Fail to comply after 96 hours from close of business that documents were to be provided.	\$100 per missing record or \$1,000 whichever is greater.	Fail to comply after 96 hours from close of business that documents were to be provided.
212-17-145(1)	Failing to notify the state fire marshal within 5 days of receiving notice from the CPSC that fireworks imported by the licensee have been laboratory tested and failed to meet the CPSC requirements for consumer fireworks.	Warning to \$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.	Two products imported at the same time failed to CPSC standards.	\$100 per item or \$1,000 whichever is greater.	More than three products imported at the same time failed to CPSC standards.
212-17-145(4)	Storing imported fireworks that are overloaded (laboratory tested by the CPSC) in a nonapproved facility.	Warning to \$50 per item or \$500 whichever is greater.	\$75 per item or \$750 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	
212-17-185 (1)(a)	Conducting retail sales of fireworks without a license.	Warning to \$250	\$500	Aware of license and permit requirements as a previous license and permit holder.	\$1,000	Permit application for activity submitted and denied.
212-17-185 (1)(b)	Conducting retail sales of fireworks without a permit issued from the local jurisdiction having authority.	Warning to \$250	\$500	Fireworks license issued but no permit.	\$1,000	Permit application for activity submitted and denied.
212-17-185 (3)(b)	Obtaining a license only to purchase fireworks at wholesaler for personal use.	Warning to \$250	\$500	Fireworks license issued but no permit.	\$1,000	Permit application for activity submitted and denied.
212-17-198(1)	Selling or offering for sale of unapproved consumer fireworks to the public.	Warning to \$50 per item or \$500 whichever is greater.	\$75 per item or \$750 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	
212-17-198(2)	Retail sales licensee failing to display the list of approved consumer fireworks.	Warning to \$250	\$500		\$1,000	
212-17-198(4)	Possession of prohibited fireworks (rockets, firecrackers, missiles, salutes or chasers).	Warning to \$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.	Net explosive weight of prohibited firework in excess of 10 gross pounds.	\$150 per item or \$1,000 whichever is greater.	Net explosive weight of prohibited firework in excess of 25 gross pounds.

<u>WAC - Literal</u>	<u>Description</u>	<u>1st violation</u>	<u>2nd offense or aggravating factors to increase penalty</u>		<u>3rd offense or aggravating factors to increase penalty</u>	
212-17-198(4)	Use of prohibited fireworks (missiles, rockets, firecrackers, salutes or chasers).	Warning to \$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.	Fire caused by item that results in an injury requiring treatment on-site or property damage (under \$25,000).	\$150 per item or \$1,000 whichever is greater.	Fire caused by item that results in an injury requiring treatment at a hospital, loss of life or major property damage (excess of \$25,000).
212-17-21504(1)	Retailer purchasing any consumer fireworks from a nonlicensed wholesaler.	Warning to \$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	
212-17-21504(2)	Retailer selling or delivering fireworks from location other than in a manner authorized.	Warning to \$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.		\$100 per item or \$1,000 whichever is greater.	
212-17-21504 (2)(b)(i)	Advertisement violation.	Warning to \$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.	Aware of license and permit requirements as a previous license and permit holder.	\$100 per item or \$1,000 whichever is greater.	License or permit application for activity submitted and denied.
212-17-21504 (2)(b)(ii)	Purchase of consumer fireworks from unlicensed wholesaler in Washington.	Warning to \$25 per item or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.	Fireworks ordered in excess of 125 pounds gross net explosive weight.	\$100 per item or \$1,000 whichever is greater.	Fireworks ordered in excess of 300 pounds of gross net explosive weight.
212-17-21505	Violation of local permit or rules for CFRS facility requirements.	Warning to \$250	\$500	Aware of license and permit requirements as a previous license and permit holder.	\$1,000	Permit application for activity submitted and denied.
212-17-21505	Conducting retail sales from an unapproved CFRS facility.	Warning to \$500	\$750	Aware of license and permit requirements as a previous license and permit holder.	\$1,000	Permit application for activity submitted and denied.
212-17-21511	Discharge of fireworks within 300 feet of the CFRS facility.	Warning to \$250	\$500		\$1,000	
212-17-21519	Fail to cleanup and remove CFRS facility.	Warning to \$250	\$500		\$1,000	
212-17-220	Unlicensed/underaged pyrotechnic operator conducting a fireworks display.	Warning to \$250	\$500	Pyrotechnic operator's license expired no more than 6 months (July 31st).	\$1,000	Licensed pyrotechnic operator's information submitted for permit is different than person conducting display.
212-17-223(2)	Conducting a fireworks display without a general display license.	Warning to \$250	\$500	Expired license, aware of license requirements as a previous license holder.	\$1,000	Denied or failed to qualify for the level of pyrotechnic license needed.
212-17-225(3)	Submitting an application for a pyrotechnic operator's license with false or inaccurate information.	Warning to \$500	\$750	Information provided was for a higher level license, i.e., proximate or special effects.	\$1,000	Person is disqualified by the ATF from being a user/possessor.

<u>WAC - Literal</u>	<u>Description</u>	<u>1st violation</u>	<u>2nd offense or aggravating factors to increase penalty</u>		<u>3rd offense or aggravating factors to increase penalty</u>	
212-17-235(1)	Failing to supervise personnel or the handling, preparing and firing of a fireworks display.	Warning to \$250	\$500	Results in an injury requiring treatment on-site or a fire causing property damage (under \$25,000).	\$1,000	Pyrotechnic operator listed on the permit is absent when the display is being setup/inspected. Results in an injury requiring treatment at a hospital, loss of life or a fire causing major property damage (excess of \$25,000).
212-17-260	Conducting a fireworks display without a general display license.	Warning to \$250	\$500	Aware of license requirements as a previous license holder.	\$1,000	Application for a general display license was denied or license was suspended or revoked.
212-17-270(1)	Conducting a fireworks display without obtaining a permit from the local authority having jurisdiction.	Warning to \$500	\$750	Aware of permit requirements as a previous permit holder.	\$1,000	
212-17-270(4)	Public display permittee failed to comply with the provisions of a public display permit.	Warning to \$250	\$500	Display starting later than allowed by permit.	\$1,000	
212-17-345	Failure to submit a report to the state fire marshal for any public display conducted.	Warning to \$25 per report or \$250 whichever is greater.	\$50 per item or \$500 whichever is greater.	Display had a fire causing an injury requiring treatment on-site or property damage (under \$25,000).	\$1,000	Display had a fire causing an injury requiring treatment at a hospital, loss of life or major property damage (excess of \$25,000).
212-17-425	Carrier delivering fireworks without having the proper license to transport such class and quantity of fireworks.	Warning to \$50 per report or \$500 whichever is greater.	\$75 per item or \$750 whichever is greater.	Fireworks delivery in excess of 125 pounds net weight of explosive, but less than 500 net weight of explosive.	\$100 per item or \$1,000 whichever is greater.	Fireworks delivery in excess of 501 pounds net weight of explosive.
212-17-430	Common carrier delivering fireworks to a person or firm within Washington state without a valid importer's license.	Warning to \$50 per report or \$500 whichever is greater.	\$75 per item or \$750 whichever is greater.	Fireworks delivery in excess of 125 pounds net weight of explosive, but less than 500 net weight of explosive.	\$100 per item or \$1,000 whichever is greater.	Fireworks delivery in excess of 501 pounds net weight of explosive.
212-17-435	Storage of fireworks that present an increased hazard or menace of fire or explosion.	Warning to \$50 per report or \$500 whichever is greater.	\$75 per item or \$750 whichever is greater.	Fireworks storage in excess of 125 pounds net weight of explosive, but less than 500 net weight of explosive.	\$100 per item or \$1,000 whichever is greater.	Fireworks storage in excess of 501 pounds net weight of explosive.

<u>WAC - Literal</u>	<u>Description</u>	<u>1st violation</u>	<u>2nd offense or aggravating factors to increase penalty</u>		<u>3rd offense or aggravating factors to increase penalty</u>	
212-17-440	Common carrier storage without a fireworks license or permit.	Warning to \$50 per report or \$500 whichever is greater.	\$75 per item or \$750 whichever is greater.	Fireworks storage in excess of 125 pounds net weight of explosive, but less than 500 net weight of explosive.	\$100 per item or \$1,000 whichever is greater.	Fireworks storage in excess of 501 pounds net weight of explosive.
212-17-442	Permanent storage of any fireworks by a licensed person in an unapproved facility without proper license/permit/approval.	Warning to \$50 per item or \$500 which ever is greater.	\$75 per item or \$750 whichever is greater.	Aware of license and permit requirements as a previous license and permit holder.	\$100 per item or \$1,000 whichever is greater.	Permit application for storage submitted and denied by local AHJ.
212-17-446 (2) and (4)	No permit for temporary storage or in violation of the requirements.	Warning to \$250.	\$500	Aware of license and permit requirements as a previous license and permit holder.	\$1,000	Permit application for activity submitted and denied.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 212-17-001 Title.
- WAC 212-17-010 Purpose.
- WAC 212-17-020 Authority.
- WAC 212-17-030 Definition and classification—"Trick and novelty devices."
- WAC 212-17-032 Definition and classification—"Articles pyrotechnic."
- WAC 212-17-035 Definition and classification—"Consumer fireworks."
- WAC 212-17-040 Definition and classification—"Display fireworks."
- WAC 212-17-042 Definition and classification—"Special effects."
- WAC 212-17-075 Fireworks manufacturer—Local ordinances.
- WAC 212-17-090 Fireworks manufacturer—Restrictions.
- WAC 212-17-095 Fireworks manufacturer—Building and structures.
- WAC 212-17-100 Fireworks manufacturer—Personnel.
- WAC 212-17-105 Fireworks manufacturer—Visitors.
- WAC 212-17-110 Fireworks manufacturer—Fire nuisance.
- WAC 212-17-115 Fireworks wholesaler—General.
- WAC 212-17-120 Fireworks wholesaler—Licensing.
- WAC 212-17-125 Fireworks wholesaler—Investigation.
- WAC 212-17-135 Fireworks wholesaler—License limitations.

- WAC 212-17-140 Fireworks wholesaler—Records and reports.
- WAC 212-17-150 Fireworks wholesaler—Personnel.
- WAC 212-17-155 Fireworks wholesaler—Visitors.
- WAC 212-17-160 Fireworks wholesaler—Fire nuisance.
- WAC 212-17-165 Importers of fireworks—General.
- WAC 212-17-170 Importers of fireworks—Licensing.
- WAC 212-17-175 Importers of fireworks—License scope.
- WAC 212-17-180 Importers of fireworks—Restrictions.
- WAC 212-17-203 Retailers of fireworks—List to be posted.
- WAC 212-17-21503 Retailers of fireworks—Definitions.
- WAC 212-17-21507 Retailers of fireworks—Transportation.
- WAC 212-17-21517 Retailers of fireworks—Temporary fireworks storage associated with the retail fireworks stand operation.
- WAC 212-17-240 Pyrotechnic operators—Observance of laws, rules and regulations.
- WAC 212-17-245 Public displays of fireworks—General.
- WAC 212-17-255 Public displays of fireworks—Type of license.
- WAC 212-17-285 Public displays of fireworks—Spectators.
- WAC 212-17-290 Public displays of fireworks—Pyrotechnic operators.
- WAC 212-17-300 Public display—Definitions.
- WAC 212-17-305 Public display—Construction of shells.

WAC 212-17-310 Public display—Storage of shells.
 WAC 212-17-315 Public display—Installation of mortars.
 WAC 212-17-317 Public display—Electrical firing unit.
 WAC 212-17-320 Public display—Site selection.
 WAC 212-17-321 Public display—Installation of buried mortars.
 WAC 212-17-323 Installation of mortar racks.
 WAC 212-17-325 Public display—Discharge site.
 WAC 212-17-327 Requirements for chain fusing.
 WAC 212-17-330 Public display—Operation.
 WAC 212-17-335 Public display—Firing of shells.
 WAC 212-17-340 Public display—Ground pieces.
 WAC 212-17-342 Public display—Floating vessels and platforms.
 WAC 212-17-350 Proximate display—Use of proximate before an audience.
 WAC 212-17-352 Transportation—By common carrier.
 WAC 212-17-355 Proximate display—Proximate permit.
 WAC 212-17-360 Proximate display—Pyrotechnic display plans.
 WAC 212-17-362 Storage—By common carrier.
 WAC 212-17-365 Proximate display—Pyrotechnic display demonstrations.
 WAC 212-17-370 Proximate display—Definitions.
 WAC 212-17-375 Proximate display—Transportation of pyrotechnic material.
 WAC 212-17-380 Proximate display—Storage of pyrotechnic materials and WAC devices.
 WAC 212-17-385 Proximate display—Separation from heat sources.
 WAC 212-17-390 Proximate display—Identification of pyrotechnic devices or binary systems.
 WAC 212-17-395 Proximate display—General fire protection.
 WAC 212-17-400 Proximate display—Firing prerequisites.
 WAC 212-17-405 Proximate display—Firing safeguards.
 WAC 212-17-410 Proximate display—Separation distances from audience.
 WAC 212-17-415 Proximate display—Performance.
 WAC 212-17-420 Proximate display—After the performance.
 WAC 212-17-445 Storage—By common carrier.

WAC 212-17-450 Fines and penalties.
 WAC 212-17-455 Definitions.
 WAC 212-17-500 Type I violations.
 WAC 212-17-505 Type II violations.
 WAC 212-17-510 Type III violations.
 WAC 212-17-900 Appendix.

WSR 15-22-085**PERMANENT RULES****DEPARTMENT OF REVENUE**

[Filed November 3, 2015, 9:13 a.m., effective December 4, 2015]

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

Purpose: WAC 458-20-166 is amended to add statutory language regarding the lodging services exemption for a "hostel" from the King County convention and trade center tax (SSB [SHB] 1516, chapter 151, Laws of 2015, 2015 regular session). This added language is at subsection (7)(c) of the rule.

Further clarifying edits include adding standardized language regarding references to related rules and the use of examples; changing references to the Washington Administrative Code from "section" to "rule;" general editing for consistency of language and grammar; and deletion of references to "summer camps" and "guest ranches" that are outside of the rule's subject matter area.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, ~~((summer camps))~~ hostels, trailer camps, ~~((ete))~~ and similar lodging businesses.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 36.100.040.

Adopted under notice filed as WSR 15-18-056 on August 27, 2015.

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 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 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: November 3, 2015.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-22-067, filed 10/29/10, effective 11/29/10)

WAC 458-20-166 Hotels, motels, boarding houses, rooming houses, resorts, ~~((summer camps))~~ hostels, trailer camps, ~~((ete))~~ and similar lodging businesses. (1) **Introduction.** This ~~((section))~~ rule explains the taxation of persons operating ~~((establishments such as))~~ hotels, motels, ~~((and))~~ bed and breakfast facilities, ~~((which))~~ and similar businesses that provide lodging and related services to transient~~((s for a charge. In addition to retail sales tax and business and occupation (B&O) tax, this section))~~ tenants.

(a) **References to related rules.** The department of revenue (department) has adopted other rules that may contain additional relevant information:

- (i) WAC 458-20-111 (Advances and reimbursements);
- (ii) WAC 458-20-118 (Sale or rental of real estate, license to use real estate);
- (iii) WAC 458-20-159 (Consignees, bailees, factors, agents and auctioneers);
- (iv) WAC 458-20-165 (Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services);
- (v) WAC 458-20-167 (Educational institutions, school districts, student organizations, and private schools);
- (vi) WAC 458-20-168 (Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities);
- (vii) WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines); and
- (viii) WAC 458-20-245 (Taxation of competitive telephone service, telecommunications service, and ancillary service).

(b) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. The examples are only a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

(2) This rule explains the business and occupation (B&O) tax, retail sales tax, special hotel/motel tax, the convention and trade center tax, the tourism promotion area charge, and the taxation of emergency housing furnished to ~~((the))~~ homeless people.

(a) ~~((In addition to persons operating hotels or motels, this section))~~ This rule applies to persons operating hotels, motels, and the following ~~((establishments:))~~ businesses.

(i) Trailer camps and recreational vehicle parks ~~((which charge for the rental of))~~ that rent space to transient~~((s for locating or parking))~~ tenants for house trailers, campers, recreational vehicles, mobile homes, tents, ~~((ete))~~ and similar accommodations.

(ii) Educational institutions ~~((which))~~ that sell overnight lodging to persons other than students. ~~((See))~~ Information regarding educational institutions is provided in WAC 458-20-167~~((:))~~ (Educational institutions, school districts, student organizations, and private schools).

(iii) Private lodging houses, dormitories, bunkhouses, ~~((ete,))~~ and similar accommodations operated by or on behalf of a business ~~((and industrial firms))~~ or school~~((s))~~ solely for the accommodation of employees of ~~((such firms))~~ the business or students of the school, which are not held out

to the public as a place where sleeping accommodations may be obtained. ~~((As will be discussed more fully below, in some circumstances these businesses may not be making retail sales of lodging.~~

~~((iv))~~ Guest ranches or summer camps which, in addition to supplying meals and lodging, offer special recreation facilities and instruction in sports, boating, riding, outdoor living, etc. In some cases these businesses may not be making retail sales, as discussed below.

(b) This ~~((section))~~ rule does not apply to persons operating the following ~~((establishments:))~~ businesses.

(i) Hospitals, sanitariums, nursing homes, rest homes, and similar institutions. ~~((Persons))~~ Information regarding operating these establishments ~~((should refer to))~~ is provided in WAC 458-20-168~~((:))~~ (Hospitals, nursing homes, ~~((boarding homes))~~ assisted living facilities, adult family homes and similar health care facilities).

(ii) ~~((Establishments such as))~~ Apartments or condominiums where the rental is for ~~((longer than))~~ one month~~((: See))~~ or more. Information regarding rentals for one month or more and the distinction between a rental of real estate and the license to use real estate is provided in WAC 458-20-118~~((:))~~ (Sale or rental of real estate, license to use real estate) ~~((for the distinction between a rental of real estate and the license to use real estate)).~~

~~((2))~~ (3) **Transient tenant defined.** The term "transient tenant" as used in this ~~((section))~~ rule means any guest, resident, or other occupant to whom lodging and other services are furnished under a license to use real property for less than one month, or less than thirty continuous days if the rental period does not begin on the first day of the month. ~~((The furnishing of))~~ Providing lodging for a continuous period of one month or more to a guest, resident, or other occupant is a rental or lease of real property. It is presumed that when lodging is ~~((furnished))~~ provided for a continuous period of one month or more, or thirty continuous days or more if the rental period does not begin on the first day of the month, the guest, resident, or other occupant purchasing the lodging is a nontransient upon the thirtieth day without regard to a specific lodging unit occupied throughout the continuous thirty-day period. An occupant who contracts in advance and ~~((does))~~ remains in continuous occupancy for the initial thirty days will be considered a nontransient from the first day of occupancy provided in the contract.

~~((3))~~ (4) **Business and occupation tax (B&O).** Where lodging is sold to a nontransient tenant, the transaction is a rental of real estate and exempt from B&O tax. ~~((See RCW 82.04.390.))~~ See WAC 458-20-118 (Sale or rental of real estate, license to use real estate). Sales of lodging and related services to transient~~((s))~~ tenants are subject to B&O tax, including transactions ~~((which))~~ that may have been identified or characterized as membership fees or dues. ~~((The B&O tax applies as follows:))~~

(a) **Retailing classification.** ~~((Amounts))~~ Gross income derived from the following ~~((charges to transients are retail sales and))~~ activities provided to transient tenants is subject to the retailing B&O tax:

- Rental of rooms for lodging;
- Rental of radio and television sets;

- Rental of rooms, space, and facilities not for lodging, such as ballrooms, display rooms, meeting rooms, ~~((ete-))~~ and similar accommodations;

- Automobile parking or storage; and ~~((the))~~

- Sale or rental of tangible personal property at retail. ~~((See "retail sales tax" below for a more detailed explanation of the charges included in the retailing classification.))~~ More information regarding retail sales is provided in subsection (5) of this rule discussing retail sales tax.

(b) **Service and other ~~((business))~~ activities classification.** Commissions, amounts derived from accommodations not available to the public, and certain ~~((unsegregated charges))~~ lump sum fees charged for multiple services are taxable under ~~((this))~~ the service and other activities classification of the B&O tax. Gross income derived from the following business activities also is subject to service and other B&O tax.

(i) ~~((Hotels, motels, and similar businesses may receive commissions from various sources which are generally taxable under the service and other business activities classification.))~~ Commission income received by hotels, motels, and similar businesses from other businesses providing a service to their tenants. The following are examples of ~~((such))~~ commission(s) income that is subject to the service and other activities B&O tax.

(A) Commission(s) income received from acting as a laundry agent for ~~((guests))~~ tenants when someone other than the hotel provides the laundry service. ~~((See))~~ Information regarding these commissions is provided in WAC 458-20-165(7) (Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services).

(B) Commission(s) income received from telephone companies for long distance telephone calls ~~((where))~~ when the hotel or motel (is merely acting) merely acts as an agent ~~((WAC 458-20-159, Consignees, bailees, factors, agents and auctioneers))~~ and commission(s) income received from coin-operated telephones ~~((WAC 458-20-245, Telephone business, telephone service))~~. Information regarding these commissions is provided in WAC 458-20-159 (Consignees, bailees, factors, agents and auctioneers) and WAC 458-20-245 (Taxation of competitive telephone service, telecommunications service, and ancillary service). Refer to ~~((the retail sales tax))~~ subsection ~~((below))~~ (5) of this rule for a ~~((further))~~ discussion of telephone ~~((charges))~~ service fees subject to retail sales tax.

(C) Commission(s) income or license fees for permitting a satellite antenna to be installed on the premises or ~~((as a commission))~~ for permitting a broadcaster or cable operator to make sales to the ~~((guest of))~~ transient tenants staying at the hotel or motel are subject to service and other activities B&O tax.

(D) Commission(s) income from the rental of videos for use by ~~((guests of))~~ tenants staying at the hotel or motel when the hotel or motel operator is ~~((clearly making such))~~ making the sales as an agent for a seller.

(E) Commission(s) income received from the operation of amusement devices. ~~((See))~~ Information regarding amusement devices is provided in WAC 458-20-187(7) (Coin operated vending machines, amusement devices and service machines).

(ii) ~~((Taxable under this classification are amounts derived from the))~~ Gross income derived from the following business activities is subject to the service and other activities B&O tax.

(A) The rental of sleeping accommodations by private lodging houses(, and by) (including dormitories, bunkhouses, (ete-,) and similar accommodations) operated by or on behalf of a business ~~((and industrial firms and))~~ for its employees, which are not held out to the public as a place where sleeping accommodations may be obtained.

~~((iii))~~ Summer camps, guest ranches and similar establishments making an unsegregated charge for meals, lodging, instruction and the use of recreational facilities must report the gross income from such charges under the service and other business activities classification.

~~((iv))~~ (B) Deposits retained by the lodging business as a penalty charged to a ~~((customer))~~ transient tenant for failure to timely cancel a reservation ~~((is taxable under the service and other business activities classification)).~~

~~((4))~~ (5) **Retail sales tax.** Persons providing lodging and other services generally must collect and remit retail sales tax on ~~((their charges for))~~ the gross selling price of the lodging and other services (as discussed below). They must pay retail sales or use tax on all ~~((of the))~~ items they purchase for use in providing their services.

(a) **Lodging.** All ~~((charges))~~ fees charged for lodging and related services to transient(s) tenants are retail sales. Included are ~~((charges))~~ fees charged for vehicle parking and storage and for space and other facilities, including ~~((charges))~~ fees charged by a trailer camp for utility services ~~((in a trailer camp)).~~

(i) ~~((An occupant))~~ A tenant who does not contract in advance to stay at least thirty days ~~((does not become))~~ is not entitled to a refund of retail sales tax ~~((where))~~ if the rental period (extended) later extends beyond thirty days.

~~((For example,))~~ Example: Assume a tenant rents the same motel room on a weekly basis. Further assume the tenant continues to extend occupancy on a weekly basis until the tenant finally exceeds thirty days. Under these assumed facts, the tenant is considered a transient for the first twenty-nine days of occupancy and must pay retail sales tax on the rental ~~((charges))~~ fees. The rental ~~((charges become exempt of))~~ fees are exempt from retail sales tax beginning on the thirtieth day. The tenant is not entitled to a refund of retail sales taxes paid on the rental ~~((charges))~~ fees for the first twenty-nine days.

(ii) A business providing transient-tenant lodging must complete the "transient rental income" information section of the combined excise tax return. The four digit location code must be listed along with the gross income received from transient-tenant lodging subject to retail sales tax for each facility located within a participating city or county.

(b) **Meals and entertainment.** All ~~((charges))~~ fees charged for food, beverages, and entertainment activities are retail sales subject to retail sales tax.

(i) ~~((Charges))~~ Fees charged for related services ~~((such as))~~ including, but not limited to, room service, banquet room services, and service charges and gratuities ~~((which))~~ that are agreed to in advance by customers or added to their bills by the service provider are ~~((also))~~ subject to retail sales tax.

(ii) ~~((In the case of))~~ If meals sold under a promotion such as a "two meals for the price of one," ~~((promotion,))~~ the taxable selling price is the actual amount received as payment for the meals.

(iii) Meals sold to employees are ~~((also))~~ subject to retail sales tax. ~~((See))~~ Information regarding meals furnished to employees is provided in WAC 458-20-119 ~~((Sales of meals for retail sales tax applicability on meals furnished to employees))~~ ~~((Sales by caterers and food service contractors))~~.

(iv) Sale of food and other items sold through vending machines are retail sales. ~~((See))~~ Information regarding income from vending machines and the distinction between taxable and nontaxable sales of food products is provided in WAC 458-20-187 ~~((Coin operated vending machines, amusement devices and service machines))~~ ~~((for reporting income from vending machine sales))~~ and WAC 458-20-244 ~~((Food and food ingredients))~~ ~~((for the distinction between taxable and nontaxable sales of food products))~~.

(v) ~~((Except for guest ranches and summer camps,))~~ When a lump sum fee is charged ~~((for lodging to nontransients and for meals furnished, the))~~ to nontransient tenants for providing both lodging and meals, retail sales tax must be collected upon the fair selling price of such meals. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. The cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other costs incidental thereto, including an appropriate portion of overhead expenses.

(vi) Cover ~~((charges))~~ fees charged for dancing and other entertainment activities are retail sales.

(vii) ~~((Charges))~~ Fees charged for providing extended television reception to ~~((guests))~~ transient tenants are retail sales.

(c) **Laundry services.** ~~((Charges))~~ Fees charged for laundry services provided by a hotel/motel in the hotel's name are retail sales. ~~((Charges))~~ Fees charged to tenants for self-service laundry facilities are not retail sales ~~((These charges are)),~~ but the gross income derived from these fees is subject to service and other activities B&O tax.

(d) **Telephone charges.** Telephone ~~((charges to guests, except those subject to service B&O tax as discussed above and in WAC 458-20-245, Telephone business, telephone service, are retail sales. "Message service" charges are also retail sales))~~ and "message service" fees charged to transient tenants are retail sales, but commission income received from telephone companies for long distance telephone calls when the hotel or motel merely acts as an agent is not subject to retail sales tax.

If the hotel ~~((or))~~ or motel is acting as an agent for a telephone service provider ~~((who))~~ that provides long distance telephone service to the ~~((guest))~~ transient tenant, the actual telephone ~~((charges))~~ fees charged are not taxable income to the hotel ~~((or))~~ or motel. These amounts are advances and reimbursements. ~~((See))~~ Information on advances and reimbursements is provided in WAC 458-20-111 ~~((Advances and reimbursements))~~ ~~((and 458-20-159, Consignees, bailees, factors, agents and auctioneers))~~. Any additional ~~((handling or other charge which))~~ fee added by the hotel ~~((or))~~ or motel

~~((may add))~~ to the actual long distance telephone ~~((charge))~~ fee, however, is a retail sale.

(e) **Telephone lines.** If the hotel ~~((or))~~ or motel leases telephone lines and then provides telephone services for a ~~((charge to its guests, these charges are taxable as))~~ fee to either its transient or nontransient tenants, these fees are retail sales. In this case the hotel ~~((or))~~ or motel is in the telephone business. ~~((See))~~ Information regarding the telephone business is provided in WAC 458-20-245 ~~((Telephone business,))~~ (Taxation of competitive telephone service, telecommunications service, and ancillary service). The hotel ~~((or))~~ or motel may give a ~~((resale certificate for purchases made before January 1, 2010, or a))~~ reseller permit for purchases made ~~((on or after January 1, 2010,))~~ to the provider of the leased lines and is not subject to the payment of retail sales tax to the provider of the leased lines. ~~((Previously accepted resale certificates must be kept on file by the seller for five years from the date of last use or no longer than December 31, 2014.))~~

(f) **Rentals.** ~~((Rentals of))~~ Renting tangible personal property such as movies and sports equipment ~~((are retail sales))~~ is a retail sale.

(g) **Purchases of tangible personal property for use in providing lodging and related services.** All purchases of tangible personal property for use in providing lodging and related services are retail sales. The ~~((charge))~~ fee charged for lodging and related services is for services rendered and not for the resale of any tangible property.

(i) ~~((Included are such items as beds and other furnishings, restaurant equipment, soap, towels, linens))~~ Purchases subject to retail sale tax include, but are not limited to, beds, room furnishings, linens, towels, soap, shampoo, restaurant equipment, and laundry supply services. Purchases, such as small toiletry items, are included even though they may be provided for guests to take home if not used.

(ii) ~~((The retail sales tax does not apply to sales of food products to persons operating guest ranches and summer camps for use in preparing meals served to guests.))~~ Sales of prepared meals or other prepared items ~~((to persons operating guest ranches and summer camps))~~ are subject to retail sales tax. ~~((See))~~ Information regarding the sales of food products is provided in WAC 458-20-244 ~~((Food and food ingredients))~~ ~~((for sales of food products))~~.

(h) **Sales to the United States government.** Sales made directly to the United States government are not subject to retail sales tax. Sales to employees of the federal government are ~~((fully taxable notwithstanding that))~~ taxable even if the employee ultimately will be reimbursed for the ~~((cost of))~~ lodging fee.

(i) **Payment by government voucher or check.** If the lodging fee is paid by United States government voucher or United States government check payable directly to the hotel ~~((or))~~ or motel, the sale is presumed to be a tax-exempt sale made directly to the federal government.

(ii) **Charges to government credit card.** Various United States government contracted credit cards are used to make payment for purchases of goods and services by or for the United States government. Specific information about determining when a purchase by government credit card is a tax-exempt purchase by the United States government is

available via the department's internet web site at <http://dor.wa.gov>. (See the department's lodging industry guide.) For specific information about determining when payment is the direct responsibility of the United States government or the employee, you may contact the department's taxpayer services division at <http://dor.wa.gov/content/ContactUs/> or:

Department of Revenue
Taxpayer Services
P.O. Box 47478
Olympia, WA 98504-7478

~~((5))~~ **(6) Special hotel/motel tax.** Some locations in the state ~~((charge))~~ impose a special hotel/motel tax. ~~((See))~~ These taxes are imposed under chapters 67.28 and 36.100 RCW. If a business is in one of ~~((these))~~ those locations, an additional tax is charged and reported under the special hotel/motel portion of the tax return. The four digit location code, the ~~((amount received for))~~ gross-selling price for providing the lodging, and the tax rate must be completed for each location ~~((in which))~~ where the lodging is provided. The tax applies without regard to the number of lodging units except that the tax ~~((of))~~ imposed under chapter 36.100 RCW applies only if there are forty or more lodging units. The tax only applies to the ~~((charge))~~ fee charged for the rooms ~~((to be))~~ used for lodging by transient((s)) tenants. Additional ~~((charges))~~ fees charged for telephone services, laundry, or other incidental charges are not subject to the special hotel/motel tax. ~~((Neither))~~ Nor is the ~~((charge))~~ fee charged for use of meeting rooms, banquet rooms, or other special use rooms subject to this tax. ~~((However, the tax does apply to charges))~~ The tax applies, however, to fees charged for use of camping and recreational vehicle sites.

~~((6))~~ **(7) Convention and trade center tax.** Businesses located in King County selling lodging to ~~((transients, having))~~ transient tenants that have sixty or more transient-lodging units ~~((located in King County))~~, must charge their customers the convention and trade center tax and report the tax under the "convention and trade center" portion of the combined excise tax return.

(a) A business having more than sixty units ~~((which are rented to transients and nontransients will be))~~ that rents to both transient tenants and nontransient tenants, is subject to the convention and trade center tax only if the business has at least sixty rooms ~~((which))~~ that are available or being used ~~((for transient lodging. For example, a business with))~~ to provide lodging to transient tenants.

Example: Assume Lodging House has one hundred forty total ~~((rooms of which ninety five are rented to nontransients))~~ individual-occupancy rooms available to the public and rents ninety-five of the rooms to nontransient tenants. Under these assumed facts, Lodging House is not subject to the convention and trade center tax because only forty-five rooms are available or being used for transient-lodging units.

(b) The convention and trade center tax ~~((only))~~ applies only to the ~~((charge))~~ fees charged for the rooms ~~((to be used for lodging by transients))~~ used to provide lodging for transient tenants. Additional ~~((charges))~~ fees charged for telephone services, laundry, or other incidental charges are not subject to the convention and trade center tax. ~~((Charges))~~ Fees charged for the use of meeting rooms, banquet rooms, or

other special use rooms are also not subject to the convention and trade center tax. ~~((However, the tax does apply to charges))~~ The convention and trade center tax applies, however, to fees charged for camping or recreational vehicle sites. Each camp site is considered a single unit.

(c) Exemptions. Businesses having fewer than sixty transient-lodging units or businesses classified as a hostel are exempt from the convention and trade center tax. For purposes of this exemption:

(i) "Hostel" means a structure or facility where a majority of the rooms for sleeping accommodations are hostel dormitories containing a minimum of four standard beds designed for single-person occupancy within the facility. Hostel accommodations are supervised and must include at least one common area and at least one common kitchen for guest use.

(ii) "Hostel dormitory" means a single room, containing four or more standard beds designed for single-person occupancy, used exclusively as nonprivate communal sleeping quarters, generally for unrelated persons, where such persons independently acquire the right to occupy individual beds, with the operator supervising and determining which bed each person will occupy.

(d) The four digit location code, ~~((amount received))~~ gross-selling price for the lodging, and the tax rate must be completed for each location ~~((in which))~~ where the lodging is provided.

~~((d))~~ If the property of the King County state convention and trade center is transferred to a King County public facilities district created as provided in RCW 36.100.010, the authority under chapter 67.40 RCW of the state and city to impose the convention and trade center tax will be transferred under RCW 36.100.040 to the public facilities district.

~~((7))~~ **(8) Tourism promotion area charge.** A legislative authority as defined ~~((by))~~ in RCW 35.101.010 ~~((Definitions))~~ may impose a charge on the ~~((furnishing of))~~ activity of providing lodging by a ~~((lodging))~~ business located in the tourism promotion area, except ~~((that this tourism promotion area charge does not apply to))~~ for temporary medical housing that is exempt under RCW 82.08.997((z)) (Exemptions—Temporary medical housing). The ~~((tourism promotion area))~~ charge is administered by the department ~~((of revenue))~~ and must be collected by ~~((lodging businesses from those persons who are subject to retail sales tax on purchases of lodging))~~ the business providing the lodging from the transient tenant. The ~~((tourism promotion area))~~ charge is not subject to the sales tax rate limitations of RCW 82.14.410. To determine whether your lodging business must collect and remit the charge, refer to the special notices for tourism promotion areas at http://dor.wa.gov/content/GetAFormOrPublication/PublicationBySubject/tax_sn_main.aspx or the lodging industry guide at <http://dor.wa.gov/content/doingbusiness/BusinessTypes/Industry/lodging/>.

~~((8))~~ **(9) Providing emergency lodging to homeless people.** The ~~((charge made for the furnishing of))~~ fee charged for providing emergency lodging to homeless ~~((persons))~~ people purchased via a shelter voucher program administered by cities, towns, ~~((and))~~ counties, or private organizations that provide emergency food and shelter services is exempt from the retail sales tax, the convention and

trade center tax, and the special hotel/motel tax. This form of payment does not influence the required minimum of transient rooms available for use as transient lodging units under the "convention and trade center tax" or under the "special hotel/motel tax."

WSR 15-22-086
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed November 3, 2015, 9:45 a.m., effective December 4, 2015]

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

Purpose: WAC 458-16A-010 Nonprofit homes for the aging, 458-16A-020 Nonprofit homes for the aging—Initial application and annual review, and 458-16A-135 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Application procedures, are amended to make the statutory language change from the phrase "physical disability" to "disability" to comply with SSB 5275, section[s] 313 and 314, chapter 86, Laws of 2015, 2015 regular session. This language change is at these three subsections: WAC 458-16A-010 (2)(l)(ii), WAC 458-16A-020 [(2)](i)(ii), and 458-16A-135 (5)(e)(iv).

Citation of Existing Rules Affected by this Order: Amending WAC 458-16A-010, 458-16A-020, and 458-16A-135.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.52.0502, and 84.55.060.

Adopted under notice filed as WSR 15-18-110 on September 1, 2015.

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 3, Repealed 0.

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

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

Date Adopted: November 3, 2015.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-064, filed 7/30/08, effective 8/30/08)

WAC 458-16A-010 Nonprofit homes for the aging.

(1) **Introduction.** Under RCW 84.36.041, a nonprofit home for the aging may be totally or partially exempt from property tax. This section explains the exemptions allowed and the criteria that must be met in order to receive an exemption under this statute. Throughout this section, all requirements will

pertain to all types of homes for the aging including, but not limited to, adult care homes, assisted living facilities, continuing care retirement communities (CCRC), and independent housing, unless a particular type of home is separately identified.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Acquisition" means that an existing home for the aging (or home) currently in operation is acquired by a nonprofit organization and the ownership of the facility will change as a result of a purchase, gift, foreclosure, or other method.

(b) "Assistance with activities of daily living" means the home provides, brokers, or contracts for the provision of auxiliary services to residents, such as meal and housekeeping service, transportation, ambulatory service, and attendant care including, but not limited to, bathing and other acts related to personal hygiene, dressing, shopping, food preparation, monitoring of medication, and laundry services.

(c) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of the person's spouse or domestic partner, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form or the person's spouse, domestic partner or cotenant during the previous year for the treatment or care of either person received in the dwelling unit or in a nursing home.

(i) If the person submitting the income verification form was retired for two months or more of the preceding calendar year, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person during the months the person was retired by twelve.

(ii) If the income of the person submitting the income verification form is reduced for two or more months of the preceding calendar year because of the death of the person's spouse or domestic partner, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person after the death of the spouse or domestic partner by twelve.

(d) "Complete and separate dwelling units" means that the individual units of a home contain complete facilities for living, sleeping, cooking, and sanitation.

(e) "Construction" means the actual construction or building of all or a portion of a home that did not exist prior to the construction.

(f) "Continuing care retirement community" or "CCRC" means an entity that provides shelter and services under continuing care contracts with its residents or includes a health care facility or health service.

(g) "Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related or personal care services, that is conditioned upon the transfer of property, the payment of an entrance fee to the provider of the services, and/or the payment of periodic charges in consideration for the care and services provided. A continuing care contract is not excluded

from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(h) "Cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(i) "Disposable income" means adjusted gross income as defined in the federal Internal Revenue Code, as amended prior to January 1, 1994, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(i) Capital gains, other than gain excluded from income under section 121 of the federal Internal Revenue Code to the extent it is reinvested in a new principal residence;

(ii) Amounts deducted for loss;

(iii) Amounts deducted for depreciation;

(iv) Pension and annuity receipts;

(v) Military pay and benefits other than attendant-care and medical-aid payments;

(vi) Veterans benefits other than attendant-care and medical-aid payments;

(vii) Federal Social Security Act and railroad retirement benefits;

(viii) Dividend receipts; and

(ix) Interest received on state and municipal bonds.

(j) "Domestic partner" means a partner registered under chapter 26.60 RCW or a partner in a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(k) "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(l) "Eligible resident" means a person who:

(i) Occupied the dwelling unit as their principal place of residence as of December 31st of the assessment year the home first became operational or in each subsequent year, occupied the dwelling unit as their principal place of residence as of January 1st of the assessment year. If an eligible resident is confined to a hospital or nursing home and the dwelling unit is temporarily unoccupied or occupied by a spouse or domestic partner, a person financially dependent on the claimant for support, or both, the dwelling will still be considered occupied by the eligible resident;

(ii) Is sixty-one years of age or older on December 31st of the year in which the claim for exemption is filed, or is, at the time of filing, retired from regular gainful employment by reason of ((physical)) disability. A surviving spouse or domestic partner of a person who was receiving an exemption at the time of the person's death will qualify for this exemption if the surviving spouse or domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income that is no more than the greater of twenty-two thousand dollars or eighty percent of the median income adjusted for family size as determined by the federal Department of Housing and Urban Development (HUD) for the county in which the person

resides and in effect as of January 1 of the year the application for exemption is submitted.

(m) "First assessment year the home becomes operational" or "the assessment year the home first became operational" means the first year the home becomes occupied by and provides services to eligible residents. Depending upon the facts, this year will be the year during which construction of the home is completed or the year during which a nonprofit organization purchases or acquires an existing home and begins to operate it as a nonprofit home for the aging.

(n) "Home for the aging" or "home" means a residential housing facility that:

(i) Provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person;

(ii) Has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and

(iii) Provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

(o) "HUD" means the federal Department of Housing and Urban Development.

(p) "Local median income" means the median income adjusted for family size as most recently determined by HUD for the county in which the home is located and in effect on January 1st of the year the application for exemption is submitted.

(q) "Low income" means that the combined disposable income of a resident is eighty percent or less of the median income adjusted for family size as most recently determined by HUD for the county in which the home is located and in effect as of January 1st of the year the application for exemption is submitted.

(r) "Occupied dwelling unit" means a living unit that is occupied either on January 1st of the year for which the application for exemption is made or on December 31st of the assessment year the home first becomes operational and for which application for exemption is made.

(s) "Property that is reasonably necessary" means all property that is:

(i) Operated and used by a home; and

(ii) The use of which is restricted to residents, guests, or employees of a home.

(t) "Refinancing" means the discharge of an existing debt with funds obtained through the creation of new debt. For purposes of this section, even if the application for tax exempt bond financing to refinance existing debt is treated by the financing agent as something other than refinancing, an application for a property tax exemption because of refinancing by tax exempt bonds will be treated as refinancing and the set-asides specific to refinancing will be applied. "Refinancing" shall include tax exempt bond financing in excess of the amount of existing debt that is obtained to modify, improve, restore, extend, or enlarge a facility currently being operated as a home.

(u) "Rehabilitation" means that an existing building or structure, not currently used as a home, will be modified, improved, restored, extended, or enlarged so that it can be used as a home for elderly and disabled individuals. A project

will be considered a rehabilitation if the costs of rehabilitation exceed five thousand dollars. If a home has acquired tax exempt bond financing and does not meet the definition of "rehabilitation" contained in this subsection, the home may be eligible for a total exemption under the "refinancing" definition and if it meets the "refinancing" set-aside requirements. If such a home is not eligible for a total exemption, the department will determine the home's eligibility for a partial exemption in accordance with the pertinent parts of RCW 84.36.041 and this section.

(v) "Set-aside(s)" means the percentage of dwelling units reserved for low-income residents when the construction, rehabilitation, acquisition, or refinancing of a home is financed under a financing program using tax exempt bonds.

(w) "Shared dwelling units" or "shared units" means individual dwelling units of a home that do not contain complete facilities for living, eating, cooking, and sanitation.

(x) "Taxable value" means the value of the home upon which the tax rate is applied in order to determine the amount of property taxes due.

(y) "Total amount financed" means the total amount of financing required by the home to fund construction, acquisition, rehabilitation, or refinancing. Seventy-five percent of this amount must be supplied by tax exempt bonds to receive the total exemption from property tax available under the tax exempt bond financing provision of RCW 84.36.041.

(3) **General requirements.** To be exempt under this section, a home for the aging must be:

(a) Exclusively used for the purposes for which exemption is granted, except as provided in RCW 84.36.805;

(b) Operated by an organization that is exempt from income tax under section 501(c) of the federal Internal Revenue Code; and

(c) The benefit of the exemption must inure to the home.

(4) **Total exemption.** There are three ways in which a home may be totally exempt from property tax. All real and personal property used by a nonprofit home that is reasonably necessary for the purposes of the home is exempt if it meets the general requirements listed in subsection (3) of this section and:

(a) At least fifty percent of the occupied dwelling units in the home are occupied by eligible residents;

(b) The home is subsidized under a HUD program; or

(c) The construction, rehabilitation, acquisition, or refinancing of a home is financed under a program using bonds exempt from federal income tax if at least seventy-five percent of the total amount financed uses tax exempt bonds and the financing program requires the home to reserve or set-aside a percentage of all dwelling units so financed for low-income residents. See subsections (5), (6), and (7) of this section for tax exempt bond requirements and the percentage of units that must be set-aside for low-income residents in order for the home to be totally exempt.

(5) **Homes or CCRCs financed by tax exempt bonds—Generally.** All real and personal property used by a nonprofit home or CCRC may be totally exempt from property tax if at least seventy-five percent of the total amount financed for construction, rehabilitation, acquisition, or refinancing uses tax exempt bonds and the financing program requires the home or CCRC to reserve or set-aside a percent-

age of all dwelling units so financed for low-income residents.

(a) The percentage of set-aside units required will vary depending on whether the home is a CCRC, the purpose for which the tax exempt bond financing was obtained, the type of dwelling unit, and the receipt of medicaid funds. The set-aside requirements for homes are set forth in subsection (6) of this section and for CCRCs are set forth in subsection (7) of this section.

(b) The exemption will be granted in direct correlation to the total amount financed by tax exempt bonds and the portion of the home or CCRC that is constructed, acquired, rehabilitated, or refinanced by tax exempt bonds.

(c) If tax exempt bonds are used for refinancing, the set-aside requirements set forth in subsections (6) and (7) of this section will be applied to the actual area or portion of the home or CCRC to which the bonds correspond.

(i) Example 1. A CCRC (that accepts medicaid funds) is composed of a multistory building, six duplexes, and two independent homes and the CCRC has secured tax exempt bonds to satisfy an existing mortgage on the multistory building. Only the multistory building will be considered eligible for a total exemption from property tax because of tax exempt bond financing. To receive the exemption, at least twenty percent of the dwelling units of the multistory building must be set-aside for residents at or below fifty percent of the local median income or at least forty percent of the dwelling units must be set-aside for residents at or below sixty percent of the local median income.

(ii) Example 2. A home obtains tax exempt bonds to refinance a portion of the home and to fund construction. The department will separately consider the area of the home that corresponds to the purpose for which the tax exempt bonds were obtained. The set-aside requirements related to refinancing will be applied to the portion of the home that corresponds to the mortgage being refinanced and the set-aside requirements related to construction will be applied to the area of the home to be newly constructed. The department will determine the eligibility for partial exemption of the remainder of the home that is not being refinanced or constructed.

(d) If a total exemption is granted under the tax exempt bond financing provision, the total exemption will remain in effect as long as:

(i) The home or CCRC remains in compliance with the requirements under which it received the tax exempt bonds;

(ii) The tax exempt bonds are outstanding; and

(iii) The set-aside requirements are met.

(e) If a home or CCRC has obtained tax exempt bond financing to modify, improve, restore, extend, or enlarge its existing facility and the project does not meet the definition of rehabilitation contained in subsection (2) of this section, the project will not be considered a rehabilitation. In this situation, the set-aside requirements related to refinancing or acquisition will be applied in determining eligibility for a total exemption.

(f) When a home or CCRC no longer meets the criteria for exemption under the tax exempt bond financing portion of the statute, eligibility for exemption under RCW 84.34.041 will be determined by the other provisions of the statute. In

other words, a home may receive a total or partial exemption depending on the number of residents who are deemed to be "eligible residents" or who require "assistance with activities of daily living." For example, if a home that previously received a total exemption due to the receipt of tax exempt bond financing has one hundred dwelling units and sixty of those dwelling units are occupied by eligible residents, the home may receive a total exemption.

(6) **Set-aside requirements related to homes and tax exempt bond financing.** A specified number of dwelling units within a home must be set-aside for low income residents to obtain a total property tax exemption because of tax exempt bond financing. The set-aside requirements for homes will be determined according to the type of dwelling units contained in the home and the purpose for which the tax exempt bond financing was obtained. The provisions of this section do not apply to CCRCs. The specific set-aside requirements for CCRCs are described in subsection (7) of this section.

A home must meet the following set-aside requirements to be totally exempt from property tax:

PURPOSE OF BOND FINANCING	TYPE OF DWELLING UNIT	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	Complete & Separate units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income
Acquisition or Refinancing of dwelling units currently satisfying 10% and 10% set-aside requirements	Complete & Separate units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 10% set-aside requirements	Complete & Separate units	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income

PURPOSE OF BOND FINANCING	TYPE OF DWELLING UNIT	SET-ASIDE REQUIREMENTS
Acquisition, New Construction, Refinancing, or Rehabilitation	Shared units	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 50% of local median income

(7) **Set-aside requirements related to CCRCs and tax exempt bond financing.** A specified number of dwelling units of a CCRC must be set-aside for low income residents to obtain a total property tax exemption because of tax exempt bond financing. The set-aside requirements for CCRCs will be determined by whether the CCRC does or does not have medicaid contracts for continuing care contract residents and the purpose for which the tax exempt bond financing was obtained. The provisions of this section do not apply to other homes. The specific set-aside requirements for other homes are described in subsection (6) of this section.

(a) The continuing care contract between the resident and the CCRC is a contract to provide shelter along with nursing, medical, health-related or personal care services to the resident for the duration of the resident's life or for a term in excess of one year. A resident's tenancy may not be terminated due to inability of the resident to fully pay the monthly service fee when the resident establishes facts to justify a waiver or reduction of these charges. This provision shall not apply if the resident, without the CCRC's consent, has impaired his and/or her ability to meet financial obligations required by the continuing care contract due to a transfer of assets, after signing the continuing care contract, other than to meet ordinary and customary living expenses, or by incurring unusual or unnecessary new financial obligations.

(b) A CCRC without medicaid contracts for continuing care contract residents may not receive medicaid funds from Washington state or the federal government during the term that the bonds are outstanding, except during the initial transition period as allowed by state law or if the regulatory agreement with the tax exempt bond financier exempts the CCRC from compliance with this requirement.

(c) The following set-aside requirements must be met by CCRCs not receiving medicaid funds (including CCRCs that are permitted to receive medicaid funds during an initial transition period only) to receive a total exemption:

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	10% of total units set-aside for residents at or below 80% of local median income and 15% of total units set-aside for residents at or below 100% of local median income

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
Acquisition or Refinancing of dwelling units currently satisfying 10% and 15% set-aside requirements	10% of total units set-aside for residents at or below 80% of local median income and 15% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 15% set-aside requirements	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income

(d) The following set-aside requirements must be met by CCRCs receiving medicaid funds to receive a total exemption:

PURPOSE OF BOND FINANCING	SET-ASIDE REQUIREMENTS
New construction or Rehabilitation	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units currently satisfying 10% and 10% set-aside requirements	10% of total units set-aside for residents at or below 80% of local median income and 10% of total units set-aside for residents at or below 100% of local median income
Acquisition or Refinancing of dwelling units not currently satisfying 10% and 10% set-aside requirements	20% of total units set-aside for residents at or below 50% of local median income or 40% of total units set-aside for residents at or below 60% of local median income

(8) **Partial exemption.** If a home does not qualify for a total exemption from property tax, the home may receive a partial exemption for its real property on a unit by unit basis and a total exemption for its personal property.

(a) Real property exemption. If the real property of a home is used in the following ways, the portion of the real property so used will be exempt and the home may receive a partial exemption for:

- (i) Each dwelling unit occupied by a resident requiring significant assistance with activities of daily living;
- (ii) Each dwelling unit occupied by an eligible resident; and

(ii) Common or shared areas of the home that are jointly used for two or more purposes that are exempt from property tax under chapter 84.36 RCW.

(b) Assistance with activities of daily living. A home may receive a partial exemption for each dwelling unit that is occupied by a resident who requires significant assistance with the activities of daily living and the home provides, brokers, facilitates, or contracts for the provision of this assistance. A resident requiring assistance with the activities of daily living must be a resident who requires significant assistance with at least three of the nonexclusive list of activities set forth below and who, unless the resident receives the assistance, would be at risk of being placed in a nursing home. Activities of daily living include, but are not limited to:

- (i) Shopping;
- (ii) Meal and/or food preparation;
- (iii) Housekeeping;
- (iv) Transportation;
- (v) Dressing;
- (vi) Bathing;
- (vii) General personal hygiene;
- (viii) Monitoring of medication;
- (ix) Ambulatory services;
- (x) Laundry services;
- (xi) Incontinence management; and
- (xii) Cuing for the cognitively impaired.

(c) Examples of assistance with the activities of daily living:

(i) If the resident of a home requires assistance with daily dressing, bathing, and personal hygiene, weekly housekeeping chores, and daily meal preparation, the person is a resident requiring significant assistance with activities of daily living and the home may receive a partial exemption for the dwelling unit in which the person resides.

(ii) If the resident of a CCRC only requires someone to clean the house weekly and to do the laundry weekly, the resident does not require significant assistance with activities of daily living and the CCRC may not receive a partial exemption for the dwelling unit.

(d) Common or shared areas. Areas of a home that are jointly used for two or more purposes exempt from property tax under chapter 84.36 RCW will be exempted under RCW 84.36.041.

(i) The joint use of the common or shared areas must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property tax under chapter 84.36 RCW. A kitchen, dining room, and laundry room are examples of the types of common or shared areas for which a partial property tax exemption may be granted.

(ii) Example. A nonprofit organization uses its facility as a home for the aging and a nursing home. The home and nursing home jointly use the kitchen and dining room. The home may receive a property tax exemption for the common or shared areas under RCW 84.36.041. The eligibility of the other areas of the facility will be determined by the appropriate statute. The home's eligibility will be determined by RCW 84.36.041 and the nursing home's eligibility will be determined by RCW 84.36.040.

(e) Amount of partial exemption. The amount of partial exemption will be calculated by multiplying the assessed value of the property reasonably necessary for the purposes of the home, minus/less the assessed value of any common or shared areas, by a fraction. The numerator and denominator of the fraction will vary depending on the first assessment year the home became operational and occupied by eligible residents.

(i) Numerator. If the home becomes operational after the January 1st assessment date, the numerator is the number of dwelling units occupied by eligible residents and by residents requiring assistance with activities of daily living on December 31st. The December 31st date will be used only in the first year of operation. In any other assessment year, the numerator is the number of the dwelling units occupied on January 1st of the assessment year by eligible residents and by residents requiring assistance with activities of daily living.

(ii) Denominator. If the home becomes operational after the January 1st assessment date, the denominator is the number of dwelling units occupied on December 31st. The December 31st date will be used only in the first assessment year the home becomes operational. In any other assessment year, the denominator is the total number of occupied dwelling units as of January 1st of the assessment year.

(iii) Example:

Assessed value of home:	\$500,000
Less assessed value of common area:	<u>- 80,000</u>
Total	\$420,000
Number of units occupied on 1/1 by eligible residents and people requiring assistance with daily living activities	= 6
Total of occupied units on 1/1	40 or .15
$\$420,000 \times .15 = \$63,000$	Amount of partial exemption
$\$420,000 - \$63,000 = \$357,000$	Taxable value of home

(f) Valuation of the home. The assessor will value a home that receives a partial exemption by considering only the current use of the property during the period in which the partial exemption is received and will not consider any potential use of the property.

(9) Income verification required from some residents. If a home seeks a total property tax exemption because at least fifty percent of the occupied dwelling units are occupied by eligible residents or seeks to receive a partial exemption based upon the number of units occupied by eligible residents, the residents must submit income verification forms. The department may request income verification forms from residents of homes receiving a total exemption because of tax exempt bond financing.

(a) The income verification forms must be submitted to the assessor of the county in which the home is located by July 1st of the assessment year in which the application for exemption is made. If the home becomes operational after the January 1st assessment date, these forms must be submitted to the assessor as soon as they are available but no later than December 31st of that assessment year.

(b) The income verification form will be prescribed and furnished by the department of revenue.

(c) If an eligible resident filed an income verification form for a previous year, the resident is not required to submit a new form unless there is a change in status affecting the resident's eligibility, such as a significant increase or decrease in disposable income, or the assessor or the department requests a new income verification form to be submitted.

(10) Additional requirements. Any nonprofit home for the aging that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16A-020 and 458-16-165. WAC 458-16A-020 contains information regarding the initial application and renewal procedures relating to the exemption discussed in this section. WAC 458-16-165 sets forth additional requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.041.

AMENDATORY SECTION (Amending WSR 08-16-064, filed 7/30/08, effective 8/30/08)

WAC 458-16A-020 Nonprofit homes for the aging— Initial application and annual renewal. (1) Introduction. This section explains the initial application process that must be followed when a home for the aging wishes to obtain a property tax exemption under RCW 84.36.041. This section also describes the annual renewal requirements that a home must follow to retain its tax exempt status, as well as the role of the assessor's office and the department of revenue in administering this exemption. Throughout this section, all requirements will pertain to all types of homes for the aging including, but not limited to, adult care homes, assisted living facilities, continuing care retirement communities (CCRC), and independent housing.

(2) Definitions. For purposes of this section, the following definitions apply:

(a) "Assessor" means the county assessor or any agency or person who is duly authorized to act on behalf of the assessor.

(b) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of the person's spouse or domestic partner, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form, the person's spouse or domestic partner, or any cotenant during the previous year for the treatment or care of any of them received in the dwelling unit or in a nursing home.

(i) If the person submitting the income verification form was retired for two months or more of the preceding calendar year, the combined disposable income of the person will be calculated by multiplying the average monthly combined disposable income of the person during the months the person was retired by twelve.

(ii) If the income of the person submitting the income verification form is reduced for two or more months of the preceding calendar year by reason of the death of the person's spouse or domestic partner, the combined disposable income of the person will be calculated by multiplying the average

monthly combined disposable income of the person after the death of the spouse or domestic partner by twelve.

(c) "Continuing care retirement community" or "CCRC" means an entity that provides shelter and services under continuing care contracts with its residents or includes a health care facility or health service.

(d) "Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related or personal care services, that is conditioned upon the transfer of property, the payment of an entrance fee to the provider of the services, and/or the payment of periodic charges in consideration for the care and services provided. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(e) "Cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(f) "Department" means the department of revenue.

(g) "Domestic partner" means a partner registered under chapter 26.60 RCW or a partner in a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(h) "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(i) "Eligible resident" means a person who:

(i) Occupied the dwelling unit as their principal place of residence as of December 31st of the assessment year the home first became operational or in each subsequent year, occupied the dwelling unit as their principal place of residence as of January 1st of the assessment year. If an eligible resident is confined to a hospital or nursing home and the dwelling unit is temporarily unoccupied or occupied by a spouse or domestic partner, a person financially dependent on the claimant for support, or both, the dwelling will still be considered occupied by the eligible resident;

(ii) Is sixty-one years of age or older on December 31st of the year in which the claim for exemption is filed, or is, at the time of filing, retired from regular gainful employment by reason of ((physical)) disability. A surviving spouse or domestic partner of a person who was receiving an exemption at the time of the person's death will qualify for this exemption if the surviving spouse or domestic partner is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income that is no more than the greater of twenty-two thousand dollars or eighty percent of the median income adjusted for family size as determined by federal Department of Housing and Urban Development (HUD) for the county in which the person resides.

(j) "First assessment year the home becomes operational" or "the assessment year the home first became operational" means the first year the home becomes occupied by and provides services to eligible residents. Depending upon

the facts, this year will be the year during which construction of the home is completed or the year during which a nonprofit organization purchases or acquires an existing home and begins to operate it as a nonprofit home for the aging.

(k) "Homes for the aging" or "home(s)" means a residential housing facility that:

(i) Provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person;

(ii) Has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and

(iii) Provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

(l) "HUD" means the federal Department of Housing and Urban Development.

(m) "Occupied dwelling unit" means a living unit that is occupied either on January 1st of the year in which the claim for exemption is filed or on December 31st of the first assessment year the home becomes operational and in which the claim for exemption is filed.

(n) "Property that is reasonably necessary" means all property that is:

(i) Operated and used by a home; and

(ii) The use of which is restricted to residents, guests, or employees of a home.

(3) **Application for exemption.** The tax exemption authorized by RCW 84.36.041 is claimed by and benefits a nonprofit home for the aging, not the residents of the home. Therefore, the claim for this exemption is submitted by a home to the department.

(a) If a claim for exemption is filed on behalf of a home under RCW 84.36.041 and the exemption is granted, no resident of that home may receive a personal exemption under RCW 84.36.381.

(b) A listing of the varying levels of care and supervision provided or coordinated by the home must accompany all initial applications submitted for exemption. Examples of the varying levels of care and supervision include, but are not limited to, the following:

(i) Conducting routine room checks;

(ii) Arranging for or providing transportation;

(iii) Arranging for or providing meals;

(iv) On-site medical personnel;

(v) Monitoring of medication; or

(vi) Housekeeping services.

(c) Homes having real property that is used for purposes other than as a home (for example, property used for a barber shop) must provide the department with a floor plan identifying the square footage devoted to each exempt and nonexempt use.

(d) At the time an application for exemption is submitted, the home must submit proof that it is recognized by the Internal Revenue Service as a 501(c) organization.

(e) Homes that apply for a total exemption because of tax exempt bond financing must submit a copy of the regulatory agreement between the home and the entity that issues the bonds. When only a portion of the home is financed by a pro-

gram using tax exempt bonds, the home must submit a site plan of the home indicating the areas so financed.

(4) **Segregation.** A nonprofit organization that provides shelter and services to elderly and disabled individuals may use the facility for more than one purpose that is exempt from property tax under chapter 84.36 RCW. Property that is used for more than one exempt purpose and that qualifies for exemption under a statute other than RCW 84.36.041 will be segregated and exempted pursuant to the applicable statute.

(a) If a home includes a nursing home, the department will segregate the home and the part of the facility that is used as a nursing home. The department will separately determine the eligibility of the home under RCW 84.36.041 and the nursing home under RCW 84.36.040 for the property tax exemption available under each statute.

Exception: If the home does not receive medicaid funds (including CCRCs that are permitted to receive medicaid funds during an initial transition period only) and is seeking a total exemption because of tax exempt bond financing, the home and nursing home will be considered as a whole when the set-aside requirements are applied.

(b) Dwelling units that are occupied by residents who do not meet the age or disability requirements of RCW 84.36.041 will be segregated and taxed.

(c) Common or shared areas. Areas of a home that are jointly used for two or more purposes exempt from property tax under chapter 84.36 RCW will be exempted under RCW 84.36.041.

(i) The joint use of the common or shared areas must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property tax under chapter 84.36 RCW. A kitchen, dining room, and laundry room are examples of the types of common or shared areas for which a property tax exemption may be granted.

(ii) Example. A nonprofit organization uses its facility as a home for the aging and a nursing home. The home and nursing home jointly use the kitchen and dining room. The home may receive a property tax exemption for the common or shared areas under RCW 84.36.041. The eligibility of the other areas of the facility will be determined by the appropriate statute. The home's eligibility will be determined by RCW 84.36.041 and the nursing home's eligibility will be determined by RCW 84.36.040.

(5) **Homes subsidized by HUD.** Homes subsidized by a HUD program must initially and each March 31st thereafter provide the department with a letter of certification from HUD of continued HUD subsidy and a list of the name, age, and/or disability of all residents. If the property is subsidized by more than one HUD contract and one of the contracts expires or is otherwise no longer in effect, the eligibility of the portion of the facility still subsidized by HUD will be conditioned on receipt of a letter of certification from HUD and a listing of all persons residing on the property. The eligibility of the remainder of the property will be determined by the number of dwelling units occupied by eligible residents on January 1st following the expiration or cancellation of the HUD subsidy.

(6) **Homes that are not subsidized by HUD.** If a home is not subsidized by HUD or does not meet the requirements to receive a total exemption because of tax exempt bond

financing, it may receive a total or partial exemption from property tax. The extent of the exemption will be determined by the number of dwelling units occupied by eligible residents. If more than fifty percent of the dwelling units are occupied by eligible residents, the home may receive a total exemption. Alternatively, if less than fifty percent of the dwelling units are occupied by eligible residents, the home may receive partial exemption for its real property on a unit by unit basis and a total exemption for its personal property. An income verification form will be used to determine if a resident of a home meets the criteria of "eligible resident." During the initial application process, the residents of a home applying for exemption will be asked to submit an income verification form with the assessor of the county in which the home is located and the assessor and/or the department may request any relevant information deemed necessary to make a determination.

(a) The type of income verification form required and its due date depends upon the date the home first became operational and began to provide services to eligible residents:

(i) If the home was operating and providing services to eligible residents on the January 1st assessment date, the residents are to submit Form REV 64-0043 between January 1st and July 1st of the year preceding the year in which the tax is due; or

(ii) If the home started operating and providing services to eligible residents after the January 1st assessment date, the residents are to submit Form REV 64-0042 on or before December 31st of the year preceding the year in which the tax is due. In this situation, no income verification forms will be required during the following year if the same eligible residents occupy the same dwelling units on December 31st and January 1st of the subsequent year.

(b) If two or more residents occupy one unit, only one cotenant is required to file verification of combined disposable income, as defined in subsection (2) of this section, with the assessor.

(c) Form REV 64-0043 will not be accepted by the assessor if it is submitted or postmarked after July 1st unless the assessor and/or the department has agreed to waive this deadline. Form REV 64-0042 will not be accepted if it is submitted or postmarked after December 31st unless the assessor and/or department agrees to waive this deadline.

(d) After the application for exemption is approved, residents will not be required to file a new income verification form unless a change in their circumstances occurs or the assessor requests it. However, at any time after the initial application is approved, assessors and/or the department may:

- (i) Request residents to complete Form REV 64-0043;
- (ii) Conduct audits; and
- (iii) Request other relevant information to ensure continued eligibility.

(e) By March 31st each year, a home not subsidized by HUD that wishes to retain its exempt property tax status must file with the department a list of the total number of dwelling units in its complex, the number of occupied dwelling units in its complex as of January 1st, the number of previously qualified dwelling units in its complex that are no longer occupied by the same eligible residents, and a list of the name, age,

and/or disability of all residents and the date upon which they moved into or occupied the home. If a home's eligibility was based upon the number of units occupied on December 31st, the home must only provide the department with an amended list of additions or deletions as of the subsequent January 1st assessment date.

(7) **Homes financed by tax exempt bonds.** Homes that receive a total property tax exemption because of tax exempt bond financing must initially and each March 31st thereafter provide the department with a letter of certification from the agency or organization monitoring compliance with the bond requirements. The letter of certification must verify that the home is in full compliance with all requirements and set-asides of the underlying regulatory agreement.

(a) If the set-aside requirements contained in the regulatory agreement differ from the set-aside requirements established by the department and set forth in WAC 458-16A-010, the department may require the residents of the home to submit income verification forms (Form REV 64-0042 or 64-0043) to the assessor of the county in which the home is located.

(b) A home for the aging that is receiving a property tax exemption must annually submit a list of the name, age, and/or disability of all residents in the home to the department.

(8) **Assessor's responsibilities.** Assessors will determine the age or disability and income eligibility of all residents who file Form REV 64-0042 or 64-0043, the income verification forms. By July 15th each year or by January 15th of the assessment year following the first assessment year a home becomes operational, the assessor will forward a copy of Form REV 64-0042 or 64-0043 to the department for each resident who meets the eligibility requirements.

(9) **Appeals.** An applicant who is determined not to be an "eligible resident" by the assessor and a home that is denied a property tax exemption by the department each have the right to appeal. Appeals must be filed within thirty days of the date the notice of ineligibility or denial was mailed by the assessor or the department.

(a) If the assessor determines that an applicant does not meet the definition of an "eligible resident," the resident may appeal this decision to the board of equalization of the county in which the home is located.

(b) If the department denies, in whole or in part, an application for exemption, the home may appeal this denial to the state board of tax appeals.

(10) **Additional requirements.** Any nonprofit home for the aging that applies for a property tax exemption under this section must also comply with the provisions of WAC 458-16A-010 and 458-16-165. WAC 458-16A-010 contains information regarding the basic eligibility requirements to receive a total or partial exemption under RCW 84.36.041. WAC 458-16-165 sets forth additional requirements that must be complied with to obtain a property tax exemption pursuant to RCW 84.36.041.

AMENDATORY SECTION (Amending WSR 13-08-028, filed 3/27/13, effective 4/27/13)

WAC 458-16A-135 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—

Application procedures. (1) **Introduction.** This rule explains when and how a senior citizen, disabled person, or one hundred percent disabled veteran may apply for a property tax exemption on that person's principal residence. RCW 84.36.381 through 84.36.389.

(2) **When to apply for the exemption.** A claimant may first apply for the exemption in the calendar year that he or she meets the age, disability, or disabled veteran requirements for exemption of taxes due in the following year. If the claimant does not apply when he or she meets the age, disability, or disabled veteran requirements, then he or she may apply for the exemption in any subsequent year. The exemption may be claimed on his or her principal residence for previous years by applying with separate applications for each year. However, refunds based upon an exemption made in previous years may be refunded only for up to three years after the taxes were due as provided in chapter 84.69 RCW.

(3) **Application required.** A claimant must submit to the county assessor's office an application for exemption with supporting documents. If the claimant applies for more than one year when the application is first made, an application must be made for each year the claimant seeks the exemption.

(4) **Where to obtain the application form.** A claimant may obtain the application form and the list of required supporting documents from the county assessor's office where his or her principal residence is located.

(5) **How to apply for the exemption.** Applications and supporting documents are filed in person or by mail at the county assessor's office where the principal residence is located.

(a) **The application form.** The county assessor designs the application form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed and used. The claimant must use an application form from the county where the principal residence is located and provide true and accurate information in the application.

(b) **Signatures.** The signature must certify that under penalty of perjury under the laws of Washington the application is true and correct. The application must be signed, dated, and state the place (city, county, or address) where it was signed. The application must be signed by:

- (i) The claimant;
- (ii) The claimant's designated agent;
- (iii) The legal guardian for the claimant (if applicable);

or

(iv) If the property is subject to a deed of trust, mortgage, or purchase contract requiring an accumulation of reserves to pay property taxes, the lien holder; and

(v) If the claimant resides in a cooperative housing unit or portion of a cooperative structure representing the claimant's ownership share in that cooperative, the authorized agent of the cooperative must also sign the application.

(c) **Perjury statement.** The perjury statement certifying under the penalty of perjury that the application is true and correct must be placed upon the application immediately above a line for the signature. Any person signing a false claim with the intent to defraud or evade the payment of any tax is guilty of perjury under chapter 9A.72 RCW. If a person receives an exemption based on erroneous information, the

assessor assesses any unpaid taxes with interest for up to five years. If a person receives an exemption based on erroneous information, and the person either provided that information with the intent to defraud or intentionally failed to correct that information, the assessor assesses any unpaid taxes with interest, for up to five years, with the one hundred percent penalty provided in RCW 84.40.130. RCW 84.36.385(5).

(d) **Cooperative agreement to reduce rent.** A cooperative must also agree, in a statement attached to the application, to reduce amounts owed by the claimant to the cooperative by the amount of the tax exemption. The agreement must also state that when the exemption exceeds the amount owed to the cooperative, the cooperative must pay to the claimant any amount of the tax exemption remaining after this offsetting reduction. RCW 84.36.387(5).

(e) **Supporting documents.** Unless the assessor determines that all or some of the supporting documents are not necessary, a claimant must present the documents listed below with his or her application. Except for affidavits, the assessor's office should not accept original documents from the claimant. If the assessor's office is presented with original documents (other than affidavits), they must make copies or note the information provided in the documents on a separate sheet and return these original documents to the claimant. The claimant submits the following documents with the application:

(i) If the county records do not reflect the claimant as the property owner, copies of any legal instruments demonstrating the claimant's interest held in the property;

(ii) Documents demonstrating that the property is the claimant's principal residence (i.e., copy of a driver's license and voter's registration card);

(iii) Copies of legal identification showing the claimant's age (i.e., copy of a driver's license or birth certificate);

(iv) If the claim is based upon a ((physical)) disability, either:

(A) An affidavit from a licensed physician or certified physician's assistant (medical or osteopath doctor), a licensed or certified psychologist for disabling mental impairments, or a licensed podiatrist for disabling impairments of the foot, that states the claimant is unable to enter into regular gainful employment because of his or her disability and the expected term of the disability; or

(B) Copies of a written acknowledgment or decision by the Social Security Administration or Veterans Administration that the claimant is permanently disabled;

(v) If the claim is based upon the claimant's veteran status, copies of legal documents showing that the claimant is a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs at a total disability rating for a service-connected disability;

(vi) Copies of documents showing income earned or reported by the claimant, the claimant's spouse or domestic partner and any cotenants, even when the income is estimated (income information should be provided to the degree possible and then confirmed with supporting documents in the follow-up period), such proof shall include to the extent it is relevant:

(A) If the claimant, the claimant's spouse or domestic partner, or any cotenants receive Social Security payments, a federal statement showing Social Security paid (generally, Form SSA-1099);

(B) If the claimant, the claimant's spouse or domestic partner, or any cotenants receive railroad retirement benefits, a federal statement showing railroad retirement benefits paid (generally, Forms RRC-1099 and RRC 1099-R);

(C) If the claimant, the claimant's spouse or domestic partner, or any cotenants file federal income tax returns, those returns with supporting forms, schedules, and, if specifically requested, worksheets for the deductions taken from gross income (generally, Form 1040 with its supporting forms and schedules);

(D) If the claimant or the claimant's spouse or domestic partner has been in a nursing home, assisted living facility, or adult family home or has been receiving in-home care, copies of invoices (or an equivalent billing statement or payment statement) for nonreimbursed nursing home and in-home care;

(E) If the claimant indicates that the nonreimbursed prescription drug expenses for the claimant and the claimant's spouse or domestic partner for the period under review exceeds five hundred dollars, copies of checks or other payment statements (i.e., pharmacy printout of payments for purchases) showing amounts paid for nonreimbursed prescription drug expenses;

(F) Copies of documents showing premiums paid if the claimant or the claimant's spouse or domestic partner pays health care insurance premiums for medicare under Title XVIII of the Social Security Act (i.e., 1099, or medicare plan policy declaration);

(G) If no federal returns were filed or received, the claimant must still provide copies of documents to demonstrate his or her income and the income of his or her spouse or domestic partner and any cotenants (i.e., federal income statements such as Form W-2 (wages), Form 1099-INT (interest), Form 1099-DIV (dividends), Form 1099-R (pension amounts), Form 1099-G (unemployment), or Form 1099-Misc. (contract income)). Even claimants who claim they have no federal income (or an inordinately small amount of federal income) must have income to maintain themselves and their residences. In these situations, the claimant must produce copies of documents demonstrating the source of the funds they are living on (i.e., checking account registers and bank statements) and the bills for maintaining the claimant and the residence (i.e., public assistance check stubs, utility invoices, cable TV invoices, check registers, bank statements, etc.); and

(vii) Any other copies of documents the assessor requires in his or her discretion for the claimant to produce in order to demonstrate the claimant qualifies for the exemption.

(f) Public disclosure of the application. The application form may not be disclosed. A copy of the application may be disclosed only if all income information on the form is obliterated so that it cannot be read. Except as required by law, no public disclosure may be made of the checklist of supporting documents or any supporting documents retained that concern the income of the claimant, the claimant's spouse or domestic partner, or any cotenant.

WSR 15-22-099
PERMANENT RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)

[Admin # 2015-01 Rev 1—Filed November 4, 2015, 8:16 a.m., effective
January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: Amends existing rules in Title 182 WAC specific to the public employees benefits board (PEBB) program with the following effect:

1. Implement PEBB policy resolution to amend wellness incentive program requirements and TRICARE retiree waiver requirements.

2. Makes technical amendments to:

- Clarify that blind vendors have a sixty day notification requirement after a loss of group health or health insurance under HIPAA.
- Clarify what "employer-based group medical insurance," "pay status," and "employee" means.
- Clarify that new employees must either "enroll or waive" coverage within thirty-one days of eligibility.
- Clarify within WAC 182-12-205 what conditions a retiring employee must meet in order to defer coverage, the timeline to defer retiree health plan coverage for both new and existing retirees, and when coverage ends for retiring employees who are deferring coverage.
- Amend the definition of "PEBB program" to remove the reference to "disabled employees."
- Amending WAC 182-12-171 to account for retiring employee issues.
- Clarify within WAC 182-12-123 the notification process between employers who employ the same employee and need to change who is paying the employer contribution.
- Clarify within WAC 182-08-235 that the employer group actuarial evaluation will be conducted by a PEBB program designated actuary.
- Clarify within WAC 182-16-073 what the PEBB program's rescheduling and continuance processes are.
- Amend WAC 182-08-245 (1)(e) to replace the words "health plans" with "insurance coverages."
- Amend WAC 182-08-240 to include a time frame, for all group sizes, on how long an employer group evaluation is valid and that like populations will be evaluated against each other during the application process.
- Amend WAC 182-08-185 to account for surcharge changes and issues.
- Amend WAC 182-12-260(3) so it says that coverage for children ends on the last day of the month in which they turn twenty-six years old.
- Amend WAC 182-08-187 to account for additional error correction issues that have been identified.
- Amend WAC 182-12-211 to include the ability to "defer" and that the references to WAC 182-12-171 are correct.
- Clarify within WAC 182-12-262 (2)(c) when coverage ends for dependents.
- Amend WAC 182-12-133 and 182-12-146 to include deadlines for COBRA/LWOP continuation coverage that mirror those requirements for COBRA.

- Amend WAC 182-12-200 to integrate provisions of Policy 21-1 that deal with retiree deferral form exemptions.
- Amend WAC 182-16-036(1) so that it also includes eligibility for benefits and add the process flow for FSA appeals.
- Amend WAC 182-16-040 to determine what must be included versus what may be included in a notice of appeal.
- Amend WAC 182-12-260 to state the PEBB program requires dependent verification documents.
- Amend WAC 182-12-263 to remove "court orders."
- Amend WAC 182-08-199 (3)(c)(vi) to update the IRS references.
- Amend WAC 182-12-123 to clarify that eligibility as an employee supersedes eligibility as a dependent in most situations.
- Amend WAC 182-16-080 to correct reference links.

3. In addition to these specific changes, HCA conducted a full review of these chapters and made some changes for readability.

Citation of Existing Rules Affected by this Order: Amending chapters 182-08, 182-12, and 182-16 WAC.

Statutory Authority for Adoption: RCW 41.05.160.

Other Authority: SB 5466 and PEBB policy resolutions.

Adopted under notice filed as WSR 15-19-119 on September 21, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 5, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

Number of Sections Adopted at 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 33, 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 33, Repealed 0.

Date Adopted: November 4, 2015.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time when subscribers may make

changes to their health plan enrollment and salary reduction elections for the following plan year. Subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in or waive enrollment in ((a)) PEBB medical ((plan)), or employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan.

"Authority" or "HCA" means the health care authority.

~~("Benefits eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).)~~

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Continuation coverage" means the temporary continuation of PEBB health plan coverage available to enrollees after a qualifying event occurs as administered under Title XXII of the Public Health Service (PHS) Act, 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB health plan by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, e-mails, electronic files, or other printed or written items.

~~("Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.)~~

"Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations

representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

"Employer-based group medical insurance" means group medical insurance coverage related to a current employment relationship. It does not include medical insurance coverage available to retired employees, individual market medical insurance coverage or government-sponsored programs such as medicare or medicaid.

"Employer group" means those ((employee organizations representing state civil service employees,)) counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, ((charter schools, and)) educational service districts ((participating in PEBB insurance coverage under contractual agreement)), and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work

hours but whose appointment, workload, and duties directly serve the institution's academic mission; as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

~~("Federal retiree plan" means the Federal Employees' Health Benefits Program (FEHB) and TriCare.)~~

"Health plan" means a plan offering medical or dental, or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability (LTD) insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

~~("LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.)~~

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Mail" or "mailing" means placing a document in the United States Postal system, commercial delivery service, or Washington state consolidated mail services properly addressed.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA ~~((which))~~ that administers insurance and other benefits for eligible employees (as ~~((defined))~~ described in WAC 182-12-114), eligible retired ~~((and disabled))~~ employees (as ~~((defined))~~ described in WAC 182-12-171), eligible dependents (as ~~((defined))~~ described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group

health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or registered domestic partner choosing not to enroll in his or her employer-based group medical insurance when:

- Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and
- The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"School district" means public schools as defined in RCW 28A.150.010 which includes charter schools established under chapter 28A.710 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. Subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in ~~((a))~~ PEBB medical ~~((plan))~~, and may enroll in or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary, or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

~~("Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.)~~

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, chewing tobacco, snuff, and other tobacco products. It does not include United States Food and Drug Administration (FDA) approved quit aids or e-cigarettes until their tobacco related status is determined by the FDA.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other employer-based group medical insurance, TRICARE, or medicare as allowed under WAC 182-12-128, or is on approved educational leave and obtains other employer-based group health insurance as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-08-185 What are the requirements regarding premium surcharges? (1) A subscriber's account will incur a premium surcharge when any enrollee, thirteen years and older, engages in tobacco use.

(a) A subscriber must attest to whether any enrollee ~~((on))~~, thirteen years and older, enrolled in his or her public employees benefits board (PEBB) medical ~~((plan))~~ engages in tobacco use. The subscriber must attest ~~((during the following times))~~ as described in (a)(i) through (vii) of this subsection:

(i) ~~((When))~~ An employee who is newly eligible or regains eligibility for the employer contribution toward PEBB benefits ((submits an enrollment)) must complete the required form to ((add)) enroll in PEBB medical as described in WAC 182-08-197 (1) or (3). The employee must include his or her attestation on that form. The employee must submit the attestation to his or her employing agency. If the employee's attestation results in a premium surcharge, it will take effect the same ((time)) date as PEBB medical begins(;;).

(ii) ~~((When))~~ If there is a change in the tobacco use status of any enrollee, thirteen years and older on the subscriber's PEBB medical ((plan. If the change in status results in a surcharge being added or removed, the change to the surcharge will take effect the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day;)), the subscriber must update his or her attestation on the required form. An employee must submit the updated attestation to his or her employing agency. Any other subscriber must submit his or her updated attestation to the PEBB program.

- A change that results in a premium surcharge will begin the first day of the month following the status change. If that day is the first of the month, the change to the surcharge begins on that day.

- A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day.

(iii) ~~((When))~~ If a subscriber submits ((an enrollment)) the required form to ((add)) enroll a dependent ((to his or

her)), thirteen years and older, in PEBB medical as described in WAC 182-12-262((-If enrolling the dependent)), the subscriber must update his or her attestation on the required form. An employee must submit the updated attestation to his or her employing agency. Any other subscriber must submit his or her updated attestation to the PEBB program. A change that results in a premium surcharge ((being added, it)) will take effect the same ((time)) date as PEBB medical begins(;;).

(iv) ~~((When))~~ An enrollee, thirteen years and older, who elects to continue ((health plan)) medical coverage as described in WAC 182-12-146((-If the attestation results in a surcharge it)), must provide an attestation on the required form if he or she has not previously attested as described in (a) of this subsection. The enrollee must submit his or her updated attestation to the PEBB program. An attestation that results in a premium surcharge will take effect the same ((time)) date as PEBB medical begins. ((This action is required only if the enrollee has not previously attested as described in (a) of this subsection;))

(v) ~~((When))~~ An employee or retiree ((submits an enrollment form to)) who enrolls in PEBB medical as described in WAC 182-12-171 (1)(a), 182-12-200 ((2)) (3)(a) and (b), or 182-12-205 ((4)) (6)(a), (b), (c), (d), and ((4. If the)) (e), must provide an attestation on the required form if he or she has not previously attested as described in (a) of this subsection. The employee or retiree must submit his or her updated attestation to the PEBB program. An attestation that results in a premium surcharge ((it)) will take effect the same ((time)) date as PEBB medical begins. ((This action is required only if the retiree has not previously attested as described in (a) of this subsection; and))

(vi) ~~((When a survivor))~~ A surviving spouse, registered domestic partner, or dependent child ((submits an enrollment form to enroll)), thirteen years and older, who enrolls in PEBB medical as described in WAC 182-12-250(5) or 182-12-265((-If the)), must provide an attestation on the required form to the PEBB program if he or she has not previously attested as described in (a) of this subsection. An attestation that results in a premium surcharge ((it)) will take effect the same ((time)) date as PEBB medical begins. ((This action is required only if the survivor has not previously attested as described in (a) of this subsection;))

(vii) An employee who previously waived PEBB medical must complete the required form to enroll in PEBB medical as described in WAC 182-12-128(3). The employee must include his or her attestation on that form. An employee must submit the attestation to his or her employing agency. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

Exception:

- (1) A subscriber enrolled in both medicare parts A and B and in the medicare risk pool is not required to provide an attestation and no premium surcharge will be imposed on the subscriber's account.
- (2) An employee who waives PEBB medical ((enrollment)) according to WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to his or her account ((until the employee enrolls in a PEBB medical plan)) as long as the employee enrollment remains in waived status.

(b) A subscriber's account will incur a premium surcharge when a subscriber fails to attest to the tobacco use status of all enrollees as described in subsection (1)(a) of this section.

(c) The PEBB program will provide a reasonable alternative for enrollees who use tobacco products ~~((se-a))~~. A subscriber can avoid the tobacco use premium surcharge if the subscriber attests on the required form that all enrollees who use tobacco products enrolled in or accessed the applicable reasonable alternative offered below:

(i) ~~((All enrollees have))~~ An enrollee who is eighteen years and older and uses tobacco products has access to a free tobacco cessation program through ~~((their))~~ his or her PEBB medical ~~((plan. A subscriber can avoid the surcharge if enrollees who use tobacco products are enrolled in their plan's tobacco cessation program))~~.

(ii) An enrollee who is thirteen through seventeen years old and uses tobacco products may access the information and resources aimed at teens on the Washington state department of health's web site at <http://teen.smokefree.gov>.

(iii) A subscriber may contact the PEBB program to accommodate a physician's recommendation that addresses an enrollee's use of tobacco products or for information on how to avoid the tobacco use premium surcharge.

(2) A ~~((subscriber's account))~~ subscriber will incur a premium surcharge if an enrolled spouse or registered domestic partner ~~((whose))~~ elected not to enroll in employer-based group medical insurance that has premiums less than ninety-five percent of the Uniform Medical Plan (UMP) Classic's premiums and benefits with an actuarial value of at least ninety-five percent of the actuarial value of the UMP Classic's benefits.

(a) A subscriber ~~((with))~~ who enrolled a spouse or registered domestic partner ~~((enrolled))~~ under his or her PEBB medical ~~((must))~~ may only attest during the following times:

(i) ~~((an employee who is newly eligible or regains eligibility for the employer contribution toward PEBB benefits submits an enrollment form to add PEBB medical as described in WAC 182-08-197 (1) or (3).))~~ a subscriber becomes eligible to enroll a spouse or registered domestic partner in PEBB medical as described in WAC 182-12-262 (1)(a). A subscriber must complete the required form to enroll his or her spouse or registered domestic partner. The subscriber must include his or her attestation on that form. The employee must submit the attestation to his or her employing agency. Any other subscriber must submit an attestation to the PEBB program. If the subscriber's attestation results in a premium surcharge it will take effect the same ~~((time))~~ date as PEBB medical begins;

(ii) When a special open enrollment (SOE) event occurs as described in WAC 182-12-262 (1)(c). A subscriber must submit ~~((s an enrollment))~~ the required form to ~~((add))~~ enroll a spouse or registered domestic partner ~~((to his or her))~~ in PEBB medical ~~((as described in WAC 182-12-262. If enrolling the spouse or registered domestic partner))~~. The subscriber must include his or her updated attestation on that form. An employee must submit an updated attestation to his or her employing agency. Any other subscriber must submit an updated attestation to the PEBB program. If the subscriber's attestation results in a premium surcharge ~~((being~~

~~added, the surcharge))~~ it will take effect the first day of the month following receipt of the attestation. If that day is the first day of the month, the change to the surcharge begins on that day;

(iii) During the annual open enrollment. ~~((If attesting))~~ A subscriber must attest if during the month prior to the annual open enrollment the subscriber was:

- Incurring the surcharge;

- Not incurring the surcharge because the spouse's or registered domestic partner's share of the medical premium through his or her employer-based group medical insurance was more than ninety-five percent of the UMP Classic's premiums; or

- Not incurring the surcharge because the actuarial value of benefits provided through the spouse's or registered domestic partner's employer-based group medical insurance was less than ninety-five percent of the UMP Classic's actuarial value.

A subscriber must update his or her attestation on the required form. An employee must submit an updated attestation to his or her employing agency. Any other subscriber must submit an updated attestation to the PEBB program. The subscriber's attestation or any correction to a subscriber's attestation must be received no later than December 31st of the year in which the annual open enrollment occurs. If the subscriber's attestation results in a premium surcharge, being added or removed, the change to the surcharge ~~((begins))~~ will take effect January 1st of the following year; and

(iv) When there is a change in the spouse's or registered domestic partner's employer-based group medical insurance. ~~((If attesting results in a surcharge being added or removed, the change to the surcharge will take effect the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day.))~~ An employee must submit an updated attestation to his or her employing agency within sixty days of when the spouse's or registered domestic partner's employer-based group medical insurance status changes. Any other subscriber must submit an updated attestation to the PEBB program no later than sixty days after the spouse's or registered domestic partner's employer-based group medical insurance changes.

- A change that results in a premium surcharge will begin the first day of the month following the status change. If that day is the first day of the month, the change to the premium surcharge begins on that day.

- A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first day of the month, the change to the premium surcharge begins on that day.

Exception:

(1) A subscriber enrolled in both Medicare parts A and B and in the Medicare risk pool is not required to provide an attestation and no premium surcharge will be imposed on the subscriber's account.

(2) An employee who waives PEBB medical ~~((enrollment))~~ according to WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to his or her account ~~((until the employee enrolls in a PEBB medical plan))~~ as long as the employee remains in waived status.

(3) An employee who covers his or her spouse or registered domestic partner who has waived his or her own PEBB medical must attest, but a premium surcharge will not be applied.

(4) A subscriber who covers his or her spouse or registered domestic partner who elected not to enroll in TRICARE must attest, but a premium surcharge will not be applied.

(b) A premium surcharge will be applied to ~~((the account of))~~ a subscriber~~((s))~~ who ~~((do))~~ does not attest as described in (a) of this subsection.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-08-187 How do employing agencies correct enrollment errors and is there a limit on retroactive enrollment? ~~((H))~~ An employing agency that fails to timely enroll an employee, or his or her dependent, in public employees benefits board (PEBB) benefits must correct the error as described in this section. An agency must correct a failure to notify an employee timely of his or her eligibility for ((public employees benefits board (-))PEBB((s))) benefits and the employer contribution ((as required in WAC 182-12-113 or the employer group contract, or fails)); or a failure to accurately enroll insurance coverage((- the agency is authorized and required to correct the error as described in this section)); or a failure to accurately enroll insurance coverage as required by WAC 182-08-197 (1)(b); or a failure to accurately reflect premium surcharge status.

The employing agency or the PEBB program's designee must enroll the employee and the employee's dependent, as elected, in PEBB benefits as described in subsection (1) of this section, reconcile premium payments and premium surcharges as described in subsection (2) of this section, and provide recourse as described in subsection (3) of this section.

Note: If the employing agency failed to provide the notice required in WAC 182-12-113 or the employer group contract before the end of the employee's thirty-one day enrollment period described in WAC 182-08-197 (1)(a), the employing agency must provide the employee a written notice of eligibility for PEBB benefits and offer a new enrollment period. Employees who do not return the required enrollment forms default to enrollment according to WAC 182-08-197 (1)(b).

(1) Enrollment.

(a) PEBB medical and dental enrollment is effective the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (3) of this section. If the enrollment error is identified on the first day of the month, the enrollment correction is effective that day;

(b) Basic life and basic long-term disability (LTD) insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible, or the first day of the month the employee regained eligibility, as described in WAC 182-08-197. If the employee became newly eligible on the first working day of a month, basic life and basic LTD insurance coverage begins on that date;

(c) Optional life and optional LTD insurance is retroactive to the first day of the month following the day the

employee became newly eligible if the employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date of the employee's application for this coverage). If an employing agency enrollment error occurred when the employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-08-197(3):

(i) Optional insurance coverage is enrolled the first day of the month the employee regained eligibility, at the same level of coverage the employee continued during the period of leave, without evidence of insurability.

(ii) If the employee was not eligible to continue optional LTD insurance coverage during the period of leave, optional LTD insurance coverage is reinstated the first day of the month the employee regained eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(iii) If the employee was eligible to continue optional insurance coverage under the period of leave but did not, the employee must provide evidence of insurability and receive approval from the contracted vendor.

(d) If the employee is eligible and elects (or elected) to enroll in the medical flexible spending ~~((account))~~ arrangement (FSA) or dependent care assistance program (DCAP), enrollment is limited to three months prior to the date enrollment is processed, but not earlier than the current plan year. If an employee was not enrolled in an FSA or DCAP as elected, the employee may adjust his or her election. The employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect.

(2) Premium payments.

(a) The employing agency must remit to the authority the employer contribution and the employee contribution for health plan premiums, premium surcharges, basic life, and basic LTD from the date insurance coverage begins as described in subsections (1) and (3)(a)(i) of this section. If a state agency failed to notify a newly eligible employee of his or her eligibility for PEBB benefits, the state agency may only collect the employee contribution for health plan premiums and premium surcharges for coverage for months following notification of a new enrollment period.

(b) When an employing agency fails to correctly enroll the amount of optional life insurance or optional LTD insurance coverage elected by the employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the employee is responsible for premiums for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premiums.

(ii) When premium refunds are due to the employee, the optional life insurance or optional LTD insurance vendor is responsible for premium refunds for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premium refunds.

(3) Recourse.

(a) Employee eligibility for PEBB benefits begins on the first day of the month following the date eligibility is estab-

lished as described in WAC 182-12-114. Dependent eligibility is described in WAC 182-12-260, and dependent enrollment is described in WAC 182-12-262. When retroactive correction of an enrollment error is limited as described in subsection (1) of this section, the employing agency must work with the employee, and the authority, to implement retroactive insurance coverage within the following parameters:

- (i) Retroactive enrollment in a PEBB health plan;
 - (ii) Reimbursement of claims paid;
 - (iii) Reimbursement of amounts paid for medical and dental premiums; or
 - (iv) Other recourse, upon approval by the authority.
- (b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for non-covered services or in the case of an individual who is not eligible for PEBB benefits.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-08-190 The employer contribution is set by the health care authority (HCA) and paid to the HCA for all eligible employees. State agencies and employer groups that participate in the public employees benefits board (PEBB) program under contract with the health care authority (HCA) must pay premium contributions to the HCA for insurance coverage for all eligible employees and their dependents.

(1) Employer contributions for state agencies set by the HCA are subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer insurance coverage for employees of these groups.

(3) Each employee of a state agency eligible under WAC 182-12-131 or each eligible employee of a state agency on leave under the federal Family and Medical Leave Act (FMLA) is eligible for the employer contribution as described in WAC 182-12-138. The entire employer contribution is due and payable to HCA even if PEBB medical is waived as described in WAC 182-12-128.

(4) Employees of employer groups eligible under criteria stipulated under contract with the HCA are eligible for the employer contribution. The entire employer contribution is due and payable to the HCA even if PEBB medical is waived as described in WAC 182-12-128.

(5) Washington state patrol officers disabled while performing their duties as determined by the chief of the Washington state patrol are eligible for the employer contribution for PEBB medical (~~(insurance)~~) as authorized in RCW 43.43.040. No other retiree or disabled employee is eligible for the employer contribution for PEBB benefits unless they are an eligible employee as (~~(defined)~~) described in WAC 182-12-114 or 182-12-131.

(6) The terms of payment to HCA for employer groups shall be stipulated under contract with the HCA.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-08-197 When must a newly eligible employee, or an employee who regains eligibility for the employer contribution, select public employees benefits board (PEBB) benefits and complete (~~(enrollment)~~) required forms? An employee who is newly eligible or who regains eligibility for the employer contribution toward public employees benefits board (PEBB) benefits enrolls as described in this section.

(1) When an employee is newly eligible for PEBB benefits:

(a) An employee must complete the required forms indicating his or her enrollment elections (~~(and return the forms to his or her)~~), including an election to waive PEBB medical if the employee chooses to waive PEBB medical as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency. Forms must be received by (~~(the)~~) his or her employing agency no later than thirty-one days (sixty days for life insurance) after the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) An employee may enroll in optional life and optional long-term disability (LTD) insurance up to the guaranteed issue without evidence of insurability if (~~(enrollment)~~) the required forms are returned to the employee's employing agency as required. An employee may apply for enrollment in optional life and LTD insurance coverage over the guaranteed issue at any time during the calendar year by submitting the (~~(evidence of insurability)~~) required form to the vendor for approval.

(ii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee will automatically enroll in the premium payment plan upon enrollment in PEBB medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, a new employee must complete the required form and return it to his or her state agency. The form must be received by his or her state agency no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(iii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must return the required (~~(enrollment)~~) form to his or her state agency or the PEBB program's designee. The form must be received by the state agency or the PEBB program's designee no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(b) If a newly eligible employee's employing agency does not receive the employee's required forms indicating medical, dental, and LTD (~~(choice)~~) elections and the employee's tobacco use status attestation within thirty-one days and life insurance (~~(choice)~~) elections within sixty days of the employee becoming eligible, his or her (~~(coverage)~~) enrollment will be (~~(enrolled)~~) as follows:

(i) (~~(Medical enrollment will be)~~) Uniform Medical Plan Classic;

(ii) (~~(Dental enrollment will be)~~) Uniform Dental Plan;

- (iii) Basic life insurance;
- (iv) Basic long-term disability insurance; ~~((and))~~
- (v) Dependents will not be enrolled; and
- (vi) A tobacco use surcharge will be incurred as described in WAC 182-08-185 (1)(b).

(2) The employer contribution toward insurance coverage ends according to WAC 182-12-131. When an employee's employment ends, participation in the state's salary reduction plan ends.

(3) When an employee loses and later regains eligibility for the employer contribution toward insurance coverage following a period of leave described in WAC 182-12-133(1) and 182-12-142 (1) and (2):

(a) The employee must complete ~~((and return))~~ the required forms indicating his or her enrollment elections ~~((to his or her))~~, including an election to waive PEBB medical if the employee chooses to waive PEBB medical as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency except as described in (d) of this subsection. Forms must be received by the employing agency no later than thirty-one days after the employee regains eligibility, except as described in subsection (3)(b) of this section:

(i) An employee who self-paid for optional life insurance coverage after losing eligibility will have that level of coverage reinstated without evidence of insurability;

(ii) An employee who was eligible to continue optional life under continuation coverage but discontinued that insurance coverage must submit evidence of insurability;

(iii) An employee who was eligible to continue optional LTD under continuation coverage but discontinued that insurance coverage must submit evidence of insurability for optional LTD insurance when he or she regains eligibility for the employer contribution.

(b) An employee in any of the following circumstances does not have to return ~~((and))~~ a form indicating optional LTD insurance elections ~~((form))~~. His or her optional LTD insurance will be automatically reinstated:

(i) The employee continued to self-pay for his or her optional LTD insurance after losing eligibility for the employer contribution;

(ii) The employee was not eligible to continue optional LTD insurance after losing eligibility for the employer contribution.

~~((Exception: An employee's insurance coverage elections remain the same when an employee transfers from one employing agency to another employing agency without a break in PEBB coverage. This includes movement of employees between any entities described in WAC 182-12-111 and participating in PEBB benefits. Insurance coverage elections also remain the same when employees have a break in employment that does not interrupt his or her employer contribution toward PEBB insurance coverage.))~~

(c) If an employee's employing agency does not receive the required forms within thirty-one days of the employee regaining eligibility, medical, dental, life, tobacco use surcharge, and LTD enrollment will be as described in subsection (1)(b) of this section, except as described in (b) of this subsection.

(d) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee may enroll in the state's medical FSA or DCAP or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must return the required ~~((enrollment))~~ form to his or her state agency or the PEBB program's designee. The form must be received by the employee's state agency or the PEBB program's designee no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(4) If an employee who is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is less than thirty days and the employee notifies the new state agency and the DCAP or FSA administrator of his or her employment transfer within the current plan year.

(5) An employee's insurance coverage elections remain the same when an employee transfers from one employing agency to another employing agency without a break in PEBB coverage. This includes movement of an employee between any entities described in WAC 182-12-111 and participating in PEBB benefits. Insurance coverage elections also remain the same when an employee has a break in employment that does not interrupt his or her employer contribution toward insurance coverage.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-08-199 **When may an employee enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP)?** An employee who is eligible to participate in the state's salary reduction plan as described in WAC 182-12-116 may enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-12-114, as described in WAC 182-08-197(1).

(2) **During annual open enrollment:** An eligible employee may enroll in or change his or her election under the state's premium payment plan, medical FSA or DCAP during the annual open enrollment. For the state's premium payment plan, the required ~~((enrollment))~~ form must be submitted to his or her employing agency. To enroll or reenroll in medical FSA or DCAP the employee must submit the required ~~((enrollment))~~ form to his or her employing agency or the public employees benefits board (PEBB) program's designee. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election will be effective January 1st of the following year.

(3) **During a special open enrollment:** An employee may enroll or change his or her election under the state's premium payment plan, medical FSA or DCAP outside of the

annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the required ((enrollment)) forms as instructed on the forms. The required ((enrollment)) forms must be received no later than sixty days after the event occurs. The employee must provide evidence of the event that created the special open enrollment.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the employee for tax purposes under IRC Section 152 without regard to the income limitations of that section. It does not include a registered domestic partner unless the domestic partner otherwise qualifies as a dependent for tax purposes under IRC Section 152.

(a) **Premium payment plan.** An employee may enroll or change his or her election under the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in election will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership when the dependent is a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;
- A child becoming eligible as an extended dependent through legal custody or legal guardianship; or
- A child becoming eligible as a dependent with a disability((=)).

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

- Employee has a change in marital status;
- Employee's domestic partnership with a registered domestic partner who is a tax dependent is dissolved or terminated;
- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for their employer contribution toward employer-based group health insurance;

(v) Employee or an employee's dependent has a change in enrollment under another employer-based group health insurance plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(vi) Employee or an employee's dependent has a change in residence that affects health plan availability;

(vii) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(viii) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(ix) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(x) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP);

(xi) Employee or an employee's dependent becomes entitled to coverage under medicare, or the employee or an employee's dependent loses eligibility for coverage under medicare, or enrolls in or (~~enrolls~~) terminates enrollment in a medicare Part D plan;

(xii) Employee or an employee's dependent's current health plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) may require evidence that the employee or employee's dependent is no longer eligible for an HSA;

(xiii) Employee or an employee's dependent experiences a disruption of care that could function as a reduction in benefits for the employee or the employee's dependent for a specific condition or ongoing course of treatment. The employee may not change their health plan election if the employee's or dependent's physician stops participation with the employee's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

- Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable;
- or

- Transplant within the last twelve months; or
- Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or
- Recent major surgery still within the postoperative period of up to eight weeks; or
- Third trimester of pregnancy.

(xiv) Employee or employee's dependent becomes eligible and enrolls in TRICARE, or loses eligibility for TRICARE.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it

would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) **Medical flexible spending (~~(account)~~) arrangement (FSA).** An employee may enroll or change his or her election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in election will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;
 - A child becoming eligible as an extended dependent through legal custody or legal guardianship; or
 - A child becoming eligible as a dependent with a disability.

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

- Employee has a change in marital status;
- Employee's domestic partnership with a registered domestic partner who qualifies as a tax dependent is dissolved or terminated;
 - An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
 - An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
 - An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the FSA;

(v) A court order or national medical support notice requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(vi) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) Employee or an employee's dependent becomes entitled to coverage under medicare.

(c) **Dependent care assistance program (DCAP).** An employee may enroll or change his or her election under the DCAP when any one of the following special open enroll-

ment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in election will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;
 - A child becoming eligible as an extended dependent through legal custody or legal guardianship; or
 - A child becoming eligible as a dependent with a disability.

(ii) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for DCAP;

(iii) Employee or an employee's dependent has a change in enrollment under another employer-based group health insurance plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(iv) Employee changes dependent care provider; the change to DCAP can reflect the cost of the new provider;

(v) Employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1);

(vi) Employee's dependent care provider imposes a change in the cost of dependent care; employee may make a change in the DCAP to reflect the new cost if the dependent care provider is not a qualifying relative of the employee as defined in Internal Revenue Code Section 152 (~~((d)(1) through (5), incorporating the rules of Section 152 (b)(1) through (3) of the IRC))~~).

AMENDATORY SECTION (Amending WSR 07-20-129, filed 10/3/07, effective 11/3/07)

WAC 182-08-220 Advertising or promotion of public employees benefits board (PEBB) benefit plans. (1) In order to assure equal and unbiased representation of public employees benefits board (PEBB) benefits, contracted vendors must comply with all of the following:

(a) All materials describing PEBB benefits must be prepared by or approved by the health care authority (HCA) before use.

(b) Distribution or mailing of all benefit descriptions must be performed by or under the direction of the HCA.

(c) All media announcements or advertising by a contracted vendor which include any mention of the "public employees benefits board," "PEBB," "health care authority," (~~(or)~~) "HCA," any reference to benefits for "state employees," or "retirees," or any group of employees covered by

PEBB benefits, must receive the advance written approval of the HCA.

(2) Failure to comply with any or all of these requirements by a PEBB contracted vendor or subcontractor may result in contract termination by the HCA, refusal to continue or renew a contract with the noncomplying party, or both.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-08-235 Employer group application process. This section applies to employer groups as defined in WAC 182-08-015. An employer group may apply to obtain insurance coverage through a contract with the health care authority (HCA). With the exception of school districts and educational service districts, the authority will approve or deny applications through the evaluation criteria described in WAC 182-08-240. To apply, employer groups must submit the documents and information described in this rule to the public employees benefits board (PEBB) program at least sixty days before the requested coverage effective date. School districts and educational service districts are only required to provide the documents described in subsections (1), (2), and (3) of this section. If school districts or educational service districts are required by the superintendent of public instruction to purchase insurance coverage provided by the authority, they are required to submit documents and information described in subsections (1)(c), (2), and (3) of this section.

(1) A letter of application that includes the information described in (a) through (d) of this subsection:

(a) A reference to the employer group's authorizing statute;

(b) A description of the organizational structure of the employer group and a description of the employee bargaining (~~unit(s)~~) unit or group of nonrepresented employees for which the employer group is applying;

(c) Employer tax ID number (TIN); and

(d) A statement of whether the employer group is requesting only medical or medical, dental, life, and long-term disability (LTD) insurance. School districts and educational service districts must purchase medical, dental, life, and LTD insurance.

(2) A resolution from the employer group's governing body authorizing the purchase of PEBB insurance coverage.

(3) A signed governmental function attestation document that attests to the fact that employees for whom the employer group is applying are governmental employees whose services are substantially all in the performance of essential governmental functions.

(4) A member level census file for all of the employees for whom the employer group is applying. The file must be provided in the format required by the authority and contain the following demographic data, by member, with each member classified as employee, spouse or registered domestic partner, or child:

(a) Employee ID (any identifier which uniquely identifies the employee; for dependents the employee's unique identifier must be used);

(b) Age;

(c) Gender;

(d) First three digits of the member's zip code based on residence;

(e) Indicator of whether the employee is active or retired, if the employer group is requesting to include retirees; and

(f) Indicator of whether the member is enrolled in coverage.

(5) If the application is for a subset of the employer group's employees (e.g., bargaining unit), the employer group must provide a member level census file of all employees eligible under their current health plan who are not included on the member level census file in subsection (4) of this section. This includes retired employees participating under the employer group's current health plan. The file must include the same demographic data by member.

(6) In addition to the requirements of subsections (1) through (5) of this section, additional information is required based upon the total number of employees that the employer group employs who are eligible under their current health plan:

(a) Employer groups with fewer than eleven eligible employees must provide proof of current coverage or proof of prior coverage within the last twelve months.

(b) Employer groups with three hundred one to two thousand five hundred eligible employees must provide the following:

(i) Large claims history for twenty-four months, by quarter that excludes the most recent three months; and

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history.

(c) Employer groups with greater than two thousand five hundred eligible employees must submit to an actuarial evaluation of the group by an actuary designated by the PEBB program. The employer group must pay for the cost of the evaluation. This cost is nonrefundable. An employer group that is approved will not have to pay for an additional actuarial evaluation if it applies to add another bargaining unit within two years of the evaluation. Employer groups of this size must provide the following:

(i) Large claims history for twenty-four months, by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Executive summary of benefits;

(iv) Summary of benefits and certificate of coverage; and

(v) Summary of historical plan costs.

(d) The following definitions apply for purposes of this section:

(i) "Large claim" is defined as a member that received more than twenty-five thousand dollars in allowed cost for services in a quarter; and

(ii) An "ongoing large claim" is a claim where the patient is expected to need ongoing case management into the next quarter for which the expected allowed cost is greater than twenty-five thousand dollars in the quarter.

(e) If the current health plan does not have a case management program then the primary diagnosis code designated by the authority must be reported for each large claimant and if the code indicates a condition which is expected to con-

tinue into the next quarter, the claim is counted as an ongoing large claim.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-08-240 How will the health care authority (HCA) decide to approve or deny an employer group application? Employer group applications for participation in insurance coverage provided through the public employees benefits board (PEBB) program are approved or denied by the health care authority (HCA) based upon the information and documents submitted by the employer group and the employer group evaluation (EGE) criteria described in this rule. The authority may automatically deny an employer group application if the employer group fails to provide the required information and documents described in WAC 182-08-235.

(1) Employer groups are evaluated as a single unit. To support this requirement the employer group must provide a census (~~data~~) file, as described in WAC 182-08-235 (1) through (5), and additional information as described in WAC 182-08-235(6) for all employees eligible to participate under the employer group's current health plan. ((This includes retired employees participating under the employer group's current health plan.)) If the employer group's application is for both employees and retirees, the census file data and additional information for retired employees participating under the employer group's current health plan must also be included.

(a) If the employer group's application is only for participation of its employees, the PEBB enrollment data used to evaluate the employer group will be state agency employee data.

(b) If an employer group's application is for participation of both its employees and retirees, the PEBB enrollment data used to evaluate the employer group will include data from the PEBB nonmedicare risk pool which includes retiree enrollment data and state agency employee data.

(2) An employer group must pass the EGE criteria or the actuarial evaluation required in subsection (3) of this section as a single unit before the application can be approved. For purposes of this section a single unit includes all employees eligible under the employer group's current health plan. If the application is only for a bargaining unit, then the bargaining unit must be evaluated using the EGE criteria in addition to all eligible employees of employer group as a single unit. If the employer group passes the EGE criteria as a single unit, but an individual bargaining unit does not, the employer group may only participate if all eligible employees of the entity participate.

(3) The authority will determine which of the criteria in (a) through (d) of this subsection is used to evaluate the employer group based upon the total number of eligible employees in the single unit.

(a) **Micro groups** (a single unit of one to ten employees) must meet the following criteria in order to pass the EGE evaluation:

(i) Provide proof of current coverage or proof of prior coverage within the last twelve months; and

(ii) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor as determined by the authority for the like population within the nonmedicare PEBB risk pool as ((determined by the authority)) described in subsection (1) of this section.

(b) **Small and medium groups** (a single unit of eleven to three hundred employees) must meet the following criterion in order to pass the EGE evaluation: The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor as determined by the authority for the like population within the nonmedicare PEBB risk pool as ((determined by the authority)) described in subsection (1) of this section.

(c) **Large groups** (a single unit of three hundred one to two thousand five hundred employees) must meet the following criteria in order to pass the EGE evaluation:

(i) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor as determined by the authority for the like population within the nonmedicare PEBB risk pool as ((determined by the authority)) described in subsection (1) of this section;

(ii) One of the following two conditions must be met:

- The frequency of large claims must be less than or equal to the historical benchmark frequency for the PEBB like population within the nonmedicare population as described in subsection (1) of this section; and

- The ongoing large claims management report must demonstrate that the frequency of ongoing large claims is less than or equal to the recurring benchmark frequency for the PEBB like population within the nonmedicare population as described in subsection (1) of this section.

(d) **Jumbo groups** (a single unit of two thousand five hundred one or more employees) must meet the following criteria in order to pass the actuarial evaluation:

(i) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor as determined by the authority for the like population within the nonmedicare PEBB risk pool as ((determined by the authority)) described in subsection (1) of this section;

(ii) One of the following two conditions must be met:

- The frequency of large claims must be less than or equal to the PEBB historical benchmark frequency for the PEBB like population within the nonmedicare population as described in subsection (1) of this section;

- The ongoing large claims management report must demonstrate that the frequency of ongoing large claims is less than or equal to the recurring benchmark frequency for the PEBB like population within the nonmedicare population((:)) as described in subsection (1) of this section.

(iii) Provide an executive summary of benefits;

(iv) Provide a summary of benefits and certificate of coverage;

(v) Provide a summary of historical plan costs; and

(vi) The evaluation of criteria in (d)(iii), (iv) and (v) of this subsection must indicate that the historical cost of benefits for the employer group is equal to or less than the histor-

ical cost of the PEBB like population within the nonmedicare population as described in subsection (1) of this section for a comparable plan design.

(4) ~~((The group evaluation for a jumbo group))~~ An approved group application is valid for ((two years after approval)) three hundred sixty-five calendar days after the date the application is approved by the authority. If an employer group applies to add additional bargaining units after ~~((two years))~~ the three hundred sixty-five calendar day period has ended, the group must be reevaluated.

(5) An entity whose employer group application is denied may appeal the authority's decision to the PEBB appeals committee through the process described in WAC 182-16-038.

(6) An entity whose employer group application is approved may purchase insurance for its employees under the participation requirements described in WAC 182-08-245.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-08-245 Employer group participation requirements. This section applies to an employer group as defined in WAC 182-08-015 that is approved to purchase insurance for its employees through a contract with the health care authority (HCA).

(1) Prior to enrollment of employees in public employees benefits board (PEBB) insurance coverage, the employer group must:

(a) Remit to the authority the required start-up fee in the amount publicized by the PEBB program;

(b) Sign a contract with the authority;

(c) Determine employee and dependent eligibility and terms of enrollment for insurance coverage ~~((in accordance with))~~ by the criteria outlined in the employer group's contract with the authority;

(d) Determine eligibility in order to ensure the PEBB program's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. This means ~~((that only))~~ the employer group may only consider employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions ~~((may be considered eligible by the employer group))~~ to be eligible; and

(e) Ensure PEBB ~~((health plans are))~~ insurance coverage is the only employer-sponsored ~~((health plans))~~ coverage available to groups of employees eligible for PEBB insurance coverage under the contract.

(2) Pay premiums ~~((in accordance with))~~ under its contract with the authority based on the following premium structure:

(a) The premium rate structure for school districts and educational service districts will be a composite rate equal to the rate charged to state agencies plus an amount equal to the employee premium based on health plan ~~((choice))~~ election and family enrollment. School districts and educational service districts must collect an amount equal to the premium surcharge(s) applied to an employee's account by the author-

ity from their employees and include the funds in their payment to the authority.

Exception: The authority will allow districts that enrolled prior to September 1, 2002, to continue participation based on a tiered rate structure. The authority may require the district to change to a composite rate structure with ninety days advance written notice.

(b) The premium rate structure for employer groups other than districts described in (a) of this subsection will be a tiered rate based on health plan ~~((choice))~~ election and family enrollment. Employer groups must collect an amount equal to the premium surcharge(s) applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

Exception: The authority will allow employer groups that enrolled prior to January 1, 1996, to continue to participate based on a composite rate structure. The authority may require the employer group to change to a tiered rate structure with ninety days advance written notice.

(3) If an employer group wants to make subsequent changes to the contract, the changes must be submitted to the authority for approval.

(4) The employer group must maintain participation in PEBB insurance coverage for at least one full year. An employer group may only end participation at the end of a plan year unless the authority approves a mid-year termination. To end participation, an employer group must provide written notice to the PEBB program at least sixty days before the requested termination date.

(5) Upon approval to purchase insurance through a contract with the authority, the employer group must provide a list of employees and dependents that are enrolled in ~~((COBRA benefits))~~ Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage and the remaining number of months available to them based on their qualifying event. These employees and dependents may enroll in PEBB medical and dental as COBRA enrollees for the remainder of the months available to them based on their qualifying event.

(6) Enrollees in PEBB insurance coverage under one of the continuation of coverage provisions allowed under chapter 182-12 WAC or retirees included in the transfer unit as allowed under WAC 182-08-237 cease to be eligible as of the last day of the contract and may not continue enrollment beyond the end of the month in which the contract is terminated.

Exception: If an employer group, other than a school district or educational service district, ends participation, retired and disabled employees who began participation before September 15, 1991, are eligible to continue enrollment in PEBB insurance coverage if the employee continues to meet the procedural and eligibility requirements of WAC 182-12-171. Employees who enrolled after September 15, 1991, who are enrolled in PEBB retiree insurance coverage cease to be eligible under WAC 182-12-171, but may continue health plan enrollment under COBRA (see WAC 182-12-146).

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. Subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll or waive enrollment in ~~((a))~~ PEBB medical ~~((plan))~~, or employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan.

"Authority" or "HCA" means the health care authority.

"Benefits-eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Blind vendor" means a "licensee" as defined in RCW 74.18.200.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Continuation coverage" means the temporary continuation of PEBB health plan coverage available to enrollees after a qualifying event occurs as administered under Title XXII of the Public Health Service (PHS) Act, 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB health plan by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, e-mails, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed offi-

cials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

"Employer-based group medical insurance" means group medical insurance coverage related to a current employment relationship. It does not include medical insurance coverage available to retired employees, individual market medical insurance coverage, or government-sponsored programs such as medicare or medicaid.

"Employer group" means those ~~((employee organizations representing state civil service employees,))~~ counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, ~~((charter schools, and))~~ educational service districts ~~((participating in PEBB insurance coverage under contractual agreement)), and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority as described in WAC 182-08-245.~~

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision;

charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal ~~((Retiree Plan))~~ retiree medical plan" means the Federal Employees Health Benefits program (FEHB) ~~((and TriCare))~~ or TRICARE which are not employer-based group medical insurance.

"Health plan" means a plan offering medical or dental, or both, developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability (LTD) insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Mail" or "mailing" means placing a document in the United States Postal system, commercial delivery service, or Washington state consolidated mail services properly addressed.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Pay status" means all hours for which an employee receives pay.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the

authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA ~~((which))~~ that administers insurance and other benefits for eligible employees (as ~~((defined))~~ described in WAC 182-12-114), eligible retired ~~((and disabled))~~ employees (as ~~((defined))~~ described in WAC 182-12-171), eligible dependents (as ~~((defined))~~ described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or registered domestic partner choosing not to enroll in his or her employer-based group medical insurance when:

- Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and
- The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"School district" means public schools as defined in RCW 28A.150.010 which includes charter schools established under chapter 28A.710 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. Subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in ~~((a))~~ PEBB medical ~~((plan))~~, and may enroll in or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary, or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted ven-

dors will issue all notices, information, requests and premium bills on behalf of enrollees.

~~("Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.)~~

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, chewing tobacco, snuff, and other tobacco products. It does not include United States Food and Drug Administration (FDA) approved quit aids or e-cigarettes until their tobacco related status is determined by the FDA.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other employer-based group medical insurance, TRICARE, or medicare as allowed under WAC 182-12-128, or is on approved educational leave and obtains other employer-based group health insurance as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-111 ~~((Eligible entities and individuals.))~~ **Which entities and individuals are eligible for public employees benefits board (PEBB) benefits?** The following entities and individuals shall be eligible for public employees benefits board (PEBB) benefits subject to the terms and conditions set forth below:

(1) **State agencies.** State agencies, as defined in WAC 182-12-109, are required to participate in all PEBB benefits. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(2) **Employer groups.** Employer groups may apply to participate in insurance coverage for groups of employees described in ~~((subsection))~~ (a) of this ~~((section))~~ subsection at the option of each employer group:

(a) All eligible employees of the entity must transfer as a unit with the following exceptions:

~~((★))~~ (i) Bargaining units may elect to participate separately from the whole group;

~~((★))~~ (ii) Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group; and

~~((★))~~ (iii) Members of the employer group's governing authority may participate as described in the employer group's governing statutes and RCW 41.04.205.

(b) ~~((The))~~ Employer groups must apply through the process described in WAC 182-08-235. School district and educational service district applications must provide the docu-

ments described in WAC 182-08-235 (1), (2), and (3). If a school district or educational service district is required by the superintendent of public instruction to purchase insurance coverage provided by the authority, the school district or educational service district is required to submit documents and information described in WAC 182-08-235 (1)(c), (2), and (3). Employer group applications are subject to review and approval by the health care authority (HCA). With the exception of a school district or educational service district, the authority will approve or deny an employer group's application based on the employer group evaluation criteria described in WAC 182-08-240.

(c) Employer groups participate through a contract with the authority as described in WAC 182-08-245.

(3) **School districts and educational service districts.** In addition to subsection (2) of this section, the following applies to school districts and educational service districts:

(a) The HCA will collect an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premium by health plan and family size and an amount equal to any applicable premium surcharge as would be charged to state employees for each participating school district or educational service district.

(b) The HCA may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505-.030.

(4) **The Washington health benefit exchange.** In addition to subsection (2) of this section, the following provisions apply:

(a) The Washington health benefit exchange is subject to the same rules as an employing agency in chapters 182-08, 182-12 and 182-16 WAC.

(b) ~~((An))~~ Employees of the Washington health benefit exchange ~~((is))~~ are subject to the same rules as ~~((an))~~ employees of an employing agency in chapters 182-08, 182-12 and 182-16 WAC.

(5) **Eligible nonemployees.**

(a) Blind vendors ~~((means a "licensee" as defined in RCW 74.18.200: Vendors))~~ actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind (DSB) may voluntarily participate in PEBB medical. Dependents of blind vendors are eligible as described in WAC 182-12-260. Eligible blind vendors and their dependents may enroll during the following times:

(i) ~~((Vendors that do not enroll when first eligible may enroll only during the annual open enrollment period offered by the HCA or the first day of the month following loss of other insurance coverage.~~

~~((ii) Department of services for the blind))~~ When newly eligible: The DSB will notify eligible blind vendors of their eligibility in advance of the date ((that)) they are eligible ((to apply)) for enrollment in PEBB medical.

~~((iii) The eligibility requirements for dependents of blind vendors shall be the same as the requirements for dependents of the state employees in WAC 182-12-260.~~

~~((iv) An individual licensee or))~~ To enroll, blind vendors must submit the required forms to the DSB. The forms must be received by the DSB no later than thirty-one days after the blind vendor becomes eligible for PEBB medical.

(ii) During the annual open enrollment: Blind vendors may enroll during the annual open enrollment. The required form must be received by the DSB before the end of the annual open enrollment. Enrollment will begin January 1st of the following year.

(iii) Following loss of other medical insurance coverage: Blind vendors may enroll following loss of other medical insurance coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA). To enroll, blind vendors must submit the required forms to the DSB. The forms must be received by the DSB no later than sixty days after the loss of other medical insurance coverage. In addition to the required forms, the DSB will require blind vendors to provide evidence of loss of other medical insurance coverage.

(iv) Blind vendors who cease(s) to actively operate a facility become(s) ineligible to participate in PEBB medical as described in (a) of this subsection. ~~((Individuals losing))~~ Enrollees who lose eligibility for coverage may continue enrollment in PEBB medical on a self-pay basis under COBRA coverage as described in WAC 182-12-146(5).

(v) ~~((An individual licensee or vendor is))~~ Blind vendors are not eligible for PEBB retiree insurance coverage.

(b) Dislocated forest products workers enrolled in the employment and career orientation program pursuant to chapter 50.70 RCW shall be eligible for PEBB health plans while enrolled in that program.

(c) School board members or students eligible to participate under RCW 28A.400.350 may participate in insurance coverage as long as they remain eligible under that section.

(6) Individuals and entities not eligible as employees include:

(a) Adult family home providers as defined in RCW 70.128.010;

(b) Unpaid volunteers;

(c) Patients of state hospitals;

(d) Inmates in work programs offered by the Washington state department of corrections as described in RCW 72.09.100 or an equivalent program administered by a local government;

(e) Employees of the Washington state convention and trade center as provided in RCW 41.05.110;

(f) Students of institutions of higher education as determined by their institutions; and

(g) Any others not expressly defined as an employee(~~s~~ under RCW 41.05.011).

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-123 Dual enrollment is prohibited. Public employees benefits board (PEBB) health plan coverage is limited to a single enrollment per individual.

(1) Effective January 1, 2002, an individual(~~s~~) who ~~((have))~~ has more than one source of eligibility for enrollment in PEBB health plan coverage (called "dual eligibility") ~~((are))~~ is limited to one enrollment.

(2) An eligible employee may waive PEBB medical and enroll as a dependent under the health plan of his or her

spouse, registered domestic partner, or parent as stated in WAC 182-12-128.

(3) A dependent enrolled in a PEBB health plan who becomes eligible for PEBB benefits as an employee must elect to enroll in PEBB benefits as described in WAC 182-08-197 (1) or (3). This includes making an election to enroll in or waive enrollment in PEBB medical as described in WAC 182-12-128 (1)(a).

(a) If the employee does not waive enrollment in PEBB medical, the employee is not eligible to remain enrolled in his or her spouse's, registered domestic partner's, or parent's PEBB health plan as a dependent. If the employee's spouse, registered domestic partner, or parent does not remove the employee (who is enrolled as a dependent) from his or her subscriber account, the PEBB program will terminate the employee's enrollment as a dependent the last day of the month before the employee's employer-paid coverage begins.

Exception:

An enrolled dependent who becomes newly eligible for PEBB benefits as an employee (~~as described in WAC 182-12-114~~) may be dual-enrolled in PEBB coverage for one month. This exception is only allowed for the first month the dependent is enrolled as an employee, and only if the dependent becomes enrolled as an employee on the first working day of a month that is not the first day of the month.

~~((2) An eligible employee may waive medical and enroll as a dependent on the coverage of his or her eligible spouse, eligible registered domestic partner, or eligible parent as stated in WAC 182-12-128.~~

~~(3) Children)~~ (b) If the employee elects to waive his or her enrollment in PEBB medical, the employee will remain enrolled in PEBB medical under his or her spouse's, registered domestic partner's, or parent's PEBB health plan as a dependent.

(4) A child who is eligible for medical and dental under two subscribers may be enrolled as a dependent under the health plan of only one subscriber.

~~((4))~~ (5) When an employee (~~who~~) is eligible for the employer contribution towards insurance coverage due to employment in more than one PEBB-participating employing agency the following provisions apply:

(a) The employee must choose to enroll under only one employing agency.

Exception:

Faculty who seek to establish or maintain eligibility under WAC 182-12-114(3) with two or more state institutions of higher education will be enrolled under the employing agency responsible to pay the employer contribution according to WAC 182-08-200(2).

(b) If the employee loses eligibility under the employing agency he or she chose to enroll under as described in subsection (5)(a) of this section, the employee must notify his or her other employing agency no later than sixty days from the date PEBB coverage ends through the employing agency described in (a) of this subsection to transfer coverage.

(c) The employee's insurance coverage elections remain the same when an employee transfers from enrollment under one employing agency to another employing agency without a break in PEBB coverage, as described in (b) of this subsection.

(6) A retiree who defers enrollment in a PEBB health plan as described in WAC 182-12-200 by enrolling as an eligible dependent in a health plan sponsored by PEBB, a Washington state school district, or a Washington state education service district and who loses the employer contribution for such coverage must enroll in PEBB retiree insurance coverage as described in WAC 182-12-171 or defer enrollment as described in WAC 182-12-205.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-128 When may an employee(s) waive ~~(or enroll)~~ enrollment in public employees benefits board (PEBB) medical and when may he or she enroll in PEBB medical after having waived enrollment? ~~(Employees)~~ An employee may waive enrollment in public employees benefits board (PEBB) medical if he or she is enrolled in other employer-based group medical insurance, TRICARE, or medicare. An employee who waives enrollment in PEBB medical must enroll in dental, basic life, and basic long-term disability insurance (unless the employing agency does not participate in these ~~(public employees benefits board)~~ PEBB insurance coverages). ~~(However, employees may waive PEBB medical if they are enrolled in other employer-based group medical insurance.)~~

~~(1) (Employees may)~~ To waive enrollment in PEBB medical ~~(by submitting)~~, the employee must submit the required ~~(enrollment)~~ form to ~~(their)~~ his or her employing agency ~~(during)~~ at one of the following times:

(a) When the employee becomes eligible: An employee(s) may waive PEBB medical when ~~(they)~~ he or she becomes eligible for PEBB benefits. The employee(s) must indicate ~~(they are waiving)~~ his or her election to waive enrollment in PEBB medical on the required ~~(enrollment form they submit to their)~~ form and submit the form to his or her employing agency. The ~~(enrollment)~~ form must be received by the employing agency no later than thirty-one days after the date ~~(they)~~ the employee becomes eligible (see WAC 182-08-197). PEBB medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) During the annual open enrollment: An employee(s) may waive PEBB medical during the annual open enrollment ~~(period)~~. The required ~~(enrollment)~~ form must be received by ~~(their)~~ the employee's employing agency before the end of the annual open enrollment. PEBB medical will be waived beginning January 1st of the following year.

(c) During a special open enrollment: An employee(s) may waive PEBB medical during a special open enrollment as described in subsection (4) of this section.

The employee must submit the required form to his or her employing agency. The form must be received no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment.

PEBB medical will be waived the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, PEBB

medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical will be waived the last day of the previous month.

(2) If an employee waives PEBB medical, the employee's eligible dependents may not be enrolled in medical.

(3) Once PEBB medical is waived, ~~(enrollment)~~ the employee is only allowed ~~(during)~~ to enroll in PEBB medical at the following times:

(a) During the annual open enrollment~~(s)~~. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will begin January 1st of the following year.

(b) During a special open enrollment ~~(created by an event that allows for enrollment outside of the annual open enrollment as described in subsection (4) of this section. In addition to the required forms, the PEBB program will require the employee to provide evidence of eligibility and evidence of the event that creates a special open enrollment)~~. A special open enrollment allows an employee to change his or her enrollment outside of the annual open enrollment. A special open enrollment may be created when one of the events described in subsection (4) of this section occurs.

The employee must submit the required form to his or her employing agency. The form must be received no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment.

PEBB medical will begin the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical will begin the first of the month in which the event occurs.

(4) Special open enrollment: ~~(Employees may waive enrollment in medical or enroll in medical if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment for the employee, the employee's dependent, or both. Employees must provide evidence of the event that created the special open enrollment.)~~ Any one of the ~~(following)~~ events in (a) through (j) of this subsection may create a special open enrollment~~(s)~~. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment for the employee, the employee's dependent, or both.

(a) Employee acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) A child becoming eligible as a dependent with a disability;

(b) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Employee or an employee's dependent has a change in employment status that affects the employee's or employee's dependent's eligibility for their employer contribution toward employer-based group medical insurance;

(d) Employee or an employee's dependent has a change in enrollment under another employer-based group medical insurance plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(e) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(f) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(g) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP);

~~To waive or enroll during a special open enrollment, the employee must submit the required forms to his or her employing agency. The forms must be received by the employing agency no later than sixty days after the event that creates the special open enrollment.~~

~~Medical will be waived the end of the month following the later of the event date or the date the form is received. If the later day is the first of the month, medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, medical will be waived the first of the month in which the event occurs.~~

~~Enrollment in medical will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, enrollment in medical will begin the first of the month in which the event occurs.))~~

(i) Employee or employee's dependent becomes eligible and enrolls in TRICARE, or loses eligibility for TRICARE;

(j) Employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-131 How do eligible employees maintain the employer contribution toward insurance coverage? The employer contribution toward insurance coverage begins on the day that public employees benefits board (PEBB) benefits begin under WAC 182-12-114. This section describes under what circumstances employees maintain eligibility for the employer contribution toward insurance coverage.

(1) **Maintaining the employer contribution.** Except as described in subsections (2), (3), and (4) of this section, employees who have established eligibility for benefits under WAC 182-12-114 are eligible for the employer contribution each month in which they are in pay status eight or more hours per month.

(2) **Maintaining the employer contribution - Benefits-eligible seasonal employees.**

(a) Benefits-eligible seasonal employees (eligible under WAC 182-12-114(2)) who work a season of less than nine months are eligible for the employer contribution in any month of the season in which they are in pay status eight or more hours during that month. The employer contribution toward insurance coverage for seasonal employees returning after their off season begins on the first day of the first month of the season in which they are in pay status eight hours or more.

(b) Benefits-eligible seasonal employees (eligible under WAC 182-12-114(2)) who work a season of nine months or more are eligible for the employer contribution:

(i) In any month of the season in which they are in pay status eight or more hours during that month; and

(ii) Through the off season following each season worked.

(3) **Maintaining the employer contribution - Eligible faculty.**

(a) Benefits-eligible faculty anticipated to work half time or more the entire instructional year or equivalent nine-month period (eligible under WAC 182-12-114 (3)(a)(i)) are eligible for the employer contribution each month of the instructional year, except as described in subsection (7) of this section.

(b) Benefits-eligible faculty who are hired on a quarter/semester to quarter/semester basis (eligible under WAC 182-12-114 (3)(a)(ii)) are eligible for the employer contribution each quarter or semester in which employees work half-time or more.

(c) Summer or off-quarter/semester coverage: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who work an average of half-time or more throughout the entire instructional year or equivalent nine-month period and work each quarter/semester of the instructional year or equivalent nine-month period are eligible for the employer contribution toward summer or off-quarter/semester insurance coverage.

Exception: Eligibility for the employer contribution toward summer or off-quarter/semester insurance coverage ends on the end date specified in an employing agency's termination notice or an employee's resignation letter, whichever is earlier, if the employing agency has no anticipation that the employee will be returning as faculty at any institution of higher education where the employee has employment. If the employing agency deducted the employee's premium for insurance coverage after the employee was no longer eligible for the employer contribution, insurance coverage ends the last day of the month for which employee premiums were deducted.

(d) **Two-year averaging:** All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who worked an average of half-time or more in each of the two preceding academic years are potentially eligible to receive uninterrupted employer contribution to insurance coverage. "Academic year" means summer, fall, winter, and spring quarters or summer, fall, and spring semesters and begins with summer quarter/semester. In order to be eligible for the employer contribution through two-year averaging, the faculty must provide written notification of his or her potential eligibility to his or her employing agency or agencies within the deadlines established by the employing agency or agencies. Faculty continue to receive uninterrupted employer contribution for each academic year in which they:

- (i) Are employed on a quarter/semester to quarter/semester basis and work at least two quarters or two semesters; and
- (ii) Have an average workload of half-time or more for three quarters or two semesters.

Eligibility for the employer contribution under two-year averaging ceases immediately if the eligibility criteria is not met or if the eligibility criteria becomes impossible to meet.

(e) **Faculty who lose eligibility for the employer contribution:** All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who lose eligibility for the employer contribution will regain it if they return to a faculty position where it is anticipated that they will work half-time or more for the quarter/semester no later than the twelfth month after the month in which they lost eligibility for the employer contribution. The employer contribution begins on the first day of the month in which the quarter/semester begins.

(4) Maintaining the employer contribution - Employees on leave and under the special circumstances listed below.

(a) Employees who are on approved leave under the federal Family and Medical Leave Act (FMLA) continue to receive the employer contribution as long as they are approved under the act.

(b) Unless otherwise indicated in this section, employees in the following circumstances receive the employer contribution only for the months they are in pay status eight hours or more:

- (i) Employees on authorized leave without pay;
- (ii) Employees on approved educational leave;
- (iii) Employees receiving time-loss benefits under workers' compensation;
- (iv) Employees called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or
- (v) Employees applying for disability retirement.

(5) Maintaining the employer contribution - Employees who move from an eligible to an otherwise ineligible position due to a layoff maintain the employer contribution toward insurance coverage under the criteria in WAC 182-12-129.

(6) Employees who are in pay status less than eight hours in a month. Unless otherwise indicated in this section, when there is a month in which employees are not in pay status for at least eight hours, employees:

(a) Lose eligibility for the employer contribution for that month; and

(b) Must reestablish eligibility for PEBB benefits under WAC 182-12-114 in order to be eligible for the employer contribution again.

(7) The employer contribution toward insurance coverage ends in any one of these circumstances for all employees:

(a) When employees fail to maintain eligibility for the employer contribution as indicated in the criteria in subsection (1) through (6) of this section.

(b) When the employment relationship is terminated. As long as the employing agency has no anticipation that the employee will be rehired, the employment relationship is terminated:

(i) On the date specified in an employee's letter of resignation; or

(ii) On the date specified in any contract or hire letter or on the effective date of an employer-initiated termination notice.

(c) When employees move to a position that is not anticipated to be eligible for benefits under WAC 182-12-114, not including changes in position due to a layoff.

The employer contribution toward PEBB benefits cease for employees and their enrolled dependents the last day of the month in which employees are eligible for the employer contribution under this section.

Exception: If the employing agency deducted the employee's premium for insurance coverage after the employee was no longer eligible for the employer contribution, insurance coverage ends the last day of the month for which employee premiums were deducted.

(8) Options for continuation coverage by self-paying. During temporary or permanent loss of the employer contribution toward insurance coverage, employees have options for providing continuation coverage for themselves and their dependents by self-paying the full premium set by the health care authority (HCA). These options are available according to WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-12-133 What options for continuation coverage are available to employees (~~and~~) and their dependents during certain types of leave or (~~whose work~~) when employment ends due to a layoff? Employees who have established eligibility for public employees benefits board (PEBB) benefits under WAC 182-12-114 (~~(have options for providing continuation))~~ may continue coverage

for themselves and their dependents ~~((by self-paying the full premium set by the health care authority (HCA) during temporary or permanent loss of the employer contribution toward insurance coverage))~~ during certain types of leave or when their employment ends due to a layoff.

(1) ~~((When an employee is))~~ Employees who are no longer eligible for the employer contribution toward insurance coverage due to an event described in ~~((a) through (f))~~ (c)(i) through (vi) of this subsection ~~((insurance coverage may be continued))~~ may continue insurance coverage by self-paying the full premium set by the ~~((HCA, with no contribution from the employer.))~~ health care authority (HCA) from the date the employer contribution is lost.

(a) Employees may self-pay for a maximum of twenty-nine months. The employee must pay the premium amounts for insurance coverage as premiums become due. If premiums are more than sixty days delinquent, insurance coverage will end as of the last day of the month for which a full premium was paid.

(b) Employees may continue any combination of medical, dental and life insurance; however, only employees on approved educational leave or called in to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA) may continue either basic or both basic and optional long-term disability insurance.

(c) Employees in the following circumstances qualify to continue coverage under this subsection:

~~((a) The employee is))~~ (i) Employees who are on authorized leave without pay;

~~((b) The employee is))~~ (ii) Employees who are on approved educational leave;

~~((c) The employee is))~~ (iii) Employees who are receiving time-loss benefits under workers' compensation;

~~((d) The employee is))~~ (iv) Employees who are called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA);

~~((e) The employee's))~~ (v) Employees whose employment ends due to a layoff as defined in WAC 182-12-109; or

~~((f) The employee is))~~ (vi) Employees who are applying for disability retirement.

(2) The number of months that ~~((an))~~ employees self-pay(s) the premium while eligible ~~((under))~~ as described in subsection (1) of this section will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). ~~((An employee who is))~~ Employees who are no longer eligible for continuation coverage as described in subsection (1) of this section but who ~~((has))~~ have not used the maximum number of months allowed under COBRA coverage may continue medical and dental for the remaining difference in months by self-paying the premium ~~((under COBRA))~~ as described in WAC 182-12-146.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-138 What options are available if an employee is approved for the federal Family and Medical

Leave Act (FMLA)? (1) An employee(s) on approved leave under the federal Family and Medical Leave Act (FMLA) may continue to receive the employer contribution toward insurance coverage in accordance with the federal FMLA. ~~((These))~~ The employee(s) may also continue current optional life and optional long-term disability. The employee's employing agency is responsible for determining if the employee is eligible for leave under FMLA and the duration of such leave.

(2) If ~~((the))~~ an employee's contribution toward premiums is more than sixty days delinquent, insurance coverage will end as of the last day of the month for which a full premium was paid.

~~((2))~~ (3) If an employee exhausts the period of leave approved under FMLA, insurance coverage may be continued by self-paying the full premium set by the HCA, with no contribution from the employer, under WAC 182-12-133(1) while on approved leave.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-12-146 ~~((What options for continuation coverage are available to subscribers and dependents who become eligible under COBRA?))~~ When is an enrollee eligible to continue public employee's benefits board (PEBB) health plan coverage under Consolidated Omnibus Budget Reconciliation Act (COBRA)? An enrollee ~~((can))~~ may continue public employee's benefits board (PEBB) health plan coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) by self-paying the full premium set by the health care authority (HCA) ~~((in accordance with Consolidated Omnibus Budget Reconciliation Act (COBRA) regulations in the following circumstances:))~~. Premiums must be paid as described in WAC 182-08-180(b).

(1) An employee or an employee's dependent who loses eligibility for the employer contribution toward insurance coverage and who qualifies for continuation coverage under COBRA may continue medical, dental, or both.

(2) An employee or an employee's dependent who loses eligibility for continuation coverage described in WAC 182-12-133, 182-12-138, 182-12-141, 182-12-142, or 182-12-148 but who has not used the maximum number of months allowed under COBRA may continue medical, dental, or both for the remaining difference in months.

(3) A retired ~~((or disabled))~~ employee who loses eligibility for PEBB retiree insurance because an employer group, with the exception of school districts and educational service districts, ceases participation in PEBB insurance coverage may continue medical, dental, or both.

(4) A retired ~~((or disabled))~~ employee, or a dependent of a retired ~~((or disabled))~~ employee, who is no longer eligible to continue coverage under WAC 182-12-171 may continue medical, dental, or both.

(5) ~~((An individual licensee or))~~ A blind vendor who ceases to actively operate a facility as described in WAC 182-12-111 (5)(a) may continue enrollment in public employees benefits board (PEBB) medical for the maximum number of months allowed under COBRA as described in this section.

~~((An individual licensee or))~~ A blind vendor is not eligible for PEBB retiree insurance coverage.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-171 ~~When ((are)) is a retiring employee((s)) eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage? A retiring employee is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) insurance coverage as a retiree if he or she meets procedural and substantive eligibility requirements as described in subsections (1) and (2) of this section.~~

(1) **Procedural requirements.** ~~A retiring employee((s)) must ((meet these procedural requirements to)) enroll or defer enrollment in ((public employees benefits board (PEBB)) retiree insurance coverage((, as well as have substantive eligibility under subsection (2) or (3))) as described in (a) and (b) of this ((section)) subsection:~~

(a) ~~((The employee's form to enroll or defer enrollment)) To enroll in PEBB retiree insurance coverage, the required form must be received by the PEBB program no later than sixty days after the employee's employer-paid ((or)) coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, or continuation coverage ends. The effective date of ((health plan enrollment will be)) PEBB retiree insurance coverage is the first day of the month ((following the loss of)) after the employee's employer-paid ((or)) coverage, COBRA coverage, or continuation coverage ends.~~

~~((Exception: The effective dates of health plan enrollment for retirees who defer enrollment in a PEBB health plan at or after retirement are identified in WAC 182-12-200 and 182-12-205.~~

~~Employees who do not enroll in a PEBB health plan at retirement are only eligible to enroll at a later date if they have deferred enrollment and maintained continuous enrollment in other coverage)) (b) To defer enrollment in a PEBB health plan, the employee must defer enrollment as described in WAC 182-12-200 or 182-12-205.~~

~~((b) Employees and)) (c) A retiring employee and his or her enrolled dependents who are entitled to medicare must enroll and maintain enrollment in both medicare parts A and B if the employee retired after July 1, 1991. If ((the employee)) a retiree or an enrolled dependent becomes entitled to medicare after enrollment in PEBB retiree insurance coverage, he or she must enroll and maintain enrollment in medicare parts A and B to remain enrolled in PEBB retiree insurance coverage.~~

Note: If an enrollee who is entitled to medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in PEBB retiree insurance coverage. The enrollee may continue PEBB health plan enrollment ((under COBRA-see)) as described in WAC 182-12-146((3)).

(2) **Substantive eligibility requirements.** ~~((Eligible employees (as described in WAC 182-12-114 and 182-12-131) who end))~~

(a) An employee as defined in WAC 182-12-109 who is enrolled in PEBB benefits or an employee who is enrolled in basic benefits through a Washington state school district or

educational service district as defined in RCW 28A.400.270 and ends public employment after becoming vested in a Washington state-sponsored retirement plan ~~((as described in subsection (4) of this section) are eligible to continue) may enroll or defer enrollment in PEBB retiree insurance coverage ((as a retiree if they)) if he or she meets procedural and substantive eligibility requirements.~~

(i) To be eligible to continue enrollment or defer enrollment insurance coverage as a retiree, the employee must be eligible to retire under a Washington state-sponsored retirement plan when the employee's employer-paid ~~((or)) coverage, COBRA coverage, or continuation coverage ends.~~

(ii) A retiring employee((s)) who ~~((do)) does not meet ((their)) his or her Washington state-sponsored retirement plan's age requirement when ((their employer paid)) his or her employer-paid coverage or COBRA coverage, or continuation coverage ends, but who meets the age requirement within sixty days of coverage ending, may request ~~((that their)) an appeal as described in WAC 182-16-032. His or her eligibility will be reviewed by the PEBB appeals committee ((to determine eligibility (see WAC 182-16-032))). An employee((s)) must meet PEBB retiree insurance coverage ((election)) procedural requirements as described in subsection (1) of this section.~~~~

~~((Employees)) (b) A retiring employee of a state agency must immediately begin to receive a monthly retirement plan payment, with exceptions described below:~~

~~((a)) (i) A retiring employee((s)) who receives a lump-sum payment instead of a monthly retirement plan payment ((are)) is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan; or~~

~~((a)) (ii) A retiring employee((s)) who ((are)) is a member((s)) of a Plan 3 retirement plan, also called a separated employee((s)) (defined in RCW 41.05.011(20)), ((are eligible if they meet their)) must meet his or her Plan 3 retirement ((plan's)) eligibility criteria. ~~((They do)) The employee does not have to receive a retirement plan payment to enroll in retiree insurance coverage;~~~~

~~((Employees who are members)) (c) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan ((are eligible if they)) (HERP) must immediately begin to receive a monthly retirement plan payment, or meet ~~((their)) his or her HERP plan's retirement eligibility criteria, or ((are)) be at least age fifty-five with ten years of state service;~~~~

~~((Employees not retiring under a)) (d) A retiring employee of an employer group participating in PEBB insurance coverage under contractual agreement with the authority must be eligible to retire as described in (i) or (ii) of this subsection to be eligible to continue PEBB insurance coverage as a retiree, except for a school district or educational service district employee who must meet the requirements as described in subsection (2)(e) of this section.~~

(i) A retiring employee who is eligible to retire under a retirement plan sponsored by an employer group or tribal government that is not a Washington state-sponsored retirement plan must meet the same age and years of service requirements as if ~~((the person had been employed as)) he or~~

she was a member of ~~((either))~~ public employees retirement system Plan 1 or Plan 2 ~~((for the same period of employment, or~~

~~• Employees who retire from a local government or tribal government that participates in PEBB insurance coverage for their employees are eligible to continue PEBB insurance coverage as retirees if the employees meet the procedural and eligibility requirements under this section.~~

~~(a) **Local government employees.** If the local government) during his or her employment.~~

~~(ii) A retiring employee who is eligible to retire under a Washington state-sponsored retirement plan must immediately begin to receive a monthly retirement plan payment, with exceptions described in subsection (2)(b)(i) and (ii) of this section.~~

~~(iii) A retired employee of an employer group, except a Washington state school district or educational service district, that ends participation in PEBB insurance coverage (~~employees who enrolled after September 15, 1991, are~~) is no longer eligible ~~((for))~~ to continue enrollment in PEBB retiree insurance coverage ~~((These employees may continue health plan coverage under COBRA (see WAC 182-12-146).~~~~

~~(b) **Tribal government employees.** If) if he or she enrolled after September 15, 1991. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-146.~~

~~(iv) A retired employee of a tribal government employer that ends participation in PEBB insurance coverage (~~employees are~~) is no longer eligible ~~((for))~~ to continue enrollment in PEBB retiree insurance coverage. ~~((These employees)) Any retiree who loses eligibility for this reason may continue health plan ~~((coverage under COBRA (see))~~ enrollment as described in WAC 182-12-146(3)).~~~~

~~((e)) (e) A retiring employee of a Washington state school district ~~((and))~~ or educational service district ~~((employees for districts that do not participate in PEBB insurance coverage. Employees of Washington state school districts and educational service districts who separate from employment after becoming vested in a Washington state-sponsored retirement system are eligible to enroll in PEBB health plans as a retiree when retired or permanently and totally disabled.~~~~

~~Except for employees who are members of a retirement Plan 3, employees who separate on or after October 1, 1993, must immediately begin to receive a monthly retirement plan payment from a Washington state-sponsored retirement system) must immediately begin to receive a monthly retirement plan payment, with exceptions described below:~~

~~(i) A retiring employee who ends employment before October 1, 1993; or~~

~~(ii) A retiring employee(s) who receives a lump-sum payment instead of a monthly retirement plan payment ~~((are))~~ is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan, or the employee enrolled before 1995~~((:))~~; or~~

~~(iii) A retiring employee(s) who ~~((are))~~ is a member(s) of a Plan 3 retirement system, also called a separated employee(s) (defined in RCW 41.05.011(20)), ~~((are eligible~~~~

if they meet their Plan 3 retirement plan's eligibility criteria. They do not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage.) must meet his or her Plan 3 retirement eligibility criteria; or

~~(iv) An employee(s) who retired as of September 30, 1993, and began receiving a monthly retirement ~~((allow-ance))~~ plan payment from a Washington state-sponsored retirement system (as defined in chapters 41.32, 41.35 or 41.40 RCW) ~~((are))~~ is eligible if ~~((they))~~ he or she enrolled in a PEBB health plan ~~((not))~~ no later than the ~~((HCA's))~~ health care authority's (HCA's) annual open enrollment period for the year beginning January 1, 1995.~~

~~(3) ~~((Substantive eligibility for))~~ An elected ~~((and))~~ or a full-time appointed state official(s) of the legislative ~~((and executive branches. Employees who are elected and full-time appointed state officials (as defined under WAC 182-12-114(4)))~~ or executive branch of state government who voluntarily or involuntarily leave public office ~~((are))~~ is eligible to continue insurance coverage as a retiree if ~~((they))~~ he or she meets procedural requirements of subsection (1) of this section.~~

~~(4) Washington state-sponsored retirement ~~((systems))~~ plans include:~~

~~((*) (a) Higher education retirement plans;~~

~~((*) (b) Law enforcement officers' and firefighters' retirement system;~~

~~((*) (c) Public employees' retirement system;~~

~~((*) (d) Public safety employees' retirement system;~~

~~((*) (e) School employees' retirement system;~~

~~((*) (f) State judges/judicial retirement system;~~

~~((*) (g) Teachers' retirement system; and~~

~~((*) (h) State patrol retirement system.~~

~~(i) The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered ~~((a))~~ Washington state-sponsored retirement systems for Washington State University Extension for an employee(s) covered under PEBB insurance coverage at the time of retirement ~~((or disability)).~~~~

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-200 ~~((May))~~ How does a retiree(s) who ~~((are))~~ is enrolled as a dependent in a health plan sponsored by public employees benefits board (PEBB), a Washington state school district, or a Washington state educational service district ~~((sponsored health plan))~~ defer enrollment under PEBB retiree insurance coverage? ~~((The following provisions apply when retirees defer enrollment under public employees benefits board (PEBB) retiree insurance coverage when enrolled as a dependent in a PEBB, Washington state school district, or Washington state education service district sponsored health plan:~~

~~(1) Retirees who are enrolled in a PEBB, Washington state school district, or Washington state educational service district sponsored medical plan as a dependent may defer enrollment in a PEBB health plan. Retirees who defer enrollment in medical cannot remain enrolled in dental.~~

~~(2) Retirees who defer may later enroll themselves and their dependents in medical, or medical and dental, if they~~

~~provide evidence of continuous enrollment in a PEBB, Washington state school district, or Washington state educational service district sponsored medical plan. Continuous enrollment must be from the date the retiree deferred enrollment in PEBB retiree insurance coverage. Retirees may enroll:~~

~~(a) During the PEBB annual open enrollment period. The required enrollment form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or~~

~~(b) When enrollment in the PEBB, Washington state school district, or Washington state educational service district sponsored medical plan ends or such coverage under COBRA ends. The required enrollment form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan coverage begins the first day of the month after the PEBB, Washington state school district, or Washington state educational service district sponsored medical plan ends--)~~

(1) A retiree may defer enrollment in a public employees benefits board (PEBB) health plan during the period of time he or she is enrolled as a dependent in a health plan sponsored by PEBB, a Washington state school district, or a Washington state education service district, including such coverage under Consolidated Omnibus Budget Reconciliation Act (COBRA) or continuation coverage.

(2) A retiree who defers enrollment in medical must defer enrollment in dental. Retirees must be enrolled in medical to enroll in dental.

(3) A retiree who defers coverage may later enroll in a PEBB health plan if he or she provides evidence of continuous enrollment in a health plan sponsored by PEBB, a Washington state school district, or a Washington state educational service district and submits the required form as described in (a) and (b) of this subsection:

(a) During the PEBB annual open enrollment period. The required form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(b) When enrollment in a health plan sponsored by PEBB, a Washington state school district, or a Washington state educational service district ends, or such coverage under COBRA or continuation coverage ends. The retiree must submit the required form to enroll or defer enrollment as described in WAC 182-12-171 (1)(a). The required form must be received by the PEBB program no later than sixty days after coverage ends. PEBB health plan coverage begins the first day of the month following the date the other coverage ends.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-205 May retirees defer enrollment under public employees benefits board (PEBB) retiree insurance coverage at or after retirement? The following provisions apply when retirees defer enrollment under public employees benefits board (PEBB) retiree insurance coverage when enrolled in other coverage:

(1) Retirees who defer enrollment in a PEBB health plan also defer enrollment for all eligible dependents, except as ~~((stated))~~ described in subsection (2)(c) of this section.

(2) Retirees may defer enrollment in a PEBB health plan at or after retirement if continuously enrolled in other medical as described in this ~~((subsection))~~ section or WAC 182-12-200. Retirees who defer enrollment in medical ~~((automatically))~~ must defer enrollment in dental. Retirees must ~~((enroll))~~ be enrolled in medical to enroll in dental.

(a) Beginning January 1, 2001, retirees may defer enrollment in a PEBB health plan if they are enrolled in employer-based group medical insurance as an employee or the dependent of an employee, or such medical insurance continued under ~~((COBRA))~~ Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage or continuation coverage.

(b) Beginning January 1, 2001, retirees may defer enrollment in a PEBB health plan if they are enrolled ~~((in medical))~~ as a retiree or the dependent of a retiree ~~((enrolled))~~ in a federal retiree medical plan.

(c) Beginning January 1, 2006, retirees may defer enrollment in a PEBB health plan if they are enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as described in this chapter. The retiree's dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a medicaid program.

(d) Beginning January 1, 2014, retirees who are not eligible for Parts A and B of medicare may defer enrollment in a PEBB health plan if they are enrolled in exchange coverage.

(3) To defer PEBB health plan enrollment, retiring employees or enrolled subscribers must submit the required forms to the PEBB program ~~((requesting to defer))~~.

(a) If retiring employees submit the required forms to defer enrollment in a PEBB health plan after their employer-paid ~~((or))~~ coverage, COBRA coverage, or continuation coverage ends as described in WAC 182-12-171 (1)~~((or))~~ (b), enrollment will be deferred the first of the month following the date their employer-paid ~~((or))~~ coverage, COBRA coverage, or continuation coverage ends. The forms must be received by the PEBB program no later than sixty days after the employer-paid ~~((or))~~ coverage, COBRA coverage, or continuation coverage ends.

(b) If enrolled subscribers submit the required forms to defer enrollment in a PEBB health plan, enrollment will be deferred effective the first of the month following the date ~~((their deferral))~~ the required form is received by the PEBB program. If the form is received on the first day of the month, coverage will end on the last day of the previous month.

(4) Retirees who defer enrollment while enrolled in coverage described in subsection (2)(a) through (d) of this section and lose such coverage must enroll in a PEBB retiree health plan as described in WAC 182-12-171 or defer enrollment as described in this section or WAC 182-12-200.

(5) Retirees who meet substantive eligibility requirements in WAC 182-12-171(2) and whose employer-paid coverage, COBRA coverage, or continuation coverage ended between January 1, 2001, and December 31, 2001, was not required to submit the deferral form at that time, but must

have met all procedural requirements as stated in this section, WAC 182-12-171, and 182-12-200.

~~((4))~~ (6) Retirees who defer may later enroll themselves and their dependents in a PEBB health plan as follows:

(a) Retirees who defer enrollment while enrolled in employer-based group medical insurance, or such medical insurance continued under COBRA coverage or continuation coverage may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required ~~((enrollment))~~ form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their employer-based group medical insurance or such coverage under COBRA coverage or continuation coverage ends. The required ~~((enrollment))~~ form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan coverage begins the first day of the month after the employer-based group medical insurance ~~((or))~~ coverage, COBRA coverage, or continuation coverage ends.

(b) Retirees who defer enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required ~~((enrollment))~~ form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When the federal retiree medical plan coverage ends. The required ~~((enrollment))~~ form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan coverage begins the first day of the month after coverage under the federal retiree medical plan ends.

(c) Retirees who defer enrollment while enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as described in this chapter may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in ~~((creditable))~~ such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required ~~((enrollment))~~ form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their medicaid coverage ends. The required ~~((enrollment))~~ form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan coverage begins the first day of the month after the medicaid coverage ends; or

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree was also determined eli-

gible under 42 U.S.C. § 1395w-114 and subsequently enrolled in a medicare Part D plan. Enrollment in the PEBB health plan will begin January 1st following the end of the calendar year when the medicaid coverage ends. The required ~~((enrollment))~~ form must be received by the PEBB program no later than the last day of the calendar year ~~((when))~~ in which the retiree's medicaid coverage ends.

(d) Retirees who defer enrollment while enrolled in exchange coverage will have a one-time opportunity to enroll or reenroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required ~~((enrollment))~~ form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When exchange coverage ends. The required ~~((enrollment))~~ form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan coverage begins the first day of the month after exchange coverage ends.

(e) Retirees who defer enrollment may enroll in a PEBB health plan if the retiree receives formal notice that the authority has determined it is more cost-effective to enroll the retiree or the retiree's eligible ~~((dependent(s)))~~ dependents in PEBB medical than a medical assistance program.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-208 What are the requirements regarding enrollment in dental under public employees benefits board (PEBB) retiree insurance coverage? The following provisions apply to a subscriber and his or her dependents enrolled under public employees benefits board (PEBB) retiree insurance coverage:

(1) A subscriber and his or her dependents enrolling in dental must meet procedural requirements (as described in WAC 182-12-171(1) and 182-12-262) and eligibility requirements (as described in WAC 182-12-171(2) and 182-12-260).

(2) A subscriber and his or her dependents must be enrolled in medical to enroll in dental.

(3) A subscriber enrolling in dental must stay enrolled for at least two years before dental can be dropped unless he or she defers medical and dental coverage as described in WAC 182-12-200 or 182-12-205, or drops dental as described in subsection (4) of this section.

(4) A subscriber enrolled in PEBB dental who becomes eligible for, and enrolls in, employer-based group dental insurance as an employee or the dependent of an employee, or such coverage ~~((continued))~~ under ~~((COBRA,))~~ Consolidated Omnibus Budget Reconciliation Act (COBRA) or continuation coverage may drop PEBB dental, before completing the two-year enrollment requirement. ~~((The subscriber and enrolled dependents will be removed from PEBB dental))~~ Coverage will end on the last day of the month ~~((following the date))~~ in which the required ~~((enrollment))~~ form is

received by the PEBB program. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(a) A subscriber may enroll in PEBB dental during the PEBB annual open enrollment period. The required (~~enrollment~~) form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB dental begins January 1st of the following year.

(b) A subscriber may enroll in PEBB dental after his or her employer-based group dental insurance or such coverage under COBRA coverage or continuation coverage ends. The required (~~enrollment~~) form must be received by the PEBB program no later than sixty days after such coverage ends. PEBB dental begins the first day of the month after the employer-based group dental insurance or coverage under COBRA ends.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-211 May an employee who is determined to be retroactively eligible for disability retirement enroll in public employees benefits board (PEBB) retiree insurance coverage? (1) An employee who is determined to be retroactively eligible for a disability retirement is eligible to enroll or defer enrollment (as described in WAC 182-12-200 or 182-12-205) in public employees benefits board (PEBB) retiree insurance coverage if:

(a) The employee submits the required form and a copy of the formal determination letter he or she received from the Washington state department of retirement systems (DRS) or the appropriate higher education authority;

(b) The employee's (~~enrollment~~) form and a copy of his or her Washington state-sponsored retirement system's formal determination letter are received by the PEBB program no later than sixty days after the date on the determination letter; and

(c) The employee immediately begins to receive a monthly pension benefit or a supplemental retirement plan benefit under his or her higher education retirement plan (HERP), with exceptions described in WAC 182-12-171 (2)(b).

(2) Premiums are due from the effective date of enrollment in PEBB retiree insurance coverage. The employee, at his or her option, must indicate the effective date of PEBB retiree insurance coverage on the (~~enrollment~~) form. The employee may choose from the following dates:

(a) The employee's retirement date as stated in the formal determination letter; or

(b) The first day of the month following the date the formal determination letter was written.

(3) The director may make an exception to the date PEBB retiree insurance coverage begins; however, such request must demonstrate extraordinary circumstances beyond the control of the retiree.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-250 Insurance coverage eligibility for survivors of emergency service personnel killed in the line

of duty. Surviving spouses, state registered domestic partners, and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage.

(1) This section applies to the surviving spouse, the surviving state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, state registered domestic partner, and dependent children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) A state registered domestic partner as defined in RCW 26.60.020(1); and

(d) Children. The term "children" includes children of the emergency service worker up to age twenty-six. Children with disabilities as defined in RCW 41.26.030(6) are eligible at any age. "Children" is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren or children of a state registered domestic partner;

(iii) Legally adopted children;

(iv) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(v) Children specified in a court order or divorce decree; or

(vi) Children as defined in RCW 26.26.101.

(4) Surviving spouses, state registered domestic partners, and children who are entitled to medicare must enroll in both parts A and B of medicare.

(5) The survivor (or agent acting on his or her behalf) must submit the required forms to the PEBB program to either enroll or defer enrollment in retiree insurance coverage as described in subsection (7) of this section. The forms must be received by the PEBB program no later than one hundred eighty days after the later of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer firefighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;

(c) The last day the surviving spouse, state registered domestic partner, or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving spouse, state registered domestic partner, or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in retiree insurance coverage may choose among the following

options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose required forms are received by the PEBB program no later than September 1, 2006;

(b) The first of the month that is not earlier than sixty days before the date that the PEBB program receives the required forms (for example, if the PEBB program receives the required forms on August 29, the survivor may request health plan enrollment to begin on July 1); or

(c) The first of the month after the date that the PEBB program receives the required forms.

For surviving spouses, state registered domestic partners, and children who enroll, monthly health plan premiums must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for retiree insurance coverage:

(a) Enroll in a PEBB health plan:

(i) Enroll in medical; or

(ii) Enroll in medical and dental.

(iii) Survivors enrolling in dental must stay enrolled for at least two years before dental can be dropped, unless they defer medical and dental coverage as described in WAC 182-12-205, or drop dental as described in WAC 182-12-208(4).

(iv) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in a PEBB health plan if continuously enrolled in other coverage as described in WAC 182-12-205 (2).

(ii) Survivors may enroll in a PEBB health plan as described in WAC 182-12-205(4) when they lose other coverage. Survivors must provide evidence that they were continuously enrolled in other such coverage when enrolling in a PEBB health plan. The required (~~enrollment~~) form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends.

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during annual open enrollment. In addition to annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors will lose their right to enroll in retiree insurance coverage if they:

(a) Do not apply to enroll or defer PEBB health plan enrollment within the timelines (~~stated~~) as described in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in other coverage during the deferral period, as (~~provided~~) described in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-260 Who are eligible dependents? To be enrolled in a health plan, a dependent must be eligible

under this section and the subscriber must comply with enrollment procedures outlined in WAC 182-12-262.

The public employees benefits board (PEBB) program verifies the eligibility of all dependents and (~~reserves the right to~~) will request documents from subscribers that provide evidence of a dependent's eligibility. The PEBB program will remove a subscriber's enrolled dependents from health plan enrollment if the PEBB program is unable to verify a dependent's eligibility. The PEBB program will not enroll or reenroll dependents into a health plan if the PEBB program is unable to verify a dependent's eligibility.

The subscriber must notify the PEBB program, in writing, when his or her dependent is not eligible under this section. The notification must be received by the PEBB program no later than sixty days after the date his or her dependent is no longer eligible under this section. See WAC 182-12-262 (2)(a) for the consequences of not removing an ineligible dependent from insurance coverage.

The following are eligible as dependents:

(1) Lawful spouse. Former spouses are not eligible dependents upon finalization of a divorce or annulment, even if a court order requires the subscriber to provide health insurance for the former spouse.

(2) Registered domestic partner is defined to include the following:

(a) Effective January 1, 2010, a state registered domestic partner, as defined in RCW 26.60.020(1);

(b) A domestic partner who was qualified under PEBB eligibility criteria as a domestic partner before January 1, 2010, and was continuously enrolled under the subscriber in a PEBB health plan or life insurance; and

(c) Former registered domestic partners are not eligible dependents upon dissolution or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former partner.

(3) Children. Children are eligible up to (~~age twenty-six~~) the last day of the month in which their twenty-sixth birthday occurred except as described in (i) of this subsection. Children are defined as the subscriber's:

(a) Children as defined in RCW 26.26.101 establishment of parent-child relationship;

(b) Biological children, where parental rights have not been terminated;

(c) Stepchildren. The stepchild's relationship to a subscriber (and eligibility as a PEBB dependent) ends, for purposes of this rule, on the same date the subscriber's legal relationship with the spouse or registered domestic partner ends through divorce, annulment, dissolution, termination, or death;

(d) Legally adopted children;

(e) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(f) Children of the subscriber's registered domestic partner;

(g) Children specified in a court order or divorce decree;

(h) Extended dependents in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or subscriber's registered domestic partner. The legal responsibility is demonstrated by a valid court order and the child's

official residence with the custodian or guardian. "Children" does not include foster children for whom support payments are made to the subscriber through the state department of social and health services foster care program; and

(i) Children of any age with a developmental disability or physical handicap that renders the child incapable of self-sustaining employment and chiefly dependent upon the subscriber for support and maintenance provided such condition occurs before the age twenty-six;

(i) The subscriber must provide evidence of the disability and evidence that the condition occurred before age twenty-six;

(ii) The subscriber must notify the PEBB program, in writing, when his or her dependent is not eligible under this section. The notification must be received by the PEBB program no later than sixty days after the date that a child age twenty-six or older no longer qualifies under this subsection;

(iii) A child with a developmental disability or physical handicap who becomes self-supporting is not eligible under this subsection as of the last day of the month in which he or she becomes capable of self-support;

(iv) A child with a developmental disability or physical handicap age twenty-six and older who becomes capable of self-support does not regain eligibility under (i) of this subsection if he or she later becomes incapable of self-support;

(v) The PEBB program will periodically certify the eligibility of a dependent child with a disability beginning at age twenty-six, but no more frequently than annually after the two-year period following the child's twenty-sixth birthday.

(4) Parents.

(a) Parents covered under PEBB medical before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous enrollment in PEBB medical;

(ii) The parent qualifies under the Internal Revenue Code as a dependent of the subscriber;

(iii) The subscriber continues enrollment in insurance coverage; and

(iv) The parent is not covered by any other group medical plan.

(b) Parents eligible under this subsection may be enrolled with a different health plan than that selected by the subscriber. Parents may not add additional dependents to their insurance coverage.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) Enrolling dependents in public employees benefits board (PEBB) benefits. A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll his or her dependent except as provided in WAC 182-12-205 (2)(c). Subscribers may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in public employees benefits board (PEBB) benefits. If eligibility is verified and the dependent is enrolled, the depen-

dent's effective date will be the same as the subscriber's effective date.

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year.

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section. The subscriber must satisfy the enrollment requirements as described in subsection (4) of this section.

(2) **Removing dependents from a subscriber's health plan coverage.**

(a) **A dependent's eligibility for enrollment in health plan coverage ends the last day of the month the dependent meets the eligibility criteria in WAC 182-12-250 or 182-12-260.** Employees must notify their employing agency when a dependent is no longer eligible. All other subscribers must notify the PEBB program when a dependent is no longer eligible. Consequences for not submitting notice within sixty days of the last day of the month the dependent loses eligibility for health plan coverage may include, but are not limited to:

(i) The dependent may lose eligibility to continue health plan coverage under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) **Employees have the opportunity to remove dependents:**

(i) During the annual open enrollment. The dependent will be removed the last day of December; or

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section.

(c) **Retirees, survivors, and enrollees with PEBB continuation coverage under WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148 may remove dependents** from their insurance coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. Unless otherwise approved by the PEBB program, the dependent will be removed from the subscriber's insurance coverage prospectively. Insurance coverage will end on the last day of the month in which the written notice is received by the PEBB program. If the written notice is received on the first day of the month, coverage will end on the last day of the previous month.

(3) **Special open enrollment.** Subscribers may enroll or remove their dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both.

• Health plan coverage will begin the first of the month following the later of the event date or the date the required

form is received. If that day is the first of the month, the change in enrollment begins on that day.

- Enrollment of an extended dependent((s)) or a dependent((s)) with a disability will be the first day of the month following eligibility certification.

- The dependent((s)) will be removed from the subscriber's health plan coverage the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

- If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin or end the month in which the event occurs.

Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) A child becoming eligible as a dependent with a disability;

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber or a subscriber's dependent has a change in employment status that affects the subscriber's or the subscriber's dependent's eligibility for their employer contribution toward employer-based group health insurance;

(d) Subscriber or a subscriber's dependent has a change in enrollment under another employer-based group health insurance plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(e) Subscriber's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(f) A court order or national medical support notice (see also WAC 182-12-263) requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP).

(4) Enrollment requirements. A subscriber((s)) must submit the required ((enrollment)) forms within the time frames described in this subsection. Employees submit the required forms to their employing agency. All other subscrib-

ers submit the required forms to the PEBB program. In addition to the required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment.

(a) If a subscriber wants to enroll his or her eligible ((dependent(s))) dependents when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the required forms that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-08-187, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the PEBB annual open enrollment period, the required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the required ((enrollment)) forms must be received no later than sixty days after the dependent becomes eligible except as provided in (d) of this subsection.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption, the subscriber should notify the PEBB program by submitting ((an enrollment)) the required form as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the required ((enrollment)) form must be received no later than twelve months after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(e) If the subscriber wants to enroll a child age twenty-six or older as a child with a disability, the required ((form(s))) forms must be received no later than sixty days after the last day of the month in which the child reaches age twenty-six or within the relevant time frame described in WAC 182-12-262 (4)(a), (b), and (f).

(f) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, required forms must be received no later than sixty days after the event that creates the special open enrollment.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-263 National Medical Support Notice (NMSN) ((or court order)). When a National Medical Support Notice (NMSN) ((or court order)) requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

(1) The subscriber may enroll his or her dependent child and request changes to his or her health plan coverage as described under subsection (3) of this section. Employees submit the required forms to their employing agency. All other subscribers submit the required forms to the public employees benefits board (PEBB) program.

(2) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN ((or court order)), the employing agency or the PEBB program may make enrollment or health plan coverage changes according to subsection (3) of this section upon request of:

(a) The child's other parent; or
 (b) Child support enforcement program.
 (3) Changes to health plan coverage or enrollment are allowed as directed by the NMSN (~~(or court order)~~):

(a) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN (~~(or court order)~~);

(b) An employee who has waived PEBB medical under WAC 182-12-128 will be enrolled in medical as directed by the NMSN (~~(or court order)~~), in order to enroll the dependent;

(c) The subscriber's selected health plan will be changed if directed by the NMSN (~~(or court order)~~);

(d) If the dependent is already enrolled under another PEBB subscriber, the dependent will be removed from the other health plan coverage and enrolled as directed by the NMSN (~~(or court order)~~).

(4) Changes to health plan coverage or enrollment as described in subsection (3)(a) through (c) of this section will begin the first day of the month following receipt of the NMSN (~~(or court order)~~). If the NMSN (~~(or court order)~~) is received on the first day of the month, the change to health plan coverage or enrollment begins on that day. A dependent will be removed from the subscriber's health plan coverage as described in subsection (3)(d) of this section the last day of the month the NMSN (~~(or court order)~~) is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(5) The subscriber may be eligible to make changes to his or her health plan enrollment and salary reduction elections during a special open enrollment related to the NMSN as described in WAC 182-08-198(2), 182-08-199(3), 182-12-128(4), or 182-12-262(3).

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

WAC 182-12-300 Public employees benefits board (PEBB) wellness incentive program eligibility and procedural requirements. The public employees benefits board (PEBB) annually determines the design of the PEBB wellness incentive program.

(1) All subscribers, except PEBB subscribers who are enrolled in both medicare parts A and B, and in the medicare risk pool, are eligible to participate in the PEBB wellness incentive program.

(2) To receive a PEBB wellness incentive ~~for the ((following))~~ 2016 plan year, eligible subscribers must complete PEBB wellness incentive program requirements during 2015 by the latest date below:

(a) For subscribers continuing enrollment in PEBB medical and subscribers enrolling in PEBB medical with an effective date in January, February, or March, the deadline is June 30th; or

(b) ~~((Within sixty days after their effective date of PEBB medical, but no later than December 31st.~~

~~((3)))~~ For subscribers enrolling in PEBB medical with an effective date in April, May, June, July, or August, the deadline is one hundred twenty days from the subscriber's PEBB medical effective date; or

(c) For subscribers enrolling in PEBB medical with an effective date in September, October, November, or December, the deadline is December 31st.

(3) Effective January 1, 2016, to receive a PEBB wellness incentive for the following plan year, eligible subscribers must complete PEBB wellness incentive program requirements during the current plan year by the latest date below:

(a) For subscribers continuing enrollment in PEBB medical and subscribers enrolling in PEBB medical with an effective date in January, February, March, April, May, or June the deadline is September 30th; or

(b) For subscribers enrolling in PEBB medical with an effective date in July or August, the deadline is one hundred twenty days from the subscriber's PEBB medical effective date; or

(c) For subscribers enrolling in PEBB medical with an effective date in September, October, November, or December, the deadline is December 31st.

(4) Subscribers who do not complete the requirements ~~((of))~~ according to subsection (2) ~~or (3)~~ of this section, except as noted, within the time frame described are not eligible to receive a PEBB wellness incentive the following plan year.

Note: All eligible subscribers can earn a wellness incentive. Subscribers who cannot complete the wellness incentive program requirements may be able to earn the same incentive by different means. The PEBB program will work with enrollees (and their physician, if they wish) to define an individual wellness program that provides the opportunity to qualify for the same incentive in light of the enrollee's health status.

~~((4)))~~ (5) A PEBB wellness incentive will be provided only if:

(a) The subscriber is still eligible for the PEBB wellness incentive program in the year the incentive applies;

(b) The funding rate provided by the legislature is designed to provide a PEBB wellness incentive program or a PEBB wellness incentive, or both; or

~~((b)))~~ (c) Specific appropriations are provided for wellness incentives.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-16-020 Definitions. As used in this chapter the term:

"Authority" or "HCA" means the health care authority.

"Business days" means all days except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Continuance" means a change in the date or time of a hearing.

"Denial" or "denial notice" means an action by, or communication from, either an employing agency, or the PEBB program that aggrieves an employee, or his or her dependent, with regard to PEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving

spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, e-mails, electronic files, or other printed or written items.

"Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

"Employer-based group medical insurance" means group medical insurance coverage related to a current employment relationship. It does not include medical insurance coverage available to retired employees, individual market medical insurance coverage, or government-sponsored programs such as medicare or medicaid.

"Employer group" means those ((employee organizations representing state civil service employees;)) counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, ((charter schools, and)) educational service districts ((participating in PEBB insurance coverage under contractual agreement)), and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Final order" means an order that is the final PEBB program decision.

"Health plan" means a plan offering medical or dental, or both, developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing" means a proceeding before a presiding officer that gives a party an opportunity to be heard in a dispute about a decision made by the PEBB appeals committee, including prehearing conferences, dispositive motion hearings, status conferences, and evidentiary hearings.

"Hearing representative" means a person who is authorized to represent the PEBB program in an administrative hearing. The person may be an assistant attorney general, a licensed attorney, or authorized HCA employee.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability (LTD) insurance, or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Mail" or "mailing" means placing a document in the United States Postal system, commercial delivery service, or Washington state consolidated mail services properly addressed.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB ben-

efits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA (~~(which)~~ that administers insurance and other benefits for eligible employees (as ~~((defined))~~ described in WAC 182-12-114), eligible retired and disabled employees (as ~~((defined))~~ described in WAC 182-12-171), eligible dependents (as ~~((defined))~~ described in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Prehearing conference" means a proceeding scheduled and conducted by a presiding officer to address issues in preparation for a hearing.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or registered domestic partner choosing not to enroll in his or her employer-based group medical insurance when:

- Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and
- The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

"Presiding officer" means an impartial decision maker who is an attorney, presides at an administrative hearing, and is either a director designated HCA employee or an administrative law judge employed by the office of administrative hearings.

"Record" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, chewing tobacco, snuff, and other tobacco products. It does not include United States Food and Drug Admin-

istration (FDA) approved quit aids or e-cigarettes until their tobacco related status is determined by the FDA.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-16-036 How can an employee who is eligible to participate in the state's salary reduction plan appeal a decision regarding the administration of benefits offered under the state's salary reduction plan? (1) Any employee who is eligible to participate in the state's salary reduction plan who disagrees with a decision that denies eligibility for or enrollment in a benefit offered under the state's salary reduction plan may appeal that decision ~~((to the public employees benefits board (PEBB) appeals committee. The PEBB appeals manager))~~ by submitting a written request for review to his or her state agency. The state agency must receive the ((notice of appeal)) request for review no later than thirty days after the date of the initial denial notice ((by the PEBB program)). The contents of the ((notice of appeal)) request for review are to be provided ((in accordance with)) as described in WAC 182-16-040.

(a) Upon receiving the request for review, the state agency shall make a complete review of the initial denial by one or more staff who did not take part in the initial denial. As part of the review, the state agency may hold a formal meeting or hearing, but is not required to do so.

(b) The state agency shall render a written decision within thirty days of receiving the request for review. The written decision shall be sent to the employee.

(c) A copy of the state agency's written decision shall be sent to the state agency's administrator or designee and to the public employees benefits board (PEBB) appeals manager. The state agency's written decision shall become the state agency's final decision effective fifteen days after the date it is rendered.

(d) Any employee who disagrees with the state agency's decision in response to a request for review, as described in subsection (1) of this section, may appeal that decision by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal no later than thirty days after the date of the state agency's written decision on the request for review.

The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(e) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

~~((b))~~ (f) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon

issuing a written finding of a good reason explaining the cause for the delay.

~~((e))~~ (g) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

(2) Any employee who is eligible to participate in the state's salary reduction plan aggrieved by a decision regarding a claim for benefits under the medical flexible spending arrangement (FSA) and dependent care assistance program (DCAP) offered under the state's salary reduction plan may appeal that decision to the third-party administrator contracted to administer the plan by following the appeal process of the third-party administrator.

Any employee who is eligible to participate in the state's salary reduction plan who disagrees with a decision in response to an appeal filed with the third-party administrator that administers the medical FSA and DCAP under the state's salary reduction plan may appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal no later than thirty days after the date of the appeal decision by the third-party administrator that administers the medical FSA and DCAP. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

(3) Any employee who is eligible to participate in the state's salary reduction plan aggrieved by a decision regarding the administration of the premium payment plan offered under the state's salary reduction plan may appeal that decision to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal no later than thirty days after the date of the denial notice by the PEBB program. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending WSR 08-20-128, filed 10/1/08, effective 1/1/09)

WAC 182-16-040 What should the request for review or notice of appeal contain? A request for review or notice of appeal ~~((is to))~~ should contain all of the following:

- (1) The name and mailing address of the appealing party;
- (2) The name and mailing address of the appealing party's representative, if any;
- (3) Documentation, or reference to documentation, of decisions previously rendered through the appeal process, if any;
- (4) A statement identifying the specific portion of the decision being appealed and clarifying what is believed to be unlawful or in error;
- (5) A statement of facts in support of the appealing party's position;
- (6) Any information or documentation that the appealing party would like considered and substantiates why the decision should be reversed. Information or documentation submitted at a later date, unless specifically requested by the PEBB appeals manager, may not be considered in the appeal decision;
- (7) The type of relief sought;
- (8) A statement that the appealing party has read the notice of appeal and believes the contents to be true and correct; and
- (9) The signature of the appealing party or the appealing party's representative.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-16-073 Rescheduling and continuances.

(1) Any party may request the presiding officer to reschedule a hearing if a rule requires notice of a hearing and the amount of notice required was not provided.

(a) The presiding officer must reschedule the hearing under circumstances identified in this subsection (1) if requested by any party.

(b) The parties may agree to shorten the amount of notice required by any rule.

(2) Any party may request a continuance of a hearing either orally or in writing.

~~((Before contacting the presiding officer to request a continuance, the party seeking a continuance must contact the other parties, if possible, to find out if they will agree to a continuance.~~

~~((b) The party making the request for a continuance must let the presiding officer know whether the other parties agreed to the continuance. If the parties agree to a continuance, the presiding officer must grant the continuance. If the parties do not agree to a continuance, the presiding officer must schedule a prehearing conference in accordance with the requirements of WAC 182-16-071 to decide whether to grant the continuance.))~~ In each administrative hearing, the presiding officer must grant each party's first request for a continuance. The continuance may be up to thirty calendar days.

(b) The presiding officer may grant each party up to one additional continuance of up to thirty calendar days because of extraordinary circumstances.

~~(c) After granting a continuance, the presiding officer must mail a new hearing notice at least fourteen calendar days before the new hearing date unless the parties agree to a shorter time period.~~

~~(d) If the presiding officer denies the continuance request after a prehearing conference is held pursuant to (b) of this subsection, the presiding officer must mail a written order setting forth the basis for denying the continuance request and may proceed with the hearing on the originally scheduled hearing date))~~ officer's office must:

(i) Immediately telephone all other parties to inform them the hearing was continued; and

(ii) Serve an order of continuance on the parties no later than fourteen days before the new hearing date. All orders of continuance must provide a new deadline for mailing documents to the presiding officer. The new mailing deadline can be no less than ten calendar days prior to the new hearing date. If the continuance is granted pursuant to (b) of this subsection, then the order of continuance must also include findings of fact that state with specificity the extraordinary circumstances for which the presiding officer granted the continuance.

(3) Regardless of whether a party has been granted a continuance as described in subsection (1) of this section, the presiding officer must grant a continuance if a new issue is raised during the hearing and a party requests a continuance.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-16-080 Determining if an administrative hearing right exists. (1) A party has a right to a hearing only if a law or program rule gives that right. If the party is not sure whether a hearing right exists, they may request a hearing to protect their rights.

(2) The right to a hearing does not exist unless:

(a) The public employees benefits board (PEBB) appeals committee has issued a written decision under WAC 182-16-030 (2)(b), 182-16-032(7), 182-16-035(4), 182-16-036 (1)(~~(b), (3)(b), (4))~~) (f), (2)(b), (3)(b), or 182-16-038(2); and

(b) A hearing of the PEBB appeals committee's written decision has been timely requested pursuant to WAC 182-16-050.

(3) If the hearing representative or the presiding officer questions the right to a hearing, the presiding officer must decide whether a hearing right exists, in a written ruling, prior to reviewing and ruling on any other issues.

(4) If the presiding officer decides a person or entity does not have a right to a hearing, the matter must be dismissed.

WSR 15-22-109

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 4, 2015, 11:58 a.m., effective December 5, 2015]

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

Purpose: The purpose of the amendment is to separate out the background check fee from the licensing fee. This will ensure the licensing program collects accurate fees when the Washington State Patrol and/or the Federal Bureau of Investigation increases or decreases fees.

Citation of Existing Rules Affected by this Order: Amending WAC 308-18-150.

Statutory Authority for Adoption: RCW 18.170.180(1).

Adopted under notice filed as WSR 15-19-094 on September 17, 2015.

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 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: November 4, 2015.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-19-056, filed 9/12/08, effective 11/1/08)

WAC 308-18-150 Private security guard company, private security guard, and armed private security guard fees. Licenses issued to private security guard companies and private security guards expire one year from the date of issuance and must be renewed each year. The fees are as follows:

Title of Fee	Fee
Private security guard company/principal:	
Application/includes first examination <u>plus background check fee</u>	\$ ((350.00)) <u>330.00</u>
Reexamination	25.00
License renewal	300.00
Late renewal with penalty	400.00
Change of principal/includes first examination <u>plus background check fee</u>	((400.00)) <u>80.00</u>
Principal armed endorsement	10.00
Private security guard:	
Original license <u>plus background check fee</u>	((441.00)) <u>91.00</u>
Armed endorsement	10.00
Transfer fee	25.00

Title of Fee	Fee
Licensees with inactive licenses are not required to pay late renewal penalty fees.	
License renewal	85.00
License late renewal with penalty.	90.00
Late fee is not due if submitting a renewal with a transfer or rehire application.	
Certified trainer endorsement examination/reexamination	25.00
Certified trainer endorsement renewal	15.00
Duplicate license	10.00